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Sup Ct

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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INDEX.

	PAGE
Petition for Review	1a
Certification of Record	1
Complaint	3
Answer of Respondent Fashion Originators Guild of America, Inc.	26
Answer of Mandel Brothers, Inc.	48
Exhibit A—Declaration of Co-operation in Anti-Piracy between Mandel Brothers, Inc., and the Fashion Originators Guild of America, Inc.	51
Answer of National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt	52
Exhibit A—Notice, dated December 17, 1935, by The Industrial Design Registration Bureau to the Trade	64
Exhibit B—Notice, dated December 17, 1935, by The Industrial Design Registration Bureau to the Trade	66
Exhibit C—Advertisement in Women's Wear Daily, Monday, December 23, 1935	68
Motion and Answer of J. L. Hudson Company	70
Exhibit A—Declaration of Co-operation in Anti-Piracy between J. L. Hudson Company and the Fashion Originators Guild of America, Inc.	78
Order Appointing Examiner and Fixing Time and Place for Taking Testimony	79
Substitute Order Appointing Examiner, etc.	81
Substitute Order Appointing Examiner, etc.	82
Motion to Dismiss by the National Federation of Textiles, Inc., and Its Officers	105
Findings of Fact and Conclusions of Law	107
Order to Cease and Desist	135

PAGE

Order Deleting Portion of Order to Cease and Desist. 149
Testimony Before Examiner. 151
Order as to Exhibits. 4639
Stipulation Waiving Printing of Exhibits. 4640
Stipulation as to Omissions from Record. 4641

TESTIMONY BEFORE EXAMINER.

For Commission.

Albert M. Post:
Direct. 165
Direct (resumed). 4149
Austin M. De Lisser:
Direct. 256
Cross (voir dire). 261
Direct (resumed). 265
Cross. 298
Redirect. 348
Recross. 352
Ben B. Hirsch:
Direct. 353
Cross. 391
Redirect. 518
Recross. 526
Saul Lieber:
Direct. 534
Cross. 562
Murray Lifshey:
Direct. 626
Cross. 657
Direct (resumed). 757
Cross. 758
Redirect. 759
Recross. 769

	PAGE
Godfrey H. Conze:	
Direct	746
Cross	755
Charles Ballon:	
Direct	789
S. M. Seegal:	
Direct	798
Cross	831
Redirect	960
Recross	979
Mathilde Kimball:	
Direct	993
Cross on Voir Dire	1002
Direct (resumed)	1003
Cross	1014
Anna Goldstein:	
Direct	1047
Cross	1069
Herbert J. Tily:	
Direct	1107
Cross	1128
Redirect	1196
Recross	1205
Redirect	1232
Recalled—Redirect	1586
Recross	1588
Charles T. Taylor:	
Direct	1234
Samuel J. Chance:	
Direct	1275
Cross	1342
Redirect	1558
Recross	1569
Kenneth March:	
Direct	1590
Cross	1591
Redirect	1693
Recross	1701

	PAGE
Louis Weinstein:	
Direct	1707
Cross	1717
Hugo C. Gutsche:	
Direct	1740
W. E. Miller:	
Direct	1759
Cross	1784
Redirect	1971
Louis B. Sappington:	
Direct	1975
Direct (resumed)	2080
Cross	2132
Redirect	2281
Recross	2289
Recalled—Redirect	2369
Recross	2377
Garfield R. MacDonald:	
Direct	2029
Cross	2036
Redirect	2075
Recross	2076
Walter E. Simmons:	
Direct	2293
Cross	2319
Redirect	2350
Recross	2358
David Saul Touff:	
Direct	2387
Cross	2415
Redirect	2487
Recross	2491
Henry N. Wyzanski:	
Direct	2494
Cross	2522
Redirect	2588
Recross	2590

	PAGE
Ralph T. Friedmann:	
Direct	2593
Louis Liberman:	
Direct	2617
Cross	2661
Redirect	2720
Recross	2723
Walter L. Rowse:	
Direct	2731
Direct (resumed)	2757
Cross	2763
R. E. Vogt:	
Direct	2755
Direct (resumed)	2778
Direct (resumed)	2822
Floyd C. Dillon:	
Direct	2766
Direct (resumed)	2781
Cross	2789
Frances Malsh:	
Direct	2823
Direct (resumed)	3167
Cross	3182
Roy H. Bjorkman:	
Direct	2828
Cross	2868
Redirect	2870
Recross	2872
Charles J. Larson:	
Direct	2886
Cross	2911
Perry W. Snyder:	
Direct	2932
Cross	2943

	PAGE
Dayne Donovan:	
Direct	2944
Cross	3013
Redirect	3082
Recross	3088
Virginia C. McDonald:	
Direct	3091
Cross	3100
Cross (resumed)	3152
Redirect	3157
Recross	3164
Helen Cofield:	
Direct	3101
Cross	3113
Nellie D. Johnstone:	
Direct	3128
Cross	3140
Florence W. Hertz:	
Direct	3195
Cross	3204
Edward A. Fletcher:	
Direct	3211
Direct (resumed)	3226
Cross	3266
A. E. Levitt:	
Direct	3222
Louis E. Klein:	
Direct	3268
Cross	3279
Redirect	3291
Alexander H. Marshall:	
Direct	3291
Cross	3302
Edgar Leighty:	
Direct	3302
Cross	3310
Redirect	3318

PAGE

Charles F. Roycroft:
Direct. 3319
Cross. 3406
Redirect. 3415

Charles J. Hutzler:
Direct. 3423
Cross. 3443

Herbert L. Bergdahl:
Direct. 3444
Direct (resumed) 3593
Cross. 3650
Redirect. 3827
Recross. 3839

Irving E. Plaut:
Direct. 3515
Cross. 3533
Redirect. 3587
Recross. 3590

John Block:
Direct. 3857
Cross. 3894
Cross (resumed) 3945
Redirect. 3966
Recross. 3978

Sidney Rosenzweig:
Direct. 3910
Cross. 3928

John B. Swinney:
Direct. 3989
Cross. 4017
Redirect. 4031
Recross. 4035

PAGE

Milton J. Greenebaum:
Direct. 4038
Cross. 4069
Redirect. 4089
Recross. 4097

David Rosenthal:
Direct. 4098
Cross. 4133

Aaron Rosenstein:
Direct. 4145
Direct (resumed). 4162

Albert M. Post:
Direct. 4149
Direct (resumed). 4170

Dr. Lazare Teper:
Direct. 4258

Herbert O. Bergdahl:
Direct. 4275
Cross. 4279

For Respondents.

Albert M. Post:
Direct. 4307
Cross. 4432
Redirect. 4445

Melvin A. Albert:
Direct. 4446

COMMISSION'S EXHIBITS

	Offered or Admitted Folio	Printed Page
1-A to 1-T—Constitution and By-Laws of Fashion Originators Guild of America, Inc.	496	4452
2-A and 2-B—List of Members of Fashion Originators Guild of America, Inc.	506	4452
3-A, 3-B, 3-C, 3-D and 3-E—Declarations of Co-operation in use in various forms	532	4452
4-A to 4-F—Contract, Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.	557	4452
5-A to 5-F—Contract, Michigan Ave. Guild of Chicago and Fashion Originators Guild of America, Inc.	557	4452
6-A to 6-E—Contract, The Ladies' Ready to Wear Guild of Baltimore and Fashion Originators Guild of America, Inc.	557	4452
7-A to 7-E—Speech by Maurice Rentner to National Retail Dry Goods Association Convention	572	4452
8—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 20, 1932	....	4453
9—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 6, 1932	....	4453
10-A to 10-C—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Oct. 31, 1932	....	4453
11-A to 11-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 14, 1932	....	4453
12-A to 12-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 28, 1932	....	4453

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
13-A to 13-D—Minutes of Membership Meeting of Fashion Originators Guild of America, Inc., of Jan. 26, 1933.....	2387	4453
14-A to 14-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 17, 1933.....	2387	4454
15—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 23, 1933.....	2387	4454
16—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 8, 1933.....	2387	4454
17—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 22, 1933.....	2387	4454
18—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 5, 1933.....	2387	4454
19-A and 19-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 12, 1933.....	2387	4454
20—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 28, 1933.....	2387	4455
21-A and 21-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 31, 1933.....	2387	4455
22—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Sept. 4, 1933.....	2387	4455
23—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Oct. 25, 1933.....	2387	4455

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
24-A and 24-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 6, 1933.....	2387	4455
25—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 1, 1933.....	2387	4455
26-A and 26-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 28, 1933.....	2387	4456
27—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 3, 1934.....	2387	4456
28—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 23, 1934.....	2387	4456
29—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 16, 1934.....	2387	4456
30—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Jan. 2, 1935.....	2387	4456
31-A and 31-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 2, 1935.....	2387	4456
32—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 4, 1935.....	2387	4457
33—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 10, 1935.....	2387	4457
34-A to 34-C—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 21, 1935.....	2387	4457

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
35-A and 35-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 29, 1932.....	2387	4457
36—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 3, 1935.....	2387	4457
37-A and 37-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 3, 1935.....	2387	4457
38-A to 38-D—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 17, 1936.....	2387	4458
39—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 19, 1936.....	2387	4458
40—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Mar. 3, 1932.....	2387	4458
41-A and 41-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 17, 1933.....	2387	4458
42—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 16, 1933.....	2387	4458
43—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 15, 1933.....	2387	4458
44—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Aug. 4, 1933.....	2387	4459
45-A and 45-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 13, 1933.....	2387	4459

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 18, 1933.....	2387	4459
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 11, 1933.....	2387	4459
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 17, 1933.....	2387	4459
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Nov. 4, 1933.....	2387	4459
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Jan. 31, 1934.....	2387	4460
and 51-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 22, 1934.....	2387	4460
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 11, 1934.....	2387	4460
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 18, 1934.....	2387	4460
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 3, 1934.....	2387	4460
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 21, 1934.....	2387	4460
-Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 13, 1934.....	2387	4461

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
57-A to 57-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Aug. 28, 1934	2387	4461
58—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 17, 1934	2387	4461
59—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Nov. 22, 1934	2387	4461
60-A to 60-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., on Jan. 24, 1935	2387	4461
61—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Mar. 20, 1935	2387	4461
62—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 8, 1935	2387	4462
63-A and 63-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 30, 1935	2387	4462
64-A and 64-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 4, 1935	2387	4462
65-A to 65-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 16, 1935	2387	4462

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
66-A to 66-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 21, 1935	2387	4462
67-A and 67-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Dec. 3, 1935	2387	4462
68-A to 68-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 13, 1936	2387	4463
69-A and 69-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 18, 1936	2387	4463
70—Minutes of a Meeting of the Executive Committee on Piracy, held on Aug. 16, 1933	2387	4463
71—Minutes of Meeting of Grievance Committee of July 27, 1934	2387	4463
72—Minutes of Meeting of Grievance Committee of Sept. 7, 1934	2387	4463
73—Minutes of Meeting of Grievance Committee of Sept. 24, 1934	2387	4463
74—Minutes of Meeting of Grievance Committee of Dec. 20, 1934	2387	4464
75—Minutes of Meeting of Grievance Committee of Jan. 7, 1935	2387	4464
76—Report of Grievance Committee of Jan. 12, 1935	2387	4464
77—Minutes of Meeting of Grievance Committee held on Jan. 23, 1935	2387	4464
78—Minutes of Meeting of Grievance Committee of Jan. 28, 1935	2387	4464

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
79—Minutes of Meeting of Grievance Committee of Mar. 21, 1935	2387	4464
80-A and 80-B—Minutes of Meeting of Grievance Committee of Mar. 29, 1935	2387	4465
81-A to 81-C—Minutes of Meeting of Grievance Committee of June 20, 1935	2387	4465
82-A and 82-B—Minutes of Meeting of Grievance Committee of July 31, 1935	2387	4465
83-A and 83-B—Minutes of Meeting of Grievance Committee of Sept. 25, 1935	2387	4465
84—Minutes of Meeting of Grievance Committee of Oct. 29, 1935	2387	4465
85-A and 85-B—Minutes of Meeting of Grievance Committee of Dec. 20, 1935	2387	4465
86—Minutes of Meeting of Grievance Committee of Jan. 2, 1936	2387	4466
87-A and 87-B—Minutes of Meeting of Grievance Committee of Jan. 27, 1936	2387	4466
88—List of Non-Guild Manufacturers	665	4466
89-A to 89-C—List of Red Carded Retailers as of July 6, 1936	670	4466
90-A—Procedure on Style Piracy adopted at Membership Meeting of Dec. 3, 1935	....	4466
90-B—Minutes of Meeting of Executive Committee on Style Piracy of Dec. 3, 1935	....	4466
91-A to 91-C—List of Members and their price ranges as shown on applications as of Apr. 16, 1936	....	4466
92—Resident Office Declarations of Co-operation	....	4466
93-A and 93-B—List of Resident Offices signed on regular and special Declarations of Co-operation as of Apr. 16, 1935	....	4467

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
94-A to 94-I—Recapitulation of Red Cards as of Mar. 20, 1936	....	4467
95—List of Officers and Directors of Fashion Originators Guild of America, Inc., as of Apr. 16, 1936	....	4467
96-A to 96-F—Instructions to Shoppers	....	4467
96-G—Declaration of Co-operation by Retail Store	....	4467
97-A to 97-N—Correspondence and report on complaint against P & R Shop of Brooklyn	686	4467
98-A to 98-M—Transaction clearing through Guild office, November, 1935	729	4467
99-A and 99-B—Circular Letter of June 16, 1933, and Memo	734	4467
99-C and 99-D—Resolution and its significance	734	4468
99-E—Form of Declaration of Co-operation enclosed in Exhibits 99-A and 99-B	734	4468
100-A and 100-B—Letters re evasion, circular letter of Apr. 9, 1936	738	4468
101-A and 101-B—Agreement between Protective Affiliates and the Fashion Originators Guild of America, Inc.	742	4468
102-A to 102-X—Monthly reports on returns, Nov., 1935, Dec., 1935, and Jan., 1936	748	4468
103—Letter, C. F. Roycroft to J. M. Golby, Sept. 4, 1935	....	4468
104-A and 104-B—Letter, J. M. Golby to C. F. Roycroft, Oct. 1, 1935	....	4468
105—Letter, Hochshild, Kohn & Co. to A. M. Post, Oct. 1, 1935	....	4469
106—Letter, Wolf, Cohn, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
107—Letter, Munroe Michel, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469
108—Memorandum of A. M. Post to J. M. Golby, Oct. 1, 1935	....	4469
109—Memo. by A. M. Post re telephone conversation with Mr. Engel of Jane Engel and Chez Rosette, Oct. 1, 1935	....	4469
110-A and 110-B—Letter, A. M. Post to C. F. Roycroft, Oct. 1, 1935	....	4469
111—Telegram, Mary McLean, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469
112—Telegram, The Clothes Line to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4470
113—Telegram, C. F. Roycroft to A. M. Post, Oct. 1, 1935	....	4470
114—Letter, C. F. Roycroft to A. M. Post, Oct. 2, 1935	....	4470
115—Reply to Commission's Exhibit 114, A. M. Post to C. F. Roycroft, Oct. 4, 1935	....	4470
116—Letter, J. M. Golby to C. F. Roycroft, Nov. 4, 1935	....	4470
117—Letter, C. F. Roycroft to J. M. Golby of Fashion Originators Guild of America, Inc., Dec. 19, 1935	....	4470
118—Letter, J. M. Golby to C. F. Roycroft, Dec. 24, 1935	....	4470
119—Letter, J. M. Golby to C. F. Roycroft, Oct. 21, 1935	....	4471
120—Letter, J. M. Golby to C. F. Roycroft, Jan. 14, 1935	....	4471
121—Letter, J. M. Golby to Rose E. Phillips, Jan. 14, 1935	759	4471

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
122—Declaration of Co-operation of Rose E. Phillips, Jan. 14, 1935	....	4471
123—Letter, J. M. Golby to C. F. Roycroft, Jan. 22, 1935	....	4471
124—Letter, C. F. Roycroft to J. M. Golby, Feb. 1, 1935	....	4471
125—Letter, J. M. Golby to C. F. Roycroft, Feb. 1, 1935	....	4471
126—Letter, C. F. Roycroft to J. M. Golby, Feb. 6, 1935	....	4472
127—Letter, J. M. Golby to Rose E. Phillips, Mar. 12, 1935	....	4472
128—Letter, J. M. Golby to Lee's, Inc., Mar. 11, 1935	....	4472
129—Letter, J. M. Golby to Sloan-Strobel, Mar. 11, 1935	....	4472
130—Letter, J. M. Golby to C. F. Roycroft, Mar. 11, 1935	....	4472
131—Letter, J. M. Golby to C. F. Roycroft, Mar. 27, 1935	....	4472
132—Letter, C. F. Roycroft to J. M. Golby, Mar. 28, 1935	....	4473
133—Letter, J. M. Golby to C. F. Roycroft, Mar. 29, 1935	....	4473
134—Letter, J. M. Golby to C. F. Roycroft, Apr. 5, 1935	....	4473
135—Letter, C. F. Roycroft to J. M. Golby, Apr. 13, 1935	....	4473
136—Letter, C. F. Roycroft to J. M. Golby, Apr. 30, 1935	....	4473
137—Letter, J. M. Golby to C. F. Roycroft, May 1, 1935	....	4473
138—Letter, C. F. Roycroft to J. M. Golby, May 3, 1935	....	4474

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
139—Letter, C. F. Roycroft to J. M. Golby, July 5, 1935	....	4474
140—Letter, J. M. Golby to C. F. Roycroft, July 8, 1935	....	4474
141-A to 141-C—Letter, A. M. Post to Allan Metzger, Aug. 1, 1935	....	4474
142—Letter, C. F. Roycroft to J. Goldston, May 22, 1935	....	4474
143—Letter, J. M. Golby to C. F. Roycroft, Aug. 23, 1935	....	4475
144—Letter, J. M. Golby to C. F. Roycroft, Aug. 27, 1935	....	4475
145—Letter, C. F. Roycroft to J. M. Golby, Aug. 28, 1935	....	4475
146—Letter, C. F. Roycroft to J. M. Golby, Aug. 27, 1935	....	4475
147—Letter, J. M. Golby to C. F. Roycroft, Aug. 28, 1935	....	4475
148—Letter, C. F. Roycroft to J. M. Golby, Aug. 29, 1935	....	4475
149—Letter, C. F. Roycroft to J. M. Golby, Oct. 25, 1935	....	4475
150—Letter, J. M. Golby to C. F. Roycroft, Oct. 29, 1935	....	4476
151—Letter, C. F. Roycroft to J. M. Golby, Oct. 30, 1935	....	4476
154—Letter, C. F. Roycroft to J. M. Golby, Nov. 5, 1935	....	4476
155—Letter, J. M. Golby to C. F. Roycroft, Nov. 6, 1935	....	4476
156—Letter, C. F. Roycroft to J. M. Golby, Nov. 9, 1935	....	4476
157—Letter, J. M. Golby to C. F. Roycroft, Nov. 11, 1935	....	4477

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
158—Letter, C. F. Roycroft to J. M. Golby, Nov. 25, 1935	....	4477
159—Letter, J. M. Golby to Weinstein & Co., Nov. 27, 1935	....	4477
160—Letter, J. M. Golby to Bertram S. Rice, Nov. 27, 1935	....	4477
161—Letter, J. M. Golby to C. F. Roycroft, Dec. 10, 1935	....	4477
164—Letter, J. M. Golby to C. F. Roycroft, Dec. 24, 1935	....	4478
165—Letter, J. M. Golby to C. F. Roycroft, Jan. 27, 1936	....	4478
166—Letter, C. F. Roycroft to J. M. Golby, Jan. 29, 1936	....	4478
167—Telegram, A. M. Post to Roy H. Bjorkman, Inc., June 26, 1935	....	4478
168—Letter, Roy H. Bjorkman to J. M. Golby, June 27, 1935	....	4478
169—Day Letter Telegram, A. M. Post to Roy H. Bjorkman, June 27, 1935	....	4478
170—Day Letter Telegram, A. M. Post to Roy H. Bjorkman, June 28, 1935	....	4479
171—Letter, Roy H. Bjorkman to A. M. Post, June 28, 1935	....	4479
172-A and 172-B—Letter, Roy H. Bjorkman to A. M. Post, Aug. 19, 1935	....	4479
173-A to 173-D—Letter, A. M. Post to Roy H. Bjorkman, Aug. 21, 1935	....	4479
174—Letter, A. M. Post to Roy H. Bjorkman, Sept. 12, 1935	....	4479
175—Letter, J. M. Golby to Roy H. Bjorkman, Oct. 21, 1935	....	4479
176—Letter, R. H. Bjorkman to A. M. Post, Oct. 29, 1935	....	4480
177—Letter, J. M. Golby to R. Bjorkman, Oct. 31, 1935	....	4480

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
178—Letter, J. M. Golby to Ed. A. Fletcher, Apr. 15, 1935	9727	4480
179—Letter, Herbert & Cooper, Inc., to George Gleason, Apr. 17, 1935	....	4480
180—Letter, Myron Herbert to Clare Weinberger, Apr. 2, 1935	....	4480
181—Letter, Ed. Fletcher to J. M. Golby, May 1, 1935	9731	4480
182—Letter, Ed. Fletcher to Mrs. Emma R. Beatie, Apr. 5, 1935	9731	4480
183—Letter, Mrs. Emma Beatie to Ed. Fletcher, Apr. 3, 1935	9731	4481
184—Letter, J. M. Golby to Ed. Fletcher, Aug. 15, 1935	9779	4481
185—Letter, Ed. Fletcher to J. M. Golby, July 23, 1935	9779	4481
186—Letter, J. M. Golby to Ed. Fletcher, July 19, 1935	9779	4481
187—Letter, J. M. Golby to Ed. Fletcher, July 17, 1935	9779	4481
188—Letter, Ed. Fletcher to J. M. Golby, July 16, 1935	9779	4481
189—Letter, J. M. Golby to Ed. Fletcher, August 19, 1935	9979	4482
190—Letter, Ed. Fletcher to J. M. Golby, Aug. 15, 1935	9779	4482
191—Letter, Ed. Fletcher to J. M. Golby, Oct. 19, 1935	9779	4482
192—Letter, Ed. Fletcher to J. M. Golby, May 20, 1935	9779	4482
193—Letter, Ed. Fletcher to Clare Weinberger, May 8, 1935	9779	4482
194—Letter, Clare Weinberger to Ed. Fletcher, May 4, 1935	9779	4482

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
195—Telegram, George M. Gleason to J. M. Golby, May 2, 1935	9779	4482
196—Letter, Ed. Fletcher to Clare Weinberger, May 2, 1935	....	4483
197—Resignation of Clare Anne Shop from Michigan Avenue Guild, May 1, 1935.	.....	4483
198—Letter, Ed. Fletcher to J. M. Golby, Nov. 11, 1935	9779	4483
199—Letter, J. M. Golby to Ed. Fletcher, Nov. 8, 1935	9779	4483
200—Letter, Ed. Fletcher to Mr. J. M. Fahey, Nov. 2, 1935	9779	4483
201—Letter, The Embassy to Ed. Fletcher, Nov. 1, 1935	9779	4483
202—Letter, Ed. Fletcher to J. M. Golby, Oct. 15, 1935	9779	4483
203—Letter, J. M. Golby to Ed. Fletcher, Oct. 11, 1935	9779	4484
204—Letter, Harriet Stein Studio to Ed. Fletcher, Jan. 14, 1935	9779	4484
205—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9779	4484
206—Letter, Ed. Fletcher to Miss Harriet Stein, Jan. 3, 1935	9779	4484
207—Letter, Ed. Fletcher to Miss Harriet Stein, Dec. 31, 1934	9779	4484
208—Letter, Ed. Fletcher to J. M. Golby, Jan. 17, 1935	9779	4484
209—Letter, J. M. Golby to Ed. Fletcher, Jan. 11, 1935	9779	4484
210—First page of letter of J. M. Golby to George Gleason, May 21, 1935	9776	4485
211—Second page of Commission's Exhibit 210	9776	4485

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
212—Letter, J. M. Golby to Ed. Fletcher, Jan. 11, 1935	9776	4485
213—Letter, Fred A. Block to J. M. Golby, Jan. 9, 1935	9776	4485
214—Letter, J. M. Golby to Ed. Fletcher, Jan. 7, 1935	9776	4485
215—Letter, Ed. Fletcher of Michigan Avenue Guild to J. M. Golby, Jan. 4, 1935	9776	4485
216—Letter, Ed. Fletcher to Fred A. Block, Dec. 31, 1934	9776	4485
217—Letter, J. M. Golby to Ed. Fletcher, Nov. 14, 1934	9776	4486
218—Letter, Ed. Fletcher to J. M. Golby, Nov. 12, 1934	9776	4486
219—Letter, J. M. Golby to Ed. Fletcher, Oct. 4, 1935	9776	4486
220—Letter, J. M. Golby to Miss Helen Kindler, Oct. 4, 1935	9776	4486
221—Letter, Ed. Fletcher to J. M. Golby, Oct. 1, 1935	9776	4486
222—Letter, Miss Kindler to J. M. Golby, Oct. 2, 1935	9776	4486
223—Letter, Secretary of Michigan Avenue Guild to George Gleason, Apr. 22, 1935	9782	4487
224—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9709	4487
225—Application of Mrs. Frances Malsh to Michigan Avenue Guild, Dec. 21, 1934.	9511	4487
226—Reply Letter, Ed. Fletcher to Mrs. Frances Malsh, Jan. 24, 1935	9514	4487
227—Letter, Ed. Fletcher of Michigan Avenue Guild to J. M. Golby, Dec. 21, 1934	9709	4487

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
228—Letter, J. M. Golby to Ed. Fletcher, Dec. 18, 1934	9709	4487
229—Letter, J. M. Golby to Ed. Fletcher, Aug. 23, 1934	9709	4487
230—Letter, Ed. Fletcher to J. M. Golby, Aug. 22, 1934	9709	4488
231—Letter, J. M. Golby to Ed. Fletcher, Jan. 8, 1935	9709	4488
232—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9709	4488
233—Application for Membership of Emily Naser to Michigan Avenue Guild, Dec. 8, 1934	9755	4488
234—Letter, J. M. Golby to Ed. Fletcher, Nov. 10, 1934	9761	4488
235—Letter, Ed. Fletcher to John T. Shayne & Co., June 17, 1935	9747	4488
236—Letter, A. H. Marshall to A. M. Post, June 13, 1935	9747	4488
237—Letter, A. M. Post to T. J. Considine, undated	9747	4489
238—Letter, A. M. Post to Ed. Fletcher, May 21, 1935	9747	4489
239—Letter, Ed. Fletcher to A. M. Post, May 14, 1935	9747	4489
241—Letter, J. M. Golby to T. J. Considine, Jan. 11, 1935	9747	4489
242—Letter, J. M. Golby to George M. Gleason, Jan. 11, 1935	9747	4489
243-A to 243-J—Resolutions embodying regulations binding upon members of Textile Division of Fashion Originators Guild of America, Inc.	791	4489
245—Letter, A. M. DeLisser to Mr. Grossleight, Jan. 27, 1936	865	4490

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
246-A—Minutes of Meeting of June 16, 1933, of Textile Members of Fashion Originators Guild of America, Inc.....	869	4490
246-B—Minutes of Meeting of Oct. 18, 1933.	869	4490
246-C—Minutes of Meeting of Nov. 7, 1934.	869	4490
246-D—Minutes of Meeting of Jan. 8, 1935.	869	4490
246-E—Minutes of Special Meeting of Jan. 25, 1935.....	869	4490
246-F—Minutes of Special Meeting of Feb. 11, 1935, of Textile Members.....	869	4491
246-G—Minutes of Special Meeting of Feb. 20, 1935, of Textile Members.....	869	4491
246-H—Minutes of Regular Meeting of Mar. 5, 1935, of Textile Members.....	869	4491
246-I—First page of Minutes, Meeting of Mar. 19, 1935, of Textile Members.....	869	4491
246-J—Second page of Minutes, Meeting of Mar. 19, 1935, of Textile Members....	869	4491
246-K—First page of Minutes, Meeting of Apr. 18, 1935, of Textile Members.....	869	4491
246-L—Second page of Minutes, Meeting of Apr. 18, 1935, of Textile Members....	869	4492
246-M—Minutes of Meeting of May 8, 1935, of Textile Members.....	869	4492
246-N—First page of Minutes, Meeting of June 6, 1935, of Textile Members.....	869	4492
246-O—Second page of Minutes, Meeting of June 6, 1935, of Textile Members.....	869	4492
246-P—Minutes of Meeting of June 25, 1935, of Textile Members.....	869	4492
246-Q—Minutes of Meeting of July 16, 1935, of Textile Members.....	869	4492
246-R—First page of Minutes, Meeting of July 23, 1935, of Textile Members....	869	4492
246-S—Second page of Minutes, Meeting of July 23, 1935.....	869	4493

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
246-T—Third page of Minutes, Meeting of July 23, 1935	869	4493
246-U—Fourth page of Minutes, Meeting of July 23, 1935	869	4493
246-V—Fifth page of Minutes, Meeting of July 23, 1935	869	4493
246-W—Minutes of Meeting of Aug. 21, 1935, of Textile Associates Committee	869	4493
246-X—First page of Minutes, Meeting of Sept. 28, 1935, of Textile Members	869	4493
246-Y—Second page of Minutes, Meeting of Sept. 28, 1935	869	4494
246-Z—First page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-AA—Second page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-BB—Third page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-CC—Minutes of Meeting of Jan. 20, 1936, of Embroidery Group	869	4494
246-DD—First page of Minutes of Meeting of Jan. 22, 1936, of Embroidery Group.	869	4494
246-EE—Second page of Minutes of Meeting of Jan. 22, 1936, of Embroidery Group.	869	4495
247—Minutes of Meeting of February 3, 1936, of Embroidery Group	872	4495
248-A and 248-B—Minutes of Meeting of Feb. 21, 1936, of Textile Division	873	4495
249-A and 249-B—Minutes of Meeting of Feb. 3, 1936, of Screen Print Group	875	4495
250—Form of Declaration of Co-operation in use by Textile Division of Fashion Originators Guild of America, Inc.	854	4495
251—Telegram, J. M. Golby to George Gleason, May 2, 1935	....	4495

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
252—Letter to Members of Michigan Avenue Guild, May 4, 1935, by George Gleason..	....	4496
253-A and 253-B—Letter, J. M.. Golby to George Gleason, May 31, 1935.....	....	4496
254-A—Letter, Michigan Avenue Guild to A. M. Post, May 24, 1935.....	....	4496
254-B—List of Non-Guild Manufacturers annexed to 254-A.....	....	4496
255—Letter, A. H. Marshall to George Gleason, May 25, 1935.....	....	4496
256-A and 256-B—Two-page letter of A. M. Post to A. H. Marshall, May 27, 1935..	....	4496
257-A to 257-C—Memorandum to Board of Governors of Fashion Originators Guild of America, Inc., signed by A. M. Post.	....	4496
258—Letter, Ed. Fletcher to J. M. Golby, June 10, 1935.....	....	4497
259—Letter, J. M. Golby to Ed. Fletcher, June 13, 1935.....	....	4497
260—Letter, Ed. Fletcher to J. M. Golby, June 17, 1935.....	....	4497
261—Declaration of Co-operation of Morris B. Sacks to Fashion Originators Guild of America, Inc., June 20, 1935.....	....	4497
262—Letter, J. M. Golby to Ed. Fletcher, June 21, 1935.....	....	4497
263-A and 263-B—Letter, A. H. Marshall to A. M. Post, June 25, 1935.....	....	4497
264—Letter, Ed. Fletcher to J. M. Golby, June 27, 1935.....	....	4497
265-A and 265-B—Letter, J. M. Golby to A. H. Marshall, June 27, 1935.....	....	4498
266—Letter, A. H. Marshall to J. M. Golby, July 1, 1935.....	....	4498

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
267—Letter, A. M. Post to A. H. Marshall, July 3, 1935	....	4498
268—Letter, A. H. Marshall to A. M. Post, July 6, 1935	....	4498
269—Letter, A. M. Post to A. H. Marshall, July 8, 1935	....	4498
270—Letter, J. M. Golby to Ed. Fletcher, July 11, 1935	....	4498
271—Letter, Marshall to A. M. Post, July 16, 1935	....	4498
272—Letter, A. M. Post to A. H. Marshall, July 26, 1935	....	4499
273—Letter, Marshall to A. M. Post, July 26, 1935	....	4499
274—Letter, J. M. Golby to Ed. Fletcher, Aug. 2, 1935	....	4499
275—Letter, Ed. Fletcher to J. M. Golby, Aug. 6, 1935	....	4499
276—Letter, Ed. Fletcher to J. M. Golby, Aug. 6, 1935	....	4499
277-A—Letter, J. M. Golby to Ed. Fletcher, Aug. 13, 1935	....	4499
277-B to 277-F—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Aug. 12, 1935.	....	4499
278—Letter, Ed. Fletcher to J. M. Golby, Aug. 15, 1935	....	4500
279—Letter, J. M. Golby to Ed. Fletcher, Aug. 19, 1935	....	4500
280—Letter, Ed. Fletcher to J. M. Golby, Sept. 7, 1935	....	4500
281-A and 281-B—Report for Feb., 1936, "Manufacturers and Number of Complaints Handled for Them"	....	4500

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
282-A and 282-B—Report for Mar., 1936, "Manufacturers and Number of Complaints Handled for Them"	....	4500
283—Advertisement in Women's Wear, Jan. 6, 1936, inserted by Textile Division	883	4500
284—Advertisement in Women's Wear, Dec. 23, 1935, by Industrial Design Registration Bureau of National Federation of Textiles, Inc.	891	4500
285-A to 285-E—List of dress manufacturers who signed Declaration of Co-operation	888	4501
286—Return invoice, "The Palace," Sept. 27, 1935	1092	4501
287—Credit return invoice of Jordan, Marsh & Co., Oct. 9, 1935	1095	4501
288—Post card, return goods notice, Marshall Field to Melba Dress, Oct. 10, 1935	1099	4501
289—Return goods notice of Kresge to Melba Dress, Oct. 17, 1935	1099	4501
290—Return goods notice of Marshall Field to Melba Dress, Oct. 10, 1935	1099	4501
291—Credit charge of Marshall Field to Melba Dress, Oct. 19, 1935	1101	4501
292—Letter, Melba Dress to Marshall Field, Oct. 8, 1935	1105	4502
293—Letter, Marshall Field to Melba Dress, Oct. 10, 1935	1105	4502
295—Return invoice of Snellenberg, Oct. 19, 1935	1113	4502
296—Letter, Klines to Melba Dress, Oct. 11, 1935	1115	4502
297—Receipt for return of Klines, Sept. 27, 1935	1119	4502
298—Receipt for return of Klines, Sept. 23, 1935	1119	4502

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
299—Letter, Carson, Pirie, Scott & Co. to Melba Dress, Aug. 4, 1935	1121	4502
300—Return invoice, Carson, Pirie, Scott & Co. to Melba Dress, Oct. 18, 1935	1123	4503
301-A—Letter, The Palace Clothing Co. to Melba Dress, Oct. 25, 1935	1125	4503
301-B—Credit memo, The Palace to Melba Dress	1125	4503
302—Letter, Leah Rubinstein to Melba Dress, Oct. 28, 1935	1127	4503
303-A—Order, Frank & Seder to Melba Dress, Aug. 10, 1935	1139	4503
303-B—Letter, Frank & Seder to Melba Dress, Nov. 1, 1935	1139	4503
303-C—Letter, Melba Dress to Frank & Seder, Nov. 2, 1935	1139	4503
304—Order, Philip Sapadin to Samuel Hoffman, Inc., Aug. 29, 1935	1146	4504
306—Order, Gimbel Bros. to Noxall Co., Sept. 17, 1935	1621	4504
307—Return memo. of R. H. White to Noxall Co., Oct. 30, 1935	1639	4504
308—Letter, Noxall Co. to R. H. White, Nov. 1, 1935	1639	4504
309—Letter, R. H. White to Noxall Co., Nov. 11, 1935	1639	4504
310—Return invoices, Kaufmann's to Noxall Co., Oct. 5, 1935	1646	4504
311—Return invoices, Kaufmann's to Noxall Co., Oct. 8, 1935	1648	4504
312—Return invoices from Kaufmann's to Noxall Co., Oct. 12, 1935	1648	4505
313—Letter, Kaufmann's to Noxall Co., Oct. 5, 1935	1646	4505

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
314—Letter, Noxall Co. to Kaufmann's, Oct. 14, 1935	1647	4505
315—Letter, Kaufmann's to Noxall Co., Oct. 15, 1935	1646	4505
316—Letter, Joseph Horne Co. to Noxall Co., Oct. 4, 1935	1658	4505
317—Letter, Noxall Co. to Joseph Horne & Co., Oct. 5, 1935	1658	4505
318—Return invoice, Lurie's to Noxall Co., Oct. 9, 1935	1661	4505
319—Letter, Lurie's to Noxall Co., Oct. 9, 1935	1661	4506
320—Letter, Noxall Co. to Lurie's, Oct. 1 , 1935	1661	4506
321—Return slip, Schunemans & Manheimers to Noxall Co., Feb. 10, 1936	1671	4506
322—Letter, Noxall Co. to Schunemans & Manheimers, Feb. 13, 1936	1671	4506
323—Express Notice to Noxall Co. that goods returned were in New York, Mar. 14, 1936	1671	4506
324—Letter, Schunemans & Manheimers to Noxall Co., Mar. 16, 1936	1671	4506
325—Letter, Noxall Co. to Schunemans & Manheimers, Mar. 18, 1936	1671	4506
326—Letter, Schunemans & Manheimers to Noxall Co., Apr. 11, 1936	1671	4507
327—Letter, Noxall Co. to Railway Express, Apr. 14, 1936	1671	4507
328—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 14, 1936	1671	4507
329—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 19, 1936	1671	4507
330—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 28, 1936	1671	4507

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
331—Letter, Kaufmann Department Stores to Trussel Dress Co., Oct. 9, 1935.....	1914	4507
332—Letter, The Jones Store to Trussel Dress Co., Oct. 26, 1935.....	1934	4507
333—Letter, Trussel Dress Co. to The Jones Store, Oct. 30, 1935.....	1934	4508
334—Letter, John Wanamaker, Philadelphia, to Trussel Dress Co., Nov. 8, 1935.....	1939	4508
335—Letter, Fashion Originators Guild of America, Inc., to Trussel Dress Co., June 24, 1936.....	1950	4508
336-A—Letter, Wm. Filene's Sons Co. to Excellent Dres. Co., Nov. 6, 1935.....	.....	4508
336-B—Letter, Excellent Dress Co. to Wm. Filene's Sons Co., Nov. 6, 1935.....	....	4508
349—Invoice credit from Wm. Filene's Sons Co. to Excellent Dress, Nov. 8, 1935...	3000	4508
352-B—Letter, Lombardy Frocks, Inc., to Wm. Filene's Sons Co., Oct. 15, 1935..	2996	4508
352-C—Notice of return from Wm. Filene's Sons Co. to Lombardy Frocks, Inc., undated.....	2991	4509
352-D—Notice of return from Wm. Filene's Sons Co. to Lombardy Frocks, Inc., undated.....	2991	4509
357—List of Guild houses with whom Wm. Filene's Sons Co. did business during 1935-1936.....	2439	4509
358—Letter to Guild manufacturers as to Filene's injunction action, Mar. 9, 1936	2820	4509
359—Fashion Originators Guild of America, Inc., notice to Wm. Filene's Sons Co., Nov. 23, 1935.....	3017	4509
360—List of dresses returned to manufacturers by R. H. White from Sept. 25, 1935, to Jan. 31, 1936.....	3169	4509

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
361-A—Letter, Fashion Originators Guild of America, Inc., to R. H. White, Nov. 7, 1935	3190	4509
361-B—Letter, Fashion Originators Guild of America, Inc., to R. H. White, Nov. 7, 1935	3190	4510
362—Strawbridge & Clothier Declaration of Co-operation, June 30, 1933	3337	4510
363—Letter, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 30, 1933	....	4510
364—Letter, Strawbridge & Clothier to A. M. Post, Feb. 6, 1936	3443	4510
366—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Feb. 4, 1936	3590	4510
367-A—New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store	3594	4510
367-B—New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store	3594	4510
368—Letter, Roth, Jackson & Immerman to Strawbridge & Clothier, June 29, 1933	3727	4510
369—Letter, Bender & Hamburger to Strawbridge & Clothier, June 29, 1933	3727	4511
370—Form Letter, Myron Herbert & Charles Cooper to Strawbridge & Clothier, June 27, 1933	3727	4511
371—Form Letter, Kallman & Cohn, Inc., to Strawbridge & Clothier, June 29, 1933	3727	4511
372—Form Letter, Cohn & Holt to Strawbridge & Clothier, June 29, 1933	3727	4511
373—Form Letter, Milgrim to Strawbridge & Clothier, June 29, 1933	3727	4511

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
374—Form Letter, Edward Gerrick Co., Inc., to Strawbridge & Clothier, June 28, 1933	3727	4511
375—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 24, 1934	3743	4511
376—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 25, 1934	3743	4511
377-A—Sketch enclosed in Exhibit 377-B	3746	4512
377-B—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, June 18, 1934	3746	4512
378-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, June 21, 1934	3746	4512
378-B—Letter, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 23, 1934	3746	4512
379—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, July 1, 1934	3750	4512
380-A—Letter, J. M. Golby to Strawbridge & Clothier, July 28, 1934	3750	4512
380-B—Reply, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., Aug. 14, 1934	3750	4512
381-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 24, 1935	3750	4512
381-B—Reply, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., Feb. 1, 1935	3750	4513

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
382-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Sept. 14, 1935	3768	4513
382-B—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Sept. 13, 1935	3768	4513
382-C—Sketches attached to Exhibit 382-B	3768	4513
382-D—Sketches attached to Exhibit 382-B	3768	4513
382-E—Sketches attached to Exhibit 382-B	3768	4513
383—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier—Bon Ray Dance Frock; Oct. 10, 1935	3768	4513
384—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, undated—LaRue Dresses, Inc.	3768	4513
385—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Oct. 29, 1935—Spectator Sports	3768	4514
386—Letter, A. M. Post to Charles Taylor of Strawbridge & Clothier, Nov. 8, 1935	....	4514
387-A—Letter, A. M. Post to Charles Taylor, Nov. 23, 1935	....	4514
387-B—Letter, A. M. Post to Charles Taylor, Nov. 23, 1935	....	4514
388—Letter, A. M. Post to Charles Taylor, Nov. 25, 1935	....	4514
389—Letter, Charles Taylor to A. M. Post, Nov. 29, 1935	....	4514
390—Letter, A. M. Post to Charles Taylor, Dec. 2, 1935	....	4514
391—Letter, Fashion Originators Guild of America, Inc., to Charles Taylor, Dec. 16, 1935	....	4515

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
392-A—Letter, A. M. Post to Charles Taylor, Dec. 26, 1935	....	4515
392-B—Reply Letter, Charles Taylor to A. M. Post, Dec. 28, 1935	....	4515
393-A—Letter, A. M. Post to Charles Taylor, Jan. 13, 1936	....	4515
393-B—Reply Letter, Charles Taylor to A. M. Post, Jan. 17, 1936	....	4515
394-A and 394-B—Letter, A. M. Post to Charles Taylor, Jan. 18, 1936	....	4515
395—Letter, Charles Taylor to A. M. Post, Jan. 20, 1936	....	4515
396-A and 396-B—Letter, A. M. Post to Charles Taylor, Jan. 18, 1936	....	4516
397—Letter, A. M. Post to Charles Taylor, Jan. 27, 1936	....	4516
398-A and 398-B—Letter, A. M. Post to Charles Taylor, Jan. 29, 1936	....	4516
398-C and 398-D—Form letter re piracy from A. M. Post to retail stores, Nov. 5, 1935.	....	4516
398-E and 398-F—Letter, A. M. Post to H. O. Bergdahl, Nov. 21, 1935	....	4516
399-A and 399-B—List of manufacturers, members of the Fashion Originators Guild of America, Inc., Spring, 1935	3820	4516
400—Table of orders, Feb. 15, 1936, to Mar. 5, 1936, date placed, where and amounts, Department 331 of Strawbridge & Clothier	3884	4516
401—Table of cost of goods that Strawbridge & Clothier couldn't get from Jan. 18, 1936, to Jan. 31, 1936	3919	4517

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
402—Comparative increase or decrease for Department 350 of Strawbridge & Clothier—1936 as against 1935—in percentages	3948	4517
403—Retail price line comparison, 1935 vs. 1936—Department 350 of Strawbridge & Clothier	3949	4517
410—List of F. O. G. of A. manufacturers and amount of business transacted—Feb. 1, 1935, to Jan. 31, 1936—with Strawbridge & Clothier	3979	4517
411—Price line comparison—Feb.-June, 1935-1936—Department 331 of Strawbridge & Clothier	3983	4517
412—Retail price line comparison—Feb.-June, 1935-1936—Department 338 of Strawbridge & Clothier	3983	4517
413—Retail price line comparison—Feb.-June, 1935-1936—Department 358 of Strawbridge & Clothier	3983	4517
414—Retail price line comparison—Feb.-June, 1935-1936—Department 371 of Strawbridge & Clothier	3983	4518
415—Figures on loss of business, Feb.-June, 1935-1936, of Strawbridge & Clothier	3983	4518
416—Letter, Strawbridge & Clothier to C. H. D. Robbins, Mar. 5, 1936	4020	4518
417—Letter, Strawbridge & Clothier to Herman Biespeil, Mar. 5, 1936	4022	4518
418—Letter, Strawbridge & Clothier to Frank Starr Friedlander, Mar. 5, 1936	4022	4518
419—Letter, Strawbridge & Clothier to Robinson Brothers, Mar. 5, 1936	4022	4518

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
420—Letter, Strawbridge & Clothier to Harry Frank. Mar. 5,.1936.....	4022	4518
421—Letter, Strawbridge & Clothier to Henry Gans, Mar. 5, 1936.....	4022	4519
422—Letter, Strawbridge & Clothier to Goldstein & Entin, Mar. 5, 1936.....	4022	4519
423—Letter, Strawbridge & Clothier to Gardner Schwartz Mar. 5, 1936.....	4022	4519
434—Recapitulation of returns, Department 491 of Strawbridge & Clothier, Aug. 12, 1935, to Jan. 16, 1936.....	5096	4519
435—Return invoice, Strawbridge & Clothier to Brenner & Weinstein, Dec. 23, 1935.	5096	4519
436—Return invoice, Strawbridge & Clothier to Tobia Dress, Dec. 16, 1935.....	5096	4519
437—Return invoice, Strawbridge & Clothier to Jomax Frocks, Dec. 16, 1935.....	5096	4519
438—Return invoice, Strawbridge & Clothier to Palma Frocks, Sept. 11, 1935.....	5096	4520
439—Return invoice, Strawbridge & Clothier to New Emporium Dress, Dec. 5, 1935.	5096	4520
440—Return invoice, Strawbridge & Clothier to Apex Dress, Jan. 16, 1936.....	5096	4520
441—Return invoice, Strawbridge & Clothier to Silver-Pom Dress, Aug. 12, 1935...	5096	4520
442—Return invoice, Strawbridge & Clothier to Lucky Style, Oct. 16, 1935.....	5096	4520
443—Return invoice, Strawbridge & Clothier to Puritan Dress, Nov. 26, 1935.....	5096	4520
444—Return invoice, Strawbridge & Clothier to Feinberg & Weisen, Sept. 11, 1935..	5096	4520
445—Return invoice, Strawbridge & Clothier to Tiljane Costume, Sept. 11, 1935....	5096	4521

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
446—Return invoice, Strawbridge & Clothier to Gladdy True Size, Sept. 11, 1935....	5096	4521
450-A to 450-P—Sixteen pages constituting a list of resources sent to Strawbridge & Clothier by the American Merchandising Corporation.....	5101	4521
451-A and 451-B—Form Letter, Maurice Rentner to A. H. Burchfield of Joseph Horne Co., Mar. 23, 1932.....	5231	4521
452—Reply to 451, A. E. Oxenreiter of Joseph Horne Co. to Fashion Originators Guild of America, Inc., Mar. 29, 1932.....	5233	4521
453—Answer to 452, Fashion Originators Guild of America, Inc., to A. E. Oxenreiter.....	5233	4521
454-A to 454-M—Letter, Maurice Rentner to H. C. Gutsche of Joseph Horne Co. with form of agreement annexed, Dec. 16, 1932.....	5236	4521
455-A and 455-B—Letter, Fashion Originators Guild of America, Inc., to H. C. Gutsche, June 19, 1933.....	5239	4522
456-A and 456-B—Memorandum of Guild's resolution adopted at Fashion Originators Guild of America, Inc., meeting on June 12, 1933.....	....	4522
457—Declaration of Co-operation of Joseph Horne Co. signed by W. H. Burchfield, Vice-President.....	5245	4522
458—Letter, Joseph Horne Co. to Fashion Originators Guild of America, Inc., June 27, 1933.....	5246	4522
460—List of returns from Feb. 21, 1935, to June 23, 1936, of Joseph Horne Co...	5261	4522

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
70—List of houses from whom purchases were made in 1935 and 1936 by William Taylor Son & Co.	5295	4522
71—List of purchases of Guild houses by William Taylor Son & Co.	5297	4522
72—Amount of orders outstanding at time of red card by William Taylor Son & Co.	5300	4523
73—Figures showing loss and effect of red card on the business, 1936 or 1935, of William Taylor Son & Co.	5317	4523
74—Telegram to Fashion Originators Guild of America, Inc., from The Bailey Co., The Lindner Co., The Halle Bros. Co., William Taylor Son & Co., The Higbee Co., The May Co. of Cleveland, Ohio..	5341	4523
75—Declaration of Co-operation from J. L. Hudson Co. to Fashion Originators Guild of America, Inc., June 22, 1933..	5932	4523
76—Letter, Fashion Originators Guild of America, Inc., to J. L. Hudson Co., Feb. 14, 1936	5947	4523
77-A—Registered letter of J. L. Hudson Co. to Fashion Originators Guild of America, Feb. 27, 1936	5941	4523
77-B—Return receipt for the registered letter (477-A)	5941	4523
78-A—List of Guild houses from whom J. L. Hudson Co. bought dresses during fiscal year 1935 (to Jan. 31, 1936)	5966	4524
78-B—List of suit Guild houses as 478-A..	5968	4524
78-C—List of Guild houses used in better coats and evening wraps as 478-A....	....	4524

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
479-A—J. L. Hudson Co. list of outstanding orders with Fashion Originators Guild of America, Inc., members as of Feb. 15, 1936	5974	4524
479-B and 479-C—List of merchandise on order with Guild houses at time of red carding as of Feb. 15, 1936, by J. L. Hudson Co.	5974	4524
480-A and 480-B—Letter, Maurice Rentner to L. B. Sappington, June 16, 1933	6005	4524
480-C and 480-D—Memorandum on Guild's Resolution adopted June 12, 1933	6005	4524
481—Memorandum from Tauff to Sappington, analysis of Department 338 of J. L. Hudson Co., Aug. 3, 1936	6025	4524
482-A and 482-B—Memorandum from Tauff to Sappington—analysis of Department 351, J. L. Hudson Co. (only figures)	6035	4525
483-A and 483-B—Effect of red carding in Jr. Miss Department of J. L. Hudson Co. Memorandum from Dunham to Sappington, dated Aug. 1, 1936 (only figures)	6040	4525
484—Net price sales in dress departments of J. L. Hudson Co. for year 1935	6044	4525
485—Comparative study of Fashion Originators Guild of America, Inc., affected departments showing percentages	6044	4525
486—Telegram, June 17, 1933, H. O. Bergdahl to J. L. Hudson Co.	6059	4525
487—Letter, L. B. Sappington to J. Goldston, Jan. 31, 1935	6064	4525
488-A and 488-B—Letter, A. M. Post to L. B. Sappington, Feb. 4, 1936	6066	4526

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
489—Telegram, L. B. Sappington to H. O. Bergdahl, May 8, 1935	6070	4526
490—Telegram, H. O. Bergdahl to L. B. Sappington, May 8, 1935	6072	4526
491-A and 491-B—Letter, L. B. Sappington to H. O. Bergdahl, May 9, 1935	....	4526
492-A to 492-C—Letter, A. M. Post to M. F. Dowley, Nov. 18, 1935	6074	4526
493-A and 493-B—Memorandum, G. R. McDonald to M. F. Dowley, Nov. 16, 1935.	6118	4526
494-A and 494-B—Letter, Oscar Webber to H. O. Bergdahl, Dec. 5, 1935	6080	4526
495—Request for return slip from Fashion Originators Guild of America, Inc., to J. L. Hudson Co., No. 2330	6083	4527
496 for Iden.—Letter, H. L. Bergdahl to L. B. Sappington, Apr. 10, 1935	6245	4527
497-A to 497-C for Iden.—Letter, H. L. Bergdahl to Oscar Webber, Dec. 4, 1935	6255	4527
498-A to 498-E—Copies of order blanks of J. L. Hudson Co.	6263	4527
499-A to 499-C—Letter, A. M. Post to Oscar Webber, Feb. 11, 1936	6294	4527
500—Telegram, Fashion Originators Guild of America, Inc., to Mr. Wilton	6294	4527
501-A and 501-B—Letter, L. B. Sappington to A. M. Post, Feb. 8, 1936	6294	4527
502—Telegram, A. M. Post to L. B. Sappington, Feb. 10, 1936	6294	4528
503—Telegram, Oscar Webber to A. M. Post, Feb. 10, 1936	6294	4528
504—Analysis of piece sales at various prices for Department 358 of J. L. Hudson Co. for 1935	6309	4528

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
505—Analysis of piece sales at various prices for Department 369 of J. L. Hudson Co. for 1935	6313	4528
506—Analysis of piece sales at various prices for Department 338 of J. L. Hudson Co. for 1935	6317	4528
507—Analysis of piece sales for Department 369 at various prices for the years 1935 and 1936	6321	4528
508—Net piece sales for all departments of J. L. Hudson Co. for the spring of 1935	6324	4528
509—Net piece sales for all departments of J. L. Hudson Co. for the spring of 1936	6324	4529
510—List of Fashion Originators Guild of America, Inc., houses with whom Department 371 Junior Miss Department of J. L. Hudson Co. did business in 1935	6850	4529
511—Telegram, W. E. Simmons to Bernard Appel, Inc., Mar. 4, 1935	7064	4529
512—Telegram, Bernard Appel, Inc., to W. E. Simmons, Mar. 5, 1935	7064	4529
513—Letter, W. E. Simmons to Bernard Appel, Inc., Mar. 14, 1935	7064	4529
514—Letter, Bernard Appel, Inc., to W. E. Simmons, Mar. 15, 1935	7064	4529
515-A and 515-B—Letter, Bernard Appel, Inc., to W. E. Simmons, Mar. 27, 1935	7064	4530
517-A and 517-B—Letter, J. Goldston to L. B. Sappington, Mar. 16, 1935	7115	4530
518—Letter, L. B. Sappington to J. Goldston	7115	4530
519—Letter, J. Goldston to L. B. Sappington, Mar. 25, 1935	7115	4530

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
520-A and 520-B—Letter, A. M. Post to L. B. Sappington, Apr. 2, 1935	7115	4530
521—Letter, A. M. Post to L. B. Sappington, Apr. 3, 1935	7115	4530
522—Report of arbitrators that Appel garment is copy of creation by Townley Frocks, Inc.	7115	4531
523—List of manufacturers who make better dresses, taken from Fairchild's Directory for fall of 1936 by type and price lines	7223	4531
525—List of $10.75 dress houses taken from Fairchild's Directory for fall of 1936	7241	4531
526—Letter, A. M. Post to Ernest Kern & Co., Feb. 7, 1936	....	4531
527-A—Declaration of Co-operation in Anti-Piracy between Mandel Bros. and the Fashion Originators Guild of America, Inc.	7498	4531
527-B—Letter, Mandel Bros. to Fashion Originators Guild of America, Inc., June 23, 1933	7498	4531
528-A and 528-B—Letter, A. M. Post to Mandel Bros., Nov. 6, 1935	7616	4532
529—Letter, Henry Wyzanski of Mandel Bros. to A. M. Post, Sept. 13, 1935	7520	4532
530-A to 530-B—Letter, A. M. Post to Henry Wyzanski, Sept. 18, 1935	7522	4532
531-A and 531-B—Telegram, Henry Wyzanski to A. M. Post, June 12, 1936	7550	4532
536—Letter, Ed. Schuster & Co., Inc., to Fashion Originators Guild of America, Inc., July 8, 1933	7795	4532

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
537—Postcard to Mr. Ralph T. Friedmann, c/o Ed. Schuster & Co., Inc., July 21, 1933, from J. M. Golby, Executive Secretary	7795	4532
538—Letter, Mar. 21, 1935, to Mr. Al. Post, signed Ralph T. Friedmann	7818	4533
539-A, 539-B and 539-C—Letter, Mar. 23, 1935, to Mr. Ralph T. Friedmann from Albert M. Post	7826	4533
539-D—Card form, date line blank, addressed to Fashion Originators Guild of America, Inc.	7826	4533
539-E and 539-F—Two-page mimeographed form letter	7826	4533
540-A and 540-B—Letter, July 1, 1935, to Mr. Ralph T. Friedmann by Albert M. Post	7832	4533
542—Tabulation headed "Returns of dresses to vendors because Guild stated dresses were copies"	7861	4534
543-A, 543-B and 543-C—Letter, Sept. 5, 1935, to Mr. Louis Libman, Ed. Schuster & Co., Inc., signed Albert M. Post	7870	4534
544—Letter, Sept. 17, 1935, to Mr. Albert M. Post, signed Louis Liberman	7872	4534
545-A and 545-B—Letter to Mr. Louis Leiberman, signed by Albert M. Post	7880	4534
546—Letter, Jan. 20, 1936, to Mr. Albert M. Post, signed Louis Liberman	7882	4534
547-A, 547-B and 547-C—Letter to Mr. Louis Liberman, Jan. 23, 1936, signed Albert M. Post	7896	4535
548—Telegram, Feb. 5, 1936, to Louis Liberman, from Albert M. Post	7898	4535

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
549—Newspaper clippings, one "Dress Guild Cancels 3 Store Agreements," from "N. Y. Times—2/12/36"; the other, "Urges Further Study by Critics of FOGA," from "Women's Wear."	7901	4535
550-A—Letter, Feb. 11, 1936, to Ed. Schuster & Co., signed Albert M. Post	7909	4535
550-B—Form headed "Declaration of Co-operation in Anti-Piracy Between (blank) and The Fashion Originators Guild of America, Inc."	7909	4535
551—Tabulation, "Exhibit C. Orders for dresses which were outstanding as of February 11, 1936, from Guild members," etc.	7913	4536
552—Tabulation, "Summary of dresses on hand in six retail price lines February 10 to July 6, 1935, and 1936, combined for Departments 57 and 63"	7934	4536
553-A—Letter, Sheila-Lynn, Inc., July 31, 1936, to Ed. Schuster Co.	7937	4536
553-B—Blank form of Declaration of Co-operation in Anti-Piracy between Retail Store and Fashion Originators Guild of America, Inc.	7937	4536
555-A and 555-B—Two sheets entitled "List of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63—Misses Dresses"	7974	4537
557—Declaration of Co-operation in Anti-Piracy between Boston Store and The Fashion Originators Guild of America, signed by W. L. Rowse	8194	4537

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
558—"Return Made by Boston Store to Vendors' Dresses Alleged to be Copies from Sept. 1935 to Feb. 1936"	8217	4537
560—Letter of Associated Merchandising Corporation Retail Research Association, Apr. 10, 1935, to Mr. W. L. Rowse.	8251	4537
561—Letter of Associated Merchandising Corporation Retail Research Association, Apr. 15, 1935, to The Boston Store	8251	4537
562-A and 562-B—Letter, May 13, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
563-A and 563-B—Letter, July 3, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
564—Letter, October 4, 1935, to Mr. N. B. Goldstein, Boston Store, signed H. O. Bergdahl	8251	4538
565-A and 565-B—Letter, November 19, 1935, to Mr. Vactor Chambers, signed Albert M. Post	8251	4538
566—Letter, Nov. 25, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
567-A—Mimeographed letter, Nov. 27, 1935, to Mr. W. L. Rowse, Boston Store, signed H. O. B.	8251	4538
567-B, 567-C, 567-D and 567-E—Mimeographed pages headed "F.O.R.A. Questions and Replies"	8251	4538
568—Mimeographed letter, Jan. 6, 1936, to Boston Store, signed Jack Goldston	8257	4539
572—Letter, June 17, 1935, to Mr. W. L. Rowse, signed J. M. Golby	8257	4539

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
573-A and 573-B—List of members of the Fashion Originators Guild of America, Inc., from whom purchases have been made during the period Feb. 1, 1935 to July 31, 1936	8269	4539
575—Page 12, The Milwaukee Journal of Wednesday, Aug. 21, 1935, containing advertisement of Boston Store	8284	4539
576—Page 20, The Milwaukee Journal, Sept. 19, 1935, containing advertisement of Boston Store	8284	4540
577—Page 5, The Milwaukee Sentinel, Oct. 5, 1935, containing advertisement of Boston Store	8284	4540
578—Page 2, The Milwaukee Journal, Oct. 18, 1935, containing advertisement of Boston Store	8284	4540
579—Page numbered in upper left-hand corner "VII," Sunday, Oct. 2, 1935, containing advertisement of Boston Store	8284	4540
580—Page 8, Milwaukee Sentinel, Nov. 2, 1935, containing advertisement of Boston Store	8284	4540
581—Page 7, Milwaukee Sentinel, Dec. 25, 1935, containing advertisement of Boston Store	8284	4540
582—Page 9, The Milwaukee Journal, Dec. 27, 1935, containing advertisement of Boston Store	8284	4541
583—Page of The Milwaukee Journal, Jan. 31, 1936, containing advertisement of Boston Store	8284	4541
584—E-page 3, Milwaukee Sentinel, Mar. 1, 1936, containing advertisement of Boston Store	8284	4541

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
585—Page 21, The Milwaukee Journal, Mar. 20, 1936, containing advertisement of Boston Store	8284	4541
586—Page 15, The Milwaukee Journal, Mar. 15, 1936, containing advertisement of Boston Store	8284	4541
587—Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936"	8341	4541
588—Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936"	8341	4541
589—Letter, Aug. 14, 1936, to Mr. Barney Gisnet, signed The Herzfeld-Phillipson Co.	8366	4542
590—Letter of Louise Mulligan, Inc., Aug. 15, 1936, to The Herzfeld-Phillipson Company	8366	4542
591—Report, "Louise Mulligan Dress Sales, Department 374," dated Aug. 22, 1936	8468	4542
592—Letter, R. H. Bjorkman to J. M. Golby, Dec. 28, 1932	8498	4542
593—Letter, R. H. Bjorkman to J. M. Golby, Dec. 30, 1932	8510	4542
594—Letter, J. M. Golby to R. H. Bjorkman, Jan. 2, 1933	8515	4542
595—Telegram to Fashion Originators Guild of America, Inc., from R. H. Bjorkman, Jan. 7, 1933	8518	4543
597—Letter, Dec. 24, 1932, J. M. Golby to R. H. Bjorkman	8523	4543
598-A to 598-H—Letter, J. M. Golby to R. H. Bjorkman with Uptown Retail Guild, minutes enclosed	8530	4543

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
599-A—Letter, Perry Snyder of Powers Mercantile Co. to R. H. Bjorkman, Jan. 17, 1933	8550	4543
600—Certificate of Organization of Minneapolis Retail Fashion Guild	8562	4543
601-A and 601-B—Declaration of Co-operation between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.	8571	4543
602—Letter from members of Minneapolis Ready to Wear Association to Fashion Originators Guild of America, Inc., Feb. 1, 1933	....	4544
603—Letter, R. H. Bjorkman to J. M. Golby, Feb. 1, 1933	....	4544
604—Letter, D. J. Larson of Dayton Company to R. H. Bjorkman, Jan. 25, 1933.	....	4544
605—Letter, Dayton Company to Fashion Originators Guild of America, Inc., Jan. 24, 1933	....	4544
606—Letter, J. M. Golby to R. H. Bjorkman, Feb. 6, 1933	....	4544
607-A and 607-B—Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, Feb. 2, 1933	....	4544
608-A and 608-B—Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, Feb. 4, 1933	....	4545
609—Letter, J. M. Golby to R. H. Bjorkman, Feb. 7, 1933	....	4545
610—Telegram, Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Mar. 1, 1933	....	4545

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
611—Letter, R. H. Bjorkman to Fashion Originators Guild of America, Inc., June 21, 1933	....	4545
612—Letter, R. H. Bjorkman to J. M. Golby, July 29, 1933	....	4545
613-A and 613-B—Letter, J. M. Golby to R. H. Bjorkman, Aug. 3, 1933	....	4545
614—Letter, J. M. Golby to R. H. Bjorkman, Aug. 4, 1933	....	4545
615-A and 615-B—Letter, R. H. Bjorkman to J. M. Golby, Aug. 7, 1933	....	4546
616—Letter, R. H. Bjorkman to J. M. Golby, Aug. 9, 1933	....	4546
617—Letter, J. M. Golby to R. H. Bjorkman, Aug. 9, 1933	....	4546
618—Letter, Louis Mallas, Chairman Junior Miss Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Oct. 25, 1933	....	4546
619—Telegram, J. M. Golby of Uptown Retail Guild Annex of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Nov. 13, 1933	....	4546
620—Letter, R. H. Bjorkman to J. M. Golby, Nov. 14, 1933	....	4546
621-A to 621-G—Letter, J. M. Golby to R. H. Bjorkman, Jan. 5, 1934, with resolutions	....	4546
622-A to 622-C—Letter, J. M. Golby to R. H. Bjorkman, Feb. 2, 1934, with copies of minutes enclosed	....	4547
624—Resolution of Uptown Retail Guild, Feb. 17, 1934	....	4547
625-A and 625-B—Letter, R. H. Bjorkman to J. M. Golby, June 5, 1934	....	4547

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
626—Letter, J. M. Golby to R. H. Bjorkman, June 7, 1934	....	4547
627-B and 627-C—Letter, J. M. Golby to R. H. Bjorkman, June 7, 1934	....	4547
627-D—List of Names of Manufacturers submitted to Uptown Retail Guild	....	4547
627-E and 627-F—Minutes of Meeting of Board of Governors of Uptown Retail Guild, June 5, 1934	....	4547
628—Letter, Fashion Originators Guild of America, Inc., Miss Herschman to R. H. Bjorkman, June 11, 1934	....	4548
629—Letter, R. H. Bjorkman to Fashion Originators Guild of America, Inc., June 14, 1934	....	4548
630-A and 630-B—Letter, Chairman of Minneapolis Fashion Guild to J. M. Golby, June 23, 1934	....	4548
631—Letter, J. M. Golby to R. H. Bjorkman, June 25, 1934	....	4548
632—Letter, Sam Dietsch, Chairman, Coat Division, to R. H. Bjorkman, June 29, 1934	....	4548
633-A and 633-B—Letter, R. H. Bjorkman to J. M. Golby, July 31, 1934	....	4548
634—Letter, J. M. Golby to R. H. Bjorkman, July 27, 1934	....	4548
635—Fashion Show Resolutions, July 31, 1934	....	4549
636—Telegram, Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Aug. 6, 1934	....	4549
637—Letter, J. M. Golby to R. H. Bjorkman, Aug. 16, 1934	....	4549

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
638-A and 638-B—Letter, R. H. Bjorkman to J. M. Golby, Aug. 18, 1934	....	4549
639—Letter, J. M. Golby to R. H. Bjorkman, Aug. 21, 1934	....	4549
640—Letter, R. H. Bjorkman to J. M. Golby, Aug. 23, 1934	....	4549
641—Letter, J. M. Golby to R. H. Bjorkman, Aug. 27, 1934	....	4549
642—Letter, J. M. Golby to R. H. Bjorkman, Aug. 27, 1934	....	4550
643—Letter, R. H. Bjorkman to J. M. Golby, Nov. 12, 1934	....	4550
644—Letter, J. M. Golby to R. H. Bjorkman, Jan. 31, 1935	....	4550
645—Letter, J. M. Golby to R. H. Bjorkman, Feb. 1, 1935	....	4550
647-A and 647-B—Letter, J. M. Golby to R. H. Bjorkman, Feb. 15, 1935	....	4550
650—Letter, J. M. Golby to R. H. Bjorkman, Feb. 28, 1935	....	4550
653-A to 653-C—Letter, R. H. Bjorkman to J. M. Golby, Mar. 21, 1935	....	4550
654-A to 654-C—Letter, J. M. Golby to R. H. Bjorkman, Mar. 26, 1935	....	4551
657—Letter, R. H. Bjorkman to J. M. Golby, Apr. 18, 1935	....	4551
658—Letter, R. H. Bjorkman to J. M. Golby, Apr. 16, 1935	....	4551
660—Letter, J. M. Golby to R. H. Bjorkman, Apr. 22, 1935	....	4551
665—Letter, J. M. Golby to R. H. Bjorkman, June 22, 1935	....	4551
666-A and 666-B—Telegram, A. M. Post to R. H. Bjorkman, June 27, 1935	....	4551

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
667—Letter, J. M. Golby to R. H. Bjorkman, June 27, 1935	....	4551
669—Telegram, R. H. Bjorkman to A. M. Post, June 28, 1935	....	4552
672-A to 672-D—Proposed Declaration of Co-operation in Anti-Piracy between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc., dated day of , 1935	....	4552
674-A and 674-B—Letter, J. M. Golby to R. H. Bjorkman, July 3, 1935	....	4552
675—Letter, R. H. Bjorkman to J. M. Golby, July 6, 1935	....	4552
676—Letter, J. M. Golby to R. H. Bjorkman, July 11, 1935	....	4552
677—Letter, A. M. Post to R. H. Bjorkman, July 12, 1935	....	4552
678-A and 678-B—Letter, A. M. Post to R. H. Bjorkman, July 19, 1935	....	4552
682-A and 682-B—Letter, A. M. Post to R. H. Bjorkman, Sept. 12, 1935	....	4553
683—List of Minneapolis stores signed with Fashion Originators Guild of America, Inc., Sept. 12, 1935	....	4553
685-A and 685-B—Registered letter from J. M. Golby to R. H. Bjorkman, Sept. 16, 1935	....	4553
686-A and 686-B—Letter, R. H. Bjorkman to A. M. Post, Sept. 18, 1935	....	4553
687—Letter, J. M. Golby to R. H. Bjorkman, Sept. 21, 1935	....	4553
688—Letter, J. Jesse Hyman to R. H. Bjorkman, Sept. 24, 1935	....	4553
689—Letter, J. Jesse Hyman to J. M. Golby, Sept. 27, 1935	....	4553

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
690—Letter, J. M. Golby to R. H. Bjorkman, Oct. 21, 1935	....	4554
691—Letter, R. H. Bjorkman to A. M. Post, Oct. 29, 1935	....	4554
692—Letter, A. M. Post to Virginia C. McDonald, May 16, 1936	....	4554
693—Letter, A. M. Post to R. H. Bjorkman, May 16, 1936	....	4554
694-A and 694-B—Letter, R. H. Bjorkman to A. M. Post, June 2, 1936	....	4554
695-A to 695-E—Signed Agreement of Minneapolis Fashion Guild with Fashion Originators Guild of America, Inc., Aug. 26, 1935	....	4554
696—Letter, P. J. Reilly of Associated Merchandising Corporation to The Dayton Co., June 21, 1933, enclosing Guild Agreement	8678	4554
697—Resolution of American Merchandising Corporation Garment Merchandising Managers concerning Anti-Piracy Agreement with Fashion Originators Guild of America, Inc.	8678	4555
701—Letter, C. J. Larson of The Dayton Co. to Fashion Originators Guild of America, Inc., July 1, 1933	8688	4555
702-A and 702-B—Letter, Fashion Originators Guild of America, Inc., to The Dayton Co., Aug. 3, 1933	8693	4555
703-A and 703-B—Proposed Agreement between Fashion Originators Guild of America, Inc., and Minneapolis Guild of Fashion Retailers	8710	4555

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
705-A, 705-B and 705-C—Letter, A. M. Post to D. Donovan of The Dayton Co., May 3, 1935	8881	4555
706—Letter, D. Donovan to A. M. Post, May 8, 1935	8881	4555
707—Telegram, D. Donovan to C. J. Larsen of The Dayton Co., May 13, 1935	9177	4556
708—Letter, Maurice Rentner to The Dayton Co., Feb. 21, 1936	8972	4556
709—Letter, Milton Altmark, Inc., to The Dayton Co., Feb. 18, 1936	8972	4556
710—Letter, N. E. Friedland of Associated Merchandising Corporation to The Dayton Co., Feb. 18, 1936	8972	4556
711—Letter, Fred A. Block, Inc., to The Dayton Co., Aug. 27, 1936	8972	4556
712—Letter, Grace Ashley to The Dayton Co., Aug. 29, 1936	8972	4556
713—Junior Dresses (Subdeb Dept.), Spring, 1935-1936—Comparison of Unit Sales (Dept. 371) of The Dayton Co.	8992	4556
714—Record of estimated loss in traveling expense and time, Spring, 1936	9015	4557
715—Booklet, "Quality Street," Fall, 1935, with imprint of The Dayton Co.	9022	4557
716—Ad, Minneapolis Journal, July 16, 1935, of The Dayton Co.	9024	4557
717—Ad, Minneapolis Journal, Aug. 2, 1935, of The Dayton Co.	9026	4557
718—Ad. Minneapolis Journal, Aug. 21, 1935, of The Dayton Co.	9027	4557
719—Ad, Minneapolis Journal, Aug. 30, 1935, of The Dayton Co.	9027	4557
720—Ad, Minneapolis Journal, Aug. 23, 1935, of The Dayton Co.	9027	4557

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
724—Ad, Minneapolis Tribune, Oct. 3, 1935, of The Dayton Co.	9027	4558
725—Ad, Minneapolis Journal, Oct. 18, 1935, of The Dayton Co.	9027	4558
726—Ad, Minneapolis Tribune, Oct. 22, 1935, of The Dayton Co.	9027	4558
727—Ad, Minneapolis Journal, Nov. 8, 1935, of The Dayton Co.	9027	4558
728—Ad, Minneapolis Journal, Nov. 22, 1935, of The Dayton Co.	9027	4558
729—Ad, Minneapolis Journal, Dec. 11, 1935, of The Dayton Co.	9027	4558
730—Ad, Minneapolis Journal, Dec. 19, 1935, of The Dayton Co.	9027	4558
731—Ad, Minneapolis Tribune, Dec. 25, 1935, of The Dayton Co.	9027	4559
732—Ad, Minneapolis Tribune, Dec. 25, 1935, of The Dayton Co.	9027	4559
733—Ad, Minneapolis Journal, Feb. 26, 1936, of The Dayton Co.	9027	4559
734—Article, Aug., 1936, issue of "Golfer & Sportsman," by Virginia McDonald, entitled "Fashions for Fashionables"	9296	4559
735—Letter, Aug. 20, 1934, to Frances Malsh, signed by J. M. Golby	9509	4559
736—Order to David Crystal, Inc., Dec. 12, 1934, signed by Frances Malsh	9517	4559
737—Letter of David Crystal, Inc., Dec. 19, 1934, to Frances Malsh	9520	4560
738—Letter of David Crystal, Inc., Dec. 27, 1934, to Frances Malsh	9524	4560
739—Order on Feigenbaum & Adelson, Inc., Aug. 1, 1935, ship to Frances Malsh	9526	4560
740—Letter of Feigenbaum & Adelson, Inc., Aug. 2, 1935, to Frances Malsh	9528	4560

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
741-A and 741-B—Letter of Frances Malsh, Aug. 7, 1935, to Fashion Originators Guild of America, Inc.	9531	4560
742-A and 742-B—Letter of Fashion Originators Guild of America, Inc., Aug. 12, 1935, to Mrs. Frances Malsh	9532	4561
743—Letter of Sport-Craft, Inc., Jan. 15, 1936, to Florence Hertz and Hazel Lang	9599	4561
744-A to 744-H—By-Laws of Michigan Avenue Guild of Chicago (adopted Mar. 2, 1933; amended Nov. 7, 1933, Oct. 24, 1934, and Dec. 17, 1935)	9646	4561
745—Paper, headed "Michigan Avenue Guild of Chicago, Inc.," being list of officers, directors, committees, etc.	9649	4561
746-A and 746-B—Rules and Regulations of the Michigan Avenue Guild of Chicago, Inc., in force as of Jan. 2, 1936	9651	4561
747-A to 747-E—Minutes of the Meeting of the Michigan Avenue Guild, Dec. 17, 1932	9660	4562
748-A and 748-B—Minutes of the Meeting of the Michigan Avenue Guild, Dec. 23, 1932	9660	4562
749-A and 749-B—Minutes of Meeting of the Michigan Avenue Guild, Dec. 30, 1932	9661	4562
750-A and 750-B—Minutes of Meeting of the Michigan Avenue Guild, Jan. 5, 1933	9661	4562
751-A and 751-B—Minutes of Meeting of the Michigan Avenue Guild, Feb. 3, 1933	9661	4563
752-A and 752-B—Minutes of the Meeting of the Michigan Avenue Guild, Feb. 10, 1933	9661	4563

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
753-A to 753-C—Minutes of Meeting of the Michigan Avenue Guild, Feb. 21, 1933.	9661	4563
754-A, 754-B and 754-C—Minutes of Meeting of the Michigan Avenue Guild, Mar. 2, 1932.	9661	4563
755—Minutes of Meeting of the Michigan Avenue Guild, Mar. 16, 1933.	9661	4563
756-A and 756-B—Minutes of Meeting of the Michigan Avenue Guild, Apr. 1, 1933.	9661	4563
757-A and 757-B—Minutes of Meeting of the Michigan Avenue Guild, Apr. 29, 1933.	9661	4564
758-A and 758-B—Minutes of Meeting of Members of the Michigan Avenue Guild, May 23, 1933.	9661	4564
759-A and 759-B—Minutes of Meeting of Members and Prospective Members of the Michigan Avenue Guild, June 24, 1933.	9661	4564
760—Minutes of Meeting of Directors of Michigan Avenue Guild, July 6, 1933.	9661	4564
761-A and 761-B—Minutes of Meeting of Directors of Michigan Avenue Guild, Aug. 24, 1933.	9661	4564
762-A and 762-B—Minutes of Meeting of the Directors of Michigan Avenue Guild, Sept. 12, 1933.	9661	4565
763-A, 763-B and 763-C—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 2, 1933.	9661	4565
764-A, 764-B and 764-C—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 11, 1933.	9661	4565
765-A to 765-B—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 21, 1933.	9661	4565

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
766-A to 766-E—Minutes of Meeting of Members of Michigan Avenue Guild, Oct. 23, 1933	9661	4565
767-A to 767-D—Minutes of Meeting of Directors of Michigan Avenue Guild, Nov. 7, 1933	9661	4566
768-A and 768-B—Minutes of Meeting of the Directors of Michigan Avenue Guild, Nov. 14, 1933	9661	4566
769-A to 769-C—Minutes of Meeting of Directors of Michigan Avenue Guild Nov. 28, 1933	9661	4566
770-A to 770-C—Minutes of Meeting of Directors of Michigan Avenue Guild, Dec. 5, 1933	9661	4566
771—Minutes of the Meeting of the Executive Committee of the Michigan Avenue Guild	9661	4566
772-A to 772-C—Minutes of Meeting of the Michigan Avenue Guild, Dec. 27, 1933	9661	4567
773-A to 773-D—Minutes of Annual Meeting of the Michigan Avenue Guild, Dec. 29, 1933	9661	4567
774-A to 774-B—President's Annual Report, Dec. 29, 1933	9661	4567
775-A to 775-E—Minutes of Directors' Meeting of the Michigan Avenue Guild, Dec. 29, 1933	9661	4567
776-A to 776-D—Minutes of Meeting of Board of Directors of Michigan Avenue Guild, Feb. 20, 1934	9661	4567
777-A and 777-B—Minutes of Special Meeting of Board of Directors of Michigan Avenue Guild, Feb. 28, 1934	9661	4568

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
778-A, 778-B and 778-C—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Mar. 3, 1934.....	9661	4568.
779-A to 779-C—Minutes of Meeting of Board of Directors and Advisory Board of Michigan Avenue Guild, Mar. 22, 1934.	9661	4568
780-A and 780-B—Minutes of General Meeting of all Members of the Michigan Avenue Guild, Apr. 9, 1934.....	9661	4568
781-A to 781-C—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, Apr. 14, 1934.....	9661	4568
782-A to 782-C—Minutes of Special Meeting of Executive Committee, Apr. 20, 1934.	9661	4569
783-A to 783-D—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, Apr. 27, 1934.....	9661	4569
784-A and 784-B—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Apr. 30, 1934.....	9661	4569
785-A to 785-C—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, May 1, 1934.....	9661	4569
786-A to 786-E—Minutes of a Joint Meeting of the Board of Directors and the Executive Committee of the Michigan Avenue Guild, May 7, 1934.....	9661	4570
X-786-A to X-786-C—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, May 11, 1934.....	9661	4570

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
787-A to 787-D—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, May 29, 1934	9661	4570
788-A to 788-D—Minutes of a Joint Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild, June 28, 1934	9661	4570
789-A to 789-C—Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, July 31, 1934	9661	4571
790-A to 790-F—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Aug. 24, 1934	9661	4571
791-A and 791-B—Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, Aug. 31, 1934	9661	4571
792-A and 792-B—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Sept. 18, 1934	9661	4571
793-A and 793-B—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Sept. 24, 1934	9661	4571
794-A to 794-C—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Oct. 5, 1934	9661	4572
795-A to 795-F—Minutes of Meeting of the Board of Directors of the Michigan Avenue Guild, Oct. 24, 1934	9661	4572
796-A to 796-I—Minutes of General Meeting of the Michigan Avenue Guild, Oct. 24, 1934	9661	4572

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
797-A to 797-E—Minutes of Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild, Dec. 5, 1934	9661	4572
798-A to 798-I—Minutes of Meeting of Members of the Michigan Avenue Guild, Dec. 28, 1934	9661	4572
799-A to 799-C—Minutes of Annual Meeting of the Board of Directors of the Michigan Avenue Guild, Dec. 28, 1934	9661	4573
800-A to 800-E—Minutes of Meeting of Executive Committee, Jan. 4, 1935	9661	4573
801-A to 801-F—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Jan. 29, 1935	9661	4573
802-A to 802-D—Minutes of Special Meeting of the Board of Directors of the Michigan Avenue Guild, Feb. 19, 1935	9661	4573
803-A and 803-B—Letter to Mr. George M. Gleason, Feb. 15, 1935, signed by J. M. Golby	9661	4573
804-A to 804-D—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Apr. 8, 1935	9661	4574
805-A to 805-D—Minutes of Meeting of Board of Directors and Executive Meeting of the Michigan Avenue Guild, Apr. 17, 1935	9661	4574
806—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members	9661	4574
807—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members	9661	4574

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
808—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members	9661	4574
809-A to 809-G—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, May 3, 1935	9661	4575
810-A to 810-L—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, Friday, May 10, 1935	9661	4575
811-A to 811-F—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, Friday, June 14, 1935	9661	4575
812-A to 812-D—Minutes of Meeting of Executive Committee, June 24, 1935	9661	4575
813-A to 813-D—Minutes of Joint Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild, July 30, 1935	9661	4575
814-A to 814-E—Minutes of Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild, Oct. 4, 1935	9661	4576
815-A and 815-B—Statistics on Copied Merchandise Returned to Manufacturer who copies—During Month of September	9661	4576
816—Mimeographed Letter of Michigan Avenue Guild, Jan. 14, 1935, "To All Members"	9661	4576
817—Mimeographed Letter of Michigan Avenue Guild, Jan. 14, 1935, addressed "To All Members"	9686	4576

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
818—Mimeographed Letter of Michigan Avenue Guild, Feb. 1, 1934, addressed "Dear Member"	9685	4576
819—Mimeographed Letter of Michigan Avenue Guild, Feb. 11, 1935, addressed "All Members"	9686	4577
820-A and 820-B—Mimeographed Letter of Michigan Avenue Guild, Feb. 19, 1935, addressed "To All Members"	9686	4577
821—Mimeographed Letter of Michigan Avenue Guild, June 15, 1935, addressed "To All Members"	9686	4577
822—Mimeographed Letter of Michigan Avenue Guild, June 29, 1935, addressed "To All Members"	9686	4577
823—Mimeographed Letter of Michigan Avenue Guild, Oct. 29, 1935, addressed "To All Members"	9686	4577
824—Mimeographed Copy of Letter of Michigan Avenue Guild, Nov. 4, 1935, addressed "Gentlemen"	9686	4578
825—Mimeographed Letter of Michigan Avenue Guild, Nov. 13, 1935, addressed "To All Members"	9686	4578
826—Letter of Michigan Avenue Guild, Sept. 10, 1935, to Mr. H. W. Rieger, Secretary, State Street Council	9693	4578
828—Letter, May 17, 1934, to Mr. Alexander H. Marshall, signed "Michigan Avenue Guild"	9785	4578
829-A to 829-J—Agreement between the Michigan Avenue Guild and the Fashion Originators Guild of America, Inc., Dec. 17, 1932	9788	4579

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
830-A and 830-B—Letter to L. E. Klein, signed by A. M. Post, Executive Director	9820	4579
831—Letter of Klein's, Peoria; Illinois, Apr. 27, 1935, to Fashion Originators Guild of America, Inc.	9820	4579
832-A and 832-B—Letter, Apr. 29, 1935, to Klein's, signed by J. M. Golby, Executive Secretary	9820	4579
833—Declaration of Co-operation in anti-piracy between Klein's and the Fashion Originators Guild of America, Inc.	9820	4579
834—Letter of Affiliated Buying Corporation, May 6, 1935, to Mr. Louis Klein	9830	4580
835—Letter of Klein's, May 8, 1935, to Fashion Originators Guild of America, Inc.	9830	4580
836—Letter of Fashion Originators Guild of America, Inc., June 27, 1935, to The D. W. Klein Company, Peoria, Illinois	9834	4580
837—Letter of Affiliated Buying Corporation, July 8, 1935, to Mr. L. E. Klein	9834	4580
838—Letter of Affiliated Buying Corporation, July 29, 1935, to Mr. H. W. Lund, Klein's, Peoria, Illinois	9834	4580
839—Letter of Fashion Originators Guild of America, Inc., July 30, 1935, to Klein's, Peoria, Illinois	9834	4581
840—Telegram, Feb. 17, 1936, to A. M. Post, Executive Director, signed by Mandel Brothers and others	9915	4581
841—Letter, Neil Petree, President, Retail Dry Goods Association of New York, Feb. 17, 1936, to Mr. A. M. Post	9915	4581
842—Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, Sept. 11, 1933	9982	4581

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
843-A to 843-G—Agreement of Ladies Ready-to-Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., Sept. 27, 1933	9985	4581
844—Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, Sept. 18, 1933	9985	4582
845-A and 845-B—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Nov. 17, 1933	9998	4582
846-A to 846-C—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Jan. 25, 1934	10002	4582
847-A to 847-D—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Apr. 9, 1934	10008	4582
848-A and 848-B—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, June 16, 1934	10012	4582
849-A and 849-B—Minutes of Membership of Ladies Ready-to-Wear Guild of Baltimore, Feb. 25, 1935	10013	4582
850-A to 850-C—Minutes of Meeting of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Aug. 5, 1935	10015	4582
851-A to 851-C—By-Laws, Rules, Regulations and Agreements of Ladies Ready-to-Wear Guild of Baltimore	10019	4582
852-A to 852-G—Minutes of Membership Meeting, Sept. 30, 1935	10022	4583
853-A and 853-B—Letter, Nov. 15, 1933, J. M. Golby to Chas. E. Hutzler of Hutzler Bros. & Co.	....	4583
854—Letter, Jan. 20, 1934, J. M. Golby to C. F. Roycroft of Ladies Ready-to-Wear Guild of Baltimore	10027	4583

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
855-A and 855-B—Form Letter signed Coat & Suit Division of Fashion Originators Guild of America, Inc., Mar. 29, 1934.	....	4583
856-A and 856-B—Letter, Feb. 15, 1935, J. M. Golby to Maison Annette.....	....	4583
857-A—Letter, Oct. 12, 1935, Roycroft to Baltimore Guild.	....	4583
857-B—Copy of Letter, Roycroft to A. M. Post, Oct. 14, 1935.....	....	4583
858-A and 858-B—Minutes, Oct. 12, 1935, of Ladies Ready-to-Wear Guild of Baltimore.	....	4584
859-A to 859-H—Articles of Constitution, Rules and Regulations and Agreement with Fashion Originators Guild of America, Inc., of Ladies Ready-to-Wear Guild of Baltimore.....	10063	4584
860—List of member shares of Associated Merchandising Corp.	....	4584
861-A and 861-B—Letter, Maurice Rentner to B. Foreman, Dec. 6, 1932.....	10382	4584
862—Letter, H. I. Kleinhaus, Association of Buying Offices, Inc., to M. Rentner, Mar. 30, 1935.....	10468	4584
863—Letter, H. I. Kleinhaus to M. Rentner, Apr. 5, 1935.....	10476	4584
864—Circular Letter, "Developments in Fashion Originators Guild of America, Inc.," by H. O. Bergdahl, to Associated Merchandising Corp. Managers, Apr. 10, 1935.....	10480	4584
865—Letter, A. M. Post to Association of Buying Offices, Inc., Apr. 23, 1935....	10484	4585
866—Letter, H. I. Kleinhaus to M. Rentner, Apr. 27, 1935.....	10492	4585

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
867—Minutes of Meeting, Special Committee of Association of Buying Offices, Inc., May 4, 1935	10496	4585
869—Letter, May 9, 1935, Reinitz to Association of Buying Offices, Inc.	....	4585
870—Proposed letter to be mailed to all retailers by Mr. Reinitz	10508	4585
871—Letter, H. I. Kleinhaus to Bertram Reinitz, May 13, 1935	10514	4585
872—Memo, H. O. Bergdahl to Garment Merchandise Managers, Associated Merchandising Corp., May 13, 1935	10517	4585
873—Letter, A. M. Post to Association of Buying Offices, Inc., June 21, 1935	....	4586
874—Letter, July 1, 1935, from A. M. Post to H. O. Bergdahl	10522	4586
875—Letter, July 3, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.	10523	4586
876—Letter to H. O. Bergdahl from A. M. Post, July 22, 1935	10531	4586
877—Letter from H. O. Bergdahl to A. M. Post, July 22, 1935	10535	4586
878—Letter from A. M. Post to H. O. Bergdahl, Aug. 2, 1935	10533	4586
879—Letter from A. M. Post to H. O. Bergdahl, Aug. 12, 1935	....	4586
880—Letter from A. M. Post to C. S. Goshen, c/o Bullock's Wilshire	....	4587
881—Letter from A. M. Post to Mr. Milburn, The Emporium, Aug. 12, 1935	....	4587
882—Letter, A. M. Post to H. O. Bergdahl, Aug. 21, 1935	....	4587

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
883—Letter, A. M. Post to Taylor of Strawbridge & Clothier, Aug. 21, 1935	....	4587
884—Letter, Chas. C. Taylor of Strawbridge & Clothier to A. M. Post, Aug. 28, 1935	....	4587
886—Telegram, John Shillito Co. to Starr-Friedlander, Mar. 3, 1936	10542	4587
887—Telegram, Frank Starr-Friedlander, Inc., to John Shillito Co., May 3, 1936	....	4587
888—Telegram, Mar. 12, 1936, Louise Mulligan, Inc., to John Shillito Co	10768	4588
889—Letter, P. J. Reilly to Louis Hutzler, June 28, 1933	....	4588
890—Letter, Mr. L. Hutzler to P. J. Reilly, June 26, 1933	....	4588
891—Letter, Theodore B. Griffith of L. S. Ayres & Co. to P. J. Reilly, June 24, 1933	....	4588
893—Letter, W. H. Burchfield of Jos. Horne & Co. to P. J. Reilly, June 24, 1933	....	4588
894—Original Declaration of Co-operation from Hutzler Bros. to Fashion Originators Guild of America, Inc., June 30, 1933	....	4588
895—Declaration of Co-operation from Stix, Baer & Fuller to Fashion Originators Guild of America, Inc., July 10, 1933	....	4588
896—Letter, A. M. Post to H. O. Bergdahl, Nov. 23, 1935	....	4589
897—Blank form of Declaration of Co-operation between Retailer and Fashion Originators Guild of America, Inc	...	4589
898—Letter, J. M. Golby to H. O. Bergdahl, Aug. 14, 1934	....	4589

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
899—Newspaper clipping, Women's Wear, Mar. 21, 1935	....	4589
900—Letter, Association of Buying Offices, Inc., to A. M. Post, Aug. 3, 1935	10780	4589
901—Letter, Aug. 8, 1935, H. O. Bergdahl to A. M. Post	....	4589
902—Letter, July 25, 1935, Floyd C. Dillon of The Emporium to H. O. Bergdahl	....	4589
903—Letter, July 29, 1935, M. Knee of Bullocks to H. O. Bergdahl	....	4590
904—Letter, Aug. 9, 1935, A. M. Post to H. O. Bergdahl	....	4590
905—Letter, Sept. 21, 1935, A. M. Post to F. & R. Lazarus, Inc	....	4590
906—Memo, Oct. 4, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.	10814	4590
907—Letter A. M. Post to H. O. Bergdahl, Oct. 8, 1935	10821	4590
908—Letter, A. M. Post to H. O. Bergdahl, Oct. 9, 1935	10821	4590
909—List headed $6.75, $7.75 and $8.75 firms applying for membership in Fashion Originators Guild of America, Inc., Oct. 4, 1935	10821	4590
910—Letter, A. M. Post to H. O. Bergdahl, Oct. 25, 1935	....	4591
911—Letter, A. M. Post to H. O. Bergdahl, Oct. 31, 1935	....	4591
912—Letter to A. M. Post from H. O. Bergdahl, Nov. 16, 1935	....	4591
913—Letter, A. M. Post to H. O. Bergdahl, Nov. 19, 1935	....	4591

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
914—Letter, A. M. Post to H. O. Bergdahl, Nov. 21, 1935	....	4591
915—Letter, H. O. Bergdahl to A. M. Post, Nov. 18, 1935	....	4591
916—Letter, H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., Nov. 27, 1935	....	4591
918—Letter, H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., Dec. 5, 1935	....	4592
920—Letter, H. O. Bergdahl to Oscar Webber of J. L. Hudson Co., Dec. 4, 1935	....	4592
924—Letter, P. J. Reilly to A. M. Post, Feb. 14, 1936	....	4592
925—Letter, A. M. Post to Reilly, Feb. 17, 1936	....	4592
926—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re F. & R. Lazarus	....	4592
927—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Associated Merchandising Corp.	....	4592
928—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Rike-Kumler Co.	....	4592
929—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re John Shillito Co.	....	4593
930—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Herzfeld-Phillipson Co.	....	4593

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
931—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Bloomingdale Bros., Inc.	....	4593
932—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Abraham & Straus	....	4593
933—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Emporium	....	4593
934—Notification of Members of non-cooperation with Fashion Originators Guild of America, Inc., re Wm. Filene's Sons Company	....	4593
935—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re J. L. Hudson Co.	....	4594
936—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re H. C. Capwell Co.	....	4594
937—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Dayton Co.	....	4594
938—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Stix, Baer & Fuller	....	4594
939—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Philadelphia, Pa.	....	4594
940—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Ardmore, Pa.	....	4594

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
941—Comparative Dollar Volume for 1935 of Fashion Originators Guild of America, and Affiliates as against entire Industry	10833	4595
942-A—Dollar Volume for 1935 of Junior Miss Members of Fashion Originators Guild of America, Inc.	10833	4595
942-B—1935 Recapitulation Sheet Members, Affiliates and Protective Affiliates	10833	4595
942-C—1935 Dress Volume—Protective Affiliates	10833	4595
942-D, 942-E, 942-F, 942-G and 942-H—1935 Dollar Volume of Dress Members	10833	4595
942-I and 942-J—1935 Dollar Volume of Sportswear Members	10833	4595
943—Letter, A. M. Post to John Block, Jan. 10, 1936	11627	4595
944—Letter, John Block to A. M. Post, Jan. 13, 1936	10628	4595
945—Letter, A. M. Post to John Block, Jan. 15, 1936	10629	4596
946—Letter, John B. Swinney to Jack Goldston, July 3, 1936	12085	4596
947—Letter, J. Goldston to J. B. Swinney, July 2, 1936	12086	4596
948—Letter, I. Himelhoch of Himelhoch Bros. & Co. to J. B. Swinney, June 29, 1936	12087	4596
949—Telegram, J. B. Swinney to Himelhoch Bros. & Co., June 29, 1936	12088	4596
950—Letter, J. B. Swinney to Himelhoch Bros. & Co., June 27, 1936	12089	4596
951—Letter, Jack Goldston to J. B. Swinney, June 24, 1936	12091	4596

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
952—Memo from J. B. Swinney to Buyer of Junior Dresses	12094	4596
953—Telegram, Himelhoch Bros. & Co. to Specialty Stores Association, June 26, 1936	12095	4597
954—Notification to Shoppers by J. Goldston, undated, re Style No. 826 of Harris Dress Co	12097	4597
955—Notification to Shoppers by J. Goldston, undated, re Style No. 829 of Harris Dress Co	12098	4597
956—Seven-page list entitled "Recapitulation of Red Cards Issued," Oct. 22, 1935	....	4597
959—Letter, Nov. 7, 1935, J. M. Golby to Protective Affiliates in $6.76, $7.75 and $8.75 price range	12341	4597
960—Sample form of letter, manufacturers to retailers who have not signed Declaration	12341	
961—Letter, J. M. Golby to David Rosenthal of Rosenthal & Kalman, Nov. 26, 1935	12342	4597
962—Minutes of Meeting of Fashion Originators Guild of America, Inc., Dec. 3, 1935	12342	4598
964—Piracy Report, Jan. 24, 1936, by J. Goldston	12347	4598
965—Sketch No. 175, Jan. 30, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598
966—Piracy Report, Feb. 4, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598
967—Additional Piracy Report, Feb. 4, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
968—Advertisement of The Emporium in San Francisco Shopping News.....	12347	4598
969—Piracy Report, Feb. 14, 1936, re Style No. 415 of Rosenthal & Kalman.....	12347	4598
970—Letter, J. Goldston to Rosenthal & Kalman, Feb. 26, 1936.....	12347	4599
971—Piracy Report, Mar. 2, 1936, re Style No. 415 of Rosenthal & Kalman.....	12347	4599
972—Letter, J. M. Golby to Protective Affiliates, Feb. 13, 1936.....	12352	4599
973—Telegram, A. M. Post to Rosenthal & Kalman, Feb. 17, 1936.....	12352	4599
974—Letter, J. M. Golby to Members of Fashion Originators Guild of America, Inc., Feb. 17, 1936.....	12352	4599
975—Letter, J. M. Golby "To Members & Affiliates," re Blue Cards, Feb. 18, 1936.....	12352	4599
976—Form of Declaration of Co-operation..	12352	4599
977—Agreement between Fashion Originators Guild of America, Inc., and Protective Affiliates in $6.75, $7.75 and $8.75 price range.....	12378	4600
978—Telegram, Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, Feb. 28, 1936.....	12380	4600
979—Telegram, Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, Mar. 2, 1936.....	12386	4600
980—Letter, J. M. Golby to Rosenthal & Kalman, Mar. 16, 1936.....	12387	4600
981—Piracy Report, Dec. 24, 1935, re Style No. 410 of Rosenthal & Kalman.....	12389	4600
982—Letter, Jack Goldston to Rosenthal & Kalman, Feb. 17, 1936.....	12389	4600

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
983—Piracy Report, re Style No. 409 of Rosenthal & Kalman, Mar. 2, 1936....	12389	4600
984—Piracy Report, re Style No. 391 of Rosenthal & Kalman, Mar. 2, 1936, and numbered 837.....	12389	4601
985—Letter, J. Goldston to Rosenthal & Kalman, Feb. 25, 1936.....	12389	4601
986—Piracy Report, re Style No. 409 of Rosenthal & Kalman, Feb. 1, 1936.....	12389	4601
987—Piracy Report, re Style No. 415 of Rosenthal & Kalman, Feb. 28, 1936...	12389	4601
988—Letter, J. Goldston to Rosenthal & Kalman, Feb. 20, 1936.....	12389	4601
989—Letter, Feb. 19, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12390	4601
990—Letter, Feb. 22, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12390	4601
991—Letter, Feb. 29, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12391	4602
992—Letter, undated, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.....	12391	4602
993—Notification to members re showing B. Foreman or Dayton Company.....	12391	4602
994—Letter, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc., May 11, 1936.....	12391	4602
995—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Nov. 4, 1935.....	12396	4602
996—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Nov. 13, 1935.....	12396	4602

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
997—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Dec. 3, 1935.....	12396	4603
998—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Feb. 11, 1936.....	12396	4603
999—Letter entitled "First Letter with Declaration on Names" sent in by Fashion Originators Guild of America, Inc., signed by J. M. Golby.....	12448	4603
1000—Follow-up letter on names sent in by Dress Creators League Members and Affiliates, undated:.....	12452	4603
1001—Form letter to retailers by J. M. Golby, undated.....	12465	4603
1002-A to 1002-L—Correspondence and file on Goodwins.....	....	4603
1002-A—Authorization for "red card" of Goodwins and Davidson Bros., Jan. 7, 1936.....	....	4603
1002-B—Letter, A. M. Post to Goodwins, Jan. 7, 1936.....	....	4604
1002-C—Report of refusal or failure to cooperate from Detroit Shopper re Goodwins, Jan. 2, 1936.....	....	4604
1002-D—Letter, J. Goldston to Mrs. Miller. Detroit Shopper of Fashion Originators Guild of America, Inc., Dec. 26, 1936.....	....	4604
1002-E—Report of refusal or failure to cooperate from Detroit Shopper re Goodwins, Dec. 26, 1935.....	....	4604
1002-F—Letter, J. M. Golby to Mrs. Miller, Dec. 5, 1935.....	....	4604

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1002-G—Letter, Davidson Bros. (Goodwins) to Fashion Originators Guild of America, Inc., Dec. 5, 1935	....	4604
1002-H—Letter, J. M. Golby to Mrs. Miller, Nov. 25, 1935	....	4604
1002-I—Authorization for red card notice of non-cooperation re Davidson Bros.	....	4605
1002-J—Letter, J. M. Golby to Goodwins, Sept. 6, 1935	....	4605
1002-K—Letter, Mrs. Miller to J. Goldston, July 9, 1935	....	4605
1002-L—Declaration of Co-operation with Fashion Originators Guild of America, Inc., of Goodwins, July 30, 1935	.....	4605
1003-A—Letter, J. H. Green, Secretary, Retail Merchants Association of Pittsburgh, Pa., to J. M. Golby, Mar. 24, 1934	12479	4605
1003-B—Reply, J. M. Golby to J. H. Green, Mar. 26, 1934	12479	4605
1004—Letter, Irene Blunt, Director, Industrial Design Registration Bureau to the Trade, Dec. 17, 1935	12503	4605
1005-A—Letter, Miss Lapidus to Jack Goldston, Nov. 1, 1935	12520	4606
1005-B—Letter, J. M. Golby to I. J. Shearer & Bro., Nov. 6, 1935	12520	4606
1006-A and 1006-B—Letter, J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., Aug. 8, 1935	12526	4606
1006-C—Letter, J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., Aug. 21, 1935	12526	4606
1006-D—Letter, J. A. Leavell of Marie Leavell to J. M. Golby, Aug. 24, 1935	12526	4606

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1006-E—Letter, J. M. Golby to J. A. Leavell, Aug. 26, 1935	12526	4606
1006-F—Letter, J. M. Golby to Herbert Nurse of Dreyfuss & Sons, Aug. 26, 1935	12526	4606
1006-G—Letter, J. M. Golby to Ben Wittenberg of La Mode Co., Aug. 26, 1935	12526	4607
1006-H—Letter, J. M. Golby to Herman Phillipson of Phillipsons, Inc., Aug. 26, 1935	12526	4607
1006-I—Letter, J. M. Golby to E. P. Simmons of Sanger Bros., Aug. 26, 1935	12626	4607
1006-J—Letter, B. H. Wittenberg to J. M. Golby, Aug. 29, 1933	12526	4607
1006-K—Letter, E. P. Simmons of Sanger Bros. to J. M. Golby, Aug. 29, 1935	12526	4607
1006-L and 1006-M—Letter, J. M. Golby to H. Stanley Marcus, Sept. 3, 1935	12526	4607
1007—Report of refusal or failure to cooperate re Ed. Schuster Co. by Dorothy Horowitz, Shopper, Jan. 10, 1936	12527	4607
1008-A—Letter, E. Bell of Esterlene Frocks to Fashion Originators Guild of America, Inc., Jan. 27, 1936	12532	4608
1008-B—Letter, J. M. Golby to Herbert S. Keller, Jan. 31, 1936	12532	4608
1008-C and 1008-D—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Feb. 1, 1936	12532	4608
1008-E—Letter, Fashion Originators Guild of America, Inc., to Esterlene Frocks, Feb. 4, 1936	12532	4608
1009-A—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Jan. 24, 1936	12566	4608

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1009-B and 1009-C—Letter, Weisman, Quinn, Allan & Spett to Florence Hertz, Jan. 24, 1936	12566	4608
1009-D—Letter, Fashion Originators Guild of America, Inc., to Herbert S. Keller, Jan. 22, 1936	12566	4608
1009-E—Letter, Sportcraft, Inc., to Fashion Originators Guild of America, Inc., Jan. 21, 1936	12566	4609
1009-F—Letter, Hertz-Lang to Sportcraft, Inc., Jan. 18, 1936	12566	4609
1009-G—Letter, Sportcraft, Inc., to Fashion Originators Guild of America, Inc., Jan. 20, 1936	12566	4609
1009-H—Letter, Hertz-Lang to Sportcraft, Inc., undated	12566	4609
1009-I—Authorization for red card of Hertz-Lang, Jan. 8, 1936	12566	4609
1009-J—Letter, E. A. Fletcher of Michigan Avenue Guild to Fashion Originators Guild of America, Inc., Jan. 6, 1936	12566	4609
1010—Letter, A. M. Post to Ernst Kern Co., Feb. 7, 1936	12586	4609
1011-A—Report on refusal or failure to co-operate, Feb. 7, 1936, re J. L. Hudson & Co., by Mrs. Miller, Shopper	12598	4610
1011-B—Letter, Fashion Originators Guild of America, Inc., to Shopper, Feb. 8, 1936	12598	4610
1011-C—Letter, Fashion Originators Guild of America, Inc., to Shopper, Feb. 10, 1936	12598	4610
1011-D—Letter, Shopper to J. Goldston, Feb. 10, 1936	12598	4610

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1011-E and 1011-F—Letter, Shopper to A. M. Post, Feb. 12, 1936	12598	4610
1011-G—Authorization for red card, Feb. 13, 1936, of J. L. Hudson & Co.	12598	4610
1012-A—Telegram, Miss Brady, Shopper, to J. Goldston, re R. H. White, undated	12601	4610
1012-B—Memorandum, Miss Brady, Shopper, to A. M. Post and J. Goldston, Feb. 4, 1936	12601	4611
1012-C—Telegram, Miss Brady to Fashion Originators Guild of America, Inc., Feb. 4, 1936	12601	4611
1012-D—Memorandum, A. M. Post to Miss Brady, Feb. 5, 1936	12601	4611
1012-E and 1012-F—Report on refusal of R. H. White to co-operate, Feb. 6, 1936	12601	4611
1012-G—Letter, Feb. 6, 1936, Weisman, Quinn, Allan & Spett to A. M. Post	12601	4611
1012-H—Letter, Feb. 6, 1936, J. M. Golby to B. F. Raphael of R. H. White Co.	12601	4611
1012-I—Authorization for red card, Feb. 6, 1936, of R. H. White Co.	12601	4611
1013-A—Report on refusal to co-operate. Jan. 2, 1936, of The Boston Store, by Dorothy Horowitz, Shopper	12608	4612
1013-B—Letter, Bender & Hamburger, Inc., to Fashion Originators Guild of America, Inc., Jan. 4, 1936	12608	4612
1013-C—Letter, Fashion Originators Guild of America, Inc., to The Boston Store, Jan. 6, 1936	12608	4612
1013-D—Letter, Fashion Originators Guild of America, Inc., to The Boston Store, Jan. 13, 1936	12608	4612

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1013-E—Letter, Herzfeld-Phillipson & Co. to Fashion Originators Guild of America, Inc., Jan. 15, 1936	12608	4612
1013-F—Letter, A. M. Post to The Boston Store, Jan. 17, 1936	12608	4612
1013-G—Report on refusal to co-operate, Feb. 17, 1936, of Herzfeld-Phillipson Co., by Dorothy Horowitz	12608	4612
1014-A—Report on Refusal to Co-operate, Nov. 7, 1935, The Dayton Co., by Virginia McDonald, Shopper	12612	4613
1014-B—Memorandum, Fashion Originators Guild of America, Inc., to Miss McDonald, Shopper, Nov. 11, 1935	12612	4613
1014-C—Report on Refusal to Co-operate, Nov. 22, 1935, re The Dayton Co.	12612	4613
1014-D—Letter, A. M. Post to Miss McDonald, Shopper, Nov. 23, 1935	12612	4613
1014-E—Report on Refusal to Co-operate, Nov. 26, 1935, re The Dayton Co.	12612	4613
1014-F and 1014-G—Letter, Fashion Originators Guild of America, Inc., to Mrs. Chase of The Dayton Co., Dec. 2, 1935	12612	4613
1015-A and 1015-B—Letter, Grace Sinclair, Shopper, re Stix, Baer & Fuller, to J. Goldston, Nov. 18, 1935	12642	4613
1015-C—Report on Refusal to Co-operate, Nov. 18, 1935, of Stix, Baer & Fuller.	12642	4614
1015-D—Memorandum, Fashion Originators Guild of America, Inc., to Miss Sinclair, Shopper, Nov. 19, 1935	12642	4614
1016—Declaration of Co-operation of McGlenn's of Minneapolis	12645	4614

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1017—Declaration of Co-operation of Carolellan's of Salt Lake City	12646	4614
1018-A—Telegram, H. C. Capwell Co. to Fashion Originators Guild of America, Inc., Oct. 23, 1935	12655	4614
1018-B—Telegram to H. C. Capwell Co. from A. M. Post, Oct. 22, 1935	12655	4614
1018-C and 1018-D—Letter, A. M. Post to Mr. Dinklespiel of H. C. Capwell Co., Oct. 12, 1935	12655	4614
1018-E—Letter, A. M. Post to H. O. Bergdahl, Oct. 12, 1935	12655	4615
1019-A and 1019-B—Letter to Mrs. A. M. Levy of John Shillito & Co. from A. M. Post, Jan. 11, 1936	12660	4615
1019-C—Letter, Mrs. A. M. Levy to A. M. Post, Jan. 9, 1936	12660	4615
1020-A to 1020-D—Letter, A. M. Post to Ben Raphael of R. H. White Co., Oct. 25, 1935	12661	4615
1020-E—Letter, B. Raphael to A. M. Post, Oct. 30, 1935	12661	4615
1021-A—Letter, Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., Nov. 9, 1935	12661	4615
1021-B—Letter, Wm. Filene's Sons Co. to Constantine Dress Co. of Boston, Nov. 7, 1935	12661	4615
1021-C—Letter, J. Goldston to A. Wright of Wm. Filene's Sons Co., Dec. 5, 1935	12661	4615
1021-D—Letter, Wright of Wm. Filene's Sons Co. to A. M. Post, Dec. 3, 1935	12661	4616
1021-E and 1021-F—Letter, A. M. Post to A. Wright of Wm. Filene's Sons Co., Nov. 27, 1935	12661	4616

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1021-G—Letter, A. M. Post to Miss Brady, Shopper, Nov. 27, 1935	12661	4616
1021-H—Letter, A. M. Post to A. Wright of Wm. Filene's Sons Co., Dec. 12, 1935.	12661	4616
1021-I—Memorandum, A. M. Post for the file, Jan. 29, 1936	12661	4616
1022-A—Letter, J. Goldston to Earl Miller of Wm. Taylor Son & Co., Mar. 21, 1935.	12661	4616
1022-B—Letter, Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., Mar. 23, 1935	12661	4616
1022-C and 1022-D—Letter draft, A. M. Post to Richard G. Roth of Wm. Taylor Son & Co., July 24, 1935	12662	4617
1022-E—Telegram, J. Goldston to E. Miller of Wm. Taylor Son & Co., Sept. 5, 1935	12662	4617
1022-F—Letter of Mrs. Joseph, Shopper, to J. Goldston, Sept. 5, 1935	12662	4617
1022-G—Letter, E. Miller to J. Goldston, Sept. 5, 1935	12662	4617
1022-H—Letter, J. M. Golby to W. E. Miller, Oct. 3, 1935	12662	4617
1022-I—Letter, W. E. Miller to J. Goldston, Oct. 2, 1935	12662	4617
1022-J—Letter, Fashion Originators Guild of America, Inc., to W. E. Miller, Jan. 21, 1936	12662	4617
1022-K—Letter, Mrs. Joseph to J. Goldston, Jan. 20, 1936	12662	4618
1022-L—Letter, Broadway Dance Frocks, Inc., to Wm. Taylor Sons & Co., Jan. 16, 1936	12662	4618
1023-A—Authorization for red card re Strawbridge & Clothier, Feb. 6, 1936	12662	4618

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1023-B—Letter, Miss Joyce, Shopper, to J. Goldston, Feb. 8, 1936	12662	4618
1023-C—Memorandum of phone conversation by A. M. Post re Strawbridge & Clothier, Feb. 10, 1936	12662	4618
1023-D—Memorandum, Fashion Originators Guild of America, Inc., to Miss Joyce, Feb. 5, 1936, re Strawbridge & Clothier	12662	4618
1023-E—Return receipt for registered letter to Strawbridge & Clothier	12662	4618
1023-F—Report of refusal or failure to co-operate by Strawbridge & Clothier, Feb. 3, 1936	12662	4618
1023-G—Letter, Miss Joyce to J. Goldston, Feb. 7, 1936	12662	4619
1023-H—Summary of a few of the 11,000 stores which have indicated their desire to co-operate with Fashion Originators Guild of America, Inc.	12662	4619
1023-I—Letter, A. M. Post to H. J. Tiley of Strawbridge & Clothier, Feb. 7, 1936	12662	4619
1023-J—Letter, Miss Joyce to A. M. Post, Jan. 30, 1936	12662	4619
1023-K—Letter, Miss Joyce to A. M. Post, Jan. 24, 1936	12662	4619
1023-L—Letter, Miss Joyce to A. M. Post, Jan. 17, 1936	12662	4619
1023-M—Letter, J. Goldston to Miss Joyce, May 21, 1935	12662	4619
1023-N—Letter, Miss Joyce to J. Goldston, May 20, 1935	12662	4620
1023-O—Letter, J. Goldston to Miss Joyce, Sept. 4, 1935	12662	4620

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1023-P—Letter, J. Goldston to Miss Joyce, Aug. 28, 1935	12662	4620
1023-Q—Letter, Miss Joyce to J. Goldston, Aug. 27, 1935	12662	4620
1023-R—Letter, Fashion Originators Guild of America, Inc., to Miss Joyce, Nov. 14, 1935	12662	4620
1023-S—Letter, Miss Joyce to J. Goldston, Nov. 13, 1935	12662	4620
1023-T—Telegram, A. M. Post to Miss Joyce, Nov. 13, 1935	12662	4620
1023-U—Memorandum, J. Goldston to Miss Joyce, Oct. 11, 1935	12662	4621
1023-V—Memorandum, J. Goldston to Miss Joyce, Nov. 7, 1935	12662	4621
1024-A—Letter, Miss Lapedus to J. Goldston, Sept. 3, 1935	12662	4621
1024-B—Telegram, A. M. Post to Hutzler Bros., Sept. 4, 1935	12662	4621
1024-C to 1024-H—Letter to Chas. Hutzler from A. M. Post, Sept. 7, 1935	12662	4621
1024-I—Letter, Chas. Hutzler to A. M. Post, Sept. 4, 1935	12662	4621
1024-J—Telegram, A. M. Post to Chas. Hutzler, Sept. 4, 1935	12662	4621
1024-K and 1024-L—Letter, A. M. Post to Chas. Hutzler, Sept. 30, 1935	12662	4621
1024-M—Letter, A. M. Post to Miss Lapedus, undated	12662	4622
1024-N—Letter, A. M. Post to Chas. Hutzler, Oct. 3, 1935	12662	4622
1024-O—Letter, A. M. Post to L. R. Bonwit, Oct. 3, 1935	12662	4622
1024-P—Letter, Miss Lapedus to J. Goldston, Oct. 21, 1935	12662	4622

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1024-Q—Letter memorandum from J. Goldston to Miss Lapedus, Sept. 23, 1936..	12662	4622
1024-R—Letter, Miss Lapedus to J. Goldston, Aug. 22, 1936.....	12662	4622
1025-A—Letter, J. Goldston to Miss Lapedus, Jan. 6, 1936.....	12745	4622
1025-B—Letter, Miss Lapedus to J. Goldston, Jan. 3, 1936.....	12745	4623
1026—Letter memorandum from Miss Tuttle of Fashion Originators Guild of America, Inc., to Miss Lapedus.....	12745	4623
1027-A—Letter, Fashion Originators Guild of America, Inc., to The Gaxton Co., attention S. Lampell, Jan. 30, 1934...	12746	4623
1027-B—Letter, Miss Lampell of The Gaxton Co. to Fashion Originators Guild of America, Inc., J. M. Golby, Jan. 20, 1934.....	12746	4623
1027-C—Letter, Fashion Originators Guild of America, Inc., J. M. Golby, to Miss Lampell of The Gaxton Co., Jan. 23, 1934.....	12746	4623
1028-A—Letter, Fashion Originators Guild of America, Inc., to Martin B. Kohn of Hochshild-Kohn, Inc., Mar. 19, 1934.....	12746	4623
1028-B—Letter, Fashion Originators Guild of America, Inc., to Hochshild-Kohn, Inc., Mar. 14, 1934.....	12746	4623
1029—Letter, J. Goldston to The Hub Co. of Baltimore.....	12753	4624
1030—Dollar volume of business of Dress Industry of United States for 1934, compiled by Research Department of Dress Joint Board.....	....	4624

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1031—Dollar volume of business of Dress Industry of United States for 1935, compiled by Research Department of Dress Joint Board	....	4624
1032—Recapitulation of card files, Apr. 1, 1936	....	4624
1033—Recapitulation of registration of styles of members of Fashion Originators Guild of America, Inc., from June, 1935, to December 17, 1936	12763	4624
1034—Application of Rosenthal & Kalman, Inc., for protection against style piracy	12763	4624
1035—Declaration of Co-operation of Ernst Kern Co., June 18, 1936	12763	4624
1036—Declaration of Co-operation of Holman's Department Store, Pacific Grove, Apr. 8, 1936	12763	4625
1037—Letter, Holman's Department Store to Weinberg, Weinberg & Alpern, Dec. 28, 1935	12764	4625
1038—Letter to Holman's Department Store from Weinberg, Weinberg & Alpern, Jan. 2, 1936	12764	4625
1039—Letter, Weinberg, Weinberg & Alpern to Fashion Originators Guild of America, Inc., Jan. 2, 1936	12764	4625
1040—Letter, J. M. Golby of Fashion Originators Guild of America, Inc., to W. R. Holman, Jan. 3, 1936	12764	4625

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1050—Total sales volume of 162 dress manufacturers who were during 1935 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business".....	10914	4625
1051—Total sales volume of seventy-eight dress manufacturers who were during 1934 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business".....	13148	4626
1052—Total sales volume of sixty-two dress manufacturers who were during 1933 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business".....	13148	4626

RESPONDENTS' EXHIBITS.

4—Order of R. H. Whiteon Noxall Co., Sept. 9, 1935.....	1753	4626
5—Order of Kaufmann's on Noxall Co., Sept. 18, 1935.....	1753	4626
6—Order of Joseph Horne on Noxall Co., Sept. 13, 1935.....	1788	4626
7—Order credit memorandum of Noxall Co. to Luries, Sept. 24, 1935.....	1809	4626
8—Original letter of co-operation, Wm. Filene's Sons Co., June 29, 1933.....	2612	4627
9—Letter, Fashion Originators Guild of America, Inc., to Mr. Wright of Wm. Filene's Sons Co.....	2613	4627

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
10—Letter from Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., July 5, 1933	2613	4627
11—Letter, Fashion Originators Guild of America, Inc., to A. W. Wright, July 7, 1933	2613	4627
12-A—Letter, A. W. Wright to Fashion Originators Guild of America, Inc., Aug. 9, 1933	2613	4627
12-B—Instructions to Dress Buyers by A. W. Wright, Aug. 8, 1933, enclosed in Respondents' Exhibit 12-A	....	4627
12-C—Letter, A. W. Wright to Fashion Originators Guild of America, Inc., Aug. 8, 1933	2613	4627
12-D and 12-E—Letter of J. M. Golby to trade, Aug. 3, 1933	2613	4627
17—Letter, H. J. Tily of Strawbridge & Clothier to A. M. Post, Feb. 8, 1936	3443	4628
18-A—Letter, A. M. Post to H. J. Tily, Feb. 7, 1936	3444	4628
18-B—Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild of America, Inc	3445	4628
19—Notification re refusal to co-operate of Strawbridge & Clothier, Feb. 6, 1936	3620	4628
20—Copy of warranty stamp suggested by Fashion Originators Guild of America, Inc., to be used by retailers	4043	4628
24—Letter of W. E. Miller of Wm. Taylor & Son to Fashion Originators Guild of America, Inc., listing outstanding orders, Mar. 11, 1936	5420	4628

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
25—Letter, W. E. Miller to J. M. Golby, Mar. 21, 1936	5460	4629
26—Letter, W. E. Miller to J. M. Golby, Mar. 16, 1936	5462	4629
27—Letter, W. E. Miller to J. M. Golby, Mar. 23, 1936	5464	4629
28—Telegram; W. E. Miller to A. M. Post, Mar. 13, 1936	5465	4629
29—Telegram, W. E. Miller to A. M. Post, Mar. 12, 1936	5467	4629
30—Letter, J. M. Golby to W. E. Miller, Mar. 19, 1936	5468	4629
31—Telegram, A. M. Post to W. E. Miller, Mar. 12, 1936	5470	4629
32—Telegram, A. M. Post to W. E. Miller, Mar. 13, 1936	5471	4630
33—Letter, Wm. Taylor & Son to J. Goldston, Mar. 4, 1935	5791	4630
34—Declaration of Co-operation, signed by Wm. Taylor & Son, June 30, 1933	5793	4630
35—Letter, W. E. Miller to J. M. Golby, Aug. 9, 1933	5796	4630
37—Letter, P. J. Reilly to A. M. Post, Feb. 14, 1936	5800	4630
38-A—Telegram, Wm. Taylor & Son to Fashion Originators Guild of America, Inc., Feb. 17, 1936	5804	4630
38-B—Night Letter, Fashion Originators Guild of America, Inc., to Wm. Taylor Son & Co., Feb. 16, 1936	5804	4630
39—Letter, R. G. Roth of Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., Feb. 21, 1936	5814	4631
40-A and 40-B—Letter to R. G. Roth from A. M. Post, Feb. 26, 1936	5819	4631

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
41—Advertisement by Fashion Originators Guild of America, Inc., in Women's Wear Daily, Feb. 24, 1936	5828	4631
43-A and 43-B—Letter, A. M. Post to Mr. McDonald of J. L. Hudson Co., Nov. 12, 1936	6163	4631
44—Advertisement in Women's Wear Daily, inserted by Dress Creators League of America	11260	4631
45—Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, Aug. 9, 1933	6703	4631
46—Letter of Associated Buying Offices signed by special committee to Fashion Originators Guild of America, Inc., Aug. 3, 1935	6833	4632
52—Telegram, Wyzanski to Mandel Bros. of Chicago to New York office, May 14, 1936	7673	4632
53—Telegram, P. J. Reilly to Stanley Stone of The Boston Store, Mar. 10, 1936	8374	4632
54—Telegram, L. C. Dillon of The Boston Store to A. M. Post, Mar. 12, 1936	8374	4632
55—Telegram, A. M. Post to L. C. Dillon of The Boston Store, Mar. 12, 1936	8374	4632
56—Telegram, L. C. Dillon to A. M. Post, Mar. 12, 1936	8374	4632
57—Telegram, A. M. Post to L. C. Dillon, Mar. 13, 1936	8374	4632
58—Letter, Roy H. Bjorkman to J. M. Golby, July 2, 1935	8612	4633
59—Letter, Roy H. Bjorkman to A. Sapero of Shapiro & Baer, July 2, 1935	8612	4633
60-A and 60-B—Declaration of Co-operation with Fashion Originators Guild of America, Inc., signed by Minneapolis Guild of Fashion Retailers, Roy H. Bjorkman, Chairman	8612	4633

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
62—Letter, D. Donovan of The Dayton Co. to J. M. Golby, June 7, 1934	9194	4633
63—Letter, D. Donovan of The Dayton Co. to H. O. Bergdahl, July 12, 1935	9198	4633
64-A and 64-B—Letter, H. O. Bergdahl to D. Donovan, Aug. 28, 1936	9267	4633
65—Blank form for Piracy Committee Report	9459	4633
66—Blank form of report of refusal or failure to co-operate	9461	4634
67-A, 67-B and 67-C—Removal slips from old form of Shoppers' Return Book	9463	4634
68-A, 68-B and 68-C—Sample forms for shopper's report on shopping	9457	4634
69—General letter from J. Goldston to shoppers, Apr. 2, 1936	9468	4634
70—Sample sketch of copy and notification to shopper of dress of Feinberg & Weisen	9493	4634
71—Sample sketch of copy and notification to shopper, No. 1020, Worthmore Co.	9493	4634
72—Report on refusal or failure to co-operate of The Dayton Co. by Virginia McDonald, Nov. 7, 1935	9493	4634
73—Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, Nov. 20, 1935	9493	4635
74—Letter, H. W. Lund, Controller of Klein's of Peoria, Illinois, to Federal Trade Commission, Chicago office, Dec. 16, 1935	9842	4635
75—Letter, J. M. Golby to C. F. Roycroft of Ladies' Ready to Wear Guild of Baltimore, Oct. 31, 1935	10217	4635

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
76—Minutes of Board of Control of Ladies' Ready to Wear Guild of Baltimore, Sept. 23, 1933	10225	4635
77—Declaration of Co-operation in form of a letter of John Shillito & Co., July 1, 1933	10665	4635
78—Letter, L. R. Minster of John Shillito & Co. to Fashion Originators Guild of America, Inc., Feb. 29, 1936	10682	4635
79—Letter, A. M. Post to Irving Plaut of John Shillito & Co., May 21, 1935	10690	4635
80—Telegram, Fashion Originators Guild of America, Inc., to L. R. Minster, Mar. 12, 1936	10717	4636
81—Telegram, L. R. Minster to Fashion Originators Guild of America, Inc., Mar. 12, 1936	10717	4636
82—Advertisement of John Shillito & Co. in Cincinnati Enquirer, Nov. 6, 1935	....	4636
86—Letter to M. Rentner from B. Foreman of B. Foreman Co., Dec. 29, 1932	11217	4636
88—Declaration of Co-operation of the Associated Merchandising Corporation signed by H. O. Bergdahl, July 5, 1933	11289	4636
89—Letter, H. O. Bergdahl to J. M. Golby, Oct. 19, 1934	11431	4636
90—Advertisement of Raphael Weill & Co., "The White House," in the San Francisco Shopping News, Oct. 15, 1934	11436	4637
91—Advertisement of Abraham & Straus in New York Herald-Tribune, Mar. 10, 1935	11520	4637
92—Letter, J. M. Golby to H. O. Bergdahl of Associated Merchandising Corporation, Oct. 29, 1935	11566	4637

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
93—Report and notes of Mr. Rosensweig of Associated Merchandising Corporation, Assistant Buyer, Mar. 4, 1936.....	11783	4637
97—First application of Rosenthal & Kalman to Fashion Originators Guild of America, Inc., for protection against style piracy.....	12416	4637
98-A and 98-B—Certificate of Incorporation of Fashion Originators Guild of America, Inc.....	13055	4637
100—Letter, H. J. Tily of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 30, 1933.....	13123	4637
101—Declaration of Co-operation of Associated Merchandising Corporation on behalf of Bullock's, signed by H. O. Bergdahl, received July 5, 1933.....	13123	4638
102—Declaration of Co-operation in form of letter from C. J. Larsen of The Dayton Co. to Fashion Originators Guild of America, Inc., July 1, 1933.....	13123	4638
122—Card catalogue of Dress Manufacturers, 1934.....	13179	4638
123—Recapitulation of available resources, 1934, taken from Official Records of Dress Code Authority, N.R.A.....	13188	4638
124—Card catalogue of Dress Manufacturers, 1935.....	13190	4638
125—List of non-Guild manufacturers and their dollar volume from credit agencies making merchandise $16.75 and up, wholesale.....	13197	4638
126—Names of firms appearing on Commission's Exhibit 450-H making merchandise, wholesale cost, under $16.50 per garment as well, and their dollar volume derived from credit agencies..	13207	4638

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	Page
Proceedings in U. S. C. C. A., Second Circuit	4671
Opinion, Hand, J.	4671
Petition for rehearing	4679
Orders denying petition for rehearing	4682
Notice of proposed decree	4683
Decree	4684
Clerk's certificate	4695
Order allowing certiorari	4696

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY TO WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.,

Petitioners,

against

FEDERAL TRADE COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE FEDERAL TRADE COMMISSION.

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

COMES NOW, the FASHION ORIGINATORS GUILD OF AMERICA, INC., on behalf of itself and of each of its officers and of each member of its Board of Governors and the respective successors of each of the foregoing and on behalf of each member of the Fashion Originators Guild of America, Inc., and the officers of each of its members, and on behalf of all other respondents against whom a certain cease and desist order has been directed as herein

4a *Petition to Review and Set Aside.*

more fully set forth, all with the same force and effect as if all of said respondents were specifically herein named, and petitions this Honorable Court to review and set aside as to all of the respondents in this proceeding the findings, conclusions and order of the Federal Trade Commission, all entered the 8th day of February, 1939, requiring your petitioner and said respondents to cease and desist from alleged violations of the Federal Trade Commission Act, and likewise come all of the aforementioned respondents and join in this petition for review and appeal as aforesaid.

5a In support of the petition, the following is shown to this Honorable Court:

I.

That your petitioner, Fashion Originators Guild of America, Inc. (hereinafter sometimes referred to as "F.O.G.A." or "Guild"), is a non-profit membership corporation organized under the laws of the State of New York. It maintains its principal office at 512 Seventh Avenue, New York City. Its members are manufacturers of ladies' ready-to-wear garments and are enumerated in the aforesaid order of the Federal Trade Commission dated February 8, 1939. Approximately 12,000 retailers of ladies' ready-to-wear garments co-operate with the Guild
6a in the program against which the aforesaid cease and desist order is directed. Your petitioner seeks review on behalf of itself and on behalf of all those against whom said order is directed, all of whom join in this petition and seek the same relief.

II.

Your petitioner was organized in March, 1932, for the following purpose:

> "To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote co-operation and friendly intercourse in the wearing apparel industry; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve, and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial industries of its members throughout the Americas, and to promote the sale, 8a identification and recognition of original style and merchandise of the industries of its members."

Your petitioner was organized solely to ameliorate evils in the dress industry, the most important of which, style piracy, was destroying the industry by ruining manufacturers, injuring retailers, oppressing labor and destroying consumer confidence. Its efforts to ameliorate these evils have been judicially sanctioned whenever challenged.

In the following cases the purposes and methods of operation of the Guild and the entire legality of both are best discussed:

> *William Filene's Sons & Co.* v. *Fashion Originators Guild of America,* 90 Fed. (2d) 556 9a (C. C. A., 1st Cir.);
> *Wolfenstein* v. *Fashion Originators Guild of America,* 244 App. Div. 656 (New York).

III.

(1) Despite judicial sanction by state and federal courts (original and appellate jurisdictions), the Federal Trade Commission (hereinafter referred to as "Commis-

10a *Petition to Review and Set Aside.*

sion") on April 16, 1936, issued its complaint (Docket No. 2769) charging the Guild and its members with the use of unfair methods of competition in commerce in violation of *Section 5 of the Federal Trade Commission Act.*

Stripped to its essentials, the complaint charges the respondents with conspiring to establish a monopoly in the manufacture and sale of ladies' ready-to-wear garments; that in furtherance thereof, members of the Guild refused to sell their dresses to retailers who refused to co-operate with the F.O.G.A. program against style piracy and that retailers, co-operating with F.O.G.A., have agreed not to purchase dresses from manufacturers whose dresses have
11a been copied from designs originated by members of F.O.G.A.

(2) Commission's attorneys urged and the Commission has held that the efforts of the members of the F.O.G.A. to save themselves from destruction by refusal to sell to those insisting upon their right to deal and dealing in pirated merchandise of F.O.G.A. members constitutes an illegal boycott *per se;* that it is immaterial that the members of F.O.G.A., and those co-operating with its program, seek to engage in no boycott but are merely adopting preventive measures to protect their business from being destroyed.

The Commission has held that regardless of how proper,
12a **reasonable or necessary the action complained of may be, if as an incident to it a restraint or boycott arises, such action is illegal.**

In conformity with this theory, the Commission refused to permit F.O.G.A. to offer any evidence of the history and condition of the industry at the time of the institution of the program, of the purposes sought to be accomplished thereby, of the reasonableness of the restraint imposed and of the fairness of its execution.

(3) The F.O.G.A., and all respondents, have answered the complaint by urging that the program cannot be declared illegal by reason of the fact that as a result of a proper effort to save the industry from destruction some restraints follow.

Petitioner contends that factually its program is legal in that:

(a) It was adopted for the purpose of eliminating evils which were ruining the dress industry; the most vicious of which was style piracy;

(b) It was voluntarily entered into by manufacturers and retailers; 14a

(c) It was a reasonable program suited to accomplish the ends sought;

(d) It has been fairly and justly administered;

(e) Its purpose was not to create a monopoly or a boycott, and, in effect, it does neither.

IV.

Although the Commission allowed its attorneys the widest latitude in introducing any and all matters into evidence petitioner was limited in its attempts to establish the facts to a degree that amounted *to a denial of due process.* 15a

There have been three examiners successively appointed by the Commission; the last examiner to hear evidence heard only 329 pages of the 8,418 pages of testimony, and thereupon filed his report upon the facts.

Pursuant to the Rules of Practice of the said Commission, exceptions to the said report were duly filed.

16a *Petition to Review and Set Aside.*

V.

On the 8th day of February, 1939, the Commission made Findings of Fact and Conclusions herein and issued its order requiring your petitioner and such co-respondents to cease and desist from the practices constituting its efforts to free the industry of evils upon the alleged ground that the practices were violative of Section 5 of the Federal Trade Commission Act.

VI.

Such order requires the abandonment in its entirety of
17a the program of the Guild, although the same has been judicially sanctioned by the Circuit Court of Appeals for the First Circuit, and all Courts of the State of New York, in which such program has been challenged.

This program, as passed upon by said Courts, is substantially as follows:

Dress manufacturers are divided into two classes, those who originate their own designs at considerable expense (originators) and those who unethically appropriate the designs of originators (style pirates). There are five seasons a year in the dress industry and an originator incurs an expense of thousands of dollars each season to produce a group of dresses (originals) from which the more desirable are selected as a so-called "sample line" for display to prospective retail buyers. A retail buyer pur-
18a chases only a small number of dresses of any one design as his first purchase (to test its consumer acceptance, i. e., will it sell) and thereafter, if a particular dress is successful, he will reorder it. The success of the originator's business depends entirely upon his receiving reorders. The original orders cannot support a dress business. (Aside from those other evils incident to style piracy, it completely destroys the *originator's* ability to obtain a reorder.)

In this industry the term "style" refers to the general characteristics of the dress, which particular characteristics differentiate it from what has previously been worn, such as the length of skirt, size and shape of sleeves, height of waist, and so forth. A "design" includes all of the details involved in the makeup of a dress and is the designer's individual interpretation of a "style".

The industry recognizes that a single "style" may be developed into almost any number of different "designs". Originators send their designers to the style centers of the world, of which Paris is the principal one, to observe the *prevailing styles* and their trend and to obtain inspiration for their new *designs*. Upon observing the current style 20a
trends, these designers interpret the same in their own designs, each according to his own conception thereof and pursuant to the interpretation of the tastes and requirements of his own customers. Designs thus prepared are recognized as original creations in the industry, even though they may not be novel in the sense that nothing like them has ever existed before.

The "style pirate" does not send designers to Paris, and thus avoids this heavy expense involved in the preparation of original designs. He does not design "a line" (an expensive and hazardous, but necessary, procedure) from which are selected the best as his sample line and the rest deemed a total loss. He just pirates or steals the best the originator has made after it has been proven at the originator's expense. Pirating is accomplished in dif- 21a
ferent ways, all either larcenous, fraudulent, evil, vicious or unethical. Sometimes employees of pirates, fraudulently misrepresenting their purpose, visit originators' showrooms and memorize or surreptitiously take notes of the details of his designs; sometimes pirates buy sketches or photographs of successful designs from those who by bribes succeeded in prostituting the originator's employees; sometimes the details are obtained through direct bribery

of the employees of the originator, other times through actual burglary, theft or fraud.

The effect of style piracy is readily observable and understood. Pirates, by avoiding the expense of producing a line of original designs and by using cheaper materials and by sweating labor thus obtain for themselves the fruit of the originator's investment, expense, hazard and genius. This competition is further made even more vicious by the pirate palming off his inferior copy as identical with or as being in fact the original design. What this does to the originator need not further be explained.

Additionally, such piracy destroys the style life of a
23a dress, i. e., the period during which it may be sold. Since the style life of a dress does not exceed at a maximum approximately three months, within a short time after their production the style life of originals is completely destroyed by the pirate, since the originality of his design quickly loses its appeal to the purchasing public by the prevalence of copies. An additional evil resulting from this is that the originator is not able to anticipate or plan for steady reorders and cannot regulate his production accordingly.

Style piracy was likewise destroying the business of the retailer. One of the principal assets of a retailer of ladies' ready-to-wear is its reputation for style, service, honesty and fair dealing, i. e., its good will. This is destroyed when a customer sees what *appear* to be the same dresses
24a on sale at other stores at a lower price, for she then feels that she has been overcharged and taken advantage of by the store in which she purchased her dress, being attracted solely by eye appeal and not recognizing the inferior materials and workmanship in the copy. This also resulted in great and unwarranted returns. In turn, it tremendously increased the retailers' "mark-downs", since the appearance of a copy immediately destroyed the value of the original. It also prevented the retailer from carrying a

balanced or complete stock through his fear of the destruction of the value of his stock by the appearance of pirated copies. (This reaction has its effect upon the pirate himself, for pirating is done progressively lower and lower until it becomes a question merely as to which pirate can sweat his labor more, the competition here being on price.)

The effect of style piracy on labor is vicious. It is the greatest contributing cause to the sweating of labor. The copyist can only compete on a price basis, since he does not offer origination of design or quality in workmanship and in materials. This has resulted in the pirate demanding that contractors bid for his work, a destructive practice, wherein the price can only be reduced at the expense 26a
of labor. Not only are wages thus forced to a low level when workers are employed, but the hazards of the seasonal nature of the business are increased by the inability to steadily employ labor due to the impossibility of expecting reorders.

The ultimate consumer has likewise been affected by style piracy. The retailer, anticipating price competition by the pirate and the necessity of taking back dresses which have been sold, must raise the initial price of his original creation in order to eventually make a profit.

It is elementary that woman has always regarded as the principal element of value in clothes a degree of exclusiveness and individuality commensurate with the price paid, and this prime element demanded by women in shopping for clothes is destroyed by style piracy; as a 27a
concomitant, the consumer was helplessly confused in her attempt to adequately measure the quality of dresses and their value by reason of the prevalence of so many copies of what she deemed good.

This brief description of the evil of style piracy and its effect has been judicially recognized and defined in the *Filene's* case, *supra,* and it is clear therefrom that style piracy was ruinously injurious to manufacturer, retailer

and labor in the dress industry and had a deleterious effect upon the customer. The manufacturer was being forced out of business due to the great expense involved in and his inability to preserve and maintain the integrity of his product. Retailers were being forced out of business or were faced with the alternative of discontinuing their dress departments due to inability to maintain a balanced stock, and the impossibility of relying upon the sale of their garments due to the palming off of their merchandise, aided by the whispering campaign, "This is the identical dress which you saw selling for twice this price." Labor was adversely affected by the inability of the manufacturer
29a to maintain a steady course of production even during the season, which resulted not only in loss of work but disasterous strikes during the season.

With manufacturers, retailers, labor and consumer panic-stricken, outraged, rebellious and disgusted, with the industry slowly disintegrating by failure after failure, the dire emergency which faced the industry resulted in the formulation of the F.O.G.A. *Its most important purpose was to legally and reasonably attempt to cure or ameliorate this evil.*

That style piracy was and is an evil is admitted.

The program of the Guild is carried out in the following manner:

30a Manufacturers who are members of the Guild have agreed not to sell their original creations to retailers who wilfully buy and sell pirated copies of their original designs. The sole purpose of this action is to protect the members' merchandise. If such retailer does not wish to deal in original merchandise the Guild has no concern with and does not attempt to prevent his free dealing in copies. Its members refuse to do business with those who are destroying them and their industry.

To ascertain the policy of the retailer he is requested to signify that it is his policy to refrain from wilfully purchasing pirated copies of original merchandise. This is usually done by the retailer signing a "declaration of co-operation" prepared by the Guild, *or, if a retailer so desires, any informal declaration incorporating the substance of the foregoing policy.*

For the purpose of having some record of what is *claimed* to be an original design, the Guild established a Design Registration Bureau. This Design Registration Bureau only fixes the time *of claim to origination* and is no proof of origination. *Registration confers no rights and does not even raise a presumption of originality. This must be determined in the event of a dispute by arbitrators as hereinafter described.*

The question of whether a particular dress is a pirated copy of an origination is determined by a system of impartial arbitration. The arbitrators are selected in rotation from lists submitted by co-operating retail stores and buying offices (*no manufacturer or member of the Guild sits as an arbitrator*), the arbitrators rotating in such manner that they sit on a particular day without knowing what disputes are to appear before them on that day.

A non-Guild manufacturer, whose dress is involved in a piracy dispute, is invited to appear before the arbitrators and present such evidence as he sees fit. No decision is rendered unless both the alleged original and the alleged pirated copy are before the arbitrators. Upon objection with or without cause by a non-member (a Guild member may not object) to the personnel of the arbitrators, he is "ipso facto" granted a new panel consisting of the next three persons on the rotating list. If he objects to this second panel he may then select any person he desires as his arbitrator, the Guild manufacturer selects another person and these two select a third. The Guild manufacturer is bound by the decision of the arbitrators, but the

non-member of the Guild may appeal to a so-called "Executive Piracy Committee", consisting of merchandising men or heads of New York buying offices. A slightly different but substantially similar and fair method of determining the question of piracy is followed in cities outside the New York area.

When a dress has been *adjudged* as having been pirated *and not before,* a description thereof is sent to employees of the Guild who are known as "shoppers". Their duty is to point out these dresses which have been adjudged copies to a co-operating retailer who may have them in stock, whose duty it then is to withdraw them from sale. These
35a shoppers are known to the retailers in the respective cities in which they work and they work in co-operation with the retailers. The functions of the shopper are openly performed; there is no spying, nothing secretive or furtive.

If a retailer desires to purchase merchandise from a member of the Guild, and pursuant to a request then made refuses to signify that it is his policy not to deal in copies, or having so signified thereafter wilfully and continually sells pirated copies of Guild merchandise, his policy is thereafter communicated to the members of the Guild. All members have a card index system which advises them of the policy of the retail stores with whom they do business. When a retailer makes known that he intends to deal in pirated merchandise, a red card is issued to the members of the Guild which advises them of such policy.
36a *It is the election on the part of the retailer preferring to sell pirated merchandise rather than originals that initiates the red card by the Guild and informs the members of the Guild that the retailer does not wish to buy Guild merchandise.* The refusal to sell by members of the Guild is not the result of the red card, but results from the definite, unequivocal and self-expressed refusal of the retailer to protect the manufacturer's business from the evil of style piracy.

Even though a retailer may have been red-carded, the red card is immediately withdrawn and the members of the Guild gladly sell him their merchandise at any time that such retailer signifies his policy to aid in the eradication of style piracy by refusing to deal in pirated merchandise.

Subsequently, the Guild adopted additional policies dealing with those additional conditions which had theretofore constituted an evil, such as apartment house shops (sometimes called bootleg shops), excessive discounts, fashion shows, subsidized retail advertising and unwarranted returns.

This program of the Guild has been completely sustained as legal, valid, fair and a reasonable regulation of trade by the United States Circuit Court of Appeals in the case of William Filene's Sons & Co. v. *Fashion Originators Guild of America,* 90 Fed. (2d) 556, *and by the Supreme Court of the State of New York in Wolfenstein* v. *Fashion Originators Guild of America,* 244 App. Div. 656. 38a

VII.

(A) The following findings of fact of the Federal Trade Commission are excepted to for the reason that they are contrary to the credible evidence in the record, are not supported by evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred and because petitioner was not permitted to introduce evidence upon the matters thus found: 39a

1. All of paragraph "Eight".

2. That part of paragraph "Ten" thereof commencing:

> "Each of these Guilds entered into an agreement with the F.O.G.A."

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to and including

"The terms of these agreements were fulfilled by the F.O.G.A. and its members, and by the respective local guilds and their members."

3. That part of paragraph "Eleven" which finds:

"And return such garments as are adjudged to be copies of the Guild's registered styles."

and to the interpretation in such paragraph of the contents of the declaration of co-operation.

4. That part of paragraph "Eleven" which finds:

41a

"At first the F.O.G.A. attempted to secure the voluntary co-operation of the retailers and their signatures to the declaration of co-operation by representing the advantages to be derived from such co-operation; later, after having secured a number of voluntary signatures to this 'declaration' the F.O.G.A. coerced, constrained and compelled retail dealers to sign such declarations of co-operation under the threat that unless they did so its members would refuse to sell them their products or to allow them to inspect their lines of merchandise. The garment manufacturing members of the F.O.G.A have refused to exhibit or sell their merchandise to retailers who fail or refuse to sign said declarations of co-operation or who having signed same fail to comply with the requirements thereof."

42a

5. So much of paragraph "Eleven" as finds that whether or not a dress is a pirated copy of an original registered style of a member of the F.O.G.A. is determined by the F.O.G.A.

6. That part of paragraph "Eleven" which finds:

"The majority of 12,000 retail dealers in women's garments referred to in paragraph 'Six' hereof

43a

signed such declaration of co-operation as a result of the threat of the F.O.G.A. that its members would sell their products only to those merchants who signed the declaration of co-operation."

7. That part of paragraph "Eleven" which finds:

"The respondent, F.O.G.A., after it had secured the co-operation of a large number of retail dealers sought to and did induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of members of the F.O.G.A."

44a

8. That part of paragraph "Thirteen" which finds:

"The F.O.G.A. from time to time appoints what it designates as a piracy committee."

9. That part of paragraph "Fourteen" which finds:

"These shoppers also visit the stores of non-co-operating retail dealers without disclosing their identity for the purpose of ascertaining whether such merchants have on sale copies of alleged original designs and styles of F.O.G.A. members and if such are found it is reported to the F.O.G.A."

10. That part of paragraph "Fifteen" which finds:

"The F.O.G.A. has also red-carded retailers who refuse to disclose the name of the manufacturer from whom they purchase alleged copies even though such retailers remove the alleged copies from sale."

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11. All of paragraph "Sixteen".

12. All of paragraph "Seventeen".

46a *Petition to Review and Set Aside.*

13. All of paragraph "Eighteen".

14. All of paragraph "Twenty-four".

15. All of paragraph "Twenty-five".

16. That part of paragraph "Twenty-eight" which finds that retail dealers

> "Have been occasioned loss of good will and great financial loss by the refusal of garment manufacturing members of the F.O.G.A. to sell them their merchandise."

47a 17. All of paragraph "Twenty-nine".

18. All of paragraph "Thirty".

19. The following subdivisions of paragraph "Thirty-one", to wit, "a", "b", "c", "d", "e", "f", "k", "l", "m", "n", "o", and "p" and to so much of paragraph "Thirty-one" as infers that action is taken by the Guild as distinguished from its members who together with co-operating retailers dictate the policies and functions of the Guild.

(B) Petitioner excepts to the Conclusion of the Federal Trade Commission upon the ground that it is unsupported by the evidence, contrary to the credible evidence because it is not supported by evidence in the record affording a
48a substantial basis of fact from which this conclusion can be reasonably drawn and because such conclusion is contrary to law.

VIII.

Exception is taken to the failure of the Commission to find as follows:

(a) The purposes for which the said Fashion Originators Guild of America, Inc., was formed are as follows:

> "To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote co-operation and friendly intercourse in the wearing apparel industries; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve and disseminate information and literature which will tend to augment the sale of the 50a
> commodities manufactured or sold; to advance the trade and commercial industries of its members throughout the Americas and to promote the sale, identification and recognition of original style and merchandise of the industries of its members" (Commission's Exhibit 1, Respondent's Exhibit 98).

(b) The Guild initiated its campaign against design copying or "style piracy" with the passage of a resolution on June 12, 1933, reading as follows:

> "WHEREAS, the chaotic conditions in the dress industry are largely attributable to widespread and persistent piracy of style and
>
> WHEREAS, unless this regrettable situation has been particularly injurious to the best interests of 51a
> the retailers and manufacturers of quality merchandise and
>
> WHEREAS, unless immediate and effective efforts to obtain protection against this plagiarism are instituted, the producers and distributors of better grade clothes will lose the excellent opportunity that will be held forth this Fall for reviving trade and consumer interest in style and quality apparel, therefore be it

RESOLVED that, in order to protect the property rights as embodied in their originations, the members of the Fashion Originators' Guild of America, beginning with the opening of their Fall lines on and after July 5, 1933, limit the showing and sale of their merchandise solely to retailers who will co-operate in protecting these property rights by refraining from purchasing or marketing or dealing in any way in garments that are copies of models created by Guild houses" (Commission's Exhibit 99-B).

(c) Copies of this resolution were sent to retail stores together with a letter dated June 16, 1933 (Commission's
53a Exhibit 99-A), explaining the anti-piracy program, and the retail stores were requested to indicate their policy with regard to the protection of original designs of Guild members (Commission's Exhibits 3-A to 3-G, 455, 456, 480, 534).

(d) Thereafter the Guild from time to time sent to retailers generally numerous form letters explaining the proposed program of the Guild, and did from time to time request retailers to state their opinion concerning the program, the value thereof to the industry generally, and to retailers in particular. The said Guild did further from time to time send various committees and representatives around the country to confer with retailers to ascertain the manner and method of curing the many evils that beset
54a the ladies' dress industry. At all times the Guild consulted with retailers in an effort to mold the programs to the retailers' needs, as well as to the needs and protection of the manufacturer (Commission's Exhibits 99, 371, 372, 373, 374, 382, 451, 454, 455, 568; Respondent's Exhibits 12-D).

(e) The form of Declaration of Co-operation as methods and procedures crystallized changed in many respects, but

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substantially the basic form continued (Commission's Exhibits 3-A to 3-G, 455, 456, 480, 534). No particular form of declaration has ever been insisted upon (Respondent's Exhibits 100-102).

(f) Ethical retailers welcomed the plan proposed by the Guild and sought conferences with representatives of the Guild in an effort to co-operate in eradicating the evil of style piracy aforesaid. Thereafter, conferences ensued, questionnaires were sent to retailers, and the program of the Guild developed after and pursuant to suggestions requested of retailers. At no time did the Guild act arbitrarily and without due regard to the rights of retailers generally in the United States.

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(g) In July, 1933, there was established a Design Registration Bureau within the Guild. Original designs created by members or affiliates of the Guild are sketched on registration forms upon which are also written detailed descriptions of the garments. The registrant makes affidavit that the garment to be registered is an original design created by him. The form is then stamped and numbered by the Guild, which retains the portion bearing the description and returns the sketch to the manufacturers. Its only function is to record the fact that the registrant *claims* that the particular design is his original creation, and the date on which such claim is first made.

(h) In the early part of 1935, the Association of Buying Offices, which represents approximately 1,700 retail stores, requested the Guild to extend its style protection program to cheaper merchandise. Such requests were in form of letters in evidence signed by H. O. Bergdahl, an officer of the Association of Buying Offices, who is also the director of the Associated Merchandising Corporation, the New York purchasing agent for Filene's and R. H. White and other witnesses. The Guild decided to take no action

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58a pending further inquiry regarding the sentiment among retailers generally. After investigation which included a trip around the principal centers of the country gathering the sentiment of retailers, it was concluded that the retailers wished that style protection be extended throughout all price ranges. Consequently, in July, 1935, a number of manufacturers in the price ranges from $10.75 to $16.75 were admitted as "protective affiliates" of the Guild. Protective affiliates differ from members in that they participate only in the style protection program and are not concerned with activities of the Guild in other fields.

59a (i) In September or October of 1935, a representative of the Associated Merchandising Corporation suggested that manufacturers in the price ranges below $10.75 be taken into the Guild. Communications were received from retailers requesting that the program of protection be extended downward to include the $6.75 manufacturers. Conferences were held with representatives of the Associated Merchandising Corporation and the Association of Buying Offices, who urged that the lower price ranges be included in the program, and in November, 1935, a group of $8.75, $7.75 and $6.75 manufacturers were taken in as protective affiliates of the Guild.

(j) The plan whereby the Guild attempts to prevent the pirating of original designs contemplates that members
60a and affiliates of the Guild shall not sell their merchandise to retailers whose policy it is to deal in pirated copies of the original creations of members or affiliates. The applicable regulation of the Guild is as follows:

> "Members shall neither show nor sell their garments to retailers:
>
> (1) who have not signed and/or agreed to the 'Declaration of Co-operation' with the Guild; or

(2) having so signed and/or agreed, have been found by the Board of Governors of the Guild to have breached its terms" (Commission's Exhibit 1). 61a

(k) In practice, the Guild has never insisted that the retailer sign any particular form of declaration of policy. Members and affiliates have always been permitted to sell to retailers who preferred not to sign the Guild form of declaration but who indicated in any other form that it was their policy not to deal in copies of garments originated by Guild manufacturers. Strawbridge & Clothier, William Filene & Sons, R. H. White Company, B. Forman's and numerous other stores members of the Associated Merchandising Corporation chose to write their own form of letter of co-operation. John Wanamaker merely sent the Guild a printed booklet which set forth the aims and mercantile policies of the founder of the store, which included a statement to the effect that the store did not countenance the copying of styles and designs, with a covering letter stating that the policy set forth in the said printed booklet was still the policy of the store, and likewise numerous other retailers chose to state that they would co-operate with the Fashion Originators Guild of America in its fight against the evil of style piracy, without using the so-called "Declaration of Co-operation" (Respondent's Exhibits 100-102). 62a

(l) Prior to the summer of 1935 approximately 6,000 retail stores had voluntarily indicated that their policy was not to deal in pirated copies of garments originated by Guild manufacturers. In the summer of 1935, a revised form of "Declaration of Co-operation" was adopted by the Guild for use by such retailers as might wish to join in the anti-piracy program. The revised form was signed by approximately 6,000 additional retailers, so that by the end of 1935 approximately 12,000 retailers voluntarily had 63a

evidenced their desire to co-operate with the Guild. A retailer signing the revised form of Declaration of Co-operation represented that it was not his policy to wilfully buy pirated copies of merchandise created by members or protective affiliates of the Guild (Commission's Exhibits 3-A to 6, 455, 456, 480, 534).

(m) Prior to the fall of 1935 the Guild had established no uniform procedure for determining whether garments alleged to be pirated copies of original creations of Guild manufacturers were in fact copies. In the fall of 1935 a uniform plan was evolved and codified by resolution of
65a the Board of Governors of the Guild. The operation of this plan, as applied to piracy disputes between Guild and non-Guild manufacturers, is as follows: Co-operating retail stores and retail buying offices in New York were requested to submit names of their employees who were considered qualified to act as arbitrators in piracy disputes. All names thus submitted to the Guild were placed on a list or panel, which was divided into categories according to the particular qualifications of the individuals as stated by the organizations submitting their names. Thus there is a group of persons particularly qualified in the field of lower priced garments, another qualified in medium priced goods, another in better goods, another in sportswear, and so forth. The panel has included as many as 200 individuals, although the number varies from time
66a to time. Three individuals on the panel, selected in regular rotation, are notified a week in advance to act as arbitrators on a certain day to decide such cases as may come up on that day. The purpose is to secure an absolutely impartial committee. Each complaint is treated separately, and upon the visible appearance of the style presented. No decision is rendered unless both the alleged original and the alleged pirated copy are before the arbitration. The arbitrators decide by majority vote, and their

decision is binding upon the Guild manufacturer. Due notice is given the non-Guild manufacturer in order that he may attend the meeting of the committee and present evidence in support of his contention that the challenged garment is not a pirated copy of the alleged original, or that the latter is not in fact an original creation of the Guild manufacturer.

Should the non-Guild manufacturer object, with or without cause, to the personnel of the particular Board of Arbitration before which his case is brought, he may request another set of arbitrators to consist of the next three individuals whose names appear in order upon the rotating panel, and the hearing is adjourned until the following day. If the non-Guild member objects to the personnel of 68a
the new Board of Arbitrators he may select any individual as his arbitrator, the Guild manufacturer selects another, and those two select a third. The majority decision of the Arbitrators thus chosen is binding upon the Guild manufacturer. He may not appeal therefrom. In order that every reasonable opportunity may be given the non-Guild manufacturer to establish his claim, he may appeal from an adverse decision of the Board of Arbitrators to an Executive Piracy Committee consisting of merchandise men or heads of New York buying offices.

(n) If the alleged style pirate is located in a city other than New York and is unwilling to appear in New York or to have his New York representative appear in his be- 69a
half, or if the retail stores immediately involved in the controversy are located in a city other than New York, the dispute may be submitted to a committee convened in the city where the manufacturer or the retailers, as the case may be, are located. The method of convening such a committee depends upon local practice. Usually a method has been formulated by a local retail organization; otherwise a committee of disinterested retailers is con-

vened by the Guild's shopper. The decision of such local committee is binding only upon stores in the particular city. The dispute is passed upon by a New York committee under the standard method of procedure before any decision is circulated throughout the country.

(o) If a non-Guild manufacturer who has failed for any reason to appear before a committee to present evidence in support of his claim subsequently desires a hearing, the case is reopened and he may appear before a retail committee, an executive piracy committee, an arbitration committee or any other impartial body that may be suggested.

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(p) Piracy complaints are not initiated by the Guild or its shoppers. They are initiated by retailers who believe that some competitor is carrying a pirated copy of an original creation stocked by the complainant. Shoppers are not spies but are known to retailers and help locate dresses which have been *adjudged* copies.

(q) A non-Guild manufacturer who believes that a Guild manufacturer has copied one of his original creations may present his complaint to the Guild. If the decision is in favor of the non-Guild manufacturer, the Guild manufacturer is required to remove the copy from his collection and recall the dresses that have been shipped to retailers.

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(r) No protection is accorded by the Guild to copies of imported garments or to any other garment that cannot fairly be regarded as an original creation of the manufacturer claiming protection. Copies of imports are not eligible for registration. If a garment registered by a Guild manufacturer is subsequently found to be a copy of an import, the registration is cancelled.

(s) A card index system is maintained by the Guild to keep its members advised as to the policy of retail stores regarding the sale of pirated originations. If a retailer desiring to purchase from a Guild manufacturer declines to state his policy to be to protect the original creations of Guild manufacturers, a blue card is issued requesting discussion of the matter before selling the putative customer. If the retailer indicates affirmatively that such is not his policy, or if a retailer who has been co-operating with the Guild indicates that he will no longer protect Guild merchandise against style piracy, members are notified by means of a red card. It is the practice of the Guild not to "red-card" a retailer until it clearly appears that the retailer does not intend to protect Guild merchandise against style piracy. If a retailer refuses or fails to discontinue the sale of garments found to be pirated, the Guild communicates with the management of the store and with its New York office, if any, to determine whether the particular incident reflects a change of policy on the part of the store or is merely an isolated instance attributable to peculiar circumstances or to a misunderstanding. Only after careful inquiry has disclosed that the general policy of the retailer is to deal in pirated merchandise does the Guild notify its members that the retailer is no longer co-operating. Should the retailer later change its policy to one of co-operation, the members of the Guild will again sell their merchandise to him. The refusal to sell by members of the defendant Guild is not the result of the "red-card", but results from the definite and unequivocal refusal of the retailer to protect the manufacturer's styles from the evil of style piracy in the manner set forth in the Declaration of Co-operation.

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(t) Under date of February 14, 1936, the Associated Merchandising Corporation advised the Guild by letter that in the future none of its members would protect orig-

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inal creations in price ranges below $10.75. The Guild thereupon sent telegrams to each of the members of the Associated Merchandising Corporation asking whether the letter of February 14th correctly stated the individual store's policy. Replies in the negative were received from four stores, and no replies were received from the remainder. Accordingly, the Guild, pursuant to the unanimous vote of members present at a meeting held February 17, 1936, issued "red cards" to those members of the Associated Merchandising Corporation who had not replied to the telegram of February 15th (Respondent's Exhibits 37, 38; Commission's Exhibits 571, 840, 841).

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IX.

Exception is taken to the failure of the Commission to find as follows:

1. That previous to the organization of the Guild an evil known as style piracy existed in the dress industry. This evil was ruinous to the manufacturer, destructive of the business of the retailer, lowered the standards of labor and confused the consumer; that the Guild was formed primarily for the salutary purpose of eliminating such evil among others and that the program and activities of the Guild were adopted and carried out for such purpose; that in the execution of its program the Guild was fair and
78a just and not arbitrary and the means adopted were suitable to the lawful end sought to be accomplished.

2. That the refusal of the members of the Guild to sell retailers who refused to protect their merchandise from style piracy is primarily and solely for the purpose of protecting their own business from piratical and unethical assaults and is not illegal.

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3. That the program of the Guild does not unreasonably restrain trade.

4. That the program and activities of the Guild do not establish or attempt to establish a monopoly in favor of its members.

5. That members of the Guild do not dominate the industry either in dollar volume or number of manufacturers in the industry.

6. That the Guild does not fix or maintain prices, control production or allocate customers.

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7. That the practice of group showing and sale of merchandise by groups of manufacturers in one place at a given time from samples transported from their headquarters at the place of the showing was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

8. That the sale of ladies' ready-to-wear garments from so-called apartment house shops was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

9. That the taking of unreasonable discounts was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

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10. That the Guild adopted regulations addressed to its members only designed to remedy evils in the industry, which regulations are reasonable and proper and have no tendency to restrict fair competition in the industry.

82a *Petition to Review and Set Aside.*

X.

Your petitioner further excepts to the said Findings, Conclusions and Order of the said Federal Trade Commission for the reason that the constitutional right of the respondent to a fair trial by due process of law was abridged by reason of the following:

(a) The denial to petitioner of the right to rebut testimony introduced by the Commission and admitted into evidence by the Examiner, upon which Findings were made by the Commission.

83a (b) The suppression of evidence by Commission's attorneys and the arbitrary, deliberate refusal to introduce evidence in their possession.

(c) The denial to the petitioner of the right to cross-examine witnesses proffered by the Commission from whom testimony was elicited on behalf of the Commission.

(d) The curtailment of cross-examination upon the ground that the matters sought to be elicited were not inquired about by Commission's attorneys.

(e) The refusal to permit cross-examination upon the ground that the matters sought to be elicited were more properly the subject of testimony by petitioner in support of its own case and the subsequent refusal to permit such presentation upon proffer of proof by the petitioner.

84a (f) The refusal of the Examiner to permit the record to reflect: questions asked by the attorneys for the petitioner, and answers made by the witnesses to such questions; answers to questions put by the attorneys for the Commission; exceptions made by the attorneys for the petitioner to the rulings of the Examiner and the physical striking by the Examiner of questions put and answers elicited upon the hearing, together with objections made and exceptions taken by attorneys for the petitioner.

(g) The requirement that the petitioner attend at the taking of testimony in New York, Boston, Philadelphia, Detroit, Cleveland, Chicago, Minneapolis and Baltimore in the light of the fact that within the legal philosophy propounded by the Commission, the Commission's entire case was presented within pages 134 to 147 of the record. 85a

(h) Of 8,418 pages of testimony, the Examiner submitting the report upon which the Commission's findings are predicated presided over the taking of only 329 pages of testimony, practically all of which was taken after the conclusion of the Commission's case: the report, therefore, is in the nature of an appellate review and petitioner has been deprived of the safeguard of the personal observation of the witnesses by the previous Examiners to aid, guide and assist in the weighing of evidence. 86a

(i) The harassing, coercive, distracting tactics of the Examiner and of the Commission's attorneys and the undue interference with the conduct of the defense by the petitioner's attorneys as revealed by the fact that in approximately 3,919 pages containing cross-examination of the Commission's witnesses (inclusive of hundreds of pages of colloquy between the attorneys and the Examiner), the cross-examination by petitioner's attorneys was interrupted by objections and by gratuitous, superfluous remarks 1,404 times; of the 202 pages containing the petitioner's direct case, inclusive of colloquy between counsel and Examiner, counsel for the petitioner in the presentation of their defense were interrupted by objections and superfluous and gratuitous remarks eighty-four times. 87a

(j) The high-handed, arbitrary tactics of the Commission in striking an exception from the petitioner's Excep-

88a *Petition to Review and Set Aside.*

tions to the Report of the Trial Examiner, which said exception is as follows:

> "The entire proceeding is an abuse of process and a malicious prosecution in the light of the decision and opinion of the United States Circuit Court of Appeals in the case of William Filene's Sons & Co. v. Fashion Originators Guild of America. The entire proceeding was an abuse of process and malicious prosecution by reason of the previous ruling of the Federal Trade Commission upon the legality of the Guild activities and the failure of Commission's attorneys to elicit proof, or the Examiner to find that the Guild's activities had altered or changed since the aforesaid decision. Respondent's
89a Ex. 99 for Identification."

(k) The refusal of the Examiner to exclude from admission into evidence Commission's Exhibits 19, 26, 88, 116, 120, 121, 123, 125, 127, 128, 129, 131-136, 140, 357, 402, 403, 471, 472, 473, 478, 479, 481-486, 489, 490, 491, 493, 496, 497, 504-509, 522, 551, 573, 587, 588, 598, 600, 601, 602, 606, 610, 611-644, 654, 713, 714, 735, 743, 829, 843, 853, 859, 867, 880, 889, 890, 891, 906, 941, 942, 956, 980, 1004, 1008-1032 as incompetent.

(l) The refusal to admit into evidence Respondent's Exhibits 99, 100-120, 127-208 for Identification.

(m) The refusal of the Commission to permit petitioner to adduce testimony in support of its affirmative case, and
90a to testify as to the reason for and the fairness of the redcarding of affected stores with respect to which testimony had been adduced by the Commission.

(n) The refusal to permit the petitioner to offer proof of the evolution of F.O.G.A.

(o) The refusal of the Examiner to exclude as incompetent testimony adduced by Commission's attorneys.

(p) The failure of the Examiner to permit proof by the petitioner with respect to the economic history of the industry, the existence of the evil of style piracy, the effect thereof, the existence and necessity for protection of original styles, the method by which original styles are pirated, the economic effect of style piracy upon manufacturer, retailer, consumer and laborer and the program and activities of the Guild and the remedy thereof and of other evils constituting the Guild program and to the refusal of the Examiner to permit the petitioner to make offers of proof with respect to the foregoing.

XI.

92a

Exception is taken to the rulings of law in the conduct of the hearing affecting the admission of testimony therein to the effect that whether or not the program of the petitioner is directed at the elimination of an evil is immaterial, that the purpose of and need for the actions of the petitioner is immaterial; that the effect of the activities of the petitioner is immaterial and that whether or not a dress is a copy of an original is immaterial.

XII.

Exception is taken to the failure of the Commission to find that the Guild program does not violate the Federal Trade Commission Act. 93a

XIII.

For the foregoing reasons, your petitioner urges that the aforesaid Findings, Conclusions and Order of the Federal Trade Commission in this proceeding are null and void.

94a *Petition to Review and Set Aside.*

XIV.

WHEREFORE, your petitioner respectfully prays this Honorable Court to review the record and Trial Examiner's report and exceptions thereto and the Findings, Conclusions, Order and proceedings of the Federal Trade Commission in this matter and set aside and hold for nought and declare null and void the Findings and Conclusions of and the said Order to cease and desist from alleged violations of the Federal Trade Commission Act.

FASHION ORIGINATORS GUILD OF AMERICA, INC.,
By MAURICE RENTNER,
President.

95a

WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Petitioners,
1450 Broadway,
New York City.

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Certification of Record.

UNITED STATES OF AMERICA

Before Federal Trade Commission, ss.:

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.	Docket No. 2769

2

I, A. N. Ross, acting secretary of the Federal Trade Commission, DO HEREBY CERTIFY that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings
Part 2—Testimony (pages 1-751)
Part 3—Testimony (pages 752-1584)
Part 4—Testimony (pages 1585-2695)
Part 5—Testimony (pages 2696-3581)
Part 6—Testimony (pages 3582-4583)
Part 7—Testimony (pages 4584-5659)
3
Part 8—Testimony (pages 5660-6621)
Part 9—Testimony (pages 6622-7680)
Part 10—Testimony (pages 7681-8418)
Part 11—Exhibits (Commission's Exhibits 1-200)
Part 12—Exhibits (Commission's Exhibits 201-450)
Part 13—Exhibits (Commission's Exhibits 451-625)
Part 14—Exhibits (Commission's Exhibits 626-750)
Part 15—Exhibits (Commission's Exhibits 751-850)

4 *Certification of Record.*

Part 16—Exhibits (Commission's Exhibits 851-975)
Part 17—Exhibits (Commission's Exhibits 976-1052)
Part 18—Exhibits (Respondents' Exhibits)

and separate original exhibits marked:

2-1	2-2
2769-1	2769-1

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated February 8, 1939, and
5 amended March 29, 1939, entered by the Federal Trade Commission in that proceeding.

IN WITNESS WHEREOF, I hereunto subscribe my name, and affix the seal of the said Federal
(Seal) Trade Commission, at its office in the City of Washington, D. C., this 26th day of August, A. D. 1939.

A. N. ROSS,
Acting Secretary.

6

Complaint.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission, having reason to believe that each and all of the parties named in Paragraphs One to Eight, both inclusive hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent Fashion Originators Guild of America, Inc., hereinafter referred to as respondent F.O.G.A., is a membership corporation organized March 7, 1932, under the laws of the State of New York, and is now existing under the laws of said state with its principal office and place of business located at 512 Seventh Avenue, in the City of New York, in said state. The membership of said corporation is divided into three

groups as follows: (1) Ladies' Garment Manufacturers, (2) Textile Merchants, and (3) Affiliated Members, consisting of retail dealers in ladies' garments and accessories. The following named individuals of the said City of New York are executive officers of respondent F.O.G.A. and as such are designated as respondents herein: Maurice Rentner, President and Treasurer, 498 Seventh Avenue; Herbert Sondheim, First Vice President, 530 Seventh Avenue; Charles Gumprecht, Second Vice President, 36 West 47th Street; J. A. Livingston, Secretary, 498 Seventh Avenue; Albert M. Post, Executive Director, 512 Seventh Avenue; and James M. Golby, Executive Secretary, 512 Seventh Avenue.

The said respondent F.O.G.A. was organized for the ostensible purpose of establishing fair trade practices among its members and to carry out a style protective program to protect the originators of fashions and styles of ladies' garments against copying and piracy. As the organization of said respondent F.O.G.A. expanded to include textile merchants and retail dealers, it also sought to protect the originators of designs of fabrics and in addition to its regular membership established a division known as "Protective Affiliates" for those non-member ladies' garment manufacturers who cooperated in the style protective program of the said respondent F.O.G.A.; and also designated the Industrial Design Registration Bureau of the respondent National Federation of Textiles, Inc., as its agency to register the designs of fabrics submitted by members of its said Textile Merchants Group.

PARAGRAPH TWO: The membership of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. is divided into the following divisions: Dress Division, composed exclusively of manufacturers of ladies' and misses' dresses; Coat Division, composed exclusively of manufacturers of ladies' and misses' coats; Junior Miss

Division, composed exclusively of manufacturers of junior misses' dresses; and the Sportswear Division, composed exclusively of manufacturers of ladies' sportswear.

From time to time the membership of said Ladies' Garment Manufacturers' Group of said respondent F.O.G.A. and the aforesaid Divisions thereof, is increased by the addition of new members, so that all the members of said Group at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers, and the other members of the Board of Governors of said Ladies' Garment Manufacturers Group, hereinafter named, are also made respondents as representing all members of said group engaged in their respective lines of business, including those members not herein specifically named. The following named individuals of New York City, compose the Board of Governors of the Ladies' Garment Manufacturers Group of respondent F.O.G.A. and as such are named as respondents herein:

Dress Division: William Bass, representing William Bass. Dress Corporation, 550 Seventh Avenue; David Bender, representing Bender & Hamburger, Inc., 530 Seventh Avenue; Louis J. Brenner, representing Brenner, Morris, Inc., 498 Seventh Avenue; Theodore Racoosin, representing Germaine Monteil, Inc., 1440 Broadway; Miss Jo Copeland, representing Jo Copeland, Inc., 15 West 47th Street; Charles Lang, representing Charles Lang, Inc., 498 Seventh Avenue; William Fox, representing Suttre-Fox, Inc., 498 Seventh Avenue; Samuel Kass, representing Kass-Sutton, Inc., 498 Seventh Avenue: Joseph Halpert, representing Joseph Halpert, Inc., 530 Seventh Avenue; D. Eli Lahm, representing Rose Barrack & Lahm, 530 Seventh Avenue; and Charles Miller, representing Strauss-Miller, Inc., 498 Seventh Avenue.

Coat Division: Louis M. Wersba, representing Deitsch, Wersba & Coppola, 512 Seventh Avenue; Kallman Carmel, representing Carmel Bros., Inc., 530 Seventh Avenue; and Leo A. Del Monte (alternate), representing Del Monte Hickey Co., 530 Seventh Avenue.

Junior Miss Division: Louis J. Mallas, representing Jane Junior Dresses, 498 Seventh Avenue.

Sportswear Division: David M. Goodstein, representing David M. Goodstein, Inc., 530 Seventh Avenue; and Matthew Kane (alternate), representing Kane-Weill, Inc., 498 Seventh Avenue.

The aforesaid members of the said Ladies' Garment
17 Manufacturers Group of said respondent F.O.G.A., consisting of approximately one hundred eighty individuals, co-partners, and corporations, are located in various states of the United States, but principally in the City of New York, State of New York, in the City of Chicago, State of Illinois, and in the City of Boston, State of Massachusetts. Most of the said members are engaged in the business of designing and manufacturing ladies', misses' and junior misses' dresses, suits, and other similar garments of high quality, and in the sale of said garments at wholesale in the higher priced lines to retail dealers located in states other than the states of manufacture, causing said garments when so sold to be transported from their respective places of manufacture to the purchasers thereof, and there has been and now is a constant current of interstate trade
18 and commerce in said products between the members of said Ladies' Garment Manufacturers Group of respondent F.O.G.A. and retail dealers in said garments, including said "Affiliated Members" of respondent F.O.G.A., located throughout the several states of the United States.

In the course and conduct of their said respective businesses, respondent members of the said Ladies' Garment Manufacturers Group of said respondent F.O.G.A., but for the matters and things hereinafter set forth, would be natu-

rally and normally in competition with each other, and are in competition with other individuals, co-partners, and corporations also engaged in the manufacture of ladies', misses', and junior misses' dresses, suits, and other similar garments and in the interstate sale of said garments to retail dealers. Said members of the Ladies' Garment Manufacturers Group of respondent F.O.G.A., during the year 1935, manufactured and sold approximately 50 per cent of all ladies' dresses sold in the United States at the wholesale price of $10.75 and above, and 30 per cent of all ladies' dresses sold in the United States at the wholesale price of $6.75 and above. The said garments designed, manufactured and sold by said members are in such demand by the trade and public that all retail dealers of ladies' garments attempting to offer a full line of ladies' garments to the public are required to stock and handle some lines of the same.

PARAGRAPH THREE: Respondent Austin M. DeLisser, 512 Seventh Avenue, New York City, is Executive Secretary of the Textile Merchants Group of the said respondent F.O.G.A. Respondents G. H. Conze, representing Susquehanna Silk Mills, 149 Madison Avenue; E. W. Freudenberg, representing Amrein, Freudenberg Co., 14 East 38th Street; Samuel Levine, representing Hess, Goldsmith & Co., 1400 Broadway; and E. E. Meyer, representing J. A. Wagenbauer, Inc., 469 Fifth Avenue, all of New York City, constitute the Board of Governors of said Textile Group of said respondent F.O.G.A., and as such are named as respondents herein. Said Textile Merchants Group of said respondent F.O.G.A. consists of approximately fifty individuals, co-partners, and corporations engaged in the business of importing, converting, and manufacturing textile fabrics.

From time to time the membership of said Textile Merchants Group of said respondent F.O.G.A. is increased by

the addition of new members, so that all the members of said group at any given time cannot be named as respondents herein without inconvenience and delay, wherefore, the officers hereinbefore named as respondents, as such officers, and the foregoing named individuals constituting the Board of Governors of the said Textile Merchants Group of said respondent F.O.G.A., are also made respondents as representing all members of said Textile Group of said respondent F.O.G.A., including those not herein specifically named.

The various members of said Textile Merchants Group of said respondent F.O.G.A., in the course and conduct of
23 their said businesses, sell textile fabrics to manufacturers of ladies' garments located in states other than the State of New York, causing said products when so sold to be transported from their respective places of business to the aforesaid purchasers thereof, and there has been and now is a constant current of interstate trade and commerce in said products between members of the Textile Merchants Group and members of the said Ladies' Garment Manufacturers Group of said respondent F.O.G.A., and their said competitors located throughout the several states of the United States.

In the course and conduct of their said respective businesses, respondent members of the said Textile Merchants Group of said respondent F.O.G.A., but for the matters and things hereinafter set forth, would be naturally and
24 normally in competition with each other, and otherwise are in such competition with other individuals, co-partners, and corporations also engaged in the business of importing, converting, and manufacturing textile fabrics and in the sale of said fabrics to retail dealers in interstate commerce.

PARAGRAPH FOUR: Respondent National Federation of Textiles, Inc., hereinafter referred to as respondent Tex-

tiles, Inc., is a membership corporation organized under the laws of the State of Connecticut with its principal office and place of business at 10 East 40th Street, in the City of New York, State of New York. Peter Van Horn is President and Irene L. Blunt is Secretary of said respondent Textiles, Inc. The membership of said respondent Textiles, Inc. is made up of approximately one hundred converters, dyers, printers, and manufacturers of silk and rayon fabrics located in the principal cities of the Eastern portion of the United States. The said respondent, Textiles, Inc., operates and maintains a clearing house for the registration of designs of silks, rayons, laces, and embroideries under the name of Industrial Design Registration Bureau, which has been designated by the Textile Merchants Group of the said respondent F.O.G.A., as the official registration agency of designs of fabrics manufactured and sold by the members of said Group.

PARAGRAPH FIVE: Respondent Marshall Field & Company is an Illinois corporation with its office located at 222 North Bank Drive in the City of Chicago and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise including ladies' garments. John McKinlay is President and T. H. Eddy is Secretary and Treasurer of said respondent Marshall Field & Company.

Respondent Allied Stores Corporation is a Delaware corporation with its office located at 1440 Broadway, New York City, State of New York, owning and operating the retail stores of Jordan Marsh Company located in Boston, Massachusetts, and the Golden Rule Store located in St. Paul, Minnesota, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. B. Earl Puckett is President and A. C. Hallan is Secretary and Treasurer of said respondent Allied Stores Corporation.

Respondent Lindner Company is an Ohio corporation with its office located at Euclid Avenue and East 14th Street in the City of Cleveland, State of Ohio, owning and operating stores in the City of Cleveland, Ohio, in the City of Binghamton, State of New York, and in the City of Elmira, State of New York, and is an affiliated member of respondent F.O.G.A., engaged in the retail distribution of merchandise, including ladies' garments. Mack Gordon is President and Edward Schwarz is Secretary of said respondent Lindner Company.

Respondent Horne Company is a Pennsylvania corporation with its office located on Penn Avenue at Stanwix
29 Street, in the City of Pittsburgh, owning and operating a department store in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. A. H. Burchfield is President and W. H. Friesell is Secretary and Treasurer of said respondent Horne Company.

Respondent Mandel Brothers, Inc., is a Delaware corporation with its office located at 1 North State Street in the City of Chicago, State of Illinois, owning and operating a department store located in said City, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Edwin F. Mandel is President and Ben J. Altheimer is Secretary of said respondent Mandel Brothers, Inc.

30 Respondent John Wanamaker, Philadelphia, is a Pennsylvania corporation with its office located in the City of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Said respondent also owns the entire corporate stock of John Wanamaker, a New York corporation, engaged in a similar business in the City of New

York in said state. Wm. L. Nevin is President and Henry H. Funk is Secretary of said respondent John Wanamaker, Philadelphia.

Respondent Lit Brothers is a Pennsylvania corporation with its office located at Market and Eighth Streets, in the City of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. G. H. Johnson is President and A. T. Hild is Assistant Secretary of said respondent Lit Brothers.

Respondent Bullock's, Inc., is a Delaware corporation 32
with its office located at Broadway, Hill and Seventh Streets, in the City of Los Angeles, State of California, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. P. G. Winnett is President and M. E. Arnett is Secretary of said respondent Bullock's, Inc.

Respondent Emporium Capwell Corporation is a California corporation with its office located at 835 Market Street, in the City of San Francisco, owning and operating the Capwell Department Store in Oakland, California, and the Emporium Department Store in San Francisco, and is an affiliated member of respondent F.O.G.A., en- 33
gaged in the retail distribution of merchandise, including ladies' garments. A. B. C. Dohrmann is President and E. C. Lipman is Vice President and Manager of said respondent Emporium Capwell Corporation.

Respondent J. L. Hudson Company is a Michigan corporation with its office located in the City of Detroit, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise,

including ladies' garments. R. H. Webber is President and W. A. Petzold is Secretary of said respondent J. L. Hudson Company.

The membership of the said Affiliated Members Group of the said respondent F.O.G.A. consists of approximately twelve thousand retail dealers in ladies' garments and accessories located in the principal trading centers of the several states of the United States, and include a substantial number of leading department stores and exclusive ladies' wear shops. From time to time the membership of the said Affiliated Member Group of said respondent F.O.G.A. is increased by the addition of new members so that all the affiliated retail dealer members of said respondent F.O.G.A. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the foregoing respondent affiliated members of said respondent F.O.G.A. described in this paragraph are also made respondents herein as representing all affiliated retail members of said respondent F.O.G.A., including those not herein specifically named.

PARAGRAPH SIX: Respondent Michigan Avenue Guild of Chicago, hereinafter referred to as respondent M.A.G., is a membership corporation organized December 27, 1932, under the laws of the State of Illinois, and is now existing under the laws of said state as a non-profit organization with its principal office and place of business located at 840 North Michigan Avenue, City of Chicago, in said state. The membership of said corporation consists of approximately two hundred retail dealers of ladies' wearing apparel, located in and near the said City of Chicago, approved by the executive committee of said M.A.G., and who are, or have agreed to become, affiliated members of

37

said respondent F.O.G.A., or who have agreed to comply with the trade practice rules and regulations of said respondent F.O.G.A. The following named individuals of said City of Chicago are officers and directors of said respondent M.A.G., and as such are designated as respondents herein: George M. Gleason, President and Director, representing Saks-Fifth Avenue, 840 North Michigan Avenue; Guy L. Ederheimer, Vice-President and Director, representing Leschin, Inc., 318 South Michigan Avenue; L. R. Pearson, Treasurer, representing Martha Weathered Shop, 950 North Michigan Avenue; Edw. A. Fletcher, Secretary, 840 North Michigan Avenue; Harry Blum, Director, representing Blum's-Vogue, Inc., 630 South Michigan Avenue; Frank L. Cole, Director, representing Martha Weathered Shop, 950 North Michigan Avenue; Herman Friedman, Director, representing Kermans, 160 North Michigan Avenue; Mrs. Sally K. Greenebaum, Director, representing Sally K. Greenebaum, 540 North Michigan Avenue; Clarence A. Powell, Director, representing Powell-700 North, Inc., 700 North Michigan Avenue; Bernard Rose, Director, representing South Shore Vogue, 2372 East 71st Street; and Mrs. Elise A. Runyan, Director, representing Elise A. Runyan, Inc., 1365 East 53rd Street.

38

From time to time the membership of said respondent M.A.G. is increased by the addition of new members so that all the affiliated members of said respondent M.A.G. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors of respondent M.A.G. hereinbefore named as respondents, as such officers and directors, are also made respondents as representing all members of said respondent M.A.G., including those not herein specifically named.

39

PARAGRAPH SEVEN: Respondent Minneapolis Fashion Guild, hereinafter referred to as respondent Minneapolis

Guild, is a membership corporation organized on or about June 1, 1932, under the laws of the State of Minnesota. Respondent Roy H. Bjorkman, representing respondent Roy H. Bjorkman, Inc., a member of said respondent Minneapolis Guild, located at Tenth and Nicollet, Minneapolis, Minnesota, is Executive Secretary of said respondent Minneapolis Guild. The membership of said Minneapolis Guild consists of approximately fifteen persons, firms and corporations engaged in the sale at retail of ladies' dresses, suits, coats and sportswear, and whose stores are located in the City of Minneapolis, in said state, and who are, or who have agreed to become, affiliated members of the said respondent F.O.G.A.

From time to time the membership of said respondent Minneapolis Guild is increased by the addition of new members so that all the affiliated members of said respondent Minneapolis Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officer and member hereinbefore named as respondent, as such officer and member of Minneapolis Guild, is also made respondent as representing all members of said respondent Minneapolis Guild, including those not herein specifically named.

PARAGRAPH EIGHT: Ladies' Ready-to-Wear Guild of Baltimore, Inc., hereinafter referred to as respondent Baltimore Guild, is a membership corporation organized under the laws of the State of Maryland on or about January 1, 1935, and now existing under the laws of said State. The membership of said Baltimore Guild consists of approximately forty persons, firms and corporations engaged in the sale at retail of ladies' dresses, suits, coats and sportswear, and whose stores are located in the City of Baltimore, State of Maryland, and who are, or have agreed to become, affiliated members of the respondent F.O.G.A. The following named individuals of the said

43

City of Baltimore are officers and directors of respondent Baltimore Guild, and as such are designated as respondents herein: C. F. Roycroft, Secretary, 1200 Lexington Building; Charles G. Hutzler, President and Director, representing Hutzler Brothers Co., 212 North Howard Street; Allen S. Metzger, Vice-President and Director, representing The Maison Annette Co., 328 North Charles Street; Fred H. Alperstein, Director, representing The Gaxton Company, 214 North Charles Street; William Pollock, Director, representing The Hub, Charles and Baltimore Streets; Lester Bonwit, Director, representing Bonwit Lennon, Inc., 220 North Charles Street; Martin Kohn, Director, representing Hochschild Kohn & Co., Howard and Lexington Streets; Albert D. Slesinger, Director, representing Slesingers, Inc., 342 North Charles Street; J. E. Ellington, Director, representing The May Company, Howard and Lexington Streets; Sam J. Schleisner, Director, representing the Schleisner Company, Howard and Saratoga Streets; and Hal W. Kenaston, Director, representing O'Neill & Company, Charles and Lexington Streets.

44

From time to time the membership of said respondent Baltimore Guild is increased by the addition of new members so that all the members of said respondent Baltimore Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors hereinbefore named as respondents, as such officers and directors of said respondent Baltimore Guild, are also made respondents as representing all members of said respondent Baltimore Guild, including those not herein specifically named.

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PARAGRAPH NINE: The said respondents hereinbefore named and described, and each of them, during the period of time, to-wit, from January 1, 1932 to the date of this complaint, have entered into an agreement, combination,

and conspiracy with each other and with other persons, to hinder and suppress competition in the interstate sale and distribution of textile fabrics to manufacturers of ladies' and misses' garments, including dresses, suits, and coats; and also to hinder and suppress competition between and among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers; and also to restrain interstate trade in said textile fabrics and said garments; and also to create a monopoly in the manufacture and interstate sale of said fabrics and said garments in the said members and affiliated members of said respondent F.O.G.A. Pursuant to
47 said agreement, combination and conspiracy said respondents have respectively and cooperatively performed, and are now so performing, the following acts and practices, to-wit:

(a) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, manufacturers of ladies' garments to confine the purchases of their requirements of textiles and fabrics to members of said Textile Merchants Group of respondent F.O.G.A., or to importers, converters, and manufacturers who have cooperated and are now cooperating with said respondent F.O.G.A. by registering their designs of said fabrics and textiles with the said respondent F.O.G.A. or with the said Industrial Design Registration Bureau of said respondent Textile,
48 Inc.; under the penalty of being required to pay fines of substantial amounts of money to said respondent F.O.G.A., and of being boycotted by members of said Textile Merchants Group of said respondent F.O.G.A.

(b) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, said ladies' garment manufacturers to confine the sales of their merchandise to retail dealers who are affiliated members of said respondent F.O.G.A., or who have cooperated and are now cooper-

ating with said respondent by purchasing their requirements of ladies' garments exclusively from the said members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A., or otherwise have cooperated or are cooperating with the respondent F.O.G.A. in its style protective program as set forth herein; under penalty of being required to pay fines of substantial amounts of money to said respondent F.O.G.A., and of being boycotted by said affiliated members of said respondent F.O.G.A. or other retail dealers who have cooperated and are now cooperating with said respondent F.O.G.A. in its style protective program as set forth herein.

(c) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, retail dealers of ladies' garments to become affiliated members of said respondent F.O.G.A., and to enter into agreements with said respondent F.O.G.A. by which and pursuant to which said retail dealers purchase their requirements of the respective lines of ladies' garments from the members of said Ladies' Garment Manufacturers Group of the said respondent F.O.G.A. or the said protective affiliates, insofar as those respective lines are sold by said members or protective affiliates; and to refuse to purchase said ladies' garments from manufacturers who have copied garments adjudged and reported by said respondent F.O.G.A. to have been designed by said members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A.; and upon notice from said respondent F.O.G.A. to return all garments to said manufacturers which are adjudged by said respondent F.O.G.A. to be copies of garments designed, manufactured and sold by members of said Ladies Garment Manufacturers Group, or said protective affiliates of said respondent F.O.G.A., and registered with said respondent F.O.G.A.; and to otherwise cooperate with said respondent F.O.G.A. in re-

moving from the market garments of manufacturers who are not cooperating with said respondent F.O.G.A. in its style protective program set forth herein; under penalty of being blacklisted and boycotted by the members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. as more particularly described in sub-paragraph (d) hereof.

(d) Said respondent F.O.G.A. has employed and now employs shoppers to spy upon retail dealers, including said affiliated members of said respondent F.O.G.A., to ascertain whether or not any of the ladies' garments being offered for sale by said retail dealers appears to be a copy
53 of garments designed, manufactured, or sold by members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A. and registered with said respondent F.O.G.A.; and where said retail dealers are offering for sale garments which appear to be such copies and said retail dealers refuse or decline to cooperate with said respondent F.O.G.A. in removing from the market the garments of manufacturers who are not cooperating with said respondent F.O.G.A. in its style protective program as set forth herein, said respondent F.O.G.A. places the names of such non-cooperating retail dealers on a blacklist and circulates said blacklist among the members of said Ladies' Garment Manufacturers Group and said Textile Merchants Group of said respond-
54 ent F.O.G.A., who thereupon and thereafter refuse to sell fabrics or ladies' garments designed and manufactured by them to such non-cooperating retail dealers; and since the date of its organization said respondent F.O.G.A. has blacklisted, and said members of said respondent F.O.G.A. have refused to sell their products to more than four hundred retail dealers located throughout the several states of the United States.

55

(e) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, the members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. to refuse to exhibit, sell or ship merchandise to persons conducting retail establishments from residential premises, or who do not cooperate with said respondent F.O.G.A. in its style protective program as set forth herein; and also refuse to participate in fashion shows sponsored by retail dealers or to display samples to group buyers; and also to agree upon uniform terms of sale and discounts, and to otherwise refrain from competing for the business of said retail dealers; under penalty of being required to pay to the said respondent F.O.G.A. fines in substantial amounts of money, and of being expelled from membership in said respondent F.O.G.A.

56

(f) Said respondent F.O.G.A., upon ascertaining through reports of its said shoppers that a member of said Ladies' Garment Manufacturers Group, or any other manufacturer of ladies' garments, has been selling ladies' garments to retail dealers which are copies of garments adjudged by said respondent F.O.G.A. to have been designed by members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. and registered with the said respondent F.O.G.A., demands that said manufacturers discontinue said practice and cooperate with said respondent F.O.G.A. in removing from the market the garments adjudged to be copies, and if said manufacturers refuse to so comply with said demands, said respondent F.O.G.A. places the names of said non-cooperating manufacturers upon a blacklist which is circulated among the retail dealers, affiliated members of said respondent F.O.G.A. Said retail dealers thereupon and thereafter, pursuant to coercion on the part of said respondent F.O.G.A., refuse to further purchase their requirements of ladies' garments from said non-cooperating manufacturers;

57

and since the date of its organization said respondent F.O.G.A. has caused its affiliated members to refuse to purchase ladies' garments from more than one hundred ladies' garment manufacturers located throughout the several states of the United States.

(g) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, said respondent Textile Merchants Group to register all designs of fabrics and textiles imported, converted, or manufactured by them with the said respondent F.O.G.A. or said Industrial Design Registration Bureau of respondent Textiles, Inc., and to confine the sale of their fabrics, so registered, to mem-
59 bers or affiliated members of said protective affiliates of said respondent F.O.G.A., and to refrain from selling said products to garment manufacturers or retail dealers who are not members or affiliated members or protective affiliates of said respondent F.O.G.A.

(h) Said respondent Textiles, Inc., operating through and by means of its said division known as Industrial Design Registration Bureau, has, within the past year, in the solicitation of the registration of designs of fabrics from importers, converters and manufacturers of textile fabrics, notified said importers, converters and manufacturers of textile fabrics that the members of the Ladies' Garment Manufacturers Group and protective affiliates of the respondent F.O.G.A. had pledged themselves in writ-
60 ing to use only the registered designs of fabrics registered with said Industrial Design Registration Bureau, and that said Bureau had been designated by the said respondent F.O.G.A. as its agency to handle the registration of designs for said textile fabrics.

(i) Said respondents local guilds, M.A.G., Minneapolis Guild, Baltimore Guild, and their officers and members, since their organization, have cooperated with the said

respondent F.O.G.A. in its style protective program by entering into agreements with said respondent F.O.G.A. whereby it is agreed on the part of the respondent F.O.G.A. that its members will not sell merchandise within the respective areas of said local guilds to retailers who are not members in good standing of said guilds, or to those retailers whose practices do not conform to the standards of fair trade practice of the respective guilds; and it is agreed on the part of the said local guilds that their members will not purchase ready-to-wear merchandise from any manufacturer not cooperating with said respondent F.O.G.A. in its style protective program, and the officers and officials of said local guilds have cooperated with the 62
said respondent F.O.G.A. in using their official positions in the enforcement and maintenance of said agreements.

PARAGRAPH TEN: The result of the said agreement, combination and conspiracy, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been and now is (a) to prevent and hinder importers, converters, and manufacturers of textile fabrics from selling their merchandise in interstate commerce to garment manufacturers who but for the existence of said agreement, combination or conspiracy would purchase said products; (b) to prevent retail dealers in ladies' and misses' garments from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (c) to force many retail dealers to discon- 63
tinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (d) to substantially increase the price of ladies' and misses' garments to the manufacturers, retail dealers and to the consuming public; and (e) to place in the hands of the respondent F.O.G.A. control over the business practices of the manufacturers and distributors of ladies' and misses' garments, and the power to exclude from this industry

those manufacturers and distributors who do not conform to the rules and regulations established by said respondent F.O.G.A., and thus to tend to create a monopoly in the said respondent F.O.G.A. and its members.

PARAGRAPH ELEVEN: The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Com-
65 mission, to define its powers and duties, and for other purposes."

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 16th day of April, A. D., 1936, now issues this its complaint against said respondents.

NOTICE

Notice is hereby given you, Fashion Originators Guild of America, Inc., Maurice Rentner, Herbert Sondheim, Charles Gumprecht, J. A. Livingston, Albert M. Post, James M. Golby, William Bass of William Bass Dress Corporation, David Bender of Bender & Hamburger, Inc., Louis J. Brenner of Brenner, Morris, Inc., Theodore
66 Racoosin of Germaine Monteil, Inc., Biss Jo Copeland of Jo Copeland, Inc., Charles Lang of Charles Lang, Inc., William Fox of Suttre-Fox, Inc., Samuel Kass of Kass-Sutton, Inc., Joseph Halpert of Joseph Halpert, Inc., D. Eli Lahm of Rose Barrack & Lahm, Charles Miller of Strauss-Miller, Inc., Louis M. Wersba of Deitsch, Wersba & Coppola, Kallman Carmel of Carmel Bros., Inc., Leo A. Del Monte of Del Monte Hickey Co., Louis J. Mailas of Jane Junior Dresses, David M. Goodstein of David M.

Goodstein, Inc., Matthew Kane of Kane-Weill, Inc., Austin M. DeLisser, G. H. Conze of Susquehanna Silk Mills, E. W. Freudenberg of Amrein, Freudenberg Co., Samuel Levine of Hess, Goldsmith & Co., E. E. Meyer of J. A. Wagenbauer, Inc., Marshall Field & Company, Allied Stores Corporation, Lindner Company, Horne Company, Mandel Brothers, Inc., John Wanamaker Philadelphia, Lit Brothers, Bullock's, Inc., Emporium Capwell Corporation, J. L. Hudson Company, Michigan Avenue Guild of Chicago, George M. Gleason of Saks-Fifth Avenue, Guy L. Ederheimer of Leschin, Inc., L. R. Pearson of Martha Weathered Shop, Edw. A. Fletcher, Harry Blum of Blum's-Vogue, Inc., Frank L. Cole of Martha Weathered Shop, Herman Friedman of Kermans, Mrs. Sally K. Greenebaum of Sally K. Greenebaum, Clarence A. Powell of Powell-700 North, Inc., Bernard Rose of South Shore Vogue, Mrs. Elise A. Runyan of Elise A. Runyan, Inc., Minneapolis Fashion Guild, Roy H. Bjorkman of Roy H. Bjorkman, Inc., Ladies' Ready-to-Wear Guild of Baltimore, Inc., C. F. Roycroft, Charles G. Hutzler of Hutzler Brothers Co., Allen S. Metzger of The Maison Annette Co., Fred H. Alperstein of The Gaxton Company, William Pollock of The Hub, Lester Bonwit of Bonwit Lennon, Inc., Martin Kohn of Hochschild Kohn & Co., Albert D. Slesinger of Slesingers, Inc., J. E. Ellington of The May Company, Sam J. Schleisner of Schleisner Company, Hal W. Kenaston of O'Neill & Company, National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt, respondents herein, that the 22nd day of May, A. D., 1936, at 2:00 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order

should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed, and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule V) provide as follows:

71 (a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * * *

72 (c) Failure of the respondent to file answer within the time above provided and failure to appear at the fixed time and place of hearing shall be deemed to authorize the Commission, without further hearing or notice to respondent, to proceed in regular course on the charges set forth in the complaint, and make, enter, issue, and serve upon respondent findings of fact and an order to cease and desist.

(d) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent admits all the material

allegations of the complaint to be true. Any such answer shall be deemed to waive a hearing thereon, and to authorize the Commission without trial and without further evidence, or other intervening procedure, to make, enter, issue and serve upon respondent:

(1) In cases arising under Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." (the Federal Trade Commission Act)

* * * * * *

findings of fact and an order to cease and desist 74
from the violations of law charged in the complaint.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed at Washington, D. C., this 16th day of April, A. D., 1936.

By the Commission.

(Seal)

OTIS B. JOHNSON,
Secretary.

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76 **Answer of Respondent Fashion Originators Guild o America, Inc.**

(Filed May 6, 1936.)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF 77 CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769

The respondent, Fashion Originators Guild of America, Inc., its respective officers, directors and members named as respondents, by their attorneys, Weisman, Quinn, Allan & Spett, and Textile Merchants Group of said respondent, Fashion Originators Guild of America, Inc., its officers, directors and members named as respondents, by their attorneys, Goldwater & Flynn, answering the complaint and the charges therein set forth, do hereby state and 78 allege as follows:

PALAGRAPH ONE.

Answering the first paragraph of Paragraph One of the complaint, respondent, Fashion Originators Guild of America, Inc. admits that it is a membership corporation, organized on the 7th day of March, 1932, under the laws of the State of New York, that it maintains its office at 512 Seventh Avenue, in New York City, and that the indi-

viduals named therein are such officers, directors and members, and are located at the addresses set forth therein, but denies each and every other allegation therein set forth and specifically denies that the said Fashion Originators Guild of America, Inc. maintains any form of membership consisting of retail dealers in ladies' garments and accessories or others, designated in the said complaint as "affiliated members," and specifically denies that retailers are in any way members of or are affiliated with the Guild except as hereinafter specifically set forth.

Answering the second paragraph of Paragraph One, the respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, except 80
that it admits that the purpose for which it was established was to establish fair trade practices among its members and to carry out a style protective program to protect the originators of fashions and styles of ladies' garments against copying and piracy, and specifically further states that as set forth in the certificate of incorporation of respondent, Fashion Originators Guild of America, Inc., the purposes for which it was organized, are further as follows:

> To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote cooperation and friendly intercourse in the wearing apparel industries; to establish and maintain uniformity and certainty 81
> in the customs and commercial usages of trade; to acquire, preserve and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial interests of its members and to foster the industries of its members throughout the Americas and to promote the sale, identification and recognition of original style and merchandise of the industries of its members.

82 *Answer of Respondent F. O. G. of A., Inc.*

Further answering the second paragraph of Paragraph One, respondent Fashion Originators Guild of America, Inc. affirmatively alleges that from its very inception its organization included the said Textile Merchants Group; and in this connection further affirmatively alleges that the Constitution and By-Laws of the respondent, Fashion Originators Guild of America, Inc. provide, with respect to the said Textile Merchants Group, as follows:

"Textile Merchants' Contributing Membership.

(a) Who is eligible.

83 Any manufacturer of material which ultimately enters into a completed lady's garment is eligible for membership as a contributing textile member, subject to the provisions hereinafter set forth.

(b) Requisite prior approval.

Notwithstanding the foregoing, no manufacturer of material shall be eligible to membership unless the reputation and standing of such manufacturer shall have been first approved by the Special Membership Committee duly appointed by the contributing textile members, and unless such manufacturer shall, in addition, comply with all other general organization requirements applicable to eligibility for membership.

84 (c) Limitation of liability.

Such contributing textile members are desirous of giving to the Guild their moral and financial support by reason of their approval of the fundamental principles and ideals of the Guild, but shall be without liability or obligation to any party whatsoever by reason of any contract, transaction, act, deed or matter of the Guild or of the officers and/or directors and/or members of the Guild. Such con-

85

tributing textile members shall not be entitled to vote for or in the election of the directors or Board of Governors of the Guild. Acquiescence in or approval of any act, deed, contract of transaction of the Guild and/or any member and/or any officer and/or any director thereof by any contributing textile member can be obtained only by the written signature of such contributing textile member, and shall not be inferred by such member's silence or failure to dissent."

Further answering the second paragraph of Paragraph One, respondents answering herein affirmatively allege that the Industrial Design Registration Bureau of the National Federation of Textiles, Inc. never was nor now is an agency of the Fashion Originators Guild of America, Inc. nor has there ever been or now is there any financial, or other connection or affiliation of whatsoever description between the said Industrial Design Registration Bureau of the National Federation of Textiles and the respondent, Fashion Originators Guild of America, Inc., or Textile Merchants Group of the Fashion Originators Guild of America, Inc. Respondents affirmatively allege that the said Industrial Design Registration Bureau was formulated and formed, upon information and belief, at the request of numerous textile merchants on or about the 1st day of August, 1928, approximately four years prior to the formation of respondent, Fashion Originators Guild of America, Inc. Its services and facilities are open and available to all textile manufacturers or merchants and others who desire to register original designs. Members of the Textile Merchants Group of the Fashion Originators Guild of America, Inc. registered their designs with such Bureau prior to becoming members of the Fashion Originators Guild of America, Inc. and have not ceased so to do upon becoming affiliated with respondent, Fashion Originators Guild of America, Inc.

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PARAGRAPH TWO.

Answering the first, second, third, fourth, fifth and sixth paragraphs of Paragraph Two of the complaint, respondent Fashion Originators Guild of America, Inc. admits the allegations set forth therein contained to be substantially correct, but affirmatively alleges that the membership of the said Fashion Originators Guild of America, Inc. has decreased from time to time as well as increased.

Answering the seventh paragraph of Paragraph Two, respondent admits the allegations therein contained to be substantially correct, but denies that most of the members of the Ladies' Garment Manufacturers Group are engaged
89 in the sale of garments in the higher price lines.

Answering the eighth paragraph of Paragraph Two of the complaint, respondent denies each and every allegation thereof, but admits that the members of the Ladies' Garment Group are naturally and normally in competition with other individuals, copartners and corporations also engaged in the manufacture of garments and in the interstate sale of said garments to retail dealers, and it is affirmatively alleged that irrespective of the matters and things set forth in the said complaint, the members of the Ladies Garment Manufacturer's Group of the respondent, Fashion Originators Guild of America, Inc. are naturally and normally in competition with each other, and with other individuals, firms or corporations also engaged in
90 the manufacture of ladies', misses' and junior misses' dresses, coats, and suits and other similar garments, and in the interstate sale of said garments to retail dealers.

Respondent further affirmatively alleges that there is no perceptible demand for any single style or group of styles by named manufacturers; that the consumer's demand is only for fashion themes which any and all manufacturers can interpret.

PARAGRAPH THREE.

Answering the first, second and third paragraphs of Paragraph Three of the complaint, respondents admit that the allegations therein contained are substantially correct, but affirmatively allege that the said Textile Merchants Group does not have a Board of Governors and that the names individuals comprise its Steering Committee, and further alleges that the membership of such Textile Merchants Group thereof has decreased from time to time as well as increased.

Answering the fourth paragraph of Paragraph Three, respondents deny each and every allegation therein contained but admit that said Textile Merchants Group are in 92
competition with other individuals, copartners, and corporations also engaged in the business of importing, converting and manufacturing textile fabrics and in the sale of said fabrics to retail dealers in Interstate Commerce, and further affirmatively allege that irrespective of the matters and things set forth in the complaint are naturally and normally in competition with each other and otherwise are in such competition with other individuals, firms or corporations also engaged in the business of importing, converting and manufacturing textile fabrics and in the sale of said fabrics in interstate commerce.

PARAGRAPH FOUR.

Answering paragraph Four, respondents answering are 93
ignorant herein of the truth of the allegations therein contained and consequently are unable to admit or deny the same and respondents further repeat and reiterate the allegations and matters set forth in Paragraph One of this answer with respect to the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc.; and affirmatively allege that not only do members of the Guild register print, jacquards and met[illegible] fabrics with

it, but its facilities are also available to and are used by non-members of the Textile Merchants Group of the respondent Fashion Originators Guild of America, Inc., such registering manufacturers comprising a substantial portion of all manufacturers of textiles in the United States.

PARAGRAPH FIVE.

Answering the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of Paragraph Five, respondent, Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently is unable to admit or deny
95 them, except that it denies that each and every respondent named in each of the paragraphs referred to above is an affiliated member of the respondent Fashion Originators Guild of America, and further affirmatively alleges that each of them has merely signed and delivered to the respondent, Fashion Originators Guild of America, Inc. a statement of policy by which it represented among other things that it would not knowingly buy or sell copies of merchandise originated by members of the Garment Manufacturers Group or Protective Affiliates of respondent, Fashion Originators Guild of America, Inc. to which statement of policy respondents beg leave to refer upon the hearing or trial of this proceeding.

Answering the eleventh paragraph of Paragraph Five
96 of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that approximately 12,000 retailers located in the several states of the United States have merely signed and delivered to the Fashion Originators Guild of America, Inc. a statement of policy, which statement represents among other things that the signer thereof will not knowingly buy or sell copies of merchandise originated by members of Garment Manufacturers Group or Protective Affiliates of respondent,

Fashion Originators Guild of America, Inc., to which statement of policy respondent Fashion Originators Guild of America, Inc. begs leave to refer upon any hearing of this proceeding.

PARAGRAPH SIX.

Answering the first paragraph of Paragraph Six respondent, Fashion Originators Guild of America, Inc., upon information and belief, admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Michigan Avenue Guild of Chicago are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc., or have 98
agreed to comply with the Trade Practice Rules and Regulations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent, Michigan Avenue Guild has entered into a certain agreement with the respondent Fashion Originators Guild of America, a copy of which agreement, the respondents beg leave to refer upon the hearing of this proceeding.

Answering the second paragraph of Paragraph Six, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

PARAGRAPH SEVEN.

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Answering the first paragraph of Paragraph Seven respondent, Fashion Originators Guild of America, Inc. upon information and belief admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Minneapolis Fashion Guild are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc. or have agreed to comply with the Trade Practice Rules and Regu-

lations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent Minneapolis Fashion Guild has entered into a certain agreement with the respondent Fashion Originators Guild of America, Inc., a copy of which agreement the respondents beg leave to refer to upon the hearing of this proceeding.

Answering the second paragraph of Paragraph Seven, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

101

PARAGRAPH EIGHT.

Answering the first paragraph of Paragraph Eight respondent Fashion Originators Guild of America, Inc. upon information and belief admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Ladies' Ready-To-Wear Guild of Baltimore are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc. or have agreed to comply with the Trade Practice Rules and Regulations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent, Ladies' Ready-To-Wear Guild of Baltimore has

102 entered into a certain agreement with the respondent Fashion Originators Guild of America, Inc., a copy of which agreement the respondents beg leave to refer to upon the hearing of this proceeding.

Answering the second paragraph of Paragraph Eight, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

PARAGRAPH NINE.

Answering the first paragraph of Paragraph Nine of the complaint, the respondents appearing hereby deny each and every allegation set forth therein, and affirmatively allege:

(a) that their program and any act committed in pursuance thereof has encouraged, stimulated and promoted fair and legitimate competition in the interstate sale and distribution of textile fabrics to manufacturers of ladies' and misses' garments, including dresses, suits and coats, and also has encouraged, stimulated and promoted competition between and among said manufacturers of said gar- 104
ments in the interstate sale and distribution of their said products to retail dealers; and also has encouraged, stimulated and promoted interstate trade in said textile fabrics and said garments; has aided the free flow of interstate commerce and has aided in wiping out unfair methods and means of competition in the manufacture and sale of ladies' ready-to-wear and the sale and manufacture of the textiles used in such manufacture; respondents further affirmatively allege that their program has aided in wiping out uneconomic and unsound practices and has generally been instrumental in bringing about a reasonable amount of stabilization of trade in the industry, and (b) that the members of 105
the Ladies' Garment Manufacturers Group and of the Textile Merchants Group comprise a minority of their respective portions of the women's ready-to-wear industry both in number of individual persons, firms or corporations engaged therein, number of units produced, and dollar volume of merchandise sold.

Answering Subparagraph (a) of Paragraph Nine, respondents answering herein deny each and every allegation therein contained and affirmatively allege that at no time have the member manufacturers of ladies' ready-to-wear garments agreed to nor are they compelled to confine their purchases of textiles and fabrics to members of the Textile Merchants Group of the Fashion Originators Guild of America, Inc. under penalty of being required to pay money fines of any description to said respondent Fashion Originators Guild of America, Inc. or of being boycotted by members of said Textile Merchants Group of said respondent Fashion Originators Guild of America, Inc. or
107 under any other penalty of any other description; nor has the said respondent, Fashion Originators Guild of America, Inc. or the Textile Merchants Group thereof ever attempted to assess or collect fines in any amount from any non-member of the respondent, Fashion Originators Guild of America, Inc. or the said Textile Merchants Group thereof for any cause whatsoever. Respondent Fashion Originators Guild of America, Inc. further affirmatively alleges that regardless of any representation whatsoever which may exist to purchase only from textile manufacturers who register their designs with the said Industrial Design Registration Bureau of said respondent Textiles, Inc., that such representation, if any, applies equally to non-members as well as members of the Textile Merchants Group of respondent, Fashion Originators Guild of Amer-
108 ica, Inc., and that, in any event, such representation, if any, has never been enforced by the imposition or attempted imposition of any money fine, or by boycott by members of respondent Fashion Originators Guild of America, Inc. or said Textile Merchants Group of said respondent Fashion Originators Guild of America, Inc. or by means of coercion of whatsoever description. Respondents further affirmatively allege that, in any event, the right to and facilities for registration of designs with

the Industrial Design Registration Bureau of respondent, Textiles, Inc. is open without discrimination to all manufacturers, importers or converters of textile fabrics, irrespective of whether or not they are affiliated with the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., and in this connection respondents reiterate and re-allege the allegations set forth in paragraph One of this answer to the effect that the respondent, Fashion Originators Guild of America, Inc. and its Textile Merchants Group maintain no Registration Bureau for the registration of textile fabrics designs. 109

Answering Subparagraph (b) of Paragraph Nine, respondents answering herein deny each and every allegation therein contained, and affirmatively allege that the members of the Ladies Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc. sell their merchandise to any retail dealer who, irrespective of whether or not he confines his purchases to members of respondent, Fashion Originators Guild of America, Inc., declares it to be his policy not to knowingly buy or sell pirated styles of merchandise originated by members of the Ladies Garment Manufacturers Group of the respondent, Fashion Originators Guild of America, Inc. and further, affirmatively allege that they have at no time compelled or coerced or attempted to compel or coerce non-members by the assessment or collection of fines in any amount. 110

Said respondent, Fashion Originators Guild of America, Inc. further affirmatively alleges that the carrying out of its program does not result in any illegal boycott in any manner, shape or form, and the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that, to the extent, if any, that the Ladies' Garment Manufacturers Group or the said protective affiliates of said respondent, Fashion Originators Guild of America, Inc. have had or now have dealings of whatsoever description with retail dealers, the said Textile Merchants Group have never participated nor do they now participate to any extent in such dealings. 111

Answering Subparagraph (c) of Paragraph Nine of the complaint, respondent, Fashion Originators Guild of America, Inc. denies each and every allegation set forth therein and affirmatively alleges that any retail dealer may purchase their requirements of ladies' garments from any manufacturer, irrespective of whether or not such manufacturer is affiliated with respondent Fashion Originators Guild of America, Inc. so long as said retail dealer represents that he will not buy or sell pirated styles of merchandise originated by members of respondent Fashion Originators Guild of America, Inc., and its protective affiliates, and irrespective of such representation, is able
113 to purchase sufficient merchandise in the ladies' ready-to-wear market without the necessity of purchasing from members of the Ladies' Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc. or its protective affiliates, and the Textile Merchants Group of respondent Fashion Originators Guild of America, Inc. repeats and reiterates the allegations set forth by it in Subparagraph (b) immediately above.

Answering Subparagraph (d) of Paragraph Nine, respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that the shoppers employed by it are known to all retailers, are employed for the purpose of aiding the retailer in ascertaining adjudged pirated styles, and act merely in a reportorial capacity, and further af-
114 firmatively alleges that its program does not involve nor does the said Fashion Originators Guild of America, Inc. circulate any blacklist among the members of the Ladies' Garment Manufacturers Group or the said Textile Merchants Group of said respondent, Fashion Originators Guild of America, Inc., and the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. repeats and reiterates each and every allegation set forth by it in Subparagraph (b) of Paragraph Nine of this

answer and specifically denies that any of its members has ever refused to sell fabrics designed and manufactured by them to any retail dealer, regardless of his conduct in relation to the program of respondent, Fashion Originators Guild of America, Inc., and affirmatively alleges that to the extent, if any, that respondent, Fashion Originators Guild of America, Inc. employs or has employed shoppers, that the said Textile Merchants Group has never had and does not now have any connection with such employment.

Answering Subparagraph (e) respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that its 116
Ladies Garment Manufacturers Group members do not sell their merchandise to persons conducting retail establishments from residential premises where such retail establishments violate the zoning laws or the multiple dwelling laws or the labor laws or any other law, ordinance, rule or regulation of any duly constituted governmental authority having jurisdiction over the premises. The respondent Fashion Originators Guild of America, Inc. further affirmatively alleges that the respondent Fashion Originators Guild of America, Inc. makes no attempt, nor has it at any time attempted to fix prices, control production or allocate customers, or otherwise refrain from competing for the business of retail dealers with establishments of whatsoever description and character.

Answering Subparagraph (f) of the complaint, respond- 117
ent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained and affirmatively alleges that the members of the Ladies' Garment Manufacturers Group sell their merchandise to any retailer who represents among other things, that upon notification to said retailer that a particular style has been adjudged a copy after due hearing by the Impartial Committees of Style Piracy, the said retailer will remove the said pirated

style from sale. As an aid to the retailer and to prevent loss to him, the said retailers represent among other things in their signed declaration of policy that they will employ the form "warranty clause" on all purchase orders, which clause in substance constitutes a warranty on the part of the selling manufacturer that the garments covered by the particular order are not copies of styles originated by members of the Ladies' Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc., so that in the event any style shall be adjudicated a copy, the same becomes a violation of the warranty of the copyist manufacturer and may be returned by the retailer.

119 Answering Subparagraph (g) of the complaint, respondents answering herein deny each and every allegation contained therein and affirmatively allege that respondent, Fashion Originators Guild of America, Inc., has no facilities whatsoever for and no fabrics are, as a consequence, registered with the respondent Fashion Originators Guild of America, Inc., and that the registration facilities of the said Industrial Design Registration Bureau of respondent, Textiles, Inc. are restricted to certain specific items and not fabrics generally.

Answering Subparagraph (h) of paragraph Nine of the complaint, respondents answering herein deny each and every allegation therein contained.

120 Answering Subparagraph (i) of paragraph Nine of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein set forth, and Textile Merchants of respondent, Fashion Originators Guild of America, Inc. repeats and reiterates each and every allegation set forth by it in Subparagraph (b) of Paragraph Nine of this answer.

PARAGRAPH TEN

Answering Paragraph Ten of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained.

PARAGRAPH ELEVEN

Answering Paragraph Eleven of the complaint, respondents deny each of the allegations therein contained and specifically deny that their acts and practices have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular and constitute unfair methods of competition in commerce within the intent and 122
meaning of Section 5 of an Act of Congress approved September 26, 1914 entitled "An Act to Create a Federal Trade Commission to Define its Powers and Duties and For No Other Purposes."

STATEMENT OF FACTS PURSUANT TO SUB-PARAGRAPH (a) OF RULE 5 OF RULES OF FEDERAL TRADE COMMISSION.

As and for its statement of facts, the respondent, Fashion Originators Guild of America, Inc., its respective officers, directors, and members named as respondents herein, and Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., its officers, directors, executives and members named as respondents herein, affirmatively allege as follows: 123

PARAGRAPH TWELVE

For some years prior to the formation of the respondent Fashion Originators Guild of America, Inc., the manufacturers creating styles in ladies' ready-to-wear garments and the manufacturers, importers and converters creating original designs in fabrics had been suffering serious finan-

cial reverses. Bankruptcies were rife and profitable business virtually non-existent and the market in quality merchandise in both these fields had become virtually demoralized. This unfortunate state of those patrons of the ladies' ready-to-wear industry which creates style and design was due in a very real sense, and to great degree to the growth of certain vicious and destructive practices in the trade, chief among which was the predatory and vicious practice, known as style piracy of stealing the ideas of the creator firm evolved by it at great expense.

PARAGRAPH THIRTEEN

125 To produce a typical sample line comprising from twenty-five to one hundred styles it is necessary to design and create a much larger number of dresses, many of which are subsequently discarded as not being suitable or properly acceptable to the trade. The production of such a line entails the employment of high salaried designers (many of them earning as much as $50,000 a year) who make trips to Europe and to other fashion centers to seek inspiration for their original creations. In addition, the manufacturer employs sample hands, sketchers, and many other types of employees whose exclusive functions merely relate to the manufacture of the sample line. These and many other items of cost are borne by the creator of fashion. It has been estimated that before any return on
126 investment is received by the creator, he has incurred a cost of many thousands of dollars to produce his sample line.

Having incurred this cost, the copyist steals the result achieved by the creator without one penny of expense on his part, except for illegal purposes or for carrying out his nefarious schemes. In like manner the manufacturer, importer and converter of original textiles creates each season many new patterns calculated to attract purchasers

by their novelty and beauty, incurring in the process many thousands of dollars of designing cost. And, as in the case of the creating manufacturer, the fruits of this expense is stolen by the copyist, without any sharing of the burdens involved. Thus style and design piracy involved not only the theft of ideas but the theft of invested capital and the copyist manufacturer took a free ride on the financial investment of the creator.

PARAGRAPH FOURTEEN

The methods and means employed by the copyist, for the most part are uniformly nefarious and involve bribery, trespass, breaking and entering, and the commission of 128
crimes or other acts which in and of themselves amount to unfair competition.

PARAGRAPH FIFTEEN

Copyist firms for the most part disregard quality and craftsmanship, produce their product under sweat-shop conditions, and by non-union labor, in contrast to the conditions existing among the members of the respondent, Fashion Originators Guild of America, Inc., whose factories are almost completely unionized and operate under prescribed union conditions.

PARAGRAPH SIXTEEN

As a result of the foregoing described practices the 129
qualities of the materials, dyes and workmanship are cheapened and trends of competition are toward the poorest and the cheapest rather than the best goods that is accepted by the consumer, and consequently the consumer is misled as to cost of production and values. The consumer is deprived of the opportunity for a wider range of designs for choice. The steady pounding by the copyist manufacturer upon a few designs not only makes the de-

signs monotonous, but in turn kills the popularity of the style and makes for rapid obsolescence of fashion and wasteful changes necessary.

PARAGRAPH SEVENTEEN

The retailer also suffers great loss and damage, the existence of copies compelling him to lower the price of the garment to a price below the original cost to him of the dress. Such successive mark-downs raised retail prices generally because the retailer was required to, recoup his loss upon other designs and styles.

131 PARAGRAPH EIGHTEEN

To remedy the deplorable conditions above described, the respondent Fashion Originators Guild of America, Inc. was formed. Learning of the aims and purposes of the respondent, Fashion Originators Guild of America, Inc., retailers throughout the country signed and delivered "Declarations of Cooperation" directed toward the elimination of style piracy. In the said Declaration the retailer represents among other things, that he recognizes the property interests of the manufacturer in styles created by him, that he will not knowingly buy or sell copies thereof. The foregoing were substantially the only matters to which the retailer subscribed. Not being a member of the Guild he was not bound by or in any way expected to
132 obey rules or regulations promulgated by the Guild for its own membership. On the other hand, if a particular retailer declined to indicate his intention not to deal in pirated styles, or in the event that a retailer repudiated his continuing representation, or in the further event that a retailer persisted in the sale of copied merchandise, thereby imperiling the investment of the garment manufacturer members of the Guild, the respondent, Fashion Originators Guild of America, Inc. so advised its members.

in order that they might protect themselves insofar as possible by refraining from selling their creations to such retailer.

PARAGRAPH NINETEEN

The manner in which disputes with respect to the existence in any given case of style piracy from members of the Ladies' Garment Manufacturers Group of respondent, Fashion Originators Guild of America, Inc. is as follows:

Provision was made for the formation of a panel composed of retailers selected at random from among signatory retail stores. From this panel, committees of three individuals are chosen in rotation. To insure impartiality 134
they are chosen at random from such panel. Notice of the hearing is given to all parties interested, including the alleged originator and the alleged copyist, both of whom are invited to appear and are given full opportunity to present evidence to support their respective contentions. To further insure complete impartiality, in the event the alleged copyist manufacturer believes for reasons sufficient unto himself, that a particular committee designated to sit with respect to a style manufactured by him is not impartial, he may object thereto and has the option of requesting an arbitration by a committee composed of an arbitrator named by himself, an arbitrator named by the respondent, Fashion Originators Guild of America, Inc. and a third selected by the two arbitrators. With respect 135
to the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., it is alleged that the machinery adopted by them is equally fair and impartial. The said Textile Merchants Group beg leave to refer in greater detail to the facts with respect thereto upon the hearing of this cause.

PARAGRAPH TWENTY

So as to further insure complete fairness, members of the Ladies' Garment Manufacturers Group of respondent, Fashion Originators Guild of America, Inc., in order to secure the benefit of the machinery above described register each design originated by them with the said Bureau prior to the release of such design for sale to the public. The purpose of this Registration Bureau is merely to fix the date of origination by the member of the Ladies Garment Manufacturer Group of respondent Fashion Originators Guild of America and should it appear upon any hearing that the alleged copyist manufacturer produced
137 and sold the alleged copy at a date prior to the date of registration, it is obligatory upon the Impartial Style Piracy Committee to find that the alleged copy is not a copy. With respect to registration of textiles and other fabrics the procedure varies in details, but is calculated to achieve the same impartial and fair result, the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. beg leave to refer in greater detail to the facts with respect thereto upon the hearing of this cause.

PARARGAPH TWENTY-ONE

Respondent Fashion Originators Guild of America, Inc. affirmatively alleges that no corecion of any kind, nature
138 or description is exercised upon non-members or members. In fact, any member of the respondent, Fashion Originators Guild of America, Inc., may at any time resign from membership therein and pursue such policy as it may desire. In addition, a cooperating retailer or manufacturer may at any time repudiate his representation and discontinue his cooperation. Nor does their cooperation involve the refusal to purchase from the copyist manufacturer any goods except copied merchandise, and except as to

such merchandise the cooperating retailer or manufacturer, as the case may be, may deal with the copyist to such extent as they see fit.

WHEREFORE, the respondents respectfully pray that the complaint herein be dismissed.

(Signed) WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Respondent, Fashion Originators Guild of America, Inc., its respective officers, directors and members named as respondents herein,
Office & P. O. Address,
1450 Broadway,
Borough of Manhattan,
City of New York. 140

(Signed) GOLDWATER & FLYNN,
Attorneys for Respondent, Textile Merchants Group of Respondent, Fashion Originators Guild of America, Inc., its respective officers, directors and members named as respondents herein,
Office & P. O. Address,
60 East 42nd Street,
Borough of Manhattan,
City of New York. 141

142 **The Answer of Mandel Brothers, Inc., a Delaware Corporation, to the Complaint of Federal Trade Commission.**

(Filed May 8, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.	Docket No. 2769.

143

Now comes Mandel Brothers, Inc., respondent in the above entitled cause, and in answer to the complaint filed against said respondent denies that it has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commission, to Define its Power and Duties and for other Purposes," and further answering this respondent states as follows with respect to the charges in said complaint made and set forth:

144 Paragraph 1. That so far as this respondent is advised, the allegations of paragraph 1 of said complaint correctly set forth the manner of the organization of the respondent Fashion Originators Guild of America, Inc.

Paragraph 2. As to the allegations contained in paragraphs 2, 3 and 4 of said complaint, this respondent has no knowledge save as derived from the allegations in said paragraphs contained, and therefore neither admits nor denies the same.

Paragraph 3. Answering the allegations of paragraph 5, so far as the same relates to this respondent, respondent admits that it is a Delaware corporation with offices located at 1 North State Street, in the City of Chicago, State of Illinois, owning and operating a department store located in said city, and engaged in the retail sale and distribution of merchandising including ladies' garments; that Edwin F. Mandel is President and Ben. J. Altheimer is Secretary of this respondent, but as to the allegation in said paragraph 5 that this respondent is an affiliated member of respondent Fashion Originators Guild of America, Inc., this respondent denies that it is an affiliated member of said Guild, and alleges to the contrary that its 146
sole relation to said Guild is as set forth in paragraph 6 of this answer.

Paragraph 4. Further answering, this respondent says that as to the allegations contained in paragraphs 6, 7 and 8, it has no knowledge as to the truth of the allegations in said paragraphs contained other than is derived from said complaint, and therefore neither admits nor denies the same.

Paragraph 5. Answering paragraph 9 of said complaint, this respondent denies that it has at any time entered into an agreement, combination or conspiracy with any of the other respondents in said complaint named, or with any other person, to hinder and suppress or to hinder or suppress competition in the interstate sale and distribution of 147
textile fabrics, to manufacture ladies' and misses' garments, including dresses, suits and coats, or to hinder and suppress or to hinder or suppress competition among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers, or to restrain interstate trade in said textile fabrics and garments, or to create a monopoly in the manufacture and interstate sale of said fabrics and said garments in the

members and affiliated members of the respondent, Fashion Originators Guild of America.

Paragraph 6. Further answering this respondent says that its only relation to or connection with the Fashion Originators Guild of America is embodied in the "Declaration of Co-Operation in Anti-Piracy" executed by this respondent, a copy of said Declaration being hereto attached, marked Exhibit "A" and made a part hereof, and that this respondent was required so to execute said Declaration as a condition to its right to purchase merchandise from manufacturers affiliated with and members of said Guild; that beyond this relation to and connection with said
149 Guild, this respondent has no interest therein, nor in its actions, nor has it acted in restraint of trade in any manner whatsoever; that this respondent has no representation as a member in nor on the Board of Directors of said Guild, nor has it at any time been consulted prior to any decisions of policy or otherwise made by said Guild, and that its sole information regarding the activities of said Guild has been derived from communications which this respondent has received from the Guild after said Guild has determined its policies.

WHEREFORE, this respondent prays that the complaint filed herein be dismissed as to this respondent.

150 MANDEL BROTHERS, INC.,
By (Signed) LEON MANDEL,
Its Vice-President and General Manager,
1 North State Street,
Chicago, Illinois.

ALTHEIMER, MAYER, WOODS & SMITH,
10 South LaSalle Street,
Chicago, Illinois,
Its Attorneys.

Exhibit A to Answer of Mandel Bros., Inc.

DECLARATION OF CO-OPERATION IN ANTI-PIRACY
BETWEEN
MANDEL BROTHERS
(Store's Name)
AND
THE FASHION ORIGINATORS' GUILD OF AMERICA

Fashion Originators' Guild of America
512 Seventh Avenue
New York City.

Gentlemen:

We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them and will refuse to countenance so-called "Style Piracy." Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We do not and will not buy for our Ready-to-Wear Departments any copied or pirated dresses of garments created by members of your association.

Furthermore, we will affix to all of our apparel orders the following clause:—

"This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

Very truly yours,

By ALBERT M. POST
Merchandise Manager
Store Name MANDEL BROTHERS

154 **Answer for Respondents National Federation of Textiles, Inc., and Peter Van Horn and Irene L. Blunt, Officers Thereof, Named as Respondents.**

(Filed May 20, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769

155

Come now the respondents, National Federation of Textiles, Inc., referred to in the complaint herein as Textiles, Inc., and Peter Van Horn and Irene L. Blunt, President and Secretary, respectively, of said National Federation of Textiles, Inc., and for their answer to the complaint herein and to each and every paragraph thereof separately, first denying, however, jurisdiction on the part of the Federal Trade Commission in respect to the acts alleged in said complaint and that said complaint states facts sufficient to constitute a violation of Section 5 of the Federal Trade Commission Act or states any charges within the meaning of said Act, and reserving the right to move to strike out any one or more of the allegations of said complaint, and denying that these answering respondents have been or now are employing any unfair methods of competition in commerce, say:—

156

PARAGRAPH ONE:

1. Answering the allegations of the first unnumbered paragraph of Paragraph One of the complaint, respondents, answering hereby, deny knowledge with respect to each and every allegation therein contained, except that respondents admit that the Fashion Originators Guild of America, Inc. is a corporation organized on or about March 7, 1932 under the laws of the State of New York.

2. Answering the allegations of the second unnumbered paragraph of Paragraph One of the complaint, respondents deny knowledge with respect to each and every allegation therein contained, except that respondents admit the 158
following facts:

(a) On several occasions written announcements over the name of the Textile Division of the Fashion Originators Guild of America, Inc. have been published, in which it was stated that said Textile Division had designated the Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc. to handle the registration of designs of certain textile fabrics, to wit, metals, jacquards, laces and embroideries, as well as printed materials;

(b) In two mimeographed notices and in an advertisement published in a newspaper known as 159
Women's Wear daily, which notices and advertisement were addressed primarily to manufacturers and converters of the said textile fabrics over the name of the Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc., it was stated that the said Industrial Design Registration Bureau had been designated by the Fashion Originators Guild of America, Inc. as the agency to handle registration of designs for the said tex-

tile fabrics referred to above, as more fully appears from the photostatic copies of said notices and advertisements which are annexed hereto as Exhibits A, B and C and made a part of this answer;

(c) The said announcements referred to above were published after informal discussions and conferences between representatives of respondent, National Federation of Textiles, Inc. and particularly the Committee on Design Registration thereof, and persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc., during the year 1935, in which discussions and
161 conferences there was indicated a demand upon the part of textile fabric converters and manufacturers for the extension of the existing facilities of the Industrial Design Registration Bureau to cover registration of the certain textile fabrics named above, in addition to facilities for registration of designs of printed materials already in existence, as more fully set forth and described in paragraph 5(c) of this answer;

and respondents further affirmatively allege that the said Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc. is only a registrar of designs without responsibility or activity other than as set forth and described in paragraph 5 of this answer, and
162 is not now, nor was it ever an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 5 and 18 of this answer.

PARAGRAPH TWO:

3. Answering the allegations of each and every unnumbered paragraph of Paragraph Two of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH THREE:

4. Answering the allegations of each and every unnumbered paragraph of Paragraph Three of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH FOUR: 164

5. Answering the allegations of Paragraph Four of the complaint, respondents deny knowledge with respect to each and every allegation therein contained, except that respondents admit the following facts:

(a) The National Federation of Textiles, Inc. is a membership corporation organized under the laws of the State of Connecticut, with its principal office and place of business at 10 East 40th Street, in the City and State of New York, of which Peter Van Horn and Irene L. Blunt are President and Secretary, respectively;

(b) The membership of the National Federation of Textiles, Inc. is made up of manufacturers, converters, dyers, and printers of silk and rayon fabrics located principally in the eastern portion of the United States, varying from time to time in number; 165

(c) The National Federation of Textiles, Inc. maintains and operates as part of its activities as the active trade association in the silk and rayon industry, a division known as the Industrial Design

Registration Bureau, of which the purposes, objectives, scope of operation and method and effect of operation are briefly and substantially as follows:

Purpose

The purpose of the Industrial Design Registration Bureau is to maintain and conduct a filing and recording bureau and system for the filing and preservation of original designs devised for use in textile fabrics, particularly silks and rayons, to encourage the voluntary filing and recording of such designs with the Bureau, and
167 thereby to avoid the duplication, imitation, simulation and misappropriation of such designs;

Objectives

In maintaining such a Bureau for the filing and recording of textile designs, the Bureau aims to furnish means whereby persons about to introduce or use textile designs may determine with practical certainty whether there is already on the market a design so substantially similar that the average layman purchaser could not readily detect one design from another, and thus to permit such persons introducing such designs to avoid the expense and waste attendant upon the
168 introduction of designs confusingly similar to those already on the market. Duplication of designs, which is inevitable in a highly competitive style industry, results in waste and demoralization throughout the vertical line of the economic structure. In having available a clearing house for designs, such as furnished by the Bureau, the manufacturer and converter of fabrics have some practical assurance that they can develop a style

line of their own in a particular season, without fear of duplication; the garment manufacturer and retailer likewise have assurance that they are not using designs which will conflict with others already in the market; and the consumer may have confidence that the design of piece goods or of the garment purchased will not appear in inferior grades of merchandise. The opportunity for stabilization which such a design clearing house offers begets voluntary cooperation for the common benefit of all concerned.

Scope of Registration.

170

The opportunity to file and record designs with the Bureau is and always has been open and available to all persons engaged in the textile industry on the same terms.

Registration has been carried on by the Bureau and its predecessor, the Design Registration Bureau of the Silk Association of America, Inc., since August, 1928. Registration has always been voluntary even with members of the Silk Association of America, Inc. and of the National Federation of Textiles, Inc., of which the Bureau is an integral division, except during the effective period of the Silk Code under the National Recovery Administration Act when registration of certain designs was obligatory for the whole industry.

171

From 1928 until late in 1935 registration was limited to designs intended for printing or for jacquard weaving, without tinsel threads. Late in 1935 facilities were made available by the Bureau for the registration of designs in certain fabrics known as laces, embrodieries and jacquards, whether with plain or metallic thread,

as well as for designs of printed materials. The introduction of facilities for registration of these last named fabrics resulted from widespread demand by manufacturers and converters for such facilities during the effective period of the Silk Code and following the expiration of the Code. These facilities were set up by the Bureau after numerous informal conferences and discussions between representatives of the Bureau and persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc. as to the method and procedure for registra-
173 tion of such fabrics.

Method and Effect of Registration

Persons seeking to register designs must submit sketches giving an adequate picture of the design with a simple application blank stating essential facts about the owner and the design. The applicant is not required to make any agreement with the Bureau other than to abide by the rules of the Bureau with regard to judgment of designs, including a provision for arbitration; if desired, with the owner of a conflicting or apparently conflicting registered design, and also with regard to fees of the Bureau and the right of the Bureau
174 to cancel registration in certain events, such as failure to process the design within sixty days after registration.

Designs offered for registration are checked, classified and photostated. The existing files of registered designs are then searched by a trained staff, the basis of judgment as to conflicts being that of possible substitution without detection on the part of the average layman purchaser of any design then registered.

Any registration is subject to cancellation if not processed within sixty days.

The period for which registration is effective is six months for prints and one year for jacquards, laces and embroideries. The period of registration is designed to correspond to the average seasonal life of a design, based on the experience in the industry. Registration also carries with it the privilege of renewal if desired.

Charges of the Bureau for registration are based on cost of administering the registration service.

(d) The Industrial Design Registration Bureau 176
of the National Federation of Textiles, Inc. has been in existence as a division of said Federation from on or about January 1, 1934 and was and is a direct outgrowth of the activities of the Design Registration Bureau of the Silk Association of America, Inc.

(e) The Silk Association of America, Inc. is a New York membership corporation, now inactive, and prior to the organization of the National Federation of Textiles, Inc., which succeeded in a large measure to its activities, said Silk Association of America, Inc. was the active trade association in the silk industry.

177

(f) The Design Registration Bureau of the Silk Association of America, Inc. was set up in or about August, 1928 and functioned actively until the organization of the respondent, National Federation of Textiles, Inc. on or about January 1, 1934;

and respondents further affirmatively allege that the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc. is merely a registrar for de-

signs without responsibility or activity other than as set forth above, and is not now, nor was it ever, an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been, any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 2 and 18 of this answer.

PARAGRAPH FIVE:

179 6. Answering the allegations of each and every unnumbered paragarph of Paragraph Five of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH SIX:

7. Answering the allegations of each and every unnumbered paragraph of Paragraph Six of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH SEVEN:

8. Answering the allegations of each and every unnumbered paragraph of Paragraph Seven of the complaint, re-
180 spondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH EIGHT:

9. Answering the allegations of each and every unnumbered paragraph of Paragraph Eight of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH NINE:

10. Answering the allegations of the first unnumbered paragraph of Paragraph Nine of the complaint, respondents deny each and every allegation therein contained.

11. Answering the allegations of the subparagraph (a) of Paragraph Nine of the Complaint, respondents deny knowledge with respect to each and every allegation therein contained.

12. Answering the allegations of the subparagraph (b) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation 182
therein contained.

13. Answering the allegations of the subparagraph (c) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

14. Answering the allegations of the subparagraph (d) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

15. Answering the allegations of the subparagraph (e) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation 183
therein contained.

16. Answering the allegations of the subparagraph (f) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

17. Answering the allegations of the subparagraph (g) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

18. Answering the allegations of sub-paragraph (h) of Paragraph Nine of the complaint, respondents deny each and every allegation contained therein except that respondents admit the following facts:

(a) On December 17, 1935 respondent National Federation of Textiles, Inc., through its division known as Industrial Design Registration Bureau,
185 mailed two mimeographed notices, and on December 23, 1935, advertised in a newspaper known as Women's Wear Daily, which notices and advertisements were addressed primarily to manufacturers and converters of certain textile fabrics known as metals, jacquards, laces and embroideries, and whose contents appear fully from the photostatic copies thereof which are annexed hereto as Exhibits A, B and C and made a part of this answer;

(b) These notices and the said advertisement were published after informal discussions and conferences between representatives of respondent National Federation of Textiles, Inc. and particularly the Committee on Design Registration thereof, and
186 persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc., during the year 1935, in which discussions and conferences there was indicated a demand upon the part of the textile fabric converters and manufacturers for the extension of the existing facilities of the Industrial Design Registration Bureau to cover

registration of the certain textile fabrics mentioned in said notices and advertisement, in addition to registration of designs of printed materials already in existence, as more fully set forth and described in paragraph 5 of this answer;

and respondents further affirmatively allege that the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc. is merely a registrar for designs without responsibility or activity other than as set forth above, and is not now, nor was it ever, an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been, any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 2 and 5 of this answer. 188

19. Answering the allegations of sub-paragraph (i) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH TEN:

20. Answering the allegations of Paragraph Ten of the complaint, respondents deny each and every allegation therein contained. 189

PARAGRAPH ELEVEN:

21. Answering the allegations of Paragraph Eleven of the complaint, respondents deny each and every allegation therein contained.

WHEREFORE, the respondents, answering hereby, respectfully pray that the complaint herein be dismissed.

GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Respondents, National Federation of Textiles, Inc. and Peter Van Horn, President and Irene L. Blunt, Secretary of said Federation,

By (Signed) CHARLES F. BAILEY
(Member of Firm)

Office and Post Office Address,
No. 40 Wall Street,
191 Borough of Manhattan,
City of New York.

Exhibit A to Answer of National Federation of Textiles, Inc.

THE INDUSTRIAL DESIGN REGISTRATION BUREAU
10 East 40th Street
New York, N. Y.
Tel. LExington 2–2820

December 17, 1935

192 TO THE TRADE:

This Bureau has been designated by the Fashion Originators' Guild as the agency to handle the registration of designs for laces and embroideries as well as metals and Jacquards, selling to the Garment Industry.

The privilege of registering is open to everyone upon identically the same terms. The important factor is the

evidence of cooperation being obtained from the garment manufacturer who believes that this policy of registration will benefit the trade and the general public alike.

We are informed by the Fashion Originators' Guild that the dress manufacturers, both members and non-members of the Guild, have pledged themselves in writing to use ONLY the registered designs of these fabrics after January 1, 1936.

You can therefore see the advisability of availing yourself of this service promptly. Both laces and embroideries will be registered for a period of one year at the cost of $2.00 per design.

NEW OR TO-BE-CONTINUED items should be registered at 194
once on special forms which will be provided upon request.

DISCONTINUED items are not to be registered individually but to be recorded on a list, which, with small identifying swatches, is to be sent to this office. This list will be filed as a blanket registration for the single fee of $2.00. The list will be assigned a registration number although no search will be made as to duplications. However, the number will avoid any difficulties in selling discontinued items to a garment manufacturer, so as to fit in with his pledge to use only registered designs.

In addition, certain designs will be recognized as staples. These include Valenciennes, silk and cotton; Alencons, Lyons and imitation, narrow staple schiffli Venice and real laces. Please send a list of your numbers in these staple classes which will be entered under a blanket registration 195
number at a fee of $2.00 for the list. Identifying swatches should be affixed to each number on the list. As new laces of the staple types are put into your line, they should be sent to the Bureau for an assignment of number. For each subsequent design so listed and identified, there will be a nominal charge of 50¢.

Well established principles of the Bureau for acceptance or rejection with which you are familiar will be employed in this case.

Any other information will be gladly given upon communication with either the Fashion Originators' Guild or this Bureau.

Yours very truly

(Signed) I. L. BLUNT
Director.

ILB:DSS

A DIVISION OF THE NATIONAL FEDERATION OF TEXTILES, INC.

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197 **Exhibit B to Answer of National Federation of Textiles, Inc.**

THE INDUSTRIAL DESIGN REGISTRATION BUREAU
10 East 40th Street
New York, N. Y.
Tel. LExington 2-2820

December 17, 1935

TO THE TRADE:

This Bureau has been designated by the Fashion Originators' Guild as the agency to handle the registration of designs for laces, metals and Jacquards, selling to the
198 Garment Industry.

The privilege of registering is open to everyone upon identically the same terms. The important factor is the evidence of cooperation being obtained from the garment manufacturer who believes that this policy of registration will benefit the trade and the general public alike.

We are informed by the Fashion Originators' Guild that the dress manufacturers, both members and non-members of the Guild, have pledged themselves in writing to use ONLY the registered designs of these fabrics after Januar 1, 1936.

You can therefore see the advisability of availing yourself of this service promptly. Both metallic fabrics and Jacquards will be registered for a period of one year at the cost of $4.00 per design.

NEW OR TO-BE-CONTINUED items should be registered at once on special forms which will be provided upon request.

DISCONTINUED items are not to be registered individually but to be recorded on a list, which with small identifying swatches, is to be sent to this office. This list will be filed as a blanket registration for the single fee of $4.00. The list will be assigned a registration number although no search will be made as to duplications. However, the number will avoid any difficulties in selling discontinued 200 items to a garment manufacturer, so as to fit in with his pledge to use only registered designs.

Well established principles of the Bureau for acceptance or rejection with which you are familiar will be employed in this case.

Any other information will be gladly given upon communication with either the Fashion Originators' Guild or this Bureau.

Yours very truly

(Signed) I. L. BLUNT
Director.

ILB:DSS 201

A DIVISION OF THE NATIONAL FEDERATION OF TEXTILES, INC.

202 **Exhibit C to Answer of National Federation of Textiles, Inc.**

WOMEN'S WEAR DAILY, MONDAY, DECEMBER 23, 1935

Section 2 3

ATTENTION!

MANUFACTURERS AND CONVERTERS

of

Metals, Jacquards, Laces and Embroideries for the Garment Industry

---

203 Your customers—the garment manufacturers—both members and non-members of the Fashion Originators' Guild of America, Inc., have forwarded to the Guild offices written pledges to use ONLY REGISTERED DESIGNS in the above fabrics on and after January 1, 1936.*

The privilege of registering designs in the above fabrics is open to all manufacturers and converters upon identically the same terms.

Registration will be handled by the Design Registration Bureau at 10 East 40th Street and proper forms will be supplied you upon request.

It is important that you have all your present designs registered at once and subsequent designs sent for registration before offering them for sale in order that you may
204 stamp or print upon your orders and your bills a statement assuring the trade that all the designs are registered.

In order that the garment manufacturers may be certain they are buying only registered designs, they will require such assurance to be stamped or printed upon the bills accompanying the merchandise on and after January 1, 1936.

As you know, one of the foundation stones of the Fashion Originators' Guild of America is the establishment of means for protection of style and design in the

interests of manufacturer, retailer and the general public alike. As evidence of cooperation and the belief that this policy is for the benefit of both the trade and general public, the dress manufacturers, members and non-members of the Guild as well, have pledged themselves to use only the registered designs of these fabrics after January 1, 1936. Accordingly, manufacturers of such fabrics should avail themselves of this service promptly.

Provision has been made to issue to each firm one blanket registration number to cover all discontinued designs and all on-hand staples. This provision and all other information will be explained to you, if you will communicate with either the Fashion Originators' Guild of 206
America, Inc., 512 Seventh Avenue, New York City, or the

INDUSTRIAL DESIGN REGISTRATION BUREAU
NATIONAL FEDERATION OF TEXTILES, INC.
10 East 40th Street, New York City
Telephone LExington 2-2820

* The pledge also covers dress prints which have been registerable for several seasons.

207

208 **Motion and Answer of J. L. Hudson Company to Complaint.**

(Filed May 20, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.	Docket No. 2769

209

Comes now J. L. Hudson Company, a Michigan corporation, one of the respondents herein, and, without waiving its motion attached hereto, for answer to the complaint herein and to each paragraph thereof separately, says:

PARAGRAPHS ONE TO FOUR, INCLUSIVE. That respondent has not sufficient information to form a belief as to matters contained in Pargraphs One, Two, Three, and Four of the complaint.

PARAGRAPH FIVE. That respondent has not sufficient information to form a belief as to the allegations contained in Paragraph Five, excepting that it denies that it is an affiliated member of the respondent F.O.G.A., denies that it has ever used any unfair methods of competition, denies that it at any time entered into any agreement, combination or conspiracy, for the purpose of hindering or suppressing competition, either local or interstate, denies that it did create or take part in the creating of any monopoly in the manufacturing and sale of fabrics, dresses, or otherwise, and denies that it ever did any wrongful act in connection with the instant matter, but admits that it did

210

participate in the Guild's plan to the extent and in the manner stated herein, affirmatively, in Paragraph Twelve hereof.

PARAGRAPHS SIX TO EIGHT, INCLUSIVE. Respondent has not sufficient information or knowledge to form a belief as to the allegations contained in Paragraphs Six, Seven, and Eight of the complaint.

PARAGRAPH NINE. Answering Paragraph Nine of the complaint this respondent denies that it has ever been an affiliated member of the said F.O.G.A., but admits it did sign a "Declaration of Cooperation," as is more fully set forth in Paragraph Twelve hereof, and alleges that since 212
the latter part of February, 1936, the said "Declaration of Cooperation" was withdrawn and all relations thereunder ceased, as hereinafter more fully set forth in the said Paragraph Twelve. That your respondent has not sufficient information to form a belief as to the further allegations set forth in Paragraph Nine, excepting as follows:

(b) It believes the matters set forth in Sub-Paragraph (b) to be true.

(c) It believes the matters set forth in Sub-Paragraph (c) to be true.

(d) It believes the matters set forth in Sub-Paragraph (d) to be true excepting that the Textile Merchants 213
Group to its knowledge has not refused to sell fabrics to blacklisted retailers.

(e) It believes the matters set forth in Sub-Paragraph (e) to be true.

(f) It has not sufficient information to form a belief as to the other allegations contained in Sub-Paragraphs (f), (g) and (h), but has been informed that there are cer-

tain agreements, contracts, rules and regulations governing the conduct and relation of the groups mentioned therein, all of which facts can best be ascertained by an examination of the record with respect thereto.

PARAGRAPH TEN. That for lack of information sufficient to form a belief, it neither admits nor denies the allegations contained in Paragraph Ten excepting as follows:

(b) It believes the allegations stated in Sub-Paragraph (b) to be true.

(c and e) It believes that the tendency of the plan is to bring about the conclusions set forth in Sub-Paragraph
215 (c) and (e).

PARAGRAPH ELEVEN. That it believes the allegations of Paragraph Eleven to be true so far as F.O.G.A. is concerned, but alleges that it did not knowingly commit nor consent to the commission of any actions to the prejudice of the buying public.

PARAGRAPH TWELVE. AFFIRMATIVE STATEMENT OF FACTS:

(A) Respondent alleges that in 1933, due to the activities of the said Guild, it found itself unable to purchase certain dresses essential to its business unless it executed a so-called "Declaration of Cooperation" of said Guild.
216 That as a result it was forced to execute the same, a true copy being attached hereto as Exhibit A. That thereafter, and while its said "Declaration" was on file with said Guild, it did unsuccessfuly object from time to time to certain actions of said Guild. That it did not have the right to and did not attend any of the Guild's meetings, nor vote thereat, nor take any part in the management of the Guild. That it at no time agreed to the blacklisting of any member or non-member, nor to any of the other

matters complained of in the Complaint. That a few days after February 14, 1936, and without any warning from the Guild, it received a letter from the Guild dated February 14, 1936, returning to it the aforesaid "Declaration of Cooperation." That at the same time and without any warning the F.O.G.A. blacklisted or "red carded" this respondent. After the receipt of the said letter of February 14, 1936, this respondent consulted with its counsel for the first time regarding said F.O.G.A. Counsel advised that the plan of F.O.G.A. was probably illegal. That under date of February 27, 1936, respondent mailed to F.O.G.A. a letter reading as follows:

218 "Since the receipt of your letter of February 14th, we have given the matter of our cooperation with the Guild careful consideration, especially in the light of the recent developments. The result is that we do not desire to further cooperate with the Guild.

"If your aforementioned letter did not have the effect of severing our relationship completely, please consider this letter as doing so."

No reply was received by this respondent to its said letter of February 27, 1936.

That your respondent prior to the signing of the "Declaration of Cooperation", heretofore mentioned, was informed by representatives of the Guild that it was the 219 purpose of the Guild to attempt to eliminate copying in the higher price lines of dresses, specifically, to prevent copying of dresses selling at wholesale at $16.75 and upwards, and that the protection of these styles was to extend only down to dresses manufactured at $10.75, wholesale. That your respondent had no thought or knowledge that the Guild reserved the right to extend its activities into the lower price lines, if it so determined, and to control certain trade practices which from time to time it might consider desirable.

Subsequent to the signing of the "Declaration of Co-operation" by your respondent the F.O.G.A. announced that it had determined to extend its control to the very lowest price lines and that thereafter all "copies", at whatever price purchased, must be returned to the manufacturer by the retailer who had signed the "Declaration of Cooperation". This action of the Guild was a tremendous handicap to those retailers who signed the "Declaration of Cooperation" in competition with those retailers who refused to sign such "Declaration of Cooperation" because of the fact that the type of business of the latter did not make it essential for them to purchase from Guild
221 members since they dealt solely in the lower price lines. Such non-cooperating retailers can and do purchase any lower-price-range dresses which they desire and sell the same without any control whatever by the Guild, and there was every indication of definite damage to respondent's business and increasing difficulty for cooperating retailers to maintain their position in the competitive field of the lower price dresses, and your respondent, as well as other retailers, protested vigorously to the Guild with respect to the Guild's activities in attempting to control the lower price lines but without avail.

(B) That an extremely small proportion, if any, of respondent's business is in interstate commerce.

(C) That a large amount of goods heretofore sold to
222 respondent by members of F.O.G.A. while respondent's "Declaration of Cooperation" was on file with the said F.O.G.A. was shipped to it in interstate commerce.

(D) That the action of F.O.G.A. in trying to control lower and lower price lines in dress manufacturing, particularly beginning in 1935, indicated a probability of definite damage to respondent's business and increasing difficulty for consumers to secure style right and value right garments of the low price lines. As a result respondent protested to the Guild as early as the fall of 1935.

E) That between January 1, 1936, and February 15, 6, respondent placed substantial orders for dresses in ious price lines with a large number of manufacturers o were members of F.O.G.A., in most instances the or- s so placed with said members being the vast majority dresses in such price lines purchased by respondent.

F) That subsequent to respondent being blacklisted as einbefore set forth, it was refused merchandise by all the many members of the said Guild its buyers ap- ached. In addition, at the time of said blacklisting s respondent had over Ten Thousand Dollars in mer- ndise on order with F.O.G.A. members, some of which rchandise was then past due and some finished and 224 dy for delivery, but all of which the said members to pondent's damage refused to deliver, respondent is in- med, on orders from the said F.O.G.A. Respondent ges that in giving such orders to the members, F.O.G.A. e no reasons therefor.

G) That the continued refusal of members of F.O.G.A. sell to respondent has affected respondent's business in ious ways to its damage, amongst others as follows:

a) It was unable to supply customer demand for men's and Misses' Fox-trimmed Costume Suits whole- ing from $49.50 to $98.50 inasmuch as no houses could found outside the members of F.O.G.A. manufacturing t type of merchandise. 225

b) It is unable to supply customer demand with as plete selections of Misses' Street Dresses wholesaling ve $14.75 and Women's Street Dresses wholesaling ve $19.75 as its business requires due to the fact that ufacturers outside the F.O.G.A. members do not make desirable merchandise and are not as well equipped n a production standpoint.

(c) Respondent was forced to seek new sources for its Women's Daytime Dress Department from $15.75 to $39.75 wholesale cost, the action on the part of the F.O.G.A. making it necessary for respondent to experiment with resources theretofore untried by it and of doubtful adequacy both as to values and ability to produce.

(d) For its Misses' Daytime Dress Department from $16.75 to $39.75 wholesale cost, respondent has been unable to maintain satisfactory selections since its said blacklisting, for the reason that F.O.G.A. controls a very large proportion of the output of this kind of merchandise.

227 (e) In its Sportswear Department respondent has been forced to give up a large number of its regular resources and to try new houses. It has been unable to get as good golf dresses. It has been severely handicapped as well in other types of sport dresses from $10.75 wholesale cost up.

(H) That the activities of F.O.G.A. members, other than the said refusal to sell, have interfered with the respondent's business to its damage in various ways in which the following is an example: F.O.G.A. requested and attempted to force respondent to return active selling dresses at very popular prices (dresses which it claimed were copies) when these same dresses were selling freely in the stores of its competitors and which stores F.O.G.A. was unsuccessful in controlling.

228

(I) That F.O.G.A. members are an essential source of supply to respondent because as a group and from a fashion and production standpoint they comprise the most important houses in all markets where medium and higher priced dresses are obtainable. In the case of Junior dresses at a cost of $10.75 up, Misses' Street dresses from $16.75 cost up, and Women's and Misses' Costume Suits from $49.75 wholesale cost up F.O.G.A. controls so high

a percentage of the entire production that respondent finds it impossible to buy this class of goods in sufficient quantities elsewhere to provide proper assortments of satisfactory merchandise.

WHEREFORE, this respondent prays that the complaint be dismissed as to it.

MOTION.

That due to the fact that this respondent's "Declaration of Cooperation" has not been on file with the said Fashion Originators Guild of America, since February, 1936, as is fully set forth in its answer, and inasmuch as respondent 230
will not again, unless a legal program is worked out, sign a "Declaration of Cooperation" with the Guild, nor in any other way further the said Guild, respondent prays that it may be dismissed from this cause.

J. L. HUDSON COMPANY,
By (Signed) OSCAR WEBBER,
Its Vice-Pres. & Genl. Mgr.,
Detroit, Michigan.

(Signed) BEAUMONT, SMITH & HARRIS,
2900 Union Guardian Building,
Detroit, Michigan,
Attorneys for J. L. Hudson Company.

231

(Signed) ALBERT E. MEDER,
2900 Union Guardian Building,
Detroit, Michigan,
Of Counsel.

232 **Exhibit A to Motion and Answer of J. L. Hudson Co.**

FASHION ORIGINATORS' GUILD OF AMERICA, INC.
512 Seventh Avenue,
New York City, N. Y.

DECLARATION OF CO-OPERATION IN ANTI-PIRACY BETWEEN THE J. L. HUDSON COMPANY AND THE FASHION ORIGINATORS' GUILD OF AMERICA

Fashion Originators' Guild of America
512 Seventh Avenue
New York, N. Y.

Gentlemen:

We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them and will refuse to countenance so-called "Style Piracy." Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

233

We do not and will not buy for our Ready-to-Wear Departments any copied or pirated dresses of garments created by members of your association.

Furthermore, we will affix to all of our apparel orders the following clause:

> "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

234

Very truly yours,

(Signed) G. R. MACDONALD
THE J. L. HUDSON COMPANY,
Basement Store

(Signed) L. B. SAPPINGTON
J. L. Hudson Company

Order Appointing Examiner and Fixing Time and Place for Taking Testimony. 235

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 12th day of June, A. D. 1936.

COMMISSIONERS: CHARLES H. MARCH, Chairman,
GARLAND S. FERGUSON, JR.,
EWIN L. DAVIS,
WILLIAM A. AYRES, 236
ROBERT E. FREER.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769

237

This matter being at issue and ready for the taking of testimony,

IT IS ORDERED that John W. Bennett, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

238 *Order Appointing Examiner.*

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Wednesday, July 15, 1936, at nine o'clock in the forenoon of that day. (eastern standard time), in room 901, 45 Broadway, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

BY THE COMMISSION:

239 OTIS B. JOHNSON,

(Seal) Secretary.

240

Substitute Order Appointing Examiner and Fixing Time and Place for Taking Testimony. 241

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of October, A. D. 1936.

COMMISSIONERS: CHARLES H. MARCH, Chairman,
GARLAND S. FERGUSON, JR.;
EWIN L. DAVIS,
W. A. AYRES, 242
ROBERT E. FREER.

IN THE MATTER OF FASHION ORIGINATORS' GUILD, INC.	Docket No. 2769

WHEREAS, John W. Bennett, an examiner of this Commission, was heretofore appointed to take testimony and receive evidence in this proceeding, pursuant to authority vested in the Federal Trade Commission under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41), and whereas, there are hearings scheduled in the above pro- 243 ceeding, beginning on Monday, November 9, 1936, at ten o'clock in the forenoon of that day, in room 401, Appraisers Store, Federal Building, Baltimore, Maryland, and whereas, the said John W. Bennett because of illness will be unable to continue therein,

IT IS, THEREFORE, ORDERED that Edward M. Averill, an examiner of this Commission, be and he hereby is desig-

nated and appointed to take testimony and receive evidence in this proceeding in the place and stead of John W. Bennett heretofore appointed.

BY DIRECTION OF THE COMMISSION:

OTIS B. JOHNSON,
Secretary.

(Seal)

Substitute Order Appointing Examiner and Fixing Time and Place for Taking Testimony.

245 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of September, A. D. 1937.

COMMISSIONERS: WILLIAM A. AYRES, Chairman;
GARLAND S. FERGUSON, JR.,
CHARLES H. MARCH,
EWIN L. DAVIS,
ROBERT E. FREER.

246

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.	Docket No. 2769

WHEREAS, Edward M. Averill was heretofore appointed to take testimony and receive evidence in this proceeding,

pursuant to authority vested in the Federal Trade Commission under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41), and whereas he is now deceased,

IT IS ORDERED that Charles F. Diggs, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding, beginning on Monday, September 20, 1937, at ten o'clock in the forenoon of that day (eastern standard time), in room 424, 815 Connecticut Avenue, N.W., Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report. 248

BY THE COMMISSION:

OTIS B. JOHNSON,
Secretary.

(Seal)

249

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Motion to Dismiss Complaint on the Merits as Against Respondent The National Federation of Textiles, Inc., and the Officers Thereof Named as Respondents.

313

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.	Docket No. 2769

314

COME NOW respondent, The National Federation of Textiles, Inc., and the officers thereof named as respondents, by their attorneys, McLanahan, Merritt & Ingraham, and move the Commission that the complaint herein be dismissed on the merits as against said respondents upon the complaint, respondents' answer thereto, the testimony herein, the Trial Examiner's report upon the facts, respondents' exceptions to said report, and upon all the proceedings heretofore had and filed herein.

This motion is made upon the following grounds:

1. That there is a failure of proof of the material allegations of said complaint with respect to said respondents. 315

2. That there is no direct proof that said respondents were parties to the agreement, combination and conspiracy alleged in the complaint herein and that the sole act charged against said respondents in the complaint, to wit, that The Industrial Design Registration Bureau of respondent, The National Federation of Textiles, Inc., advertised and solicited the registration of designs of textile fabrics on the ground that it had been designated as the

agency to handle the registration of designs of textile fabrics for members of the respondent F.O.G.A., does not justify the inference attempted to be drawn that said respondents were parties to the agreement, combination and conspiracy alleged in the complaint.

3. That the said act of respondents, the facts concerning which are fully set forth and admitted in their answer to the complaint, was confined to a period of one week in December, 1935, and that thereafter said advertising and solicitation ceased long before the issuance of the complaint herein and there is no reason to apprehend the renewal thereof; and that, under the circumstances, there-
317 fore, the Commission is not justified in issuing a Cease and Desist Order against these respondents.

Respondents respectfully request the Commission to set the time and place for argument of this motion to dismiss on Wednesday, September 21, 1938, at 2:00 P. M., in the Hearing Room, Federal Trade Commission Building, Washington, D. C., said time and place being that set for the final argument in this matter.

WHEREFORE, it is prayed that this Honorable Commission grant this motion to dismiss the complaint on the merits against the undersigned respondents.

Respectfully submitted,

Dated: September 15th, 1938.

318 McLANAHAN, MERRITT & INGRAHAM,
Attorneys for the respondent, The National Federation of Textiles, Inc., and the officers thereof named as respondents,
By ROBT. McLANAHAN
(Member of firm),
Office and P. O. Address,
No. 40 Wall Street,
Borough of Manhattan,
New York City.

Findings of Fact and Conclusions of Law. 319

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES. 320

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.	Docket No. 2769

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 16, A. D. 1936, issued and served its complaint in this proceeding upon the respondents specifically named in the caption hereof and upon the various corporations and individuals named as respondents in the body of the complaint, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other 321

evidence in support of the allegations of the complaint were introduced by Reuben J. Martin and Everett F. Haycraft, attorneys for the Commission, and in opposition to the allegations of the complaint by Milton C. Weisman and M. A. Albert, attorneys for the respondent, before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the testimony and other
323 evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

Findings as to the Facts

Paragraph One: Respondent Fashion Originators Guild of America, Inc., hereinafter for convenience referred to as "F.O.G.A.", is a membership corporation composed of manufacturers of women's garments and of textiles used in the manufacture thereof. It was incorporated under
324 the laws of the State of New York on March 7, 1932, and its principal office and headquarters are located in the City and State of New York. The following-named persons were officers and members of respondent's board of governors as of April 16, 1936:

OFFICERS

Maurice Rentner	—	President and Treasurer
Herbert Sondheim	—	First Vice-President
Charles Gumprecht	—	Second Vice-President
J. A. Livingston	—	Treasurer
Albert M. Post	—	Executive Director
James M. Golby	—	Executive Secretary

BOARD OF GOVERNORS

Dress Division

William Bass	—	David Bender
Louis J. Brenner	—	Theodore Racoosin
Jo Copeland	—	Charles Lang
Charles Gumprecht	—	William Fox
Samuel Kass	—	Herbert Sondheim
Maurice Rentner	—	Joseph Halpert
D. Eli Lahm	—	Charles Miller

326

Coat Division

Louis M. Wersba — Kallman Carmel
Leo Del Monte (alternate)

Junior Miss Division

Louis J. Mallas

Sports Wear Division

J. A. Livingston — David M. Goodstein
Matthew Kane (alternate)

327

Austin M. DeLisser is the executive secretary of the Textile Merchants' Group of the F.O.G.A. This group has no board of governors, but has a steering committee which performs the same functions, and

G. H. Conze — E. W. Freudenberg
Samuel Levine and E. E. Meyer

are or have been members of this committee.

On April 16, 1936, the F.O.G.A. had two hundred and twenty-five members, whose names, classifications and addresses are as follows:

DRESS MEMBERS

Aldrich & Malvin, Inc., 530 Seventh Avenue
Milton Altmark, Inc., 530 Seventh Avenue
Charles Armour & Bros., Inc., 498 Seventh Avenue
Arons, Bernstein & Arons, Inc., 530 Seventh Avenue
Joseph & Ben Barnett, Inc., 498 Seventh Avenue
Rose Barrack & Lahm, Inc., 530 Seventh Avenue
William Bass Dress Corp., 550 Seventh Avenue
329 Herman Beispel, Inc., 530 Seventh Avenue
Bender & Hamburger, Inc., 530 Seventh Avenue
Blotta & Conti, Inc., 498 Seventh Avenue
Brenner, Joseph, & White, 30 West 47th Street
Brenner, Morris, Inc., 55½ Columbia
Hattie Carnegie, Inc., 42 E. 49th Street
Clifford Salkin, Inc., 530 Seventh Avenue
Lewis Cohn, Inc., 530 Seventh Avenue
Jo Copeland, Inc., 15 W. 47th Street
David Crystal, Inc., 498 Seventh Avenue
Dolces Dressing, Inc., 530 Seventh Avenue
Anna Duke, Inc., 498 Seventh Avenue
Etc. Inc., 38 W. 47th Street
Feigenbaum & Adelsohn, Inc., 530 Seventh Avenue
Pauline Fields, Inc., 498 Seventh Avenue
330 Herman Floersheimer & Bro., Inc., 550 Seventh Avenue
Louise Barnes Gallagher, Inc., 37 W. 47th Street
Henry Ganz, Inc., 550 Seventh Avenue
Gardner & Schwartz, Inc., 498 Seventh Avenue
Garfinckel & Siegel, Inc., 550 Seventh Avenue
Ed. Garrick & Co., Inc., 550 Seventh Avenue
A. Goodman & Co., Inc., 530 Seventh Avenue
Joseph Greenberg-Bettina, Inc., 550 Seventh Avenue

Charles Groden, Inc., 20 West 56th Street
Julius Grossman & Fred Greenberg Dress Co., Inc., 550 Seventh Avenue
Joseph Halpert, Inc., 530 Seventh Avenue
Max Heit Dress Corp., 478 Seventh Avenue
Myron Herbert & Charles Cooper, Inc., 498 7th Avenue
Jack Herzog & Bro., Inc., 530 Seventh Avenue
Virginia Hume & Gold, Inc., 498 Seventh Avenue
E. A. Jackson-Bienard, Inc., 550 Seventh Avenue
Kallman & Morris, Inc., 530 Seventh Avenue
Kaplan & Moskowitz, Inc., 498 Seventh Avenue
Samuel Kass Gowns, Inc., 498 Seventh Avenue
Kiviette, Inc., 37 W. 47th Street 332
Charles Kondazian & Papaz, Inc., 37 W. 47th Street
Kornhauser Gowns, Inc., 498 Seventh Avenue
Charles Lang, Inc., 498 Seventh Avenue
La Rue Dresses, Inc., 550 Seventh Avenue
Lenkowsky Modes, Inc., 550 Seventh Avenue
Marry Lee Frocks, Inc., 498 Seventh Avenue
Mary Liotta, Inc., 37 W. 47th Street
M. A. Litvin, Inc., 498 Seventh Avenue
H. Milgrim & Bros., Inc., 6 W. 57th Street
Germaine Monteil, Inc., 36 W. 47th Street
Jennie Moskowitz, Inc., 550 Seventh Avenue
Nanty Frocks, Inc., 36 W. 47th Street
Nomis Dress Co., Inc., 498 Seventh Avenue
Paul Parnes, Inc., 498 Seventh Avenue
Pattulo Modes, Inc., 1 W. 47th Street 333
Perles & Gilbert, Inc., 530 Seventh Avenue
Ben Reig, Inc., 498 Seventh Avenue
Maurice Rentner, Inc., 498 Seventh Avenue
Nettie Rosenstein Gowns, Inc., 36 W. 47th Street
James J. Rothenberg, Inc., 550 Seventh Avenue
Rudolf Gowns, Inc., 530 Seventh Avenue
Ruffolo Bros., Inc, 31 W. 47th Street
J. M. Silverman Dresses, Inc., 498 Seventh Avenue

Somay, Inc., 530 Seventh Avenue
Herbert Sondheim, Inc., 530 Seventh Avenue
Spectator Sports, Inc., 15 W. 47th Street
Frank Starr Friedlander, Inc., 530 Seventh Avenue
Straus-Miller, Inc., 498 Seventh Avenue
Suttre-Fox, Inc., 498 Seventh Avenue
A. Traina Gowns, Inc., 550 Seventh Avenue
John Traina, Inc., 530 Seventh Avenue

(All of the above are located in the City and State of New York).

AFFILIATED MEMBERS

335 B. G. Garment Co., Inc., 337 S. Franklin St., Chicago, Ill.
Fred A. Block, Inc., 325 W. Jackson St., Chicago, Ill.
S. Eisenberg, 106 Fifth Ave., New York, N. Y.
H. N. Fried, 337 S. Franklin St., Chicago, Ill.
Junior Guild Frocks, Inc., 1372 Broadway, New York, N.Y.
Lang-Kohn Mfg. Co., 525 Seventh Ave., New York, N. Y.
Matthew Kadetsky Co., 530 Seventh Ave., New York, N. Y.
Robinson Bros., Inc., 550 Seventh Ave., New York, N. Y.

COAT AND SUIT MEMBERS

Carmel Bros., Inc., 530 7th Ave., New York, N. Y.
Dartmoor Coat Co., Inc., 1384 Broadway, New York, N. Y.
Deitsch-Wersba & Coppola, Inc., 512 7th Ave., New York, N. Y.
336 Del Monte Hickey Co., Inc., 205 W. 39th St., New York, N. Y.
Ben Gershel & Co., Inc., 512 7th Ave., New York, N. Y.
Ben Ginsburg, Inc., 500 7th Ave., New York, N. Y.
Aaron Goldstein Co., Inc., 530 7th Ave., New York, N. Y.
Louis Goldstein Company, Inc., 512 7th Ave., New York, N. Y.
Grossman & Spiegel, Inc., 512 7th Ave., New York, N. Y.
Philip Mangone & Co., Inc., 500 7th Ave., New York, N. Y.

Monte, Sans & Pruzan, Inc., 21 W. 46th Street, New York, N. Y.
Zuckerman & Kraus, Inc., 512 7th Ave., New York, N. Y.

JUNIOR MISS MEMBERS

Louis Kallish and Max Rosenbluth (copartners trading as Arkay Junior Frocks), 498 Seventh Avenue
Ashley Frocks, Inc., 1400 Broadway
J. H. Horwitz and Joseph M. Duberman (copartners trading as Horwitz & Duberman), 498 7th Avenue
Jane Junior Dresses, Inc., 1400 Broadway
Joanne, Jr., Zinn Bros., Inc., 1400 Broadway
Junior League Frocks, Inc., 1372 Broadway 338
Louise Mulligan, Inc., 498 Seventh Avenue
Ira Rentner-Miller, Inc., 498 Seventh Avenue

(All of the above are located in New York, N. Y.)

TEXTILE ASSOCIATES

Amrein, Freudenberg & Co., Inc., 14 E. 38th Street
Bianchini, Ferier, Inc., 663 Fifth Ave.
Bloomsburg Silk Mill, Inc., 525 Seventh Ave.
Sidney Blumenthal & Co., Inc., 1385 Broadway
Brueck & Richards, Inc., 280 Madison Ave.
Case & Co., Inc., 220 W. 40th St.
Chatillon, Mouly, Roussel, Inc., 608 Fifth Ave.
Cheney Bros., Inc., 1412 Broadway 339
Combier & Co., Inc., 58 W. 40th Street
Coudurier, Frustus & Devigne, Inc., 1441 Broadway
Descours, Genthen, Inc., 58 W. 40th Street
Croydon Fabrics, Inc., 1441 Broadway
Silk Guild of America, Inc., 1441 Broadway
F. Ducharne Silk Co., Inc., 244 Madison Ave.
Empire Silk Co. (Incorporated), 180 Madison Ave.
Cohn Hall-Marx Co., Inc., 1412 Broadway

The Forstman Woolen Co. (Incorporated), 350 Fifth Avenue
Frank Associates, Inc., 1412 Broadway
Theodore J. Gallagher, Inc., 58 W. 40th Street
Hess, Goldsmith & Co., Inc., 1400 Broadway
L. J. Hyams & Jane Hyams (copartners), 108 W. 39th Street
Kandelaft Silks, Inc., 1441 Broadway
Lace Net Importing Co., Inc., 244 Madison Ave.
Maginnis & Thomas, Inc., 411 Fifth Ave.
H. B. Mahinson & Co., Inc., 119 W. 40th Street
Menke Kaufman & Co., 119 W. 40th Street
341 Onondaga Silk Co., Inc., 1412 Broadway
Wm. C. Openhym, 1441 Broadway
Remond-Holland, Inc., 663 Fifth Ave.
L. & E. Stirn, Inc., 1400 Broadway
Stunzi Sons Silk Co., Inc., 1400 Broadway
Susquehanna Silk Mills (Inc.), 498 Seventh Ave.
Schwarzenbach, Huber, Inc., 498 Seventh Ave.
J. A. Wagenbauer, Inc., 545 Fifth Ave.
Wahnetah Silk Co., Inc., 119 W. 40th St.
Wechaler Silk Corp., 498 Seventh Ave.
Zellinger & Schreth, Inc., 50 W. 40th St.
J. J. & N. Blackstone, Inc., 58 W. 40th St.
Dutschler, Trull & Justin, Inc., 570 Seventh Ave.
Ellen Lace & Embroidery Co., Inc., 1441 Broadway
L. H. Hollander, 101 W. 37th St.
342 Ikle Freres & Co., Inc., 22 W. 38th St.
Herbert Lehman, Inc., 47 W. 34th St.
Lido Embroidery, Inc.
Maison France, Inc., 101 W. 37th St.
Record Lace & Embroidery Co., Inc., 1270 Broadway
Swiss Novelty Embroidery Co., Inc., 108 W. 39th St.
Walter Tobler & Franz Hoenig (copartners), 250 W. 40th St.
Sol Wolfman, Inc., 1457 Broadway

SPORTS WEAR MEMBERS

Adler & Adler, Inc., 550 Seventh Ave.
Davidow, Inc., 550 Seventh Ave.
David M. Goodstein, Inc., 550 Seventh Ave.
Kane-Weill, Inc., 498 Seventh Ave.
Joseph Levay, Inc., 498 Seventh Ave.
J. A. Livingston, Inc., 498 Seventh Ave.
David N. Lowenthal & Son, Inc., 550 Seventh Ave.
Mutual Rosenbloom Corp., 498 Seventh Ave.
Charles W. Nudelman, Inc., 550 Seventh Ave.
Zoltan Rosenberg & Theodore Rosenberg (copartners), 550 Seventh Ave.
Sport Craft Inc., 1350 Broadway 344
Star M[illegible]Dresses, Inc., 498 Seventh Ave.
Sam Stei[illegible]berg & Co., Inc., 498 Seventh Ave.
Townley Frocks, Inc., 498 Seventh Ave.

(All of the above-named are located in New York, N. Y.)

PROTECTIVE AFFILIATES

Aywon Dress Co., Inc., 1400 Broadway
L. & D. Beilinson, Inc., 1400 Broadway
Daytime Frocks, Inc., 525 Seventh Ave.
F.E.D. Dress Co., Inc., 1400 Broadway
Harry Frank, 1400 Broadway
Friedman Dress Co., Inc., 1400 Broadway
Goldman Frocks Co., Inc., 1400 Broadway 345
International Dress Co., Inc., 1400 Broadway
Jomark Dresses, Inc., 1400 Broadway
Joe Levine Dress Co., Inc., 1400 Broadway
Parisian Mfg. Co., Inc., 1400 Broadway
C. H. D. Robbins Co., Inc., 1375 Broadway
Rosen Bros. Frocks, Inc., 1400 Broadway
Sheila Lynn Dresses, Inc., 1400 Broadway
Silver Dresses, Inc., 1400 Broadway
David S. Westheim Corp., 1400 Broadway

Witlin & Schneider, Inc., 1400 Broadway
Anderman-Bob Burns, Inc., 1385 Broadway
Bernard Appel, Inc., 498 Seventh Ave.
Grace Ashley, 743 Fifth Ave.
Bonnay Dance Frocks, Inc., 134 W. 37th St.
Capri Frocks, Inc., 1372 Broadway
Casino Dresses, Inc., 530 Seventh Ave.
Cohen Tunick, Inc., 525 Seventh Ave.
Dalton Frocks, Inc., 1372 Broadway
Sam Davidson, Inc., 1400 Broadway
Dresden Dress Co., Inc., 1400 Broadway
Fashion Wear Dress Co., Inc., 1400 Broadway
347 Franklin Dress Co., Inc., 318 W. Adams, Chicago, Ill.
Ginsburg & Abelson, Inc., 1400 Broadway
Alexander S. Gross, Inc., 498 Seventh Ave.
Lee Claire Costumes, Inc., 525 Seventh Ave.
Lyla Modes, Inc., 1400 Broadway
Lyttle Bros., Inc., 1400 Broadway
E. N. Marcus, 1400 Broadway
Matty Moskowitz, Inc., 530 Seventh Ave.
Parnis-Levinson, Inc., 530 Seventh Ave.
Patricia Perkins, Inc., Los Angeles, Calif.
Radiant Dress Co., Inc., 525 Seventh Ave.
Reich-Goldfarb & Co., Inc., 530 Seventh Ave.
L. C. Rosenblatt, Inc., 1440 Broadway
Schultze-Zuch, Inc., 525 Seventh Ave.
348 Stern & Goldberg, Inc., 525 Seventh Ave.
Will Steinman, Inc., 525 Seventh Ave.
Valroy, Inc., 491 Seventh Ave.
Phil Zahn & Co., Inc., 1400 Broadway

(All the above-named, except the two otherwise shown, are located in New York, N. Y.)

Bretter & Sussman, Inc., 1375 Broadway
Campus Modes, Inc., 1400 Broadway
Flo-Frocks, Inc., 1385 Broadway
George Hess Co., Inc., 1385 Broadway
Junior Fashion Guild, Inc., 498 Seventh Ave.
Michael Kaplan & M. Kaplan (copartners trading as Mike Kaplan Dresses), 1400 Broadway
Wein Frocks, Inc., 1375 Broadway
Abbate-Swift, Inc., 1385 Broadway
Argosy Dresses, Inc., 1385 Broadway
Cecele Dance Frocks, Inc., 1384 Broadway
Garland Dress Co., Inc., 1400 Broadway
B. Tobias, Inc., 498 Seventh Ave. 350
Samuel Lipman, Herman Lipman and Julius Lipman (co-partners), 1400 Broadway
Marie Lynn Dance Frocks, Inc., 1384 Broadway
Rosenthal & Kallman, Inc., 1400 Broadway

(All of the above are located in New York, N. Y.)

PARAGRAPH TWO: Respondent Michigan Avenue Guild of Chicago is a membership corporation organized under the laws of the State of Illinois, on April 27, 1932. Its headquarters are located at 669 North Michigan Avenue, Chicago, Illinois. The membership of this corporation is composed of approximately seventy-five retail dealers in women's wearing apparel, whose places of business are located in Chicago, Illinois. Its officers in 1936 were 351

Guy L. Ederheimer,	President
Frank L. Cole,	Vice-President
Edward A. Fletcher,	Secretary
L. R. Pearson,	Treasurer

George M. Gleason was president in 1935.

Its Board of Directors in 1936 consisted of the following:

Harry Blum	Leo Bramson
Frank L. Cole	Guy L. Ederheimer
Louis Gossert	M. E. Greenebaum
A. E. Levitt	Sally K. Greenebaum
Bernard Rose	E. R. Lindburg

The following named persons were members of its Board of Directors in 1935:

George M. Gleason	Herman Friedman
Clarence A. Powell	Elise A. Runyan

353

PARAGRAPH THREE: Respondent Minneapolis Fashion Guild is an unincorporated membership association, having its headquarters in Minneapolis, Minnesota. Roy H. Bjorkman is the executive secretary of this association and dominates and controls its activities. The association has no other officers or directors. Approximately nineteen dealers in women's wearing apparel whose places of business are located in Minneapolis, Minnesota, comprise the membership of this association.

PARAGRAPH FOUR: Respondent Ladies' Ready-to-Wear Guild of Baltimore, Inc., is a membership corporation organized under the laws of the State of Maryland. The following-named persons comprise the officers and directors of this corporation:

354

Charles G. Hutzler,	President & Director
Allen S. Metzger,	Vice-President and Director
C. F. Roycroft,	Secretary
Fred H. Alperstein,	Director
William Pollock,	Director
Lester Bonwit,	Director
Martin B. Kohn,	Director
Albert D. Slesinger,	Director
J. E. Ellington,	Director
Sam J. Schleisner,	Director
Hal W. Kenaston,	Director

The membership of this respondent corporation is composed of approximately forty retail dealers in women's garments whose places of business are located in Baltimore, Maryland.

PARAGRAPH FIVE: Respondent National Federation of Textiles, Inc., is a membership corporation organized under the laws of the State of Connecticut. Its principal office is located at 10 East 40th Street, in the City and State of New York. Peter Van Horn is the president of this corporation and Irene L. Blunt is its secretary.

The membership of this corporation consists of approximately one hundred manufacturers, converters, dyers and printers of silk and rayon fabrics. 356

PARAGRAPH SIX: Approximately 12,000 retail dealers in women's garments, located at various places throughout the United States, cooperate with the respondent F.O.G.A. in carrying out its hereinafter described programs, policies and practices, and have signed declarations of cooperation which will be hereinafter described. It is impracticable to name all of said cooperating retailers as respondents, but the following named respondents are representative of the whole:

Marshall Field & Company—a corporation organized under the laws of the State of New York and having its principal place of business at 222 North Bank Drive, in the City of Chicago, State of Illinois. John McKinley is president of this corporation; Ernest L. Olrich is its secretary, and Horace A. Wetmore is its treasurer. 357

Allied Stores Corporation—a corporation organized under the laws of Delaware, and having its principal place of business at 85 Ellison Street, Paterson, New Jersey. D. Earl Pluckett is its president and A. C. Hallam is its secretary and treasurer.

The Lindner Co'y (designated in the complaint as Linder Company)—a corporation organized under the laws of the State of Ohio and having its principal place of business at Euclid Avenue and East 14th Street, in the City of Cleveland and State of Ohio. Max Gordon is its president and Edward Schwarz is its secretary.

Joseph Horne Company (designated in the complaint as Horne Company)—a corporation organized under the laws of the State of Pennsylvania and having its principal place of business on Pennsylvania Avenue and Stanwix Street, in the City of Pittsburgh, Pennsylvania. A. M. Burchfield is its president and W. M. Friesell is
359 its secretary and treasurer.

Mandel Bros., Inc.—a corporation organized under the laws of the State of Delaware and having its principal place of business at 1 North State Street, in the City of Chicago, State of Illinois. Edwin F. Mandel is its president and Sam J. Altheimer is its secretary.

John Wanamaker, Philadelphia—a corporation organized under the laws of the State of Pennsylvania, and having its principal place of business in the City of Philadelphia, State of Pennsylvania. William L. Nevin is its president and Henry H. Funk is its secretary.

Lit Brothers, Inc. (designated in the complaint as Lit Brothers)—a corporation organized under the laws of the State of Pennsylvania and having its principal place
360 of business in the City of Philadelphia, State of Pennsylvania. G. H. Johnson is its president and A. T. Hild is its assistant secretary.

Bullock's, Inc.—a corporation organized under the laws of the State of Delaware, having its principal place of business located at Hill and Seventh Streets in the City of Los Angeles, State of California. F. G. Winnett is its president and M. E. Arnett is its secretary.

The Emporium Capwell Corporation (named in the complaint as Emporium Capwell Corporation)—a corporation organized under the laws of the State of Delaware, and having its principal place of business at 835 Market Street in the City of San Francisco, State of California. Joel W. Kaufman is its vice-president, secretary and treasurer. This corporation owns all the common stock of The Emporium, a California corporation which owns and operates the Capwell Department Store, located in Oakland, California, and The Emporium Department Store, located in San Francisco, California.

J. L. Hudson Co.—a corporation organized under the laws of the State of Michigan and having its principal place of business located in the City of Detroit, State of Michigan. Oscar Weber is its vice-president and general manager. 362

In a number of instances these cooperating retail dealers, at the request of the F.O.G.A., have contributed to its fund to be used in defraying the expenses incident to the effectuation of its programs and policies, and such contributing retail dealers are designated by the F.O.G.A. as retail contributing members.

PARAGRAPH SEVEN: The members of the F.O.G.A. and the National Federation of Textiles, Inc., sell and ship their products to dealers located in states other than those in which said members are located, and in so doing, are in competition among themselves and with other manufacturers who likewise sell and ship similar products. 363

PARAGRAPH EIGHT: The garment-manufacturing members of the F.O.G.A. are a dominant factor in the women's garment manufacturing industry, and their products are in such demand by the trade and the purchasing public that all retail dealers in women's garments, in order to

meet competition and the demand of the consuming public, are compelled to stock and handle some of the lines manufactured by said F.O.G.A. members. The combined sales of the members of the F.O.G.A. in 1936 constituted 38.8 per cent of the total sales of women's garments in the United States in the wholesale price range of $6.75 and up, and 83.99 per cent in the wholesale price range of $10.75 and up.

PARAGRAPH NINE: Respondent F.O.G.A. was organized in March, 1932, by approximately fifteen manufacturers of women's garments which sold at wholesale for from $29.50
365 up. Manufacturers of lower priced garments were admitted from time to time, and by the fall of 1935 the membership included manufacturers in the price range of from $6.75 up. After the F.O.G.A. was organized, it was decided to include in its membership manufacturers of textiles used in the women's garment manufacturing industry. By April 16, 1936, the membership of this respondent consisted of 176 manufacturers of women's garments and 49 manufacturers, converters, dyers and printers of textiles.

Respondent F.O.G.A. was organized primarily for the purpose of preventing the copying for sale in commerce of alleged original creations in fashions and styles of women's garments. The program was later expanded to cover designs of textiles used in the manufacture of women's gar-
366 ments. This respondent from time to time enlarged its original program to cover other practices and policies which will be hereinafter set forth.

PARAGRAPH TEN: Respondent F.O.G.A., in furtherance of its objectives, sought and secured the cooperation of the three respondent local guilds, Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, and Ladies' Ready-to-Wear Guild of Baltimore, Inc. Each of these guilds entered into an agreement with the F.O.G.A., by the terms

of which the F.O.G.A. agrees that its members will not sell their products in the cities in which said local guilds are located to retailers who are not members in good standing of said local guilds, or who do not conform to their standards and regulations; that they will not sell at retail to individual consumers or to persons conducting their business in residences, residential quarters, or in hotels or apartment buildings; that they will not conduct off-price promotion sales or clearance sales prior to the dates fixed by the local guild; that they will not sell to any member of the local guild who shall violate any of the provisions of the agreement until such member is restored to good standing in the local guild; that if any of its mem- 368
bers shall breach any of the provisions of this agreement they will be suspended from membership.

The respective local guilds agree that their members will not purchase from manufacturers who do not conform to the standard of ethics and the regulation of the F.O.G.A.; that they will not knowingly buy or sell copies of legitimately registered styles and will return any such copies as are found in their stock; that they will accept the decision of the "style piracy" division of the F.O.G.A. on all questions of alleged design piracy; that they will stamp all their orders for merchandise with the warranty clause formulated by the F.O.G.A., which clause is as follows:

> "This order is placed upon the seller's warranty that the above garments are not copies of styles 369
> originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

Each of the respondent local guilds agrees that it will suspend from membership any member who shall violate any of the provisions of the agreement; that its members will refrain from purchasing from any member of the

F.O.G.A. who shall violate any of the provisions of this agreement until such time as such member shall be restored to membership in good standing of the F.O.G.A.

The terms of these agreements were fulfilled by the F.O.G.A. and its members, and by the respective local guilds and their members.

PARAGRAPH ELEVEN: Respondent F.O.G.A., in 1933, determined that its objectives would be best accomplished by securing the cooperation of individual retail dealers in women's garments in territories which had no local guilds, and to this end, it distributed to retail dealers throughout
371 the United States copies of what it termed a "Declaration of Cooperation," for the signature of the retailer. It is stated in this Declaration of Cooperation that the retailer will not buy any copies of merchandise created by members of the F.O.G.A.; that he will abide by the decision of the "piracy committee" of the F.O.G.A., and return such garments as are adjudged to be copies of the Guild's registered styles, and will cooperate with the F.O.G.A. to the fullest extent in helping it to remove such copies from the market; that he will furnish the F.O.G.A. with such information in his possession as it may desire; that he will affix to all of his apparel orders the warranty clause formulated by the F.O.G.A., which is set forth in Paragraph Ten hereof.

At first the F.O.G.A. attempted to secure the voluntary
372 cooperation of the retailers and their signatures to the declaration of cooperation by representing the advantages to be derived from such cooperation; later, after having secured a number of voluntary signatures to this "declaration," the F.O.G.A. coerced, constrained and compelled retail dealers to sign such declarations of cooperation under the threat that unless they did so, its members would refuse to sell them their products or to allow them to inspect their lines of merchandise. The garment-manufacturing members of the F.O.G.A. have refused and do refuse to

exhibit or sell their merchandise to retailers who fail or refuse to sign said declarations of cooperation, or who, having signed same, fail to comply with the requirements thereof.

As a result of the coercive activities of the F.O.G.A., approximately 12,000 retail dealers, including those specifically mentioned in Paragraph Six hereof, had signed such declarations of cooperation and returned same to the F.O.G.A. by the end of 1935. The retailers who signed these declarations thereafter refused to purchase garments which were determined by the F.O.G.A. to be copies of original registered styles or designs of its members, and the terms of the declaration were generally complied with 374
by the signers thereof. In some instances, however, signers of these declarations of cooperation failed or refused to comply with the terms of such declaration of cooperation, in which instances the members of the F.O.G.A., in accordance with the requirement of the F.O.G.A., refused to sell or exhibit their merchandise to such non-complying retailers. The majority of the 12,000 retail dealers in women's garments referred to in Paragraph Six hereof signed such declarations of cooperation as a result of the threat of the F.O.G.A. that its members would sell their products only to those merchants who signed the declaration of cooperation.

The respondent, F.O.G.A., after it had secured the cooperation of a large number of retail dealers, sought to, 375
and did, induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of members of the F.O.G.A.

PARAGRAPH TWELVE: The F.O.G.A., as a part of its program, in 1933 instituted its Design Registration Bureau for the registration of alleged original designs and styles

of its women's garment-manufacturing members. Blank application forms were furnished the members, on which description was entered of the design and style of the garment to be registered, and members were required to submit a sketch of the garment with such form, together with an affidavit setting forth that the garment sought to be registered was an original design created by the applicant. Each registration was stamped and numbered, but such registration raised no presumption that the registered garment was, in fact, the original design of the registrant, but merely fixed the date when such claim was made.

377 PARAGRAPH THIRTEEN: The F.O.G.A. from time to time appoints what it designates as a "piracy committee," to determine whether the garments alleged to be copies of styles and designs registered by its members as original creations are such in fact. The piracy committee notifies both parties to the controversy as to the time and place of hearing, and both the garment claimed as original and its alleged copy are before the committee. After the hearing, the committee makes its determination, and if adverse to the alleged copyist, he has the right of appeal to certain other successive committees, as provided. When the challenged party has exhausted the appeals in such case provided, the status of the garment is fixed.

378 PARAGRAPH FOURTEEN: The F.O.G.A. employs in the principal cities throughout the country persons designated as "shoppers," who visit the stores of cooperating retail dealers for the purpose of examining their stocks, to determine and report as to whether they contain garments declared by the piracy committee of the F.O.G.A. to be copies of registered designs or styles of its members. When such copies are discovered by the shoppers, they request the retailer to remove the same from sale, and failure to do so is reported by the shopper to the F.O.G.A. These

shoppers also visit the stores of non-cooperating retail dealers, without disclosing their identity, for the purpose of ascertaining whether such merchants have on sale copies of alleged original designs and styles of F.O.G.A. members, and if such are found, it is reported to the F.O.G.A.

PARAGRAPH FIFTEEN: The F.O.G.A., in order to provide an effective means of preventing the purchase by retail dealers of alleged copies of original styles and designs registered by its members, inaugurated and maintains a card-index system by which the names of cooperating retailers who have signed the declaration of cooperation are each entered on a white card, duplicates of which are sent 380
to each member of the F.O.G.A., and such members are prohibited from selling to any retail merchant whose name is not so carded. The names of retailers who fail or refuse to sign the declaration of cooperation, or who, having signed, fail or refuse to take off sales garments adjudged by the piracy committee of the F.O.G.A. to be copies of registered original designs of an F.O.G.A. member, are entered on a red card, a duplicate of which is sent to each member of the F.O.G.A., and upon receipt of same, the member, in compliance with the regulations and requirements of the F.O.G.A., refuses to sell such red-carded retailer. The F.O.G.A. also distributes among its members lists of retailers who have failed or refused to sign the declaration of cooperation, or who, having signed same, fail or refuse to remove from sale copies of alleged original 381
styles or designs registered by its members, or who fail to comply with the rules and regulations of the F.O.G.A., with instructions that members receiving such lists are not to sell their merchandise to persons who names appear thereon, and its members thereafter refuse to sell such persons. The red-carded list, on March 20, 1936, contained the names of over 400 retail dealers located at various places throughout the United States. The F.O.G.A. has

also red-carded retailers who refuse to disclose the name of the manufacturer from whom they purchased alleged copies, even though such retailers removed the alleged copies from sale.

PARAGRAPH SIXTEEN: The respondent National Federation of Textiles, Inc., maintains a clearing-house for the registration of textile designs, under the name Industrial Design Registration Bureau. This bureau is available to members and non-members of said respondent corporation. The F.O.G.A. designated this bureau as the official registration bureau of its textile members, and the garment-
383 manufacturing members and the textile members of the F.O.G.A. entered into an agreement that the former would not buy textiles which were not registered in said bureau, and the latter agreed to sell only to those garment manufacturers who became parties to said agreement. The agreements were and are kept by said members.

PARAGRAPH SEVENTEEN: Respondent National Federation of Textiles, Inc., on December 23, 1935, placed an advertisement in a trade journal, notifying manufacturers and converters of textiles used in the women's garment manufacturing industry that members of the F.O.G.A. and other manufacturers of women's garments who were not members of the F.O.G.A., had signed pledges to use only textile designs which had been registered in the In-
384 dustrial Design Registration Bureau of the National Federation of Textiles, Inc.

PARAGRAPH EIGHTEEN: On December 28, 1933, the F.O.G.A. passed a resolution tha., as a means of preventing style piracy, its members would not buy from textile manufacturers who sold to retailers who entered into agreements with manufacturers to manufacture styles, and that they would not sell to retailers who resort to this practice.

PARAGRAPH NINETEEN: On September 13, 1933, the board of governors of the F.O.G.A., by resolution, prohibited its members from participating in any manner whatsoever in any retail advertising, and fixed expulsion from the organization as the penalty for violation thereof; and the members of the F.O.G.A. have complied and do comply with the terms of this resolution.

PARAGRAPH TWENTY: On June 10, 1935, the F.O.G.A. adopted a resolution that none of its members should allow or give any discount in excess of "8—10 e.o.m."

PARAGRAPH TWENTY-ONE: The F.O.G.A., on June 10, 1935, adopted a resolution prohibiting its members from selling at retail, and thereafter its members refused to make retail sales. 386

PARAGRAPH TWENTY-TWO: The F. O. G. A. cooperated with the Ladies' Ready-to-Wear Guild of Baltimore, Inc., in its attempt to prevent special sales except upon days designated by said Baltimore Guild.

PARAGRAPH TWENTY-THREE: In compliance with the policy and program of the F.O.G.A., its members refuse to sell their women's garments to persons who conduct business in residences, residential quarters, hotels or apartment houses.

387

PARAGRAPH TWENTY-FOUR: In the event a retailer fails to obey the rule of the F.O.G.A. which prohibits retailers participating with dress manufacturers in promoting fashion shows unless the merchandise used therein be actually purchased and delivered, the F.O.G.A. refuses to continue its affiliation with such retailer and denies to him all the privileges resulting from such affiliation.

PARAGRAPH TWENTY-FIVE: In compliance with the policy and program of the F.O.G.A., its members refrain from participating in fashion shows sponsored by retailers.

PARAGRAPH TWENTY-SIX: The F.O.G.A. employs auditors who audit the books of its members to ascertain whether they are selling red-carded retailers or violating any of the regulations, policies or programs of the F.O.G.A.

PARAGRAPH TWENTY-SEVEN: The F.O.G.A. collects fines which it imposes on its members who are shown by its auditor's reports, or otherwise, to have sold red-carded
389 retailers, or to have violated any of its policies or programs. A fine of $1,500 was collected from one member, and the F.O.G.A. notified its membership that a fine of $5,000 would be assessed by it in case of future violation.

PARAGRAPH TWENTY-EIGHT: Retail dealers in women's garments who have failed or refused to cooperate with the F.O.G.A., or who, having signed its declaration of cooperation, have failed or refused to remove from sale garments declared by the F.O.G.A. to be copies of registered original designs or styles of its members, have been occasioned loss of good will and great financial loss by the refusal of garment-manufacturing members of the F.O.G.A. to sell them their merchandise.

390 PARAGRAPH TWENTY-NINE: Manufacturers of women's garments who sell their products in interstate commerce and who are not members of the F.O.G.A. have been occasioned great financial loss, due to the return by retail dealers, in compliance with the requirements of respondent F.O.G.A., of garments declared by said respondent to be copies of registered original styles or designs of its members.

PARAGRAPH THIRTY: Respondent F.O.G.A. has induced and constrained retail dealers to refrain from purchasing any of their requirements from manufacturers declared by it to be confirmed copyists, and as a result, such manufacturers have suffered great financial loss.

PARAGRAPH THIRTY-ONE: All of the respondents, during the period of time, to wit, from March 7, 1932, to April 16, 1936, by cooperating with each other in the conduct and consummation of the policies and programs of the respondent F.O.G.A., and pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally by them, and by reason of the 392
policies and programs in pursuance thereof, have produced and caused the following conditions and effects:

(a) Prevented competitors of members of the F.O.G.A. and the National Federation of Textiles, Inc., from making sales of their products and shipments thereof in interstate commerce, and, as a result, competition in interstate commerce in the sale and shipment of women's garments and textiles used in the manufacture thereof has been substantially lessened, hindered and suppressed.

(b) Prevented retail dealers in women's garments, located throughout the United States, from buying their requirements from manufacturers boycotted by the respondent F.O.G.A., and as a result, competition in interstate commerce in the purchase and sale of women's gar- 393
ments has been substantially lessened, hindered and suppressed.

(c) Respondents F.O.G.A. and the National Federation of Textiles, Inc., have obtained and have exercised control over the business practices of a majority of the manufacturers and distributors of women's garments and the textiles used in the manufacture thereof, and have the power

to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries.

(d) Constrained, coerced and compelled retail dealers in women's garments throughout the United States to declare their intention to cooperate with the F.O.G.A. in its policies and programs by signing the declaration of cooperation submitted by the F.O.G.A.

(e) Caused retail dailers in women's garments who failed or refused to sign the declaration of cooperation of
395 the F.O.G.A., or who, having signed same, failed to remove from sale garments found by the F.O.G.A. to be copies of styles or designs registered as original creations of its members, to suffer great financial loss and loss of good will because of the refusal of members of the F.O.G.A. to sell their merchandise to such retailers.

(f) The F.O.G.A. fixes the amount of discounts to be given by its garment-manufacturing members to retail dealers.

(g) Garment-manufacturing members of the F.O.G.A. refuse to sell their merchandise at retail, or to persons conducting business in residences, residential quarters, hotels or apartment houses.

396 (h) The F.O.G.A. prohibits its garment-manufacturing members from participating in fashion shows conducted by retailers.

(i) The F.O.G.A. prevents its garment-manufacturing members from subsidizing retail advertising.

(j) The F.O.G.A. exacts fines from its garment-manufacturing members for violation of its policies and programs.

(k) Garment-manufacturing members of the F.O.G.A. refuse to buy from textile manufacturers that sell to retailers who enter into agreements with manufacturers to manufacture styles.

(l) Garment-manufacturing members of the F.O.G.A. refuse to sell to retail dealers who enter into contracts with manufacturers to manufacture styles.

(m) Textile members of the F.O.G.A. refuse to sell their products to manufacturers who enter into agreements with retail dealers to manufacture styles.

(n) Garment-manufacturing members of the F.O.G.A. refuse to purchase textiles from manufacturers thereof 398
who do not register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

(o) Textile members of the F.O.G.A. refuse to sell their products to manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

(p) Garment-manufacturing members of the F.O.G.A. refuse to sell to retail dealers in Chicago, Illinois, Minneapolis, Minnesota, and Baltimore, Maryland, who are not members of the local guild of said respective cities, or who do not conform to the rules and regulations of said respective guilds; and members of said respondent local 399
guilds confine their purchases of women's garments to members of the F.O.G.A. and those manufacturers who conform to the regulations, programs and policies of the F.O.G.A.

CONCLUSION

The acts, policies and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and tend to create a monopoly, within the intent and meaning of the Federal Trade Commission Act.

Dated this 8th day of February, A. D. 1939.

BY THE COMMISSION.

401 (Seal) R. E. FREER,
Chairman.

Attest:

OTIS B. JOHNSON,
Secretary.

402

Order to Cease and Desist.

403

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES.

404

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.	Docket No. 2769

405

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and other evidence taken before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and briefs filed herein and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

IT IS ORDERED, that the respondents, Fashion Originators Guild of America, Inc., its officers,

Maurice Rentner,	President, Treasurer and Member of its Board of Governors,
Herbert Sondheim,	First Vice-President and Member of its Board of Governors,
Charles Gumprecht,	Second Vice-President and Member of its Board of Governors,
J. A. Livingston,	Treasurer and Member of its Board of Governors,
407 Albert M. Post,	Executive Director,
James M. Golby,	Executive Secretary,

and their successors;

William Bass,	David Bender,
Louis J. Brenner,	Theodore Racoosin,
Jo Copeland,	Charles Lang,
William Fox,	Samuel Kass,
Joseph Halpert,	D. Eli Lahm,
Charles Miller,	Louis M. Wersba,
Kallman Carmel,	Leo Del Monte,
David M. Goodstein,	Matthew Kane,

Louis J. Mallas,

and their successors, members of its Board of Governors;

408 Austin M. DeLisser, executive secretary of the Textile Merchants Group of the Fashion Originators Guild of America, Inc., and E. W. Freudenberg, Samuel Levine and E. E. Meyer, and their successors, Members of its Steering Committee, and the following named members of the Fashion Originators Guild of America, Inc.:

ldrich & Malvin, Inc.
harles Armour & Bros., Inc.
oseph & Ben Barnett, Inc.
illiam Bass Dress Corp.
ender & Hamburger, Inc.
renner, Joseph & White, Inc.
attie Carnegie, Inc.
ewis Cohn, Inc.
avid Crystal, Inc.
nna Duke, Inc.
eigenbaum & Adelsohn, Inc.
erman Floersheimer & Bro., Inc.
uise Barnes Gallagher, Inc.
arfinckel & Siegel, Inc.
Goodman & Co., Inc.
lius Grossman & Fred Greenberg Dress Co., Inc.
harles Groden, Inc.
ax Heit Dress Corp.
yron Herbert & Charles Cooper, Inc.
rginia Hume & Gold, Inc.
allman & Morris, Inc.
muel Kass Gowns, Inc.
harles Kondazian & Papaz, Inc.
harles Lang, Inc.
nkowsky Modes, Inc.
n Reig, Inc.
ttie Rosenstein Gowns, Inc.
dolf Gowns, Inc.
M. Silverman Dresses, Inc.
erbert Sondheim, Inc.
ank Starr Friedlander, Inc.
ttre-Fox, Inc.
hn Traina, Inc.
ed A. Block, Inc.
N. Fried
ng-Kohn Mfg. Co.
Milton Altmark, Inc.
Arons, Bernstein & Arons, Inc.
Rose, Barrack & Lahm, Inc.
Herman Beispel, Inc.
Blotta & Conti, Inc.
Brenner, Morris, Inc.
Clifford Salkin, Inc.
Jo Copeland, Inc.
Dolces Dressing, Inc.
Eta, Inc.
Pauline Fields, Inc.
Henry Ganz, Inc.
Gardner & Schwartz, Inc.
Ed Garrick & Co., Inc.
Joseph Greenberg-Bettina, Inc.
Joseph Halpert, Inc.
Jack Herzog & Bro., Inc.
E. A. Jackson-Bienard, Inc.
Kaplan & Moskowitz, Inc.
Kiviette, Inc.
Kornhauser Gowns, Inc.
LaRue Dresses, Inc.
Mary Lee Frocks, Inc.
Mary Liotta, Inc.
H. Milgrim & Bros., Inc.
Jennie Moskowitz, Inc.
Nomis Dress Co., Inc.
Pattulo Modes, Inc.
Amrein Freudenberg & Co., Inc.
Bloomsburg Silk Mill, Inc.
Brueck & Richards, Inc.
Chatillon, Mouly, Roussel, Inc.
Combier & Co., Inc.
Coudurier, Frustus & Devigne, Inc.
Silk Guild of America, Inc.
Empire Silk Co. (Inc.)
The Forstman Woolen Co. (Inc.)

Tightly Bound

Robinson Bros., Inc.
Dartmoor Coat Co., Inc.
Ben Gershel & Co., Inc.
Ben Ginsberg, Inc.
Aaron Goldstein Co., Inc.
Grossman & Spiegel, Inc.
Monte, Sans & Pruzan, Inc.
Louis Kallish
Ashley Frocks, Inc.
Joseph M. Duberman
Joanne, Jr., Zinn Bros., Inc.
Louise Mulligan, Inc.
M. A. Litvin, Inc.
Germaine Monteil, Inc.
Nanty Frocks, Inc.
Paul Parnes, Inc.
Perles & Gilbert, Inc.
Maurice Rentner, Inc.
James J. Rothenberg, Inc.
Ruffolo Bros., Inc.
Somay, Inc.
Spectator Sports, Inc.
Straus-Miller, Inc.
A. Traina Gowns, Inc.
B. G. Garment Co., Inc.
S. Eisenberg
Junior Guild Frocks, Inc.
Matthew Kadetsky Co.
Carmel Bros., Inc.
Deitsch, Wersba & Coppola, Inc.
Del Monte Hickey Co., Inc.
Louis Goldstein Company, Inc.
Philip Mangone & Co., Inc.
Zuckerman & Kraus, Inc.
Max Rosenbluth
J. H. Horwitz
Jane Junior Dresses, Inc.
Junior League Frocks, Inc.

Theodore J. Gallagher, Inc.
L. J. Hyams
Kandelaft Silks, Inc.
Maginnis & Thomas, Inc.
Menke Kaufman & Co.
Wm. C. Openhym
L. & E. Stirn, Inc.
Bianchini, Ferier, Inc.
Sidney Blumenthal & Co., I
Case & Co., Inc.
Cheney Bros., Inc.
Descours, Genthon, Inc.
Croydon Fabrics, Inc.
F. DuCharne Silk Co., Inc.
Cohn-Hall-Marx Co., Inc.
Frank Associates, Inc.
Hess, Goldsmith & Co., Inc.
Jane Hyams
Lace Net Importing Co., In
H. B. Mallinson & Co., Inc.
Onondaga Silk Co.
Remond-Holland, Inc.
Stunzi Sons Silk Co., Inc.
Susquehanna Silk Mills (In
J. A. Wagenbauer, Inc.
Wechsler Silk Corp.
J. J. & N. Blackstone, Inc.
Ellen Lace & Embroidery C
Inc.
Ikle Freres & Co., Inc.
Lido Embroidery, Inc.
Record Lace & Embroidery
Inc.
Walter Tobler
Franz Hoenig
Schwarzenbach, Huber, Inc.
Wahnetah Silk Co., Inc.
Zellinger & Schreth, Inc.

a Rentner-Miller, Inc.
H. Hollander
erbert Lehman, Inc.
aison France, Inc.
wiss Novelty Embroidery Co., Inc.
ol Wolfman, Inc.

dler & Adler, Inc.
avid M. Goodstein, Inc.
seph Levay, Inc.
avid N. Lowenthal & Son, Inc.
harles W. Nudelman, Inc.
eodore Rosenberg
ar Maid Dresses, Inc.
wnley Frocks, Inc.
rwon Dress Co., Inc.
ytime Frocks, Inc.
rry Frank
ldman Frocks Co., Inc.
mark Dresses, Inc.
risian Mfg. Co., Inc.
sen Bros. Frocks, Inc.
ver Dresses, Inc.
tlin & Schneider, Inc.
derman-Bob Burns, Inc.
ace Ashley,
pri Frocks, Inc.
hen-Tunick, Inc.
n Davidson, Inc.
shion Wear Dress Co., Inc.
nsburg & Abelson, Inc.
e Claire Costumes, Inc.
ttle Bros., Inc.
tty Moskowitz, Inc.
tricia Perkins, Inc.
ich-Goldfarb & Co., Inc.
hultze-Zuch, Inc.
ll Steinman, Inc.

Dutschler, Trull & Justin, Inc.
C. H. D. Robbins Co., Inc.
Sheila-Lynn Dresses, Inc.
David S. Westheim Corp.

Bernard Appel, Inc.
Bonn Ray Dance Frocks, Inc.
Casino Dresses, Inc.
Dalton Frocks, Inc.
Dresden Dress Co., Inc.
Franklin Dress Co., Inc.
Alexander S. Gross, Inc.

Lyla Modes, Inc.
E. N. Marcus
Parnis-Levinson, Inc.
Radiant Dress Co., Inc.
L. C. Rosenblatt, Inc.
Stern & Goldberg, Inc.
Valmoy, Inc.
Bretter & Sussman, Inc.
Flo-Frocks, Inc.
George Hess Co., Inc.
Michael Kaplan
Wein Frocks, Inc.
Argosy Dresses, Inc.
Garland Dress Co., Inc.
Samuel Lipman
Julius Lipman
Rosenthal & Kallman, Inc.
Junior Fashion Guild, Inc.
M. Kaplan
Abbate-Swift, Inc.
Cecele Dance Frocks, Inc.
B. Tobias, Inc.
Herman Lipman
Marie-Lynn Dance Frocks, Inc.

Tightly Bound

Phil Zahn & Co., Inc.
Campus Modes, Inc.
Davidow, Inc.
Kane-Weill, Inc.
J. A. Livingston, Inc.
Mutual Rosenbloom Corp.
Zoltan Rosenberg
Sport Kraft, Inc.
Sam Steinberg & Co., Inc.

L. & D. Beilinson, Inc.
F.E.D. Dress Co., Inc.
Friedman Dress Co., Inc.
International Dress Co., Inc.
Joe Levine Dress Co., Inc.

and all present and future members, their agents, servants and employees, each and all,

CEASE AND DESIST from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to hinder or suppress competition in the interstate sale and distribution of women's garments or textiles used in the manufacture thereof; or to hinder or suppress competition among manufacturers of said garments or textiles in the interstate sale and distribution of said products to retail dealers, and particularly from directly or indirectly, in pursuance of any such understanding, arrangement, agreement, combination or conspiracy, from:

1. Inducing, coercing, constraining or compelling manufacturers of women's garments to confine their purchases of textiles to those textile manufacturers who register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

2. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to buy from textile manufacturers who sell to retail dealers in women's garments who enter into agreements with manufacturers to manufacture styles, or to refuse to sell to such retail dealers as resort to such practices.

3. Inducing, coercing, constraining or compelling textile members of the Fashion Originators Guild of America, Inc., to refuse to sell textiles to women's garment manufacturers who do not agree to purchase only from textile manufacturers who 422
register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

4. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell their merchandise to retail dealers who do not agree to cooperate with, or who do not cooperate with, the Fashion Originators Guild of America, Inc., by refusing to buy women's garments declared by it to be copies of original registered designs of its members and registered by them in the registration bureau of said respondent, Fashion Originators Guild of America, Inc., 423
and by returning to the manufacturers thereof any such copies which may be found in their stock, and by stamping all their orders for merchandise with the warranty clause stamp of the Fashion Originators Guild of America, Inc., which recites that the seller warrants that the garments ordered and sold are not copies of styles originated by members of the Fashion Originators Guild of

America, Inc., and that the purchaser reserves the right to return any merchandise which is not as warranted.

5. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to confine their sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, to retail dealers in women's garments who are members of the respective respondent local guilds of those cities, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-
425 Wear Guild of Baltimore, Inc., or those who conform to the standards and regulations of such respondent local guilds.

6. Inducing, coercing, constraining or compelling the women's garment-manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to conduct off-price promotion sales, or clearance sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, prior to the dates fixed for such sales by the respective respondent local guilds, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc.

426 7. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell at retail, or to persons conducting their business in residences, residential quarters, hotels or apartment buildings.

8. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to

refuse to exhibit or sell their merchandise to retail dealers who fail or refuse to sign the Declaration of Cooperation of the Fashion Originators Guild of America, Inc., or who, having signed same, fail or refuse to comply with the conditions thereof.

9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to contribute to the cost of advertisements of retail dealers in women's garments.

10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers. 428

11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments.

12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers. 429

13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of

America, Inc., and from imposing or collecting fines or penalties, or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc.

IT IS FURTHER ORDERED, that the respondent Michigan Avenue Guild of Chicago,—

431

Guy L. Ederheimer,	L. R. Pearson,
Edward A. Fletcher,	Leo Bramson,
Harry Blum,	M. E. Greenbaum,
Louis Gossert,	Sally K. Greenbaum,
A. E. Levitt,	E. R. Lindburg,
Bernard Rose,	George M. Gleason,
Herman Friedman,	Clarence A. Powell, and
Frank L. Cole,	Elise A. Runyan,—

its officers and members of its Board of Directors and their successors, its members and all future members;

The respondent Minneapolis Fashion Guild, Roy H. Bjorkman, its Executive Secretary, and his successors, its officers and members of its Board of Directors and their successors, its members and all future members;

The respondent Ladies' Ready-to-Wear Guild of Baltimore, Inc.,—

432

Charles G. Hutzler,	Allen S. Metzger,
C. F. Roycroft,	Fred H. Alperstein,
William Pollock,	Lester Bonwit,
Martin B. Kohn,	Albert D. Slesinger,
J. E. Ellington,	Sam J. Schleisner, and

Hal W. Kenaston,—

its officers and members of its Board of Directors, and their successors, its members and all future members:

CEASE AND DESIST from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, or persons, association or corporation:

(a) To refuse to purchase any of their requirements from manufacturers of women's garments who are not members, or who do not conform to the standards, ethics or regulations of the Fashion Originators Guild of America, Inc.;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., prohibiting 434
the purchase or sale of women's garments declared by it to be copies of styles or designs registered as original by its members in its design registration bureau;

(c) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any such declared copies as are mentioned in subparagraph (b), that are found in their stock shall be removed from sale and returned to the manufacturer thereof;

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that all orders for women's garments shall be stamped with its warranty clause which recites that the seller war- 435
rants that the garments are not copies of styles or designs registered with the Fashion Originators Guild of America, Inc., as original by its members, and reserving the right in the purchaser to return any merchandise which is not as warranted;

(e) To comply with the requirement of the Fashion Originators Guild of America, Inc., that purchases of women's garments be made only from its mem-

bers in good standing or from manufacturers who observe its standards, ethics, policies and regulations.

IT IS FURTHER ORDERED, that the respondent National Federation of Textiles, Inc., Peter Van Horn, its President, Irene L. Blunt, its Secretary, and their successors, all other of its officers and their successors, members of its Board of Directors and their successors, and its members and all future members, their agents, servants and employees:

437 CEASE AND DESIST from directly or indirectly, jointly or severally, entering into, or carrying out, any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, persons, association or corporation,—

(a) To refuse to sell their textile products to manufacturers of women's garments who fail or refuse to agree that they will not purchase any of their requirements from textile manufacturers who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.;

(b) To publish in trade journals, newspapers, or in any other manner, that manufacturers of women's
438 garments have entered into an agreement not to purchase textiles from manufacturers thereof who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

IT IS FURTHER ORDERED, that respondents Marshall Field & Company, Allied Stores Corporation, the Lindner Co'y, Joseph Horne Company, Mandel Brothers, Inc., John

Wanamaker, Philadelphia, Lit Brothers, Inc., Bullock's Inc., The Emporium Capwell Corporation and J. L. Hudson Co., their officers, members of their Boards of Directors, and their successors, their agents, servants and employees, and approximately 12,000 retail dealers in women's garments throughout the United States who have signed Declarations of Cooperation with respondent Fashion Originators Guild of America, Inc., whom it is impracticable to name herein, and of whom the respondents specifically named in this paragraph are representative:

CEASE AND DESIST from, directly or indirectly, jointly or severally entering into, or carrying out any understanding, arrangement, agreement, combination or conspiracy 440 with each other, or with any other person or persons, association or corporation:

(a) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion Originators Guild of America, Inc., or who do not conform to its standards, ethics and regulations;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members;

441

(c) To comply with the request of the Fashion Originators Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists;

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any women's garments found in their stocks which

have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

IT IS FURTHER ORDERED that the complaint herein be, and the same hereby is, dismissed, insofar as it applies to respondent G. H. Conze, for the reason that said respondent resigned as a member of the Steering Committee of the textile group of Fashion Originators Guild of America, Inc., prior to the issuance of the complaint herein, and refused to be a party to the policies and programs which formed the basis of the charges set out in the complaint.

443

IT IS FURTHER ORDERED, that the respondents shall, within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

BY THE COMMISSION.

(Seal) OTIS B. JOHNSON,
Secretary.

444

Order Deleting Portion of Order to Cease and Desist. 445

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of March, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES. 446

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.	Docket No. 2769

This matter coming on for hearing by the Federal Trade Commission upon its own motion and it appearing that 447 one prohibition of the order to cease and desist issued herein on February 8, 1939, should be deleted for the reason that there is a lack of substantial evidence establishing the participation of the respondent National Federation of Textiles, Inc., its officers, directors and members, in certain of the practices charged in the complaint, and the Commission having duly considered the matter and being now fully advised in the premises;

448 *Order Deleting Portion of Order to Cease and Desist.*

IT IS ORDERED that subsection (a) of that portion of the order to cease and desist issued on February 8, 1939, directed to respondent National Federation of Textiles, Inc., its officers and directors, and their successors, and its members, be, and the same is hereby, deleted, said subsection (a) appearing on page 8 of the order to cease and desist as mimeographed and reading as follows:

> "To refuse to sell their textile products to manufacturers of women's garments who fail or refuse to agree that they will not purchase any of their requirements from textile manufacturers who do not register their designs in the Industrial Design
449 Registration Bureau of the National Federation of Textiles, Inc."

IT IS FURTHER ORDERED that the order to cease and desist issued on February 8, 1939, except for the deletion herein directed, remain in full force and effect.

BY THE COMMISSION.

(Seal) OTIS B. JOHNSON,
Secretary.

450

Testimony. 451

BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769.

452

Room 901, 45 Broadway,
New York City, N. Y.,
July 15, 1936, 10 A. M.

Met pursuant to notice, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., R. J. MARTIN, Esq., and A. G. SEIDMAN, Esq., attorneys for the Federal Trade Commission. 453

SUNDHEIM, FOLZ & SUNDHEIM, Esqrs., for Lit Brothers of Philadelphia (Philadelphia, Pennsylvania), by SYLVAN HIRSCH, Esq., of counsel.

MILTON C. WEISMAN, Esq. (1450 Broadway, New York City, N. Y.), GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., for the Fashion Originators Guild of America.

DURYEA, ZUNINO & AMEN, Esqrs. (20 Exchange Place, New York City, N. Y.), S. S. DURYEA, Esq., G. C. HECK, Esq., of counsel, for G. H. Conze.

SAUL, EWING, REMIC & SAUL, Esqrs. (301 Pickard Avenue, Philadelphia, Pa.), by ALAN S. OLMSTEAD 2ND, Esq., of counsel, for John Wanamaker.

GLEASON, MCLANAHAN, MERRITT & INGRAHAM, Esqrs. (40 Wall Street, New York City, N. Y.), JOHN W. SIMPSON, Esq., ROBERT R. BRUCE, Esq., WALTER GORDON MERRITT, Esq., of counsel, for National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt.

455 REED, SMITH, SHAW & CLAY, Esqrs. (747 Union Trust Building, Pittsburgh, Pa.), J. H. BEAL, Esq., of counsel, for Joseph Horne & Co.

GOLDWATER & FLYNN, Esqrs. (60 East 42nd Street, New York City, N. Y.), MONROE GOLDWATER, Esq., NATHAN GOLDSTEIN, Esq., STANLEY KAUFMAN, Esq., of counsel, for Textile Affiliates.

PROCEEDINGS.

Examiner Bennett: Gentlemen, are you ready to proceed?

456 Mr. Haycraft: May it please the Examiner, it is just 10 A. M., and I notice that the principle attorneys for the principal respondents are not present.

Examiner Bennett: They are not here yet?

Mr. Haycraft: No, sir. I had a conference with them yesterday afternoon, and they asked that this hearing might be held over until 10.30, as it was impossible for them to get here at 10 o'clock this morning.

Examiner Bennett: Shall we wait until that time?

Mr Haycraft: I think it would be well to wait a few minutes longer.

Examiner Bennett: That is satisfactory. We will recess for a few minutes.

(Whereupon a brief recess was taken, whereupon at 10.30 o'clock A. M. the hearing was resumed as follows:)

Examiner Bennett: Gentlemen, come to order, please.

This proceeding in the Matter of Fashion Originators Guild of America, Inc., Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, Ladies' Ready-to-Wear Guild of Baltimore, National Federation of Textiles, Inc., their officers and so forth, under Docket No. 2769, is set for 458
hearing at this time and place. Counsel appearing for the Federal Trade Commission are E. F. Haycraft, Esq., R. J. Martin, Esq., and A. G. Seidman, and for the respondents Milton C. Weisman, George Feldman, Herbert S. Keller, for the Fashion Originators Guild of America; John W. Simpson, Robert R. Bruce and Walter Gordon Merritt, for the National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt; for Lit Brothers of Philadelphia, Sylvan Hirsch, Esq.; for John Wanamaker, Alan S. Olmstead 2nd, Esq.; for Textile Affiliates, Monroe Goldwater; for G. H. Conze, S. S. Duryea and G. C. Heck; for Joseph Horne & Co. of Pittsburgh, J. H. Beal.

Mr. Haycraft: Mr. Examiner, it has occurred to me that, because of the size of this case and the number of 459
respondents involved here, that it might be well if the Commission's counsel make a brief statement as to what is involved in this case, and what issues we feel are raised by the pleadings here.

Examiner Bennett: Yes, I think so.

Mr. Haycraft: To that end, I wish to state that the Fashion Originators Guild of America, Inc., is an association primarily of dress manufacturers. The other guilds

that are named in this complaint, the Commission's complaint, are what might be described as affiliated or subsidiary guilds of the principal guilds, or parent guilds.

Outside of the retail dealers, however, of dresses, women's and misses' dresses, located in Chicago and Baltimore and Minneapolis, there are also listed as respondents a number of department stores who have co-operated with the Guild in its complaint to prevent or eliminate what is known as the copying of styles, where a name has been given to it, properly or improperly, as style piracy. The various department stores that are named, are named as representing themselves and a certain large group of retail
461 dealers that are co-operating.

Now, there are a large number of charges that are contained in the complaint. Answers, of course, have been filed by the various respondents to the issues that have grown out of these pleadings, and, according to counsel for the Commission, I believe they are as follows:

The first is whether the garments manufactured by the members of the Guild are in such a demand that they must necessarily be offered for sale by the public by any retail store intended to handle a complete line of ladies' and misses' garments. That is one of the issues that is involved here, to determine the effect of the action of the Guild, whether the retail dealers located throughout the United States with whom there is some sort of relationship
462 charged by the Commission and denied on the part of the dealers, whether this relationship amounts to an understanding or agreement on the part of the retail dealers that they will not buy garments that are alleged to be copies of garments that are alleged to be copies of garments manufactured by the members of the respondent Guild.

I say that is rather an important issue in the case, whether or not this relationship that exists between the

Guild and the retail dealers who are co-operating with the Guild amounts to an understanding or agreement to do the things that they are doing.

Then there is a question of whether or not the activities of the Guild in relation to the retailers has any relation to the manufacturers who are not members of the Guild and do not register their designs with the Guild, amounts to what might be called a boycott. That is a charge in the complaint—whether or not the list of retail dealers exists that are not entitled to buy goods from members of the Guild because they do not co-operate; whether that list so furnished to the members of the Guild amounted to a blacklist; and, as charged by the complaint, as being 464 a scheme, or part of a scheme, to boycott.

Then there is the question involved as to the extent of co-operation of the textile manufacturers who manufacture the goods out of which garments are made by the dress manufacturers, and there is a question arising there as to whether or not the extent of the co-operation between those textile manufacturers and the Guild is a private conspiracy as alleged to boycott those manufacturers who are not members of the Guild.

Examiner Bennett: And that is the relation in which you bring in the National Federation of Textiles, Inc.?

Mr. Haycraft: That is right. They are known by the members of the Guild as the Textile Division, or group, of the Guild.

465

Now, then, of course there are a number of practices that are condemned by the local guilds, the Local Guild of Retail Dealers, that are involved; and the extent to which the Fashion Originators Guild of America co-operates with the local guild in enforcing prohibition of those local practices. And then, of course, there is the effect or issue as to the fact that this arrangement between the Guild and its manufacturers, and the one hundred textile manufacturers and retail dealers, what effect that has had upon

those dealers and those manufacturers other than those participating in the plan, or in a conspiracy, as the Commission describes it.

I think that, as briefly stated, would give you an idea as to what the issues are in this case.

Now, I may have to add to that some of the minor issues that will come up from time to time; but those are the principal ones.

The first witness to be called by the Commission will be Mr. Albert M. Post, executive director of the respondent the Fashion Originators Guild of America, Inc.

Mr. Weisman: I believe that it might clarify the issues
467 and the course of the proof if I were permitted to make a brief statement as to the chief respondent's position; that is, the Fashion Originators Guild of America, Inc.

Examiner Bennett: All right.

Mr. Weisman: At the outset, before I go into the formal position of rebuttal which the respondent will assume with regard to the proof in chief that counsel for the Commission has outlined, that it is his intention to adduce here I wish to make a formal reservation of all rights herein, and to state on the record that we are proceeding upon the express understanding that by proceeding we do not waive our right to object to the bringing of this proceeding or the decision of the Commission to proceed at this time.

468 Among other reasons for this reservation of rights, I wish to outline on the record that I believe and urge that the Commission is, at this time, by its own pronouncements and rulings, and by the rulings of the District Court, estopped from going on with these proceedings.

As I have read the complaint, the action is one or the proceeding is one instituted under Section 5 of the Act which reads and the nub of which is unfair methods of competition in commerce are hereby declared unlawful.

I believe there is no argument possible that in this case the only unfair method of competition that might be urged or that will be urged against the respondent herein is that the actions of the respondent are in restraint of trade, or tend to a monopoly. I do not believe it is necessary for me to urge upon this Court that it is the settled law that the words "unfair methods of competition" as used in this Act and as interpreted by the Circuit Court, various Circuit Courts of Appeal, and as affirmed by the Supreme Court, allege to such restraints of trade as have been held wrongful or criminal or subject to damages under the Sherman Act and/or the Clayton Act.

In this case, prior to the institution of this proceeding, 470
there was a suit instituted against the respondent in the United States District Court for the District of Massachusetts, alleging that these very practices were in restraint of trade. That Sherman suit, the title of which was Filene & Sons against the Fashion Originators Guild of America, Inc., and other respondents here, was an action brought under the Sherman Anti-Trust Law, which, though instituted by a private party, is in the nature of a public suit, and the Courts will so hold. In that suit, in which the very act of this restraining was examined in greatest detail, it was then before the Court, and the Court, by its findings of fact made upon the motion for a preliminary injunction, found that such actions were not in restraint of trade, and were reasonable and proper, in view of the 471
circumstances.

That case took approximately thirty days to try. There were hundreds of exhibits. There were 1800 pages of testimony. We are now awaiting final determination, which we expect to have in the course of the next few days, with findings of fact and conclusions of law for a full and complete trial; and we urge and claim that the finding in that suit is binding by reason of the particular language of the complaint in this particular case.

And we say that that is the reason, one of the reasons, why this proceeding may not go on, and that the Commission is bound by this ruling that will be enunciated in that case if it shall so decide to reserve the right if, during this trial, the findings of fact are made, and as we believe they will be made passing upon these very acts and conclusions of law to submit those conclusions of law and findings of fact in this case, the proceeding is a bar hereto.

In a moment, I would like to read the present existing findings of fact and conclusions of law that have been made in that case on the motion for preliminary injunction, which I believe is binding and determinative to the
473 issue herein.

Mr. Haycraft: I object to that.

Mr. Weisman: May I not proceed uninterrupted, and have counsel wait until the end to interpose his objection?

Examiner Bennett: All right.

Mr. Weisman: I also wish to urge that the Commission is further estopped from proceeding in this case, by reason of the fact that the Commission heretofore, and in the spring of 1935, made a complete analysis and a complete examination of all the facts, circumstances, acts, deeds, and transactions of the Guild, and after the conclusion of such examination, writes a letter which I am going to offer in evidence, in which they stated that from such examination—of practices as they then existed and as they now are, with this exception—in other words, there was
474 no retrogression from the situation, and that, by that letter, the Commission advises that there was nothing in our practice which, within the purview of the Act, was wrongful or harmful.

I would like to advance at this time and for the purpose of the record read into the record the letter of the Commission of July 17, 1935.

Mr. Haycraft: That is objected to.

Examiner Bennett: You may formulate the objection. Let me see the letter, please.

(Mr. Weisman hands the letter referred to to the Examiner.)

Mr. Weisman: This is a photostatic copy of the record.

Mr. Haycraft: This letter does not relate to the matter of the proceeding. It is another matter entirely.

Mr. Weisman: Then that should not be conclusive but go to the probative weight of this proceeding.

Mr. Haycraft: No probative weight whatsoever, Mr. Examiner.

Examiner Bennett: The files were closed without prejudice, and the Commission actually acted in April, 1936, and I think the letter is irrelevant, as stated. 476

Mr. Weisman: May I call your Honor's attention, and I trust you will pardon me, for I am doing the best I can for my client, that the complaint in this case alleges, right through to the date of this letter, and I believe that in view of the fact that among other things—in other words, to give this Commission jurisdiction, there must be a public interest involved; and I think that, while it may not be determinative, there is certainly a probative weight to show that the Commission examining these acts which are charged in the complaint, expressed itself that there was, as late as July, 1935—that there was no public issue involved, and I respectfully urge that, for those reasons, I urge this. I hadn't called your Honor's attention to it before, that the acts alleged in the complaint cover the 477 period that this letter covers. It is not as if they had charged us from and after July, 1935, with doing something which was contrary; but they say at that very time we were doing something, and in my statement to the Court I said to your Honor, even as to the acts which are charged as having occurred since July 17, 1935, the proof in this case will show that those acts are no wrongful acts in the light of what was done before that.

If anything, our conduct subsequently was of an amelioratory kind, and one which lessened any possible claim of hardship of our action.

Examiner Bennett: Well, now, if you are going—the ruling stands as to an argument on the merits of the case. It is quite useless to make it at this time. If you want to call attention to any special features of the proof or something of that sort, I will be very glad to hear you but you are really wasting your time and the time of the hearing in making an argument on the merits of the case at this time.

Mr. Weisman: Well, anyway, may I mark this for
479 identification?

Examiner Bennett: Beg pardon?

Mr. Weisman: May I mark this for identification?

Examiner Bennett: You may mark it.

Mr. Haycraft: I object to that at this time, Mr. Examiner. I think we should proceed in an orderly way, and let the Commission put in its case; and at the time we close our case I have no objection to the respondent putting it in evidence.

Examiner Bennett: Well, it may be marked for identification.

(The letter referred to was marked Respondent's Exhibit 1 for Identification.)

Examiner Bennett: Now, if you have any statement to
480 make along those lines, I would be glad to hear it; but, as I say, going into the law, the merits of the case, is quite beside the point at this stage of the proceedings. I will go along as far as I can.

Mr. Weisman: I am quite sure that the Court is mindful of the great respect in which I hold it, and if I differ with the Court, as a practicing lawyer that is my duty, to present my beliefs and my position as a protagonist for the respondent.

Examiner Bennett: Surely.

Mr. Weisman: In that relationship I would just like to make one further brief claim before I come to the merits, and that is that I wish to urge at the outset that the Commission is further estopped from claiming that our coping with this unfair—with this matter of style piracy in this fashion, by reason of the fact that the Federal Trade Commission has itself recognized style piracy as an unfair method of competition, and in its Trade Practice Conferences through which the Commission has encouraged the formulation of rules of fair competition, it has itself provided the following:

> "The practice of usurping design, style, or pat- 482
> terns originated by a competitor, and appropriating them for one's own use within blank period after such origination, is condemned by the industries."

This appeared in the Federal Trade Commission publication entitled "Fair Trade Practices" on June 30th, 1933. This has been confirmed by various cases in the Circuit Court of Appeals, the chief of which is the Winstead Hosiery case. These are my formal objections to the proceeding and my reservation of rights.

I believe it would be well for me to say to the Court, by way of opening, the other things that presented themselves, and the background behind the position of the Guild.

The Guild was organized in 1932, prior to the organization of the Fashion Originators Guild. We will prove in this case that the industry in the higher-priced brackets, where there was style origination, was completely demoralized; that people were being daily or weekly or monthly driven out of business by the practice of these copyists. In a nutshell, and making it as brief as I can, a manufacturer who originates designs has a large overhead. It is necessary for him to employ designers; he uses high-class

materials; he uses the best of labor. It is necessary for him to go to Europe to observe style trends. The testimony will develop that this costs—to produce a line costs on the average anywhere from $20,000 to $40,000 a season, and that there are two major seasons during the year, and approximately three supplemental seasons, so that the cost is tremendous.

The proof will further show that, when a manufacturer produces this line, he is merely producing something that he hopes will have a ready consumer acceptation; that is, that it will be able to sell; that, in order to produce such a line successfully to be in business, it is necessary for
485 him to make, let us say, forty garments, which is known as a line. I think your Honor will know something about the dress business before this case is over.

Of these forty, possibly six or eight have a ready consumer acceptation, so that he must produce, if he is going to stay in business, he must recoup his investment out of the six or eight good ones. And when dresses are sold, they are never sold in large lots. The retailer comes in and he will buy ten different numbers, two or three of a particular number; and then, as those dresses move, as there is a consumer acceptation for them, then, and only then, does the manufacturer, the originator, begin to reap the benefits of his origination.

In other words, it is a question of reorder. When a retailer knows that dresses will sell, then the reorders
486 come in.

Now, this style copying destroyed the only possibility—the only chance that the manufacturer had to recoup his investment, for, the minute it became apparent, or sometimes even before the manufacturer was aware that the style was a good one and had consumer acceptation, it was adapted, or stolen.

The proof will show in some cases it was stolen, robbery was committed; fraud was committed, to get that. There-

upon, the dress was copied down; if the dress was to wholesale for $29.75, the copyist not having all of the expense, the capital investment, the experimentation that was necessary, the other thirty-four, let us say, ones that didn't have consumer acceptation, would thereupon copy it down and sell it, let us say, for $22.50, depriving the manufacturer, the originator, of the opportunity to recoup its investment, to stay in business.

Thereupon, we will show that this wasn't an evil in itself which stopped there, but that it went right down the line. The $29 dress was thereafter copied, first, by the $22 manufacturer, and then by the $17 and then by the $10 and then even by the $6 and so on down the line. 488
We will show that this copying was the bane of the dress industry from every conceivable angle; from the angle of the manufacturer who was gradually and in great numbers being driven out of business; the originator; secondly, that it was injurious to the retailer, in that the retailer was injured by it beyond measure in that the minute he put a dress in his showroom or in his shop to sell, and put it in the window, if ten minutes later or ten hours later his competitor had a copy of the dress at a showing for six or seven dollars less, it not alone destroyed the value of the dress, and the retailer immediately had to take a loss thereupon, but it also destroyed the good will, the confidence of the store, that this evil ate not alone at the manufacturer, but at the retailer.

We intend to show still further that it was injurious 489
to the consumer; that it destroyed in the consumer, first, the value of the purchase of the consumer—the value of what he bought; because, if the consumer bought from me to-day for $22.50 and she saw it the next day for $19 or $18, her mind was unsettled.

We will show furthermore that it was injurious to the consumer in that it did not give the consumer something that was better than anything else for $19. It didn't give

her a $27 dress for $19; but merely by reason of the fact that these copyists simulated our designs, used poor workmanship, used poor materials, gave to that woman not even a good value at the $19, so that she was injured. We will also——

Examiner Bennett: I think you have gone along far enough in this character of address. You are going into an argument in the case, instead of giving a brief statement of what you intend to prove. I wish to point out that I will have to cut it off at this time, and go ahead with the case. I don't see that we are going to get anywhere by filling the record with an argument at this time.
491 That is my ruling. You make a very definite character of statement, and I am not going to hear it any further.

Mr. Weisman: I bow to the ruling of the Court, and I wish to say, in explanation of my rather lengthy statement, my brief experience with these anti-trust cases indicates—and I believe in some measure I was sustained in that by the rules of the Court, that the back history was always of great importance in determining the ultimate fact. I really thought that it might be of assistance to the Court. If the Court feels otherwise, however——

Examiner Bennett: Yes; but the background would be perfectly proper, but you are going into the merits of the situation.

Mr. Weisman: I will reserve any further statement.

Mr. Goldstein: We represent the merchants, or the
492 Textile Group, respondents in this action, and we wish to join with Mr. Weisman in his reservation of rights to produce testimony, and join with him in our objections to the further prosecution of this proceeding on the estoppel ground urged by Mr. Weisman.

ALBERT M. POST was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your full name, residence, and occupation, Mr. Post? A. Albert M. Post, 35 East 76th Street, New York. I am executive director of the Fashion Originators Guild.

Q. How long have you been occupying that position? A. Approximately two years.

Q. Can you give us the approximate date that you became associated with the Guild in that capacity? 494 A. Why, not the exact date; but around the 20th something of September, 1934, I believe.

Q. And as such what have been your duties? A. Well, I am the administrative head of the Fashion Guild, if that answers your question.

Q. And by that can you elaborate somewhat upon what you do as the administrative head of the Fashion Guild? A. Well, I supervise the routine performance of the Guild's business; I act under the votes and consensus of opinion or actions of the board of directors of the various committees; I attend all meetings and hearings and trials.

Q. All right. Now, then, when you testified first as to the nature of the business of the Guild, let me ask you in what business is the Guild engaged? A. Well, I should say 495 that the best description I could give is that it is a trade association, in a way. It is not exactly that; but I imagine that that is the closest description.

Q. You have a constitution and by-laws? A. Yes.

Q. Do you have a copy of that with you this morning? A. I believe so, yes.

Q. Will you produce that at this time? A. (The witness produces a document.) Here it is. Here is the constitution and by-laws as of April 16th, I believe, 1936.

Q. That contains all of the amendments made since the original organization? A. Up to that date.

Mr. Haycraft: Without explanation, I offer this in evidence as Commission's Exhibit No. 1.

Examiner Bennett: It will be marked as Commission's Exhibit No. 1.

(The document referred to was marked Commission's Exhibit 1-A to 1-T, inclusive, and received in evidence.)

Mr. Weisman: It appears that these records—or this is not the complete by-laws. I am waiting to
497 see whether or not there are some others, because the question was, "Have you got them up to date?"

Examiner Bennett: All right.

Mr. Weisman: Don't you want the by-laws as of to-day?

Mr. Haycraft: As of April 16th, the date of the complaint.

Examiner Bennett: The exhibit has been marked.

Mr. Haycraft: It consists of twenty pages.

By Mr. Haycraft.

Q. To your knowledge was this organization organized under the laws of the State of New York? A. I believe so.

Q. And known as a membership corporation? A. Yes,
498 that is correct.

Q. I notice in the original—strike that out. I notice that there are certain amendments to the by-laws, beginning on page 17 through 20. Can you testify as to when those amendments were made effective? A. I shall be glad to look at them. I doubt very much whether I could state in a general way—except that they were made effective during my association.

Q. I want to lay the foundation, of course, for further testimony, so will you make that attempt? A. Page 17, did you say?

Q. Yes; beginning on page 17. A. Well, the first three, I would say, were prior to my association with the Fashion Guild. The last two——

Q. Well, take amendment No. 4. What do you say about that? A. Amendment No. 4? Wait a minute, now. That was prior to my association with the Guild.

Q. Do you know—have you any indication as to when that was passed? I notice there is a pencil notation on it. A. Yes. I notice that pencil notation. I don't know who put it on there; but I assume that might have been the 500 date. It is April 8th, 1933.

Q. Subject to correction, I want that explanation of the date as it appears on the exhibit as it is now, so I want the explanation of what that refers to. A. I don't know.

Mr. Weisman: He says he does not know.

Mr. Haycraft: We will proceed to the next, then.

Mr. Weisman: I think that is a sufficient answer.

The Witness: Well, the next one, I believe, was about the time I came in; although I am not certain of that. I remember some discussion about it; but whether it was passed or then passing, I do not recall.

By Mr. Haycraft. 501

Q. There is a pencil notation there? A. There is.

Q. What is that pencil notation? A. October 15, 1934.

Mr. Haycraft: Will counsel for the respondent stipulate that those two dates represent the dates that those two amendments were respectively passed by the Guild?

The Witness: By the Guild, yes.

Mr. Weisman: Just a moment. I am counsel. I don't know; so I won't stipulate that. If you want me to find out, if it is a fact, I will be glad to stipulate it. I don't know any more about it than you do right now.

Mr. Haycraft: I would like to have you find out.

Mr. Weisman: If you will suspend a minute, I will try.

The Witness: Your Honor, I would like to make one statement. I just recall—I think it was the month of October that I came with the Guild; not the month of September.

503 Mr. Weisman: Then counsel for the Fashion Originators Guild will stipulate that Amendment No. 4 was passed on or about April 8, 1933, and that Amendment No. 5 was passed on or about October 15, 1934.

Mr. Haycraft: Thank you.

By Mr. Haycraft.

Q. I notice, according to this constitution and by-laws, Article 3 provides for three classes of membership, the manufacturers' membership, textile membership and affiliated membership; the manufacturers' membership being manufacturers of ladies' garments; the textile membership, textile merchants, and the affiliated membership, dealers
504 and traders in articles used as accessories for ladies' garments or merchants of any ladies' wear, et cetera. I will ask you if you can produce at this time a list of the manufacturers of ladies' garments, the members of your organization. A. Yes, I think so. It takes a little time, because we have to look back to our letters and find out the code number, and then go to the files. You wanted that as of what date, Mr. Haycraft?

Q. April 16, 1936. A. What was that question again, please?

Q. (The reporter repeated the last question as above recorded.) A. Yes, here it is.

(The witness produced a document.)

Q. I want the record to show that I am asking this as of April 16, 1936. A. Yes. I am informed that that is April 16, according to your letter-request.

Mr. Haycraft: With that explanation and identification, I offer the exhibit in evidence.

Mr. Weisman: No objection.

Examiner Bennett: That may be marked as Commission's Exhibit No. 2. 506

(The paper referred to was marked Commission's Exhibits 2-A and 2-B and received in evidence.)

Mr. Haycraft: That consists of two pages.

By Mr. Haycraft.

Q. I wish to call your attention to this Exhibit No. 2; you have a copy of it there? A. I don't think so. We didn't bring any extra ones.

Q. Well, I will hand it to you, and ask you the question: you have listed dress members, 73; affiliated members, 8; coat and suit members, 12; Junior Miss members, 8; textile associates, 7; sportswear members, 14; protective affiliates, 17; and then another group of listed concerns following that, under the protective affiliates, of 29 and 15, subdivisions, and my question is whether or not the textile associates that you have listed in this exhibit are manufacturers of ladies' garments, or are manufacturers of textiles used in the manufacture of ladies' garments? A. They are manufacturers of textiles. 507

Q. And, in fact, they would comprise the second group of members—that is, the textile merchants listed in the constitution and by-laws that I called your attention to a moment ago; is that correct? A. Yes; that is correct.

Q. Will you explain for the record what the affiliated members are that are listed as eight manufacturers of ladies' garments? How do you distinguish them from your dress members that you have there listed? A. Well, in the actual Guild set-up, the difference between affiliated members and the regular members, in so far as dress manufacturers are concerned, or people making dresses, was that they had a separate division within the industry and within the Guild. In other words, whatever they may have been on that list that you refer to, Junior wear manufacturers, or sportswear, they formed a division within the Guild.

509 Q. All that is true with respect to the coat and suit members, the Junior Miss members, and so forth? A. Yes.

Q. But what about those members that were located in other cities? A. I believe they were called affiliated members.

Q. And are so designated in this exhibit? A. I believe so. Also, the Protective Affiliated Group were known as affiliate members.

Q. That was—you had in mind a moment ago—I think you had that in mind? A. Not entirely; because, with the sportswear and cloak and suit people, they were also affiliated members.

Q. They are not so designated in this exhibit, Mr. Post. A. They are designated as sportswear members.

510 Q. Sportswear, Junior Miss? A. That is right.

Q. Our next question was going to relate to the protective affiliates; how do you distinguish between your regular membership and these particular divisions? A. What is the distinction?

Q. What is the distinction between the protective affiliates? You have one group of members of Dress Creators Guild—that is 17 members, and then another group of 29, and another group of 15; now, will you tell us, so the record

will show, what the distinction is between this group that I called your attention to, and your regular members, your other members? A. Yes. I think Mr. Haycraft, that you are a little confused between two classifications of affiliated memberships.

Q. I am, Mr. Post. A. Then there are protective affiliates.

Q. I don't think I am; but if I am, I would be glad to have you clear it up. A. There are protective affiliate members. They are members who joined the Guild for the purpose of style-protection. They are in no way associated with the Guild in any other activity, except those which pertain to style protection. 512

Q. And that includes all that you have listed under that caption? A. Under the caption of protective affiliates.

Q. Yes. Right now is there any further distinguishing characteristic between the protective affiliates and your other members? A. I am afraid that I do not understand your question.

Q. Is there any distinction as to the price of garments that they manufacture, as a usual proposition? A. Well, they happen to manufacture in the lower price range, if that is what you mean.

Q. Yes. A. Well, that is correct.

Q. And can you testify from this exhibit as to the price range of these various groups of manufacturers, or the various group manufacturers? A. I will try.

Q. Will you do that? A. You are talking about this 513 group under the caption, protective affiliates; is that right, Mr. Haycraft?

Q. Take from the very beginning; the first page of that exhibit where you have the list of dress members. A. You want to know the price range?

Q. The price range.

Mr. Weisman: I object to that, unless this witness will testify, unless he is qualified—unless he

knows what these hundred-odd manufacturers charge for their respective garments. I mean, obviously, it is a question which appears that nobody could know, except the manufacturer.

Mr. Haycraft: I object to that, Mr. Examiner. The witness can testify as to whether he knows or not.

Mr. Weisman: You didn't ask him whether he knew. You asked him whether he could testify to the price at which these people sell their garments.

Mr. Haycraft: Well, as a matter of fact, let the witness tell what he can or cannot, instead of counsel.

515

Mr. Weisman: I object to it on the ground that there is no foundation for the question. When a witness who is a lay witness is asked a question, "What is the price that these people charge for their garments?" without the foundation being laid as to whether he knows, he obviously gives a guess, and we have a guess in the record.

Examiner: Bennett: Do you know as to the price range?

The Witness: Well, I don't know, no.

Examiner Bennett: You haven't any means of finding out?

The Witness: I have means.

Examiner Bennett: That isn't part of your duties?

516

The Witness: No. There are some parts that I do know. I mean, when you hand me the whole list, I don't believe that I know the price range of all these things. I know some of them.

Examiner Bennett: You can give some of them?

The Witness: Surely.

Examiner Bennett: Well, then, just state what you know.

By Mr. Haycraft.

Q. Do the best you can on that.

Mr. Haycraft: And I might state for the record, Mr. Examiner, that we had that information during the course of the investigation coming from this office, and I do not know whether Mr. Goldby or their associates—but somebody gave that to us.

A. Isn't it possible that whoever gave it to you looked it up at the time?

Q. I suppose so; but I will ask you to do the best you can on it. A. All right. 518

Mr. Weisman: Wait a minute. I object to his doing the best he can, unless, by doing the best he can means that he can answer as to those he knows; not to do the best as to those that he does not know.

Examiner Bennett: That is true.

By Mr. Haycraft.

Q. Let me put it this way; I will obviate the necessity of further discussion on that, and ask the witness if he will, during the recess, take this exhibit, and consult his associates, and indicate thereupon, immediately after the name of the various manufacturers, the price—the general price range of the dresses they manufacture, so that they may be divided up. 519

Mr. Weisman: I object to that. That won't make it any better; if he marks it down and he does not know. If my friend wants this information, I am anxious to get the record as accurate as possible, and I don't care where the chips may fall. I want it right. I will agree that, by to-morrow, we will communicate with these manufacturers and find out what their price range is, and then we shall

have testimony that I think has some probative force; but I don't want him to go out and guess during the recess, and then write something down.

Examiner Bennett: Unless he has a record of it. If he has a record of it——

Mr. Haycraft: As I said a moment ago, we have already been furnished this information by this witness' office; why go into all this mystery now?

Mr. Weisman: There is not any mystery. You were furnished a guess that was not under oath—what somebody thinks might be the case. Now, I don't want to try a case on that kind of evidence. If I am here to meet a charge, I want to meet a
521 charge.

Mr. Haycraft: We didn't ask for guesses, Mr. Examiner. We asked for accurate information, and we assumed we had it and based our case on that.

The Witness: I haven't got that.

Examiner Bennett: Give what you have. I say, let us see what you have. Give us what you have.

The Witness: Yes, sir.

By Examiner Bennett.

Q. Concerning this price information, what was your function, the function of your association, your office, with regard to price information of the kind asked for? That is, did you get it in the regular course of your activities
522 from manufacturers? A. No, sir. The only time we get any such information is the time when application is filed. We ask that as a part of the application as to the general price range they make, and that may consist of four answers; but we accumulate no information on prices whatsoever.

Q. Yes; but you have that information as to price range that comes to you in due course in laying that number in? A. At the time, yes.

Examiner Bennett: Is that what you want?

Mr. Haycraft: Yes, that is what I want.

Examiner Bennett: All right; he is competent to produce that, and he will produce it. If you want to contradict it, [illegible]ght.

Mr. Weisman: [illegible] we will get it and offer it, not as to what these men actually manufacture, but that they said was their price range at the time they made application to the Guild.

Examiner Bennett: That is all we want.

Mr. Haycraft: That is all that is necessary.

Mr. Weisman: Well, we will furnish you with that information. Thank you.

524

Examiner Bennett: If you will get that, please.

Mr. Haycraft: I will pass that for the time being, it being understood that it will be furnished at a later date.

By Mr. Haycraft.

Q. Now, as to the third classification of membership, that of dealers and traders in articles used as accessories in ladies' garments, and merchants of ladies' wearing apparel commodities, et cetera, I notice that you have defined in Section 5 of your constitution and by-laws "any dealer, or trader in the articles used as accessories to ladies' garments, or any merchant of any ladies' wearing apparel, whose reputation and standing shall have first been approved by the Membership Committee, and who 525 otherwise complies with the organization's requirements, shall be eligible for membership as an affiliated member." Now, can you testify as to the affiliated membership under that article as of April 13, 1935? A. Well, you better let me read that article, and just see what it is. Well, under that affiliated membership, I don't believe we have any members. I do not believe so.

Q. How long has that been true? A. I don't recall any members, dealers, in articles other than textile people, and they are provided for under textile membership. There may be some within the Textile Division.

Q. No; this refers to dealers and traders. A. Dealers and traders?

Q. Dealers and traders. A. We have never had any membership.

Q. Dealers or merchants of ladies' wearing apparel. A. Never had any such membership, that I recall, or have heard of.

Q. Do you keep in your files a list of retail dealers who
527 are co-operating with the Guild in any way? A. Yes.

Q. How many of such dealers did you have in your list as of April 16, 1936? A. Well, I cannot answer that, except by approximation. Shall I answer it that way?

Q. What do you mean by "approximation"? A. Well, there is somewhere between 12,000 and 12,500. Whether it is the exact number—what the exact number is on a certain day, I cannot tell you.

Q. What sort of a record do you keep of those dealers? A. There is a card file.

Q. A card file? A. Yes.

Q. In your organization, when do you make a card file of a retail dealer? A. We make a card file—you mean when we make a file, or when we make a card?

Q. When do you make the card that goes into the file?
528 A. At the time that the retailer indicates to us what their policy is regarding style protection and style piracy.

Q. Do you have any forms approved by the Guild and submitted to prospective—strike that out—to retail dealers soliciting their co-operation in that respect? A. Yes.

Q. Will you produce at this time all such forms that have been in use by the Guild for that purpose? A. Yes; I believe these are copies of all the forms that were ever used.

Q. Prior to the dates—approximate dates—that those forms were used, the respective forms that you have? A. No, I cannot testify to that; but I can look that up.

Q. Can you testify that some time prior to April 16, 1936, one or all of these forms have been used? A. No; there is one there that I don't think was used prior to April 16th. That is one that the——

Q. (Interposing) Well, the one that you just called my attention to was not used prior to April 16th, 1936, marked 2-B? A. That is right.

Q. And the others, they were; is that right? A. That is right, yes.

Mr. Haycraft: I ask that these papers which the 530
witness has handed to me, be marked as the next Commission's exhibit, each one to take a separate letter.

The Witness: Mr. Haycraft, I believe there was a declaration that was used by some of the officers, that apparently was not included in this thing, because you asked for stores, I think; in the letter you asked for that; but I will be glad to get that one at the next session.

Mr. Haycraft: All right. Make a separate exhibit of those.

The Witness: You asked merely for the forms we used, and not necessarily as to the individual statements.

Mr. Weisman: It has been suggested that these 531
be marked 3-A, B, C, D and E.

Examiner Bennett: Very well. They will be received in evidence.

Mr. Weisman: No objection.

Examiner Bennett: There is no objection, and they will be marked as Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-E.

(The papers referred to were marked Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-F respectively, and received in evidence.)

By Mr. Haycraft:

Q. Is there anyone in your organization, Mr. Post, who could testify as to when these respective forms, 3-A to 3-E, were put in use and the circumstances? A. No. But I believe that, by looking in our files, we could get an approximate date from those that were signed at that time. If you want that, I will be very happy to get that information.

533 Q. Yes. I might inquire as to whether or not your minutes of any of your committees might show that. A. I don't think so, except for that one ten-point one. I believe that one was specifically approved by the board.

Q. And—that is, 3-E was? A. Yes, I think so.

Q. Well, we will refer to that one later, then. A. Yes.

Q. Now, then, as I understand your testimony, if a dealer signs any of these forms that were in use at the time they were effective, his name was placed on a card; would that be automatic, or would you or someone in your organization pass upon the admissibility of that particular declaration or statement? A. Oh, no. We accepted the signed declaration without question.

Q. No investigation? A. Investigation of what?

Q. By you or anyone in your organization? A. Well,
534 I don't know exactly what you mean by "investigation."

Q. Well, to ascertain whether or not the organization signing that was what it purported to be. A. What the organization was?

Q. Yes. A. Well, if you will notice, in the left-hand corner it says the firm submitting the declaration—it shows what the firm was, and, therefore, they came in to us from our own members, and they had been in contact with the stores, yes, if that is what you want.

Q. Yes. That is what I want to get at, exactly. A. Now, of course, you understand that those are the forms, and that there are many letters.

Q. Well, let's get the forms first, and then take the letters later. A. All right.

Q. Now, then, these forms, when signed by a dealer, were presented to you—your organization—by some member of your organization. Is that correct? A. That is correct; not always. because sometimes the store would sign directly in our own office; our representative.

Q. And you would pass on it yourself? A. There is nothing to pass on, except whether or not the person in the office is truly a representative of that store; that is all. 536

Q. Did that—while you were executive director of the organization, did it come within your duties to receive these declarations? A. No; except, speaking generally, that they were received in an organization for which I was responsible; but I didn't receive them myself.

Q. You didn't receive them in all cases? A. I didn't.

Q. In all cases, they didn't pass across your desk? A. No; the routine was that they did not pass across my desk at all.

Q. Who did receive them and have charge of the filing of them? A. The secretary to Mr. Golby.

Q. And what was the next step that was taken in respect to the information contained in these declarations? A. Anything other than the filing of the name of the dealer? 537

Q. Yes. A. Well, a card would be made out and then duplicated for each of the files of our members.

Q. Each file of your members? A. For each of the individuals: for each individual file of each individual member.

Q. In other words, every dress manufacturer, Junior Miss, or Coat and Suit Member, of your organization, received a duplicate card containing the name of the

dealer who signed this form of declaration and co-operation? A. That is right; and the Protective Affiliates.

Q. And the Protective Affiliates as well, when they became members? A. That is right.

Q. By the way, when did they become members, the Protective Affiliates? A. I think July 1, 1935, was the first group of Protective Affiliates; I believe that that is correct.

Q. Was there any particular color assigned to a card that was made up from the names of dealers signing these forms of declaration or co-operation? A. Yes.

Q. And what were the colors? A. Well, there were
539 white cards, or yellow cards, and green cards.

Q. What was the distinguishing feature? Why was it yellow or white or green? A. I am not sure what the distinction between the white and the yellow was. It was just the acknowledgment that it was this store's policy to protect goods; the green cards were retailers who were signed up on the piracy agreement, but who operated in apartment house shops, or something like that, which the Fashion Guild members did not care to do business with; but that again, as I told you before, in distinguishing between the Protective Affiliate membership and the regular membership, that was not binding upon them.

Q. In other words, the green card was not furnished to the Protective Affiliates? A. The green card was.

Q. The green card was? A. Yes.

540 Q. Furnished also to the others? A. Furnished also to the others, yes.

Q. What was the difference, then, in the treatment of the information on the green card by the two groups? How did your members treat the names on the green cards? A. My recollection is that the regular members did not sell the green cards, and the affiliated membership, or the Protective Affiliated membership, did.

Q. To refresh your recollection, was not the yellow card a member of some local retail guild? A. I do not think so. I do not think that that was that difference.

Q. Can you consult your associates at this time, and testify as to that? A. Yes, I will. Well, let's take one at a time. The white card is a member of a retail guild, and the yellow card is a retailer who is co-operating on piracy, but not a member of the local guild. The green card is—well, the green card apparently is a retailer in a city not a member of the local guild, but he might be in an apartment house shop, or something like that, which the membership do not sell.

Q. Now, who determines into which category this pro- 542
tective retailer would go, as to whether he was to have a white card or a yellow card or a green card? A. Well, the first distinction, of course, between members of a retail guild is very easy, because we have the membership of the retail guild, and that becomes very easy. The second distinction was that we would ask them, or somebody would ask them, or we have maps in our office of many cities under the zoning laws, and they would be checked; and in this industry I think that you pretty generally know.

Q. Who determined that in your organization? A. Whoever handled the original declaration, they would tell us the character of the business.

Q. What I am trying to find out is, did you at any time have anything to do with saying whether or not the 543
name of a dealer signing one of these declarations of co-operation would be given a green card or a yellow card or a white card? A. I think Mr. Golby handled that.

Q. Mr. Golby? A. Yes.

Q. Under your direction? A. Well, I would know of it occasionally; if something came up that he raised a question about; but ordinarily——

Q. If there was any dispute about it? A. Any question about it, it would come to me.

Q. Now, just a moment, about these retail guilds. I think they have been mentioned. Perhaps we had better go into that a little bit.

(Discussion off the record.)

By Mr. Haycraft.

Q. Will you describe, Mr. Post, the retail guilds that are associated with the Fashion Originators Guild?

Mr. Weisman: I object to the form of the question as incompetent, immaterial, and no proper foundation laid in the first place. It does not ap-
545 pear that any retail guilds are associated with the Fashion Originators Guild. That calls for a conclusion of this witness; and, furthermore, obviously, this witness could not know. He has not been asked whether he knows anything about these other guilds; or how their formation was undertaken. He is asked for something—and I object to both the form and the substance of the question.

Examiner Bennett: Please read that.

(The reporter read the last question as above recorded.)

By Mr. Haycraft.

Q. I withdraw that question. You have been talking
546 about retail guilds in your testimony. What are they? A. Associations of retailers.

Q. Located where? A. Well, there is one in New York, one in Chicago, one in Minneapolis, and one in Baltimore. I believe some—or, rather, one in Philadelphia. That is all that I can recall.

Q. Can you give the names of those guilds? A. New York is The Uptown Retail Guild; Chicago is the Michigan Avenue Guild; Baltimore is the Baltimore Ready-to-Wear Guild; Minneapolis is the Minneapolis Fashion Guild, I think.

Q. Philadelphia? A. Philadelphia is the Philadelphia Something-or-other. I don't know; probably the Philadelphia Guild.

Q. Can you give the approximate time that they were organized? A. No, I cannot.

Q. Is there any relationship between them and the Fashion Originators Guild of America? A. Relationship?

Q. Yes. A. I think two of them, Minneapolis and Chicago, have contracts with the Fashion Guild.

Q. Does the Baltimore? A. No.

Q. Did it ever have? A. Yes.

Q. When? A. I believe the Baltimore contract expired December 31st, 1934.

548

Q. Have the terms of that contract been followed or observed in any way since that time?

Mr. Weisman: I object to that. That calls for a conclusion of the witness, referring to a document not in evidence. How does he know? How do we know what the terms are, or how can we tell whether they have been followed? It is a conclusion of law anyhow, and that is what most of the courts are all the time trying to find out—obviously a witness cannot testify to it.

Examiner Bennett: Well, I think you will have to make a better foundation for that. I will sustain the objection.

By Mr. Haycraft. 549

Q. What changes, if any, took place between the Baltimore Guild and the Fashion Originators Guild subsequent to December, 1934?

Mr. Weisman: I object to that as having no proper foundation laid, and as being immaterial. We haven't been shown what the materiality is of

the question, or what the contract was, or what the agreement was. It is rather putting the cart before the horse.

By Mr. Haycraft.

Q. I will ask the witness to produce at this time an agreement that is referred to in his testimony. A. (The witness produced a document) Here is the Baltimore contract.

Mr. Weisman: Wait just a minute. Is that the original contract?

The Witness: That is a copy of the original con-
551 tract.

Mr. Weisman: Where is the original?

The Witness: I haven't got the original.

Mr. Haycraft: Well, what is that?

The Witness: You asked me for the Baltimore; is that right?

Mr. Haycraft: Yes.

The Witness: I find I am in error as to the expiration date; the expiration date is December 31st, 1935, instead of, I think I said, 1934.

By Mr. Haycraft.

Q. That is the Baltimore Guild? A. The Baltimore Guild.

552 Q. You make that correction in your testimony, do you? A. How do I do that?

Q. I say, you wish to make a correction in your testimony? A. Yes, I do.

Q. Now, do you have the contracts? A. Yes. You asked me for that.

Mr. Weisman: The witness produces copies of an agreement between the Ladies' Ready-to-Wear Guild of Baltimore, Inc., and the Fashion Origina-

tors Guild of America, Inc., dated the 30th day of September, 1935; also an agreement between Fashion Originators Guild of America, Inc., and the Minneapolis Fashion Guild, dated August 26th, 1935; also an agreement between Fashion Originators Guild of America, Inc. and Michigan Ayenue Guild of Chicago, Illinois, dated the 10th of May, 1935.

Examiner Bennett: At the request of the Commission?

Mr. Weisman: All produced at the request of the Commission.

By Mr. Haycraft. 554

Q. I will ask the witness if these are, to his knowledge, correct copies of the originals in the files of the Fashion Originators Guild? A. I believe so.

Q. They were produced pursuant, I mean—were they prepared pursuant to your instructions? A. That is correct.

Q. Did you have them checked against the originals? A. I did not check them.

Q. Did you have them checked against the originals? A. No, I do not think so.

Mr. Haycraft: There will be no objection to that?

Mr. Weisman: No; we will stipulate that they 555 are correct copies.

Examiner Bennett: All right.

Mr. Haycraft: Am I to understand that the Minneapolis agreement and Chicago agreement are now in effect—still in effect?

The Witness: Minneapolis and Chicago are now in effect, yes.

By Mr. Haycraft.

Q. You have no agreements with the Philadelphia? A. No, sir.

Q. With this explanation and identification——

The Witness: I believe that is right.

Mr. Haycraft: Well, with this explanation and identification, I will offer these three agreements in evidence, taking the next exhibit numbers in the order presented.

Examiner Bennett: Take the next three numbers, and give each page a number. There are six pages in each exhibit, I believe.

557 Mr. Haycraft: Exhibit 4 is the Minneapolis agreement. Exhibit No. 5 is the Michigan Avenue Guild; and Exhibit No. 6 is the Baltimore agreement. Exhibits 4 and 5 have each six pages, and Exhibit No. 6 consists of five pages.

(The papers referred to were marked Commission's Exhibits 4-A to 4-F, inclusive, 5-A to 5-F, inclusive, and 6-A to 6-E, inclusive, respectively, and received in evidence.)

By Mr. Haycraft.

Q. Did you have anything to do with the negotiation of these agreements? A. Yes.

558 Q. What did you do?

Mr. Weisman: For the purpose of clarity: We have three different agreements negotiated with three different people at three different, widely separated times. I do not want to object, but I think we shall be able to understand the situation better if we direct ourselves to one agreement at a time.

Examiner Bennett: All right.

Mr. Weisman: Does not your Honor feel that way about it?

Examiner Bennett: Yes. I shall be glad to do it in that way.

Mr. Haycraft: What did you have to do——

Mr. Weisman: I merely objected to talking of the three at the same time.

Examiner Bennett: Take them up seriatim.

Mr. Weisman: I thought the Court had sustained me; otherwise, he cannot give an intelligent answer, for as to what he might have done with one, he might not have done with the other.

By Mr. Haycraft. 560

Q. What did you do? A. Well, I understand that there is a question—that it seems to me——

Q. You are instructed to take them up in the order in which they were given.

Mr. Weisman: No—you were instructed to ask the question seriatim.

The Witness: What is the order, please?

Mr. Haycraft: Take the Michigan Avenue Guild first.

A. Well, the Minneapolis Guild——

By Mr. Haycraft. 561

Q. Well, take the Minneapolis Guild. A. Well, the Minneapolis Guild, as the administrative head of the organization, I talked to our attorneys; talked to the head of the Guild, drew up the preliminary points on which we were in agreement prior to the draft of the contract being drawn and any disagreement—things that were not clear in the draft as they came through; wrote letters or corresponded on them, attempted to adjust the differences or misunderstandings or confusions, whatever they might have been.

Q. You had correspondence with the Minneapolis dealers who entered into the agreement? A. With the head of the Minneapolis Guild, yes.

Q. Who is that? A. Roy Bjorkman.

Q. And this agreement was a culmination of those negotiations conducted? A. Conducted—negotiations and conferences, yes.

Q. Now, I will ask about the Michigan Avenue Guild, Mr. Post. A. Well, generally, the procedure was the same; although in Minneapolis—in Chicago, rather, I met a man named Gleason who was the head of the Guild at that time, and their attorney a man named Marshall, and, I
563 believe, the other officers of the Guild at different times may have either written or corresponded or come in to see us, or else we saw them in Chicago.

Q. This agreement was the culmination of the negotiations you had? A. That is right.

Q. Both oral and written? A. That is right.

Q. And what about Baltimore? A. In Baltimore, the head of the Guild, Mr. Charles Hutzler, and the negotiations were carried on in the main through him; although the vice-president, I think, is a man named Metzler—Alan Metzler, and he partook in some of it.

Q. And this agreement was the culmination of the negotiations which you had? A. Correct.

Q. Did you have authority to negotiate these agreements? A. To negotiate the agreements?

564 Q. Yes. A. Well, if I were sure what the word "negotiate" means as you use it, I could answer it. I would have the authority to negotiate, yes; but not to approve the agreement.

Q. Who did have the final agreement—that is, the final authority to approve the agreement? A. The Board of Governors of the Fashion Originators Guild for our organization; and, I assume, for their organization, their board of directors.

Q. Now, referring back for a moment to the declaration of co-operation, the forms which have been identified here, Commission's Exhibits 3-A to 3-E, I notice that in each one of them there is an opening statement to the effect as follows: "We understand that the members of your organization"—strike that out. The declaration is addressed to the Fashion Originators Guild, and the opening statement reads as follows: "We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." I will ask you whether or not you are familiar with the way in which these dealers were made acquainted with that policy of the Guild? A. What policy? 566

Q. That I just read to you; that they will recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy.

Mr. Weisman: Wait a moment. I do not think that question is clear.

Mr. Haycraft: Strike out that question.

By Mr. Haycraft.

Q. It says "that the members of the Guild will confine their sales to retailers who recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." A. Now, let me see if I can understand that question again. Will you repeat it? 567

Q. (The reporter repeated the last question as above recorded.) A. Well, it seems like an awfully broad question; but there was publicity. There were meetings. We traveled around the country, held meetings in various cities,

the members of the Guild told it to their customers as they came in. Goodness, I don't know just how many different methods might have been used, or how many thousands of lines of newspaper copy were used by trade publications on the program.

By Mr. Haycraft.

Q. Did you get our circular letters? A. Yes, I think we did, yes.

Q. Did you furnish information to trade magazines to that effect? A. I should not wonder.

Q. Were addresses made at meetings of retailers by your-
569 self or Mr. Rentner? A. Yes; they were—since I have been with the Guild, and by Mr. Rentner prior to that.

Q. Mr. Rentner is the president of the Guild? A. Yes.

Q. He was at the time that you went with the Guild? A. He still is.

Q. I say, he was at the time that you went with the Guild? A. Yes.

Q. Do you have with you to-day any of the circular letters or copies of the newspaper or trade magazine articles with respect to the publication of such a policy on the part of the individual members of the Guild? A. Well, if they are among the letters that you asked for, I have them with me: I do not recall.

Mr. Weisman: They were not among the letters
570 that you asked for; but I will say that, if you will give us a reasonable time, even though you have not asked for them, we shall be glad to bring them in. Unfortunately, you asked for so many things that, to get together all of the things you asked, took pretty nearly all our time.

Mr. Haycraft: I will offer this for identification.

Mr. Weisman: I will ask to read this five-page letter. It will take a few moments.

Examiner Bennett: Yes; all right.

Mr. Weisman: I have no objection to the introduction into evidence of this address made by Mr. Maurice Rentner, chairman of the Fashion Originators Guild, on the topic of "Fashion Originators Guild and its Success in the Future," delivered at the convention of the National Retail Dry Goods Association in Detroit, Tuesday, January 16, 1934.

Examiner Bennett: You are examining that?

Mr. Haycraft: I offer it.

Examiner Bennett: That will be received as Commissioner's Exhibit 7.

Mr. Haycraft: That consists of five pages.

(The paper referred to was marked Commission's Exhibit 7-A to 7-E, inclusive, and received in evidence.) 572

By Mr. Haycraft.

Q. Were personal contacts made by yourself and others in your organization among retail dealers? A. Yes.

Q. Who else, besides yourself, was authorized to make such contacts? A. Contacts?

Q. Yes, sir; that is, calling upon retail dealers, in individual cases or in groups. A. I don't think that anybody was specifically authorized to do that.

Q. Well, was it customary for anybody else to do that, besides yourself? A. Well, Mr. Golby; he is the executive secretary; and Mr. Goldstein, who is in charge of our Piracy Department; Mr. Rentner as president has also done a good deal of that. There is a man named Morris Kaulman, who was executive director prior to my being with the Guild, who did a great deal of it. The various officers and members of the Board of Governors have, at different times, also done it. 573

Q. Now, a while ago, in discussing these forms, you mentioned that some other forms were had with resident

buying officers, I believe, here in New York; did you have a form of declaration of co-operation to be signed by them? A. I think so, yes.

Q. Do you have that available? A. I said that I would have that to-morrow.

Q. You will have it to-morrow? A. Yes.

Q. I did not ask for that. That is why it is not here now? A. Yes.

Q. Well, they represented retail dealers, did they not, Mr. Post? A. I do not believe that that is correct.

Q. You do not believe that that is correct? A. They represent——

575 Q. Retail dealers? A. Yes. But they are not retail dealers.

Q. But they are representatives of retail dealers? Is that it? A. Yes.

Q. You don't think—well, how many such organizations are you familiar with? A. What organizations?

Q. Buying; I referred to that a moment ago. A. How many?

Q. Yes. A. How many do I know of?

Q. Yes. That is it. A. Well, there is one organization known as the Association of Buying Officers that say that they have twenty-seven or twenty-eight members, all of whom are buying officers. I should say that I might know a couple of hundred of them in total.

Q. There are about that many buying officers in New
576 York representing retail dealers outside of the city? A. Oh, I would not know about that.

Q. Can you state whether or not you have secured declarations of co-operation from any of these buying officers? A. Yes.

Q. And can you state which ones? A. Well, all that we do business with. I cannot tell you just which ones they are.

Q. Are they individual members represented by those buying officers? Have they signed declarations of co-operation of some kind—either a letter, or some form? A. I am sorry. I cannot follow your question exactly, I don't quite get which group—or which form you are talking about.

Mr. Haycraft: Read the question.

Q. (The reporter repeated the last question as above recorded.)

Mr. Haycraft: I will withdraw that question.

By Mr. Haycraft. 578

Q. Have the Retail Dealers whom these buying officers represent, signed a declaration of co-operation in some form or another, and indicated to you that they were co-operating with you in your style piracy campaign? A. Yes; some of them have.

Q. Some of them have? A. Yes.

Q. Well, is any agreement that you might have—no, strike that out. Have you obtained separate declarations of co-operation from the buying officers, as distinct from their individual members, the people that they represent? A. Yes.

Q. And that is the form that you are going to find for me to-morrow? A. Yes.

Q. Will you also at the same time be able to have or to 579 testify as to the names of these buying officers that have indicated a desire to co-operate? A. Yes, sir.

Q. Now, is it a fact that the business of the Fashion Originators Guild is conducted and controlled by the Board of Governors, as indicated in the constitution and by-laws which you have furnished here? A. No, I do not think so. Is that what is indicated?

Q. I am reading from it: "The management of the organization, and of all its affairs and property, shall be entrusted to 14 of its members as hereinafter set forth, to be known and constituted as a Board of Governors. The Board shall consist of all the following officers of the Organization. At least four additional members thereof shall be of the Textile Membership, who shall be honorary members only, without liability or power to make any decision or act for the organization, but with the privilege in their discretion of attending any meetings of the Board: (1) Chairman of the Board; (2) First Vice-President; (3) Second Vice-President; (4) Financial Secretary; (5) Re-
581 cording Secretary; (6) Treasurer. Section 2. The Election of the Governors"— A. Well, that reading confirms what was my impression; the control of the Guild rests with its members, the Board of Governors acting on those things as they come up, and within certain bounds, I should say; but, in the final analysis, the control of the Guild rests with its members.

Q. Well, now, would you say that the functions of the Board of Governors as set forth—would you say that that was set forth in the language which I have just read?

Mr. Weisman: Just a minute, please. I object to that as immaterial. The agreement speaks for itself, and the witness has already fully answered. The constitution and by-laws says that the man-
582 agement is with the board of directors. The witness was asked a question. He says it is true that the board of directors manages it, but the members control. I think that that is a complete answer. Now my friend is arguing with his own witness as to the meaning of the language which is in this document.

Examiner Bennett: Will you repeat that question, please?

(The reporter repeated the last question as above recorded.)

Mr. Weisman: The function of the Board of Governors is set forth there.

Examiner Bennett: I think I will sustain the objection in that form. I think it is proper for us to know the practice that has been followed.

Mr. Haycraft: Well, I will ask him whether or not, in practice, the Board of Governors manages the organization and the affairs and the property of the Guild.

A. In practice, the answer is yes, although it has been 584
the practice of the Board of Governors of the Fashion Originators Guild to refer to its membership any question which they think important, or in which there has not already been a previous determination which is a fair guide.

Q. And will we find the results of the deliberations and actions of the Board of Governors and the members in the minutes of the organization? A. Yes.

Q. Do you have those minutes here with you at this time? A. Yes.

Q. Will you now produce them? A. Mr. Weisman, I would like to point out to you that we have no copies of these minutes—most of these forms we had copies of; but we haven't of these.

585

Mr. Weisman: Mr. Haycraft, could you defer your calling for this and overnight I will have a copy made. Obviously, I do not want to give you our minute book.

Mr. Haycraft: We do not want all your minutes, I don't think, quite.

Mr. Weisman: If you will tell us what you want?

Mr. Haycraft: I am going to indicate in the examination what minutes——

Mr. Weisman: We will get copies to the Commission of everything that is indicated. We do not want, however, to lose custody of this minute book.

Examiner Bennett: All right.

Mr. Haycraft: Let the record show that the witness has produced the minute book, and then we can make the selection.

By Mr. Haycraft.

Q. I will ask you to consult the minutes—the minute book that you have before you, of the members, first. A. The members?

587 Q. The members on June 20, 1932; and see if you have the minutes of a meeting on that date; a special meeting. I will withdraw that question. No—I will let that stand, I believe.

(The reporter repeated the last question as above recorded.)

Q. Have you got that? A. I have, yes.

Q. June 20, 1932? A. That is right.

Q. Do you find a reference in those minutes to the matter of apartment house retailers? A. I do, yes.

Q. A discussion? A. Yes.

Q. Now, at my request— A. (Interposing) I believe this is it.

588 Mr. Haycraft: Just a moment. Mr. Examiner, at my request, then, I ask that a copy of the minutes of the Dress Membership on June 20, 1932, be produced at the next hearing, and copies can be made, and, I understand, rather, in lieu of the original which the witness has just identified.

Mr. Weisman: Of course, we shall be very glad to do that.

Examiner Bennett: All right.

The Witness: Do I understand that this is the complete copy of the minutes, or just the thing you refer to now?

Mr. Haycraft: As far as I am concerned I do not care for anything except the reference to that; but I do not want to be placed in the position of taking excerpts, unless counsel for the respondent will agree that just that point shall be copies.

The Witness: If we are given a few days, we can get anything.

Mr. Weisman: We will produce that.

Mr. Haycraft: I think that we can save a little time, Mr. Examiner. 590

I have here extracts that have been made, and we will let the witness check them up against the original as we go along.

By Mr. Haycraft.

Q. In connection with these exhibits, I would like to ask the witness to state for the record the practice of the Piracy Committee, calling his attention to the provisions of the constitution and by-laws with respect thereto, pages 10 and 11, which says:

"Section 1. The Piracy Committee shall consist of five members, the Chairman of which and two of the members must be members of the Board of Governors, but the remaining members need not be. 591 This Committee shall have at least three members of the Manufacturers Membership.

"Section 2. It shall be the duty of this Committee to investigate all complaints received by the organization regarding the piracy of styles, fashions, or textiles, and/or a violation of those matters, and things constituting the objects and purposes of this Organization, and, in its discretion, to exercise

measures to abate the piracy. It shall be the duty of this Committee to render a written report of the result of its investigations to the Board of Governors with all convenient speed. The life of this Committee shall be for a period of one year.

"Section 3. Vacancies on the Piracy Committee shall be filled by a majority vote of the members of the Committee, but the candidates so proposed shall first be approved by the Board of Governors, and after election to serve until their successors shall have been elected.

593 "Section 4. If two members of the Committee shall vote in the negative, such proposed nominee shall not be recommended to the Board of Governors for approval."

My question is: What was the practice of the committee?

Examiner Bennett: Frame another question.

By Mr. Haycraft.

Q. I have read you—are you familiar with the provisions of the Piracy Committee, Article 9 of the constitution and by-laws? I will read that:

"Section 1. The Piracy Committee shall consist
594 of five members, the Chairman of which and two other members must be members of the Board of Governors, but the remaining members need not be. This Committee shall have at least three members of the Manufacturers membership.

"Section 2. It shall be the duty of this Committee to investigate all complaints received by the Organization regarding piracy of styles, fashions, or textiles, and/or a violation of these matters, and

things constituting the objects and purposes of this organization and in its discretion to exercise measures to abate the piracy. It shall be the duty of this Committee to render a report of the results of its investigations to the Board of Governors, with all convenient speed. The life of this Committee shall be for a period of one year.

"Section 3. Vacancies in the Piracy Committee shall be filled by a majority vote of the members of the Committee, but the candidate so proposed shall first be appointed by the Board of Governors and after election to serve until their successors shall have been selected. 596

"Section 4. If two members of the Committee shall vote in the negative the proposed nominee shall not be recommended to the Board of Governors for approval."

My question is: Is it the practice of this organization of which you are an executive director to follow the provisions of the constitution and by-laws that I read to you in respect to the Piracy Committee?

Mr. Weisman: Now, I believe we have two questions there. I may be mistaken. May I have the stenographer read that? I believe Mr. Haycraft started out with one question by reading something, and when he got finished, he had another question. 597

Now, obviously, if that is the situation, I want it corrected. I don't believe that two questions can be intelligently answered.

Examiner Bennett: Will you read that again, please?

(The reporter read the last question as above recorded.)

The Witness: I am familiar with the provisions in the constitution for that Piracy Committee.

Examiner Bennett: You are?

The Witness: Yes.

By Mr. Haycraft.

Q. Now will you answer the question as to whether or not the practice of the Guild is to follow out the provisions or to follow on the provisions provided in that constitution? A. Pertaining to that particular thing? Is that your question?

Q. It is. A. I do not think that that question can be
599 answered. You have got to specify at what time that was the original constitution.

Q. Well, what was the practice when you went with the Guild in the fall of 1934? A. I am not sure how the committees of the Guild were functioning at that time.

Q. Well, who does know? A. Well, there was a constant evolution on that thing; and to take a particular time and say how were they functioning, or were they functioning in such and such a way, the only thing you can do on that is to go back to the records of the Piracy Committee and see how they were functioning as of any particular date.

Q. Well, don't you have any recollection as to how they were functioning when you first became associated with them? A. Well, I have a distinct recollection that they
600 were not functioning the way that they are to-day; if that is what you mean.

Q. As to how they were functioning when you first became associated with them? What is your recollection as to how they were functioning when you went with them? A. That there were Piracy Committees; that they were selected by a method of what might be comparable to selecting arbitration committees.

Q. Who made the selection? A. The participating manufacturers.

Q. You mean the members of the Guild? A. Members of the Guild and non-members of the Guild; the people involved in the particular question of piracy on the individual garment.

Q. And of what were the committees then composed? That is, as to their ordinary walks of life, occupation, that is what I mean. A. Well, Mr. Haycraft; I think the difficulty is that there might not have been a routine method such as we have to-day; that some committees might have been composed of retailers; some committees might have been composed of manufacturers who were not members of the Guild; some committees might have been composed of Guild manufacturers. As I stated before, 602
there was an evolution on this thing, and it is very difficult to put your finger on a particular point and say what you were doing then. I can say what we have been doing for approximately a year now when the present system was inaugurated. That is very clear.

Q. Well, what were you doing before the present system was inaugurated? A. Well, I just said how they were selected at the time I came in. I think by a method of mutual agreement between the participating or involved manufacturers, as to whatever extent that was possible. They might have been manufacturers; they might have been retailers.

Examiner Bennett: And was it their practice to try individual cases? That is, to have hearings in 603
individual cases?

The Witness: Oh, yes; at no time did the Piracy Committee deal except with an individual case; an individual garment.

By Mr. Haycraft.

Q. Did they report to the Board of Governors? A. They made a report which, I believe, was submitted as part of the minutes for approval to the Board of Governors.

Q. Then did the Board of Governors take action on the report of the Piracy Committee? A. What period are you speaking of?

Q. When you first went with the organization. A. I do not think so.

Q. What was the practice? A. That their decisions were accepted by the participants unless one of them protested and then brought it to the Board of Governors; then the Board of Governors sat. It would function more or less as a board of appeal, if you will, from the decisions of the Piracy Committee.

Q. Then what was the outcome of—no, strike that. Did
605 the Piracy Committee, when you first went there before the present set-up that you say has been in existence about a year—did they at that time investigate a particular complaint that was made and make a decision, and render the decision to the participants; that is, to the manufacturers involved? A. Yes.

Q. And then what happened, so far as the conduct of those manufacturers was concerned? A. Goodness, I cannot answer for each manufacturer.

Q. Did they accept the report of the Piracy Committee? A. I cannot answer that.

Q. Did the committee make any report at all to the Board of Governors as to what was the outcome of their deliberations? A. Well, they may have.

Q. Was there action taken?

606

Mr. Weisman: I have an objection to this line of inquiry. Does your Honor deem it material as to what used to happen a year ago, when the testimony clearly develops that that has not been done for a year, and is not now being done, and isn't the practice that was followed at the time of the filing of this complaint? I mean, it seems to me that it is clearly irrelevant and immaterial. I have not

thought to object because I was afraid that I would take up more time objecting than I would if I let him ask the question; but it seems that this matter is now going along, and I would like to have a ruling from the Court as to whether these actions, completely abandoned a year ago, not the matter or subject-matter of the complaint in this case, not participated in at the time of the filing of the complaint, upon which the direct testimony elicited by his own witness, shows that they have been abandoned over a year ago, whether or not any inquiry into that at this time is at all relevant or material. I think it is not; and I urge that counsel be requested to confine himself to such matters as are relevant and material. 608

Mr. Haycraft: I suggest, Mr. Examiner, that we are entitled to show whatever this Guild may have done, from the time of its inception up to the time of the issuance of the complaint.

Mr. Weisman: Well, I don't think that that is at all the fact. As a matter of fact, in 254 New York, in the Coca Cola case, this particular query was passed upon, and it was there ruled that the plaintiff's position must be judged by the facts as they were when the suit was begun; not by the facts of a different condition at an earlier time. Now, obviously, if something was done—the witness has testified that this was an evolutionary process, and what happened a long time ago is of no materiality now. It takes up some time, but it does not get us anywhere on the ultimate decision that will be rendered here, I submit. 609

Examiner Bennett: I recall that the Seventh Circuit came to a different conclusion in one of our cases. I am going to overrule your objection to that.

By Mr. Haycraft.

Q. My next question, then, Mr. Post, is: Where a Piracy Committee found that the garment in question was a copy, what, if any, action was then taken by the Guild?

Mr. Weisman: May I correct the statement I made?

Examiner Bennett: Yes.

Mr. Weisman: It has been called to my attention that I said 254 New York; I was not aware of that. I meant to say 254 United States. It was a Supreme Court decision.

611 Examiner Bennett: Yes, I see.

The Witness: Well, at the time I came into the Guild, where a garment had been adjudged a copy, sketches of that garment were sent out to various retail stores that were participants in the Guild program, calling their attention to the fact that the garment had been adjudged a copy.

By Mr. Haycraft.

Q. Now, you mean by participants in the program those who had indicated that they would co-operate with you in the program either by signing a form such as we have here, Commission's Exhibits 4, 5 and 6? A. That is correct.

Q. 3-A to 3-F, rather—or in some other manner indi-
612 cating that they were willing to co-operate? A. That is correct.

Examiner Bennett: What is the page number on that decision? Have you it?

Mr. Weisman: 254 U. S. 134, at page 147. I also understand that the language of this case was quoted with the approval—or with approval in Federal Trade Commission against American Snuff Company, C. C. A., October Term, 1935.

By Mr. Haycraft.

Q. What, if any, attempt was made to determine whether or not a co-operating dealer—I refer to them as that—those dealers whom we refer to, to whom these designs and so forth were sent, were co-operating in your program? A. Oh, I don't believe any.

Q. At the time you first came with the Guild? A. That is right.

Q. Did there come a time when investigations were made? A. That is part of the evolution that I spoke about.

Q. When did that begin to take place? A. I should say around the first of January, 1935, we began the program of employing shoppers. 614

Q. Employing shoppers? A. Yes.

Q. Will you describe the procedure in the employment of shoppers, just what was done in that respect by the Guild, and where? A. The procedure in employing them?

Q. Yes. A. Or the procedure of the shoppers? I do not understand your question, Mr. Haycraft. I am sorry.

Q. Who selected them? How many were selected? Where were they to operate? What were their duties? To whom were they to report—all those things. A. That is one question?

Q. One question.

Mr. Weisman: May I respectfully submit that that is hardly one fair question; that it ought to be broken up. 615

Examiner Bennett: Well, all right.

Mr. Haycraft: I merely explained to the witness what I meant by "procedure."

Mr. Weisman: If that is what you mean by procedure, I object to the form of your question as being all-embracive, and not subject to a simple answer, as testimony is supposed to be.

Examiner Bennett: Well, you can ask him those separately.

Mr. Haycraft: I did not hear you.

Examiner Bennett: You may ask him those questions one at a time. The respondent's attorney objects.

Mr. Haycraft: Will you read the first part of that?

(Question repeated by the reporter as follows:)

"Q. Who selected them?"

The Witness: That is the first question?

617 Mr. Haycraft: Yes.

A. In some cities we appealed to the organization, the retail groups; in some they were Guild, and in others there weren't any guilds; in other cities, either Mr. Goldstein, who had charge of piracy, or Mr. Golby, made a trip around with them and selected them. In New York, naturally, they were selected in the Guild office; so again there were, if you say who finally hired them, I suppose the Guild did. I suppose that is the answer: but they were referred to us by various retailers or manufacturers or members. I believe our girl in Chicago was recommended to us by some of our Chicago members.

By Mr. Haycraft.

618 Q. Who, you say, was placed in charge of that work? who did you say was placed in charge of that work—Mr. Goldstein? A. Mr. Goldstein is in charge of the piracy work, yes; special piracy work.

Q. Read the second part of the question.

(The reporter repeated as follows: "How many were selected, where were they to operate?")

By Mr. Haycraft.

Q. Where were they to operate? A. Any cities we could find any money to engage them.

Q. Can you testify now as to the principal cities where they were engaged during the year 1935? A. Yes. Boston, New York, Newark, Brooklyn—if that is a city; Philadelphia, Washington, Baltimore, Atlanta, Miami, Pittsburgh, Detroit, Chicago, Minneapolis, St. Paul, Rochester, Syracuse, Albany, St. Louis, Kansas City, Denver, San Francisco, Los Angeles, Houston, Dallas, New Orleans, Cincinnati, Louisville, Columbus, are as many as I think of at the moment.

Q. What were their duties? A. Their duties were to 620
locate garments which had been adjudged to be copies, call them to the attention of the co-operating retailers, to request that they be removed from sale, and if they were not, to advise us to act in the matter of any local complaint that originated in that particular city.

Q. Now, when you say "adjudged to be copies," adjudged by the Piracy Committee that you referred to? A. I don't believe I referred to our Piracy Committee as organized about the time that we started employing shoppers.

Q. Well, was the meaning, then, of your term "adjudged to be copies"—well, adjudged by whom? What is the meaning of that term? A. By Piracy Committees.

Q. And at that time, January, 1935, how were the Piracy Committees made up? A. Well, at that time we were be- 621
ginning to use retail Piracy Committees. A definite policy had not as yet been formulated, but we started in shortly after I came to the Guild in securing almost exclusively retail committees.

Q. Then what was the procedure that the Piracy Committee—did the Piracy Committee report to Mr. Goldstein or the Board of Governors or to you or to whom, that a certain dress was adjudged a copy? A. Well, they would report—write and sign a report of their judgment. That

was before it became part of our records. I don't know whether I can say that they reported to anybody particularly. They simply recorded their judgment.

Q. Well, how did that report to the shopper? A. Oh, after their judgment had been arrived at, if the garment was adjudged to be a copy, then the sketches of the dress, with the same information which we had previously sent out to retailers, was then sent to shoppers in cities where we had shoppers.

Q. Where complaints were made locally by retailers to the shoppers, what were the shopper's instructions? A. Well, the first thing we were to do was the check of the
623 records of these sketches, to see whether the particular garment complained of had been adjudged a copy by the Piracy Committee in New York, the controlling committee, or Central Piracy Committee. If that were not so, they were to wire the Guild and find out if such a decision had—such address had been considered, or was being considered. If there was a need or a desire or—strike that out, that part of it for a moment. Let me correct myself. Assuming that there was no decision on a particular dress, we would frequently take a complaint an ' get the dresses for the committee the next day. On so.e few occasions locally they would desire to hold the meeting in the city where the complaint originated. They were empowered to co-operate with the local retailers to that extent. Any
624 such decision of a local committee like that had no bearing except for its particular city in which the complaint would originate.

Q. What was the nature of the report that they made, as to details of the dress? Did they have to submit a sample of the dress, or number of the dress, or anything of that kind?

Mr. Weisman: Who is "they"?

Mr. Haycraft: The shopper.

A. The shoppers did not originate any complaint.

By Mr. Haycraft.

Q. I did not ask you that.

Mr. Haycraft: Read the question.

(The reporter repeated the last question as above recorded.)

A. Well, I am sorry. I cannot answer that question.

By Mr. Haycraft.

Q. You cannot? A. It is not sufficiently specific. I do not know who you are referring to. Read the question.

(The reporter again repeated the question.) 626

The Witness: I don't know what complaint you are referring to, or what decision you are referring to.

By Mr. Haycraft.

Q. Well, you have testified that your shoppers were expected to take complaints—local complaints. A. Yes.

Q. You just now got through saying that these shoppers submitted these complaints to your office in New York. A. Yes.

Q. My question is, What information did they submit? A. All right, I have been saying that. They would submit a question: "Is Model No. 1000 from John Jones a copy of Tom Smith's 500?"

Q. Were they ever instructed to get samples of the dresses and send them to the New York City office? A. Yes; where we could not get the sample ourselves. 627

Q. What was the custom as to your activities—that is, your office—as to getting the sample that had been complained about? A. Why, I am assuming that you are talking about a thing that has not already been adjudged a copy?

Q. Right. A. We get this request, just as I said before, "Is so and so a copy?"

Q. Right. A. The next step, assuming that the manufacturer is a New York manufacturer, the question of alleged copy, if he is a New York manufacturer, we send someone up to see the dress and to see the original, and to see whether in their judgment there is a possibility that that is a fair complaint. If we believe that it is, we say to the alleged copyist manufacturer—we ask if he will not submit his sample the following day to a Piracy Committee. We invite him to come up, state all the facts in defense of his dress to indicate that it is not a copy, if
629 that is his position. We do the same thing with the original dress, and then both those garments are submitted to the Piracy Committee the next day, along with the interested manufacturers, who bring any testimony or evidence or sketches or anything else that they have to prove their point of origination if they claim it, and date of acceptance of their line, the production on their line, et cetera.

Q. Now, in the personnel of these Piracy Committees, in January, 1935, how were they selected? A. Since January, 1935?

Q. Yes. A. Well, the process has been an evolution, so I cannot answer that.

Q. Well, begin at the beginning, and bring us down to the present time; evolute a little bit. A. All right. I told you that we started it around that time in informally
630 securing retail committees, around the fall of 1935, we accepted a regular procedure that the Guild followed since then. We went to the various New York retailers, and secured from them and buying officers a list of personnel, and, from that, made up panels. We advised a week in advance a committee of from three to five retailers from this panel. We selected them—they were selected from these various panels, and they are invited to serve on a Piracy Committe a week later—say, Tuesday, or such and such a day.

By that method, by calling them a week in advance, there is no possibility of anybody being called for particular judgment.

In other words, the committee is selected, and we have not any idea what dresses are going to be submitted to them. Then, when they come with a complaint, they come in during the previous twenty-four hours, and they sit in judgment on that.

There is, however, this proviso: That a non-Guild manufacturer, not a member of the Guild—a non-Guild manufacturer coming up to the Guild to appear before this committee and defend his garment may, without cause, take exception to the committee. As a matter of fact, the 632
procedure is that if he takes exception to the committee, the next committee, which is coming the following day, he is told who that is, and if that is not satisfactory, he again may object with or without cause. If that is not satisfactory, we ask him to select from our panel retailers, any committee—well, I think we select one, and those two select one, or a third; anyway, it is a Special Piracy Committee for him.

He has, however, the right of appeal, which our members have not got. In other words, if the decision is against him, and they say that his garment is a copy, and he doesn't think it is, he has a right to ask for an appeal, and the Appeal Board, as the system routine is now established, and as the procedure is now established, is made up of a 633
group of merchandise managers from the various stores and heads of offices.

Q. When did that last go into effect? A. About the same time as the other.

Q. When was that? A. Well, in the early fall of 1935.

Q. Do you have any copies of resolutions covering that? A. Yes, I believe so. I know we have.

Q. I would like to have those produced. A. Those are the executive Piracy Committee that you were referring to before. There are minutes on it.

Q. You don't know where the minutes that I had there—you do not know if that covered it? I do not think that it did. A. What is that?

Q. I don't think that the minute that I had identified covered that particular point. A. No, I would not say that.

Q. What is that? A. The minute that approved this routine were the minutes of the executive Piracy Committee, which you were referring to before.

Q. I see. A. In the constitution.

Q. What I would like to have is any written rules or regulations.

635 Mr. Weisman: We will have them. We will get them for you. We have them.

Mr. Haycraft: All right.

Mr. Weisman: They were in evidence in the Filene suit. I can show them to you.

Mr. Haycraft: This is not the Filene case, and has nothing to do with the Filene case, and it is not going to be of any assistance to refer to it.

Mr. Weisman: I tried to help you, to tell you what I could do. If you do not like it——

Mr. Haycraft: There has been a steady attempt to refer to the Filene case at every opportunity you can get, and I don't think that it should be done. This record is built up on its own basis, and not

636 on the Filene case.

Mr. Weisman: That is for the Court to say. There is no jury here. The reason I refer to the Filene suit is because I didn't want to say it before, but my adversary seems to express the greatest amazement over such resolutions, and I say that they were in the Filene suit, and I say so advisedly, because copies of the minutes in the Filene suit were furnished to Mr. Haycraft, so there is no ground for any amazement that there was such.

Mr. Haycraft: There is no amazement. All this is manufactured for the benefit of the Examiner.

Mr. Weisman: Oh, no.

Mr. Haycraft: There is no amazement whatsoever. This is not relevant.

Mr. Weisman: I have too great a respect for the Examiner to manufacture anything for his benefit. He can take care of himself, I am sure.

Mr. Haycraft: There is a lot of talk; if the respondent wants to pay as high a price as he can for this record, that is his privilege. We are certainly losing a lot of time. You haven't any copies at this time.

638

Mr. Weisman: We will get them.

Mr. Haycraft. Some later time will be quite all right.

Mr. Weisman: All right.

By Mr. Haycraft.

Q. Now, in making up this panel was it restricted to retail dealers who were known to be co-operating with the Guild in its style piracy program? A. Well, obviously.

Q. Your answer is yes, then? A. Well, it is still obviously.

Q. Well, yes? A. Well, I think that would be obvious, yes.

Q. I am asking you if your answer is yes. A. Yes.

639

Q. Now, if the final result of all these committees is against the manufacturer that is not a member of the Guild, what then? A. What is that?

Q. What happens next, if all the committees that pass upon a certain claim, decide against the manufacturer that is outside the Guild? Then what happens?

Mr. Weisman: Just a moment. I do not understand that question; and I cannot see how the wit-

ness can understand it. What do you mean, "what happens?" To whom? I mean, the question is not at all intelligible to me, and I submit that the witness should not be permitted to answer such a question. Do you mean what happens to the dress, or what? I don't know.

Mr. Haycraft: What happens to the manufacturer?

The Witness: Well, Mr. Examiner, frankly, I find it very difficult to answer those questions, as they are not specific. This suit is something of great importance to us, and I do not wish my an-
641 swers to be anything but direct answers to questions that I understand in my testimony. I think I have normal intelligence, but I really do not understand your question.

Mr. Haycraft: You can strike out that statement as not in response to any question, and that the witness be instructed to confine his remarks to answers to questions.

Mr. Weisman: I think the witness can address the Court for aid under such circumstances. It is proper matter for the record.

Examiner Bennett: Well, I will let it remain in the record. I think that I will ask you, however, to make your questions more specific as to what happened. I suppose what you want to develop is
642 whether there was any further action by the organization. Is that it?

Mr. Haycraft: Exactly.

Mr. Weisman: Your Honor made a good guess; but we could not.

The Witness: Well, I have always testified that where a garment has been adjudged to be a copy—and that is what I assume you mean when you say that the committee decides against the non-Guild manufacturer?

Q. Yes. A. That the sketches which we used to send out to the stores before we had shoppers, are now sent out to the shoppers; and I have already testified also, I think, that it is their job to locate those garments, and call it to the attention of the participating retailer.

Q. And if the participating retailer will not return these garments, indicates to your shopper that he will not co-operate by returning the garment to the manufacturer? A. They report back to us.

Q. They report back to you? A. Yes.

Q. All right, then. What is the next step by you as to that particular retailer? A. Well, the next step by us is to get in touch with that retailer and their New York office, cite the circumstances of the report that we have as we know it, try to verify the facts, try to find out where, or whether that transaction is—whether it is of and by itself an isolated case of misunderstanding, or whether it indicates or is intended as a determination of policy on the part of the store, reversing their policy as they had previously declared it to be to us. 644

Q. Then what do you do in respect to that dealer? A. Well, there are two questions there. The first is on the assumption that we find out that the failure to remove the copies from sale was due to some misunderstanding, or something of that character, and we would do nothing. If we find out that it is an indication or intended as a change in policy, we notify our members that this store is no longer co-operating. 645

Q. How do you make that notification? A. By exchanging in the card file for the white, green, or yellow card, a red card.

Q. Then do you send a red card to the manufacturer? A. Each member of our organization.

Q. Each member of the organization? A. That is correct.

Q. And why do you do that? A. To notify them that this retailer is no longer protecting the goods of the Fashion Guild Manufacturers, themselves included, from piracy; to notify them that, under the rules of membership, this retailer, as he is no longer co-operating, should not be sold.

Q. Now, with respect to the use of the red card, is that the only occasion—the only time that your office sends a red card to the membership? That is, in such a situation as you just related? A. You mean we only send red cards in cases of style piracy?

Q. That is right. A. No.

647 Q. When are the other occasions that you send red cards of retail dealers to the membership of the Guild? A. When a retailer—when a manufacturer, a member of the Guild, has, through experience, been forced to break the rules of membership for the manufacturers, by having imposed upon him certain things that may be in violation of our code of ethics, or code of fair practice, and the retailer indicates that it is their intention to pursue the same tactics with all manufacturers—or, rather, with all of our members. In order to prevent our members from all being exposed to the breaking of these rules, we notify the members in the same manner.

Q. What are those rules and regulations as of April 16th, 1935? A. Well, I cannot say.

Q. You have that? A. Yes, we have.

648 Q. You have a set of them with you to-day? A. Yes, I believe we have.

Mr. Weisman: Mr. Haycraft, you asked us for those before to-day?

Mr. Haycraft: I think so. But I am not sure about it.

Mr. Weisman: Evidently Mr. Feldman said you had it; so instead of wasting time we will make a notation of that and we will bring it in to-morrow.

Mr. Haycraft: All right.

Mr. Weisman: Unless we have got it there, I don't think we have got it. Mr. Goldby thinks so, but he is mistaken.

The Witness: You wanted the sum total of all of them, did you not?

Mr. Haycraft: Yes.

The Witness: It would not be in the minutes?

Mr. Haycraft: It would be cumulative.

(Discussion off the record.)

By Mr. Haycraft.

Q. Now, did you make any attempt to check up, to see 650
whether or not the manufacturer carries out his part of the agreement with the Guild, as to selling or not selling to a retail dealer that is not co-operating? A. Yes, sir.

Q. What steps are taken in that respect by you or by your office? A. Well, we employ auditors; they go around constantly auditing the books of the members of the Guild, to see whether they are living up to the rules of the Guild and the results of their membership.

Q. And if it is found that they are not, is there any penalty for that violation? A. Well, I guess you are one step ahead of your question. It is then submitted to a Grievance Committee, which determines whether or not there shall be a penalty.

Q. I see. If the auditor reports that there have been 651
instances where they have not lived up to their agreement, then that is reported to a Grievance Committee? A. Yes.

Q. And the member is given a hearing before that committee? A. Correct.

Q. And if the committee decided against him, finds that he has been violating his agreement, what is his penalty? A. Well, there is a discretionary—it is discretionary with the Grievance Committee. Conceivably, they could find

that he did violate and there would be no penalty. I mean the circumstances and intents and all those things are bound in with it.

Q. What is the penalty that may be levied by the Guild under its own rules and regulations against an offending member? A. My recollection, if that will suffice for the time being, is that, for wilful violation—if you are speaking of the rate card system, for wilful violation of that, the first offense for that is $100 fine. The second offense—again from recollection—is $200 or $250 fine.

Q. The third offense? A. Maybe $500. I am not sure.

Q. What is the maximum? A. Well, I suppose the maximum would be expulsion.

653

Q. Well, is there a maximum dollar fine—money fine? A. I really do not know.

Q. $5,000? A. No.

Q. One time it was? A. There was at one time.

Q. At what time was that $5,000 fine removed? A. I do not know.

Mr. Weisman: I object to the form of that question. As a matter of fact, the resolution—it wasn't removed, the resolution by which it was enacted was self-removing. It was one of these self-effacing things, and my friend has a copy of that resolution, and he can fairly offer it in evidence; so that the Examiner may see that it was not put on with any

654 removal idea.

Mr. Haycraft: Will you produce a copy of that resolution?

The Witness: To-morrow, yes.

Mr. Haycraft: I think it is already identified.

Mr. Weisman: You brought it here. We gave you a copy of it. It is marked for identification.

By Mr. Haycraft.

Q. Well, let me ask you this question: Has that $5,000 fine ever been revived? A. Revived?

Q. Yes. A. As——

Q. Yes; as a maximum penalty. A. No. As a matter of fact, I am not clear as to whether it was ever passed.

Q. Was it the highest—well, what was the highest fine that has actually ever been imposed in your recollection? A. For piracy?

Q. Yes; the highest fine for selling to a red-carded dealer. A. I believe $100.

Q. Do you have any record of the number of such fines? I mean the number that have actually been levied—the 656
number of instances where members have violated their agreement not to sell to red-carded dealers? A. Well, our books would show income for fines as a separate item, and checking that back against the Grievance Committee, we can tell.

Q. Have you made any summary of your Grievance Committee reports, as to the number of those? A. No.

Q. Is that Grievance Committee—does it sit all the time? A. No.

Q. Sit as called by you? A. Well, as a matter of fact, the procedure is when we accumulate enough to give them a few hours' work, why, we call a committee.

Q. Is there any notification? A. Providing it does not interfere with their operation.

657

Q. Well, now—strike that out. Have there ever been instances where members have been expelled because they did not live up to their agreement not to sell to red-carded dealers? A. I believe not. There is one questionable case in my mind, but I don't think they have been expelled. I think they have been suspended.

Q. Do you recall that case? A. Sure.

Q. What case was it? A. It is a man—a firm named Rosenthal & Kalman.

Q. For how long were they suspended? A. Well, they are still suspended.

Q. Still suspended? A. I believe so. I am not quite clear on that.

Q. If you solicit a dealer to co-operate in your style piracy program, and he refuses to do it, is he red carded? A. Well, not just as bluntly as that. The retailer, if he refuses to co-operate, as you say, we make an attempt to explain our program, if we find, after presenting our entire story, and satisfying ourselves that we have presented our entire story, then the retailer says, "Well, I am not interested in that—I am going to carry copies of your goods"—

659 yes, then he is red carded.

Q. Then, I believe, it is correct that you do follow on the practice of red carding all retail establishments that are conducted in apartment houses? A. Well, that is one of the fair trade code of ethics that I referred to before. We have a rule against selling——

Q. He is red carded to your members, and green carded to Protective Affiliates? A. I believe that is correct. I am not certain of that detail.

Q. Now, there have been times—strike that out. The custom to notify retail dealers of the names of manufacturers who have resigned from or who are not members of the Guild— A. It is not the custom. It has been done.

Q. Do you know how many times? A. No, I do not. May I add——

660 Q. Do you remember when it was done?

Mr. Weisman: He has not finished his answer.

The Witness: May I add, when you asked the question, I assumed that you were speaking of retail guilds under which we have an agreement to do that; but I don't want the question to mean that we notified all participating retailers. We never did that.

By Mr. Haycraft.

Q. You never did that? A. No.

Q. The Guild with whom you have an agreement to give them that information? A. An agreement to keep them advised of our membership, both additions and subtractions.

Q. What was the purpose of doing that? A. Well, the purpose is, as far as our own members go, that our members' merchandise is protected against piracy. Now, it is of some interest to retailers who, I should say—or apparently they think—or want to buy originations or want to sell them—keep them protected against piracy, to know from whom they may be bought and the reverse is when 662
somebody once was a member of the Guild, and is no longer a member of the Guild, we have had complaints registered with us concerning manufacturers who may have resigned, wanted to know why somebody had a copy of their dress.

Q. Your letterheads carry a list of your members? A. On the reverse side.

Q. On the reverse side? A. Yes.

Q. And how often are those letterheads corrected as to your members? A. Well, as often as it is practicable to do so.

Q. Well, just give us an idea. When were they last corrected? A. May I refer to Mr. Goldby, because he knows more about that?

Q. Surely. A. Mr. Goldby thinks about every two 663
months we run out of stationery; so that then the list is corrected.

Q. Well, then, how do you apprise the members, outside of the members of the retail guilds, of those changes? A. Why, we do not; except for public announcements that may be carried in "Women's Wear" and things of that kind.

Q. I will ask you if you can identify this paper (a document was passed to the witness). A. What?

Q. Can you identify that? A. I have a recollection of having seen it.

Q. You say you do? A. Yes.

Q. To whom was that sent? A. This, I believe, was sent to retail Guilds.

Q. This Chicago and Minneapolis one? A. Yes.

Q. Baltimore? A. Well, I would not say as to that. I imagine they were sent out generally to those retail guilds. Is that one-page thing?

Mr. Haycraft: I offer this as Exhibit No. 88.

Examiner Bennett: You are offering that?

Mr. Haycraft: Yes, I am offering that.

665 Mr. Weisman: No objection.

Examiner Bennett: That will be received and marked Commission's Exhibit 88.

(The paper referred to was received in evidence and marked Commission's Exhibit 88.)

By Mr. Haycraft.

Q. Can you produce at this time or have you with you a list of retail dealers that have been red carded, who were red carded as of April 16, 1936? A. Well, if it is one of the lists you asked for?

Q. Yes. A. I have, and can produce it.

Q. I asked for a number of lists. Do you have them all? A. I think so, yes.

666 Q. All of them—will you produce them?

Mr. Weisman: Will you read the last question?

(The reporter repeated the last question as above recorded.)

Mr. Weisman: Will you withdraw that question and ask him for the list as of July 6th? You asked us to get up a list in advance.

Mr. Haycraft: I asked for a number of lists, and they were gotten out periodically, I believe.

Mr. Weisman: We have got a list as of July 6th.

Mr. Haycraft: I will take that in lieu of the one of April 16th.

Mr. Weisman: That is what I mean. We would have been glad to get it up for you.

Mr. Haycraft: I will take the last one you got up before that time; what was the last one you got out before July?

Mr. Weisman; They do not send them out monthly.

The Witness: No; because, due to all this litigation, those lists——

668

By Mr. Haycraft.

Q. When was the last one that you sent out to your members? A. Well, if you won't get annoyed with me if I refer to the Filene suit—but it seems to me that they have been referred to; some list around January or February of the year, which I believe was the last one.

Q. Give us that one. A. I will check back on the record.

Mr. Weisman: We will see if we have got it.

The Witness: I think that you have got that list, but if you have not I will get the list that was used in there.

Mr. Haycraft: I offer this one in evidence.

Mr. Weisman: Will you ask the witness a question to identify that; the last list you referred to was as of April 16th. 669

Mr. Haycraft: All right.

By Mr. Haycraft.

Q. Are you able to find a list as of April 16, 1936? A. No, we have no such list.

Q. What have you? A. We have a list of July 6th, 1936.

670

Mr. Haycraft: I will accept that in lieu of the one of April 16th, 1936, with the request that you furnish the prior list that was submitted to your members; I think probably in January or February, 1936.

The Witness: Yes, we will.

Mr. Haycraft: I offer this one in evidence as identified.

Examiner Bennett: You may make this one as Commission's Exhibit No. 89.

(The paper referred to was marked Commission's Exhibit 89-A, B and C, and received in evidence.)

671

Mr. Haycraft: That consists of three pages.

Examiner Bennett: Very well. Now, gentlemen, before we adjourn for the day, I am going to ask you to co-operate with the reporter in checking up on the appearances. I am not sure that they are correct, and I would like to have them correct.

The hearing is now adjourned until 10.30 A. M. to-morrow morning.

(Whereupon, at 4.30 o'clock P. M., July 15, 1936, the hearing in the above-entitled matter was adjourned.)

672

Room 901, 45 Broadway,
New York City, N. Y., July 16, 1936.

Met, pursuant to adjournment, at 9.30 A. M.

Before: JOHN W. BENNETT, Examiner.

(SAME APPEARANCES.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Weisman: Mr. Haycraft has asked me for some papers. I want to see if we have them. 674

During various times yesterday certain additional papers were requested by Mr. Haycraft of the Commission. We have advised him that theretofore he had not requested the papers so we did not have them, but we naturally undertook to get them during the adjournment, and we have them here.

I believe that Mr. Haycraft requested a copy of the rules and regulations under which the Executive Piracy Committee now acts, and also a copy of a report. I have that here and I will give it to you, Mr. Haycraft, and I will leave a copy with Mr. Post so if he is questioned he may testify with regard thereto.

675

ALBERT M. POST was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Who compiled and prepared this Commission's Exhibit 96? A. Who what, sir?

Q. Who compiled or prepared Commission's Exhibit 96, instructions? A. I do not recall that.

Q. Do you recall when they were first issued? A. (No response.)

Q. To refresh your recollection, was that about the first part of 1935 when you first began to employ shoppers? A. I imagine that is correct.

Q. Have you any better recollection than an imagination on it? A. Well, what I mean to say, I think that is correct, because when we hired the shoppers I am sure we must have sent out instructions, and this was it (indicating).

677 Q. What was the occasion of sending out these instructions? A. We had hired these shoppers.

Q. That you testified about yesterday? A. That is right.

Q. And these instructions were furnished to those shoppers? A. That is right.

Q. I notice in the last page originally drafted and part of the instructions, was a declaration of co-operation of anti-piracy; was that furnished to the shoppers along with the instructions? A. Yes, I believe so.

Q. What was the purpose of that? A. I cannot say as to that.

Q. Do you recall whether or not the shoppers were expected to familiarize the persons upon whom they called, and retail dealers, with the declaration of co-operation of anti-piracy——

678

Mr. Weisman (interposing): I object to the form.

By Mr. Haycraft.

Q. —form that was being used by the Guild at that time in soliciting the co-operation of retail dealers?

Mr. Weisman: I object to the question as incompetent, and want to have the question read.

Examiner Bennett: Read the question.
(Last question read.)
Examiner Bennett: Overruled. He may answer.
The Witness: I may answer?
Examiner Bennett: Yes.

A. Well, I don't believe that is correct, Mr. Haycraft.

By Mr. Haycraft.

Q. Were you executive director at that time? A. Yes.

Q. Is there any way that you can refresh your recollection as to the purpose of the inclusion of this copy or form of declaration? A. I have heard Mr. Weisman say it is 680
not referred to in the declaration—in this instruction. I will be very happy to read that myself and see if there is any reference to them, unless you also agree with Mr. Weisman that is not so.

Q. I do not know whether that is or is not, but I am trying to get your independent recollection. A. I have no recollection of it. I can say it was possibly attached so that the shoppers would know what the declaration looked like, but I say your interpretation is wrong, because retailers already signed the declaration there is no particular point in having the shoppers go around with another one.

Q. I am trying to find out if the shopper was expected to make any use of it? A. I should say not.

Q. Were any shoppers instructed to solicit the co-operation of retail dealers located in the territory where they 681
were operating? A. Not to my knowledge.

Q. Would, then, it be your judgment that the inclusion of this was simply to acquaint the shopper with the arrangement that existed at that time with the retailer dealer? A. My conclusion would be because there is so much reference to the declaration of co-operation that it was simply attached to the instructions so that they would know what it looked like.

Q. What do you mean, with reference to the declaration? A. This, I see on the first page, just glancing at it, the words—just glancing at the first page I see the words incorporated "declaration of co-operation" once right in the middle of the page, and on the second page, as I turn it over, I see it again, just by glancing, so that I——

Q. It is mentioned in the instruction "declaration of co-operation"? A. "Declaration of co-operation" is mentioned, yes.

Mr. Weisman: Do I understand you to offer these?

Mr. Haycraft: Yes.

683 Mr. Weisman: I make no objection to the competency of these documents. I waive any right to request that formal foundation be laid. I do object to their introduction in evidence on the ground that they are immaterial, since they refer to a procedure which is no longer in existence, and which was not in existence at the time of the filing of the complaint in this case.

Your Honor may remember that the witness, who is the Commission's witness, testified that since December, 1935, I believe—is that not correct?

The Witness: Yes.

Mr. Weisman: A new system of——

The Witness: It was before.

684 Mr. Weisman: —dealing with piracy complaints had been inaugurated. This is a system which was operated under the old plan, I believe?

The Witness: Yes.

Examiner Bennett: In cases of this kind the background of the situation is very frequently given in the way of history of the actions of the organization under inquiry. I think, without exception, that that is true in handling cases of this

sort, and the Examiner is going to follow this rule, so he overrules your objection, and receives the documents as Commission's Exhibits 97-A to N.

Mr. Weisman: If this document is being received for the purpose of showing the background, I have no objection.

Examiner Bennett: Yes.

Mr. Weisman: With the understanding that it does not show the present operation.

Examiner Bennett: Oh, I think——

Mr. Haycraft: The witness will so testify; I have not asked him.

Examiner Bennett: I understand that—that it 686
just gives a history of what the former practice is.

Mr. Weisman: Yes, that is true.

Examiner Bennett: That is all, of course, that is the end of that.

(The documents referred to, heretofore marked for Identification Commission's Exhibits 97-A, 97-B, 97-C, 97-D, 97-E, 97-F, 97-G, 97-H, 97-I, 97-J, 97-K, 97-L, 97-M, and 97-N, were received in evidence.)

By Mr. Haycraft.

Q. I will ask the witness to testify as to whether or not that Commission's Exhibit 97-A is an example of the way in which grievances of that kind indicated were handled at the time of the date of the exhibit. 687

Mr. Weisman: I object to the form of that question. The question is whether or not grievances of that kind clearly calling for an operation of this witness' mind. What kind this grievance is, or how close to one or the other it might be, he has got an example in here, and I submit that each question stands on its own bottom, and you cannot ask a witness if a thing like that happens what would you do.

Mr. Haycraft: Well, I will ask him whether that is the usual procedure in handling complaints on or about the time of the date of that exhibit. We do not bring in every complaint that was handled during that period of time. If that is typical of it, we want to know it. If it is not, we want evidence of what the procedure was.

Mr. Weisman: Are you ready to answer the question?

The Witness: That question cannot be answered. We have about five different transactions all mixed up in this bunch of papers, all different kinds of
689 transactions.

Mr. Weisman: Speak up so the Examiner can hear you.

The Witness: All different kinds of transactions, between Guild members and non-Guild members, and all sorts of things mixed up in this batch. That is not one transaction at all. It could not be typical of anything.

Mr. Haycraft: All right, let us have the exhibit back.

(Mr. Weisman hands Commission's Exhibit 97 to counsel for Commission.)

By Mr. Haycraft.

690 Q. I call your attention, Mr. Post, to Commission's Exhibits 97-A to F (indicating), and ask you if that refers to one transaction? A. A to F. (Witness examines papers.) No, sir.

Mr. Weisman: The answer was "No, sir."

By Mr. Haycraft.

Q. I will ask you whether or not Commission's Exhibits 97-A, B and C, 97-A being a letter from Mr. Goldby

to Charles Lang, dated June 18, 1935, B being a letter from Mr. Golby to Miss Ann Sadowsky, dated June 18, 1935; C being a letter from Mr. Golby to Louis J. Brenner, dated June 18, 1935, all relate to appointment of these individuals as members of the Grievance Committee? A. Is that the question?

Q. That is the question. A. If I understood correctly, do these three letters pertain to an appointment of the Grievance Committee?

Q. Yes. A. That is correct.

Q. Were those three letters typical of the method employed in the appointment of the Grievance Committee in June, 1935? A. Grievance Committees, yes. 692

Q. All right. I will ask you whether or not Commission's Exhibit 97-D, which is a letter from Mr. Golby to Mr. Ben Rifkin, of Daytime Frocks, Inc., dated October 18, 1935, is a notification to Mr. Rifkin that a Grievance Committee had been appointed to deal with his violation in selling copies?

Mr. Weisman: Will you read the question?

(Last question read.)

Mr. Weisman: Just a moment. I object to that question. Here is a document in evidence which is obviously what it is. It is written in the English language. It needs no interpretation. It is plain. Now, my friend, having offered this in evidence, says, "Is this such and such thing?" It is perfectly 693 apparent on its face what it is. What is the sense of putting anything in evidence, if a minute after it is in evidence you are going to ask, "Is this an order?" "Are these minutes?" This is offered in evidence; it speaks for itself.

Mr. Haycraft: I am trying to find out whether it is a typical method used.

Mr. Weisman: You did not say that.

Mr. Haycraft: I will when I get around to it.

Mr. Weisman: I object to the question now propounded to the witness; otherwise, these proceedings will be interminably dragged out.

Mr. Haycraft: Who is dragging them out?

Mr. Weisman: You are, by asking questions that are incompetent. You know you cannot ask about a letter that is in evidence, "Is this such and such?" It is what it says it is. Of course, it is a notice, perfectly apparent on its face. Sometimes when we have a jury you may try to get that in to emphasize the evidence, but you do not do it before a court
695 without a jury.

Examiner Bennett: Read the question.

(Last question read.)

Mr. Weisman: Here is the letter.

Examiner Bennett: The objection is sustained.

By Mr. Haycraft.

Q. I will ask you whether or not it was customary for the Fashion Originators' Guild to give notice in the form set forth in Commission's Exhibit 97-D to manufacturers who were charged with violating the rules of the Guild by selling copies? A. To Guild manufacturers? Members of the Guild.

Q. Members of the Guild. A. That is right.

696 Q. Do you say that Commission's Exhibit 97-E was also a form used at that time in October, 1935?

Mr. Weisman: I do not think the Court can hear you. I can hardly hear him. Can you hear the question, your Honor? I can hardly hear him standing beside him.

The Witness: Repeat the question, please.

(Last question read.)

A. It is a typical letter; it was not a form.

y Mr. Haycraft.

Q. What is Commission's Exhibit 97-F?

Mr. Weisman: Wait just a moment. I object to the form of that, as Commission's Exhibit 97-F is now in evidence, was offered by my friend. Now, he says to the witness after he has offered it in evidence, "What is it?" It speaks for itself, otherwise it should not be offered in evidence.

Mr. Haycraft: I wish to call your attention, Mr. Examiner, to the objection that was made by this respondent to this exhibit in connection with the testimony of the witness before I began to take these 698
pages up one by one, that they were a mixture, that they did not relate to anything, that he could not tell what they were, and all that. I am doing that to clarify the record so that you and the Commission will understand what these various documents are.

Mr. Weisman: That is no way to do it.

Mr. Haycraft: I agree with counsel that I think the document as originally offered does speak for itself, but in view of the witness' testimony I think it is necessary to clarify the record.

Mr. Weisman: Each document speaks for itself and the Commission can clearly see when it reads it, as well as the witness, and you should have seen that these are four separate items. 699

Examiner Bennett: Read the question, please.

(Last question read.)

Examiner Bennett: I will ask you to make that question more specific. I think the form of your question dealing with the last document is all right, and I think that is what we are interested in, and nothing else much. That is, as to whether or not these documents reflect the practice at that time.

Mr. Haycraft: Well, I want to know, first, what the document is. It does not indicate on the face of it what it is, specifically.

Examiner Bennett: Well——

Mr. Weisman: Now, I move that it be stricken out, if it is an unintelligible document, I move it be stricken out of evidence.

Mr. Haycraft: I am asking the witness now to further identify the exhibit so that the Commissioners and the Examiner know what this paper is.

Mr. Weisman: Just a moment. I respectfully submit that the paper on its face——

701 Examiner Bennett: Just a moment; that is a matter that we are trying to determine, and I will not entertain any objection in that respect. Let us see the document. The document seems to indicate that it was one of the letters written. Oh, I see it is not addressed to anybody.

All right, the objection is overruled; you may answer.

(Last question read.)

A. Well, I will have to guess.

Examiner Bennett: It is not necessary to guess, if you are familiar with the work of the organization.

702 The Witness: Well, I am sorry, sir. I still have to guess. It may be a copy of a report of a committee, but I have not the original, and I don't know that it is.

Examiner Bennett: Yes. Well——

By Mr. Haycraft.

Q. What is your judgment that it is, as director of that Guild.

Examiner Bennett: You are here to give your best recollection, you are not here to say things that are going to damn you eternally or otherwise.

The Witness: I did not want to identify something that I had no reason for knowing was exactly what I identified it as.

Examiner Bennett: I see.

The Witness: It appears to be a copy of a grievance committee.

Mr. Weisman: You mean a grievance committee report, I take it.

The Witness: Findings is what I meant to say.

Mr. Weisman: Findings, not of the committee? 704

The Witness: It appears to be the findings of a grievance committee.

By Mr. Haycraft.

Q. It appears to be the findings of the grievance committee? A. Yes.

Q. Does that relate to any transaction referred to in any of the other exhibits here? A. I don't think so.

Q. Does it relate to the Daytime Frocks? A. Yes.

Q. Who manufactures Daytime Frocks? A. Daytime Frocks?

Q. Yes. A. That is the name of a concern.

Q. Daytime Frocks is the name of a concern? A. Oh, yes.

Q. What dress was involved in Exhibit 97-E? A. Wait 705 a minute. I think this report does relate to the items in the first three letters.

Q. Exhibit 97-E? A. Yes, sir. That is correct, and the one in front of it.

Q. Exhibit 97-D? A. Yes.

Q. You mean Mr. Ben Rifkin of Daytime Frocks, Inc.? A. Yes.

Q. And Mr. Louis J. Brenner? A. Yes.

Q. That does refresh your recollection with regard to Exhibits 97-D and 97-E? A. To Mr. Rifkin and to Mr. Westheim——

Q. Did Mr. Rifkin and Mr. Westheim sit as a committee? A. No. The committee has decided that Daytime Frocks' sale of No. 394 is a copy of David Westheim. He was the complainant.

Q. He was the complainant? A. Yes, I suppose you might put it that way.

Q. Westheim was the complainant and Daytime Frocks was the respondent? A. The complainant might actually have been some retailer who complained that they had the
707 dress and somebody else had a copy of it, but he was the manufacturer that had the original.

Q. Westheim? A. Yes, sir.

Q. And Rifkin was the one who was supposed to have violated it? A. Rifkin was—what was that number?

Q. The members of the committee appear on that report 97-F as Mr. Friedman, Mr. Schneider and Mr. Beilinson. A. Yes.

Q. Mr. Friedman, Mr. Schneider and Mr. Beilinson are the members of the committee? A. Yes.

Q. So the report of the Grievance Committee indicated in Commission's Exhibit 97-F referred to the transaction, or to the claim mentioned in Commission's Exhibit 97-D and Commission's Exhibit 97-E? A. Yes.

Q. Do you know what Commission's Exhibit 97-G refers
708 to, this says something about "Spoke to Mr. Myerson of Aywon"? A. That apparently is the report of a young man who makes preliminary investigations on complaints as they come in.

Q. He goes around and makes a call on the manufacturers? A. On the members.

Q. On the members that are involved? A. In the complaint.

Q. What would you say that that young man had done, and, first, who is he? A. The man who does that is named Gartner.

Q. As indicated, he talked to Mr. Myerson of the Aywon Company? A. Yes, sir.

Q. As to his refusal to give information on the P. & R. Shop of Brooklyn, New York? A. Yes, sir.

Q. The P. & R. Shop was the one that was supposed to be the defendant? A. No, I do not think so.

Q. What would the P. & R. Shop be? A. Judging from what I see here apparently somebody said they had Guild merchandise; that is pure conjecture.

Mr. Weisman: I object to pure conjecture; I like 710
the purity, but I do not like the conjecture.

Examiner Bennett: All right.

By Examiner Bennett.

Q. You are giving us your best recollection on that? A. I have no recollection on it.

Examiner Bennett: What are you trying to find out here?

Mr. Haycraft: I am trying to get him to interpret the record correctly.

By Examiner Bennett.

Q. Do you recall the circumstances that brought it out? 711
A. I am afraid I do not in this case.

By Mr. Haycraft.

Q. Who is Mr. Rimland? A. I have no idea.

Q. Was he connected with the P. & R. Shop? A. He might have been.

Mr. Weisman: I ask that the answer be stricken out as a conclusion of the witness.

Examiner Bennett: What is the situation, then, Mr. Haycraft?

Mr. Haycraft: I will ask a question which will take care of that.

By Mr. Haycraft.

Q. Does this report indicate that he was?

Mr. Weisman: I object to that. If the report will help the witness to refresh his recollection that is one thing, but if he is simply reading what is on the exhibit, why, then, the exhibit speaks for itself.

The Witness: The report does indicate it down
713 here.

Mr. Weisman: Then, the report speaks for itself.

Examiner Bennett: Proceed.

Mr. Haycraft: Mr. Examiner, I think I can clear this up in a few minutes.

By Mr. Haycraft.

Q. Was it customary, in the work of your Mr. Gartner, to make reports of this nature upon making the investigation that you had referred to a moment ago; that is, when he made calls on members of the Guild? A. Mr. Haycraft, let me say this—just a moment, let me see if I can tell you what I believe this has reference to—that is what you are trying to get at?

714 Q. Yes. A. A retail store does not co-operate, or, to put it this way, a retail store that is not co-operating with the Fashion Guild on piracy and some other store—that is, let us say that we find that the P. & R. Shop has Guild merchandise and we know that they are not co-operating and are carrying goods that are not the goods of our members, and so forth. So they say to us, our report, Daytime or Aywon—we saw some Aywon dresses in their window—that comes in to us and then we informally check first

with our member as to whether or not they had shipped any goods to Aywon. That is what I believe this thing is.

Q. That is the report of your investigator? A. That is when he calls on them. He does investigate.

Q. All right. This exhibit, Commission's Exhibit No. 97-H, refers to the same transaction as Commission's Exhibit 97-G? A. Yes. I think so. At least, it refers to the same retail shop.

Q. How would you describe Commission's Exhibit 97-H? A. That, again, is a report of Gartner who checked various members of the Guild on that same retail shop.

Q. Who is Garland? A. Garland? He was a member of the Guild.

716

Q. He is the one that made the complaint? A. Apparently.

Q. The names mentioned at the top, namely, L. & D. Beilinson, C. H. D. Robbins, Aywon, M. & S. Extract, B. Tobias, are they members of your Guild? A. They were at that time. Some of them still are.

Q. Who is Mr. Bert Reinitz, referred to on Commission's Exhibit No. 97-I? A. He is publicity director of the Fashion Guild.

Q. Did you have anything to do with the writing of this letter, Commission's Exhibit 97-I? A. No. However, I know the letter.

Q. You recognize the letter? A. Surely.

Q. Were members of the Dress Creators' League members of the Guild at the time this letter was written? A. Yes.

717

Q. Do you know the purposes of the writing of this letter? A. May I expand one answer that I gave you a moment ago about who Mr. Reinitz is?

Q. Yes. A. He is also—I did not know what his title is, but he is associated with the Dress Creators' League. I think he passes on their publicity also. Now, what is the question you want to ask now?

Q. Do you know the purposes of the writing of this letter? A. P. & R. Shop has Guild merchandise.——

Q. I do not believe you understood the question. What was the purpose of this letter? A. Oh, I see what you mean. Apparently, it was to acquaint Mr. Reinitz with the fact that our auditors checked some of the——

Mr. Weisman (interposing): It is obvious that the witness is now reading from a letter, and it shows on the face of it what it is. That is the vice of all these questions. I object.

Examiner Bennett: Yes.

719 Mr. Weisman: The letter that he has in his hands is objectionable. The letter is in evidence now. He is asking the witness as to what the purpose of the letter is, and the witness cannot state that because the purpose of the letter can best be determined from what it is on its face. It shows what its purpose is.

Mr. Haycraft: The letter does not show the purpose of the letter.

Mr. Weisman: I will leave it to the Court (handing the document to the Examiner).

Examiner Bennett: If the purpose of that letter is to be inquired into that is one thing. On the other hand, if the purpose of your investigation is to see what the circumstances were under which it was written, I think that if he could get any information on that, it is proper for him to do so.

720 Mr. Haycraft: If the witness does not know, then I will call Mr. Goldston and find out from him. Oh, I believe this one was written by Mr. J. M. Golby, executive secretary. I will call him if this witness does not know.

Mr. Weisman: That would not make it any more competent. The letter says just what it is and what it is about.

Mr. Haycraft: It does not say what the purpose of it was.

Mr. Weisman: Yes, it does. The Examiner will see from a reading of the letter that the purpose of the letter is perfectly apparent.

Examiner Bennett: I sustain the objection to the question in that form. If you want to get the circumstances under which it was written you may do so.

By Mr. Haycraft.

Q. What did Mr. Reinitz have to do with the calling of the meetings of the Grievance Committee? A. I have 722
said that Mr. Reinitz was employed by the Dress Creators' League, which was a division in the Fashion Originators Guild. He has more or less acted as secretary—executive head of that organization in so far as our contact with it goes, so any transaction involving a member of the Dress Creators' League is usually handled through Mr. Reinitz, or copies of the correspondence is sent to Mr. Reinitz. I think it is obvious that the Dress Creators' League was involved in this particular situation and that is why he was notified.

Q. Was it customary for members of the Dress Creators' League, Division of the Guild, and the Protective Affiliates, to sit on the Grievance Committee? A. It was customary to sit on the grievance committees involving their own membership—in other words, it was customary for one of 723
their members to sit in on grievance committees involving their own membership.

Q. But not the other members? A. No.

Q. Referring to Commission's Exhibit No. 97-K, which is the report from the Chicago shopper, who was the person signing; in other words, whom do the initials "C. G." refer to? A. That is not, in the first place, a report from the Chicago shopper. That is the report of Mr. Gartner rendered which refers to a report of the Chicago shopper.

Q. Does this represent a report of his investigation? A. It reports his investigation of the report from the Chicago shopper, if I make myself clear.

Q. You do. The investigation was made in New York? A. Yes.

Q. That is the same type of report as Commission's Exhibit No. 97-H; would you say? A. Generally, yes, because it involves, of course, different people, but it is the same type of report.

Q. Would you say it is indicative of the practice that was being followed at that time? A. Yes.

Q. Referring to Commission's Exhibit No. 97-L, which
725 appears to be a letter from Miss Helen Kindler, or Mrs. H. Kindler, Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, Illinois, dated December 23, 1935, and addressed to Mr. J. Goldston, do you recognize that? A. I understand that.

Q. Who was the Chicago shopper; was Mrs. H. Kindler the Chicago shopper? A. Yes, sir; that is one of the Chicago shoppers. There are more than one.

Q. Was this report that she made here, Commission's Exhibit No. 97-L, the subject matter of the report in Commission's Exhibit No. 97-K? A. I do not think so, Mr. Haycraft. While it is, in part, apparently, again it deals with several transactions and one part of it refers to the same transaction involved—that is right. Yes, that is right.

726 Q. What would you say about Commission's Exhibit No. 97-M, which is a letter from Mr. J. M. Golby, executive secretary, to Mr. H. H. Friedman, International Dress Co., Inc., 1400 Broadway, New York, New York, under date of December 27, 1935; is that the same thing? A. That is one of the transactions in Commission's Exhibit No. 97-L and the transaction in Commission's Exhibit No. 97-K.

Q. Referring to Commission's Exhibit No. 97-N, being a tter from International Dress Co., Inc., H. L. Friedman, the Fashion Originators Guild of America, Inc., New ork, New York, attention of Mr. Golby, under date of ecember 26, 1935; does that relate to the same transaction as Commission's Exhibit No. 97-M? A. Yes.

Q. Would you say that the reports that I have called our attention to, and the correspondence relating thereto Commission's Exhibits No. 97-K, 97-L and 97-N, were ypical of the practice that was used at that time with he reports and data in handling complaints? A. Yes, r; I think that is so. Mr. Haycraft, you said in handling omplaints?

728

Q. Yes. A. Handling complaints of that kind?

Q. Of that kind. A. Yes.

Q. I show you Commission's Exhibits 98-A to M, both clusive, for identification, and ask you if you can identify hem in any way; that is, this sheaf of papers. For your formation I will say that it was furnished by your office our investigator. A. Yes, sir; I believe it was—yes, it a group of papers showing a transaction clear through he Guild office.

Q. Would you say that that was in November, 1935? A. Vhat?

Q. That in November, 1935, this was the typical method handling transactions of that kind? A. Typical, not all details, but I think typically a fair example.

729

Mr. Haycraft: I offer this in evidence.

(The documents referred to, heretofore marked for Identification Commission's Exhibits 98-A, 98-B, 98-C, 98-D, 98-E, 98-F, 98-G, 98-H, 98I, 98-J, 98-K, 98-L, and 98-M, were marked as exhibits and received in evidence.)

The Witness: In that latter question, Mr. Haycraft, as to whether or not Commission's Exhibits

98-A to M, both inclusive, and referring particularly to Exhibit 98-I, while in the mechanics of this transaction I would say that I believe that it is a typical transaction, this particular letter is not a typical letter. I notice that it was written at a time when I was away from the office, personally away from the office, and this is a reply to a letter such as I referred to before that I would not say is entirely typical.

By Mr. Haycraft.

Q. Can you indicate in what way it appears to be an
731 exception? A. The thing that occurs to me as being the most important is that it is typical for us in things of this kind to offer or suggest arbitration. This letter makes no suggestion of arbitration; also on the return that I write I am rather careful not to refer to retailers who are in any way involved in this transaction. I notice that this letter has several references to retailers, which remarks are purely gratuitous and extraneous, so that with that exception I would like to, or, at least, to that extent, I think that I would like to qualify my previous statement.

Mr. Haycraft: I ask that this document be marked Commission's Exhibits 99-A, 99-B, 99-C, 99-D, and 99-E, for Identification.

(Letter dated June 16, 1933, consisting of two
732 sheets, and signed by Maurice Rentner, chairman, Fashion Originators Guild of America, Inc., was marked Commission's Exhibits 99-A and 99-B, for Identification.)

(Memorandum on Guild's Resolution and its Significance, consisting of two sheets, was marked Commission's Exhibits 99-C and 99-D, for Identification.)

(Form of Declaration of Co-operation in Anti-Piracy, was marked "Commission's Exhibit 99-E, for Identification.)

(There was a discussion off the record.)

Mr. Haycraft: I offer in evidence, Mr. Examiner, at this time, Commission's Exhibits 99-A, 99-B, 99-C, 99-D, and 99-E, which I understand counsel for respondent has no objection to because of its competency.

It is dated June 16, 1933, before this witness became associated with the organizations, so I cannot identify it by his testimony.

Mr. Weisman: No objection. 734

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 99-A, 99-B, 99-C, 99-D and 99-E, were marked as exhibits and received in evidence.)

Examiner Bennett: What has it reference to?

Mr. Wiesman: It seems to be a sort of circular letter sent out to the retailers sort of patting ourselves on the back that we have done a nice job if the truth must be known.

Mr. Haycraft: It is sent out by the chairman of the Guild.

I ask that this document be marked Commission's Exhibits 100-A and 100-B. It comprises two sheets. 735

(Photostat of circular letter dated April 9, 1936, from Albert M. Post, executive director, Fashion Originators Guild of America, Inc., and sent to members and affiliates of the Fashion Originators Guild of America, Inc., was marked Commission's Exhibits 100-A and 100-B, for Identification.)

736 *Albert M. Post—For Commission—Direct.*

By Mr. Haycraft.

Q. Mr. Post, I show you Commission's Exhibits 100-A and 100-B, which purports to be a letter from yourself to members and affiliates of the Fashion Originators Guild of America, Inc., on the letterhead of the Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, "Member Correspondence," under date of April 9, 1936, and ask you if you can identify that? A. First, I would like to go back to the other question you asked me about this other transaction as to whether it was typical of the time?

Q. Yes. A. All right. Because we have changed cer-
737 tain procedure, and I just happened to think of one of them.

Mr. Weisman: I have already stipulated that you could put that in evidence. Why waste time this way about it? Why not let it go in in evidence?

Mr. Haycraft: That is just one thing. Wait until I offer it in evidence. I have not offered it in evidence yet.

Mr. Weisman: I have agreed to it. Why waste the witness' time about it.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: I have no objection. I am just trying to save some time.

Examiner Bennett: Without objection, it will be
738 received in evidence.

(The letter referred to, heretofore marked for Identification Commission's Exhibits 100-A and 100-B, were marked as exhibits and received in evidence.)

Examiner Bennett: We will recess until 2 o'clock, and I shall ask you all to be here promptly.

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Gentlemen, the hearing will come to order. Mr. Post, will you come around, please, and resume the stand.

ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, do you have available the original agreement between the Guild and the Protective Affiliate members around January 20, 1936? A. There was no agreement—what was the date of that, you said? Mr. Haycraft, what was it? 740

Q. January 20, 1936.

(Question read.)

A. May I change my last answer?

By Mr. Weisman.

Q. Certainly. If your answer was wrong.

(Question again read.)

A. My answer is that I was confused with the general agreement in this matter. There was a special agreement at that time and that was made out for some of the Protective Affiliates. 741

Mr. Haycraft: I ask that this document be marked Commission's Exhibits 101-A and 101-B for Identification.

(An agreement with the Fashion Originators Guild was marked Commission's Exhibits 101-A and 101-B for Identification.)

742 *Albert M. Post—For Commission—Direct.*

By Mr. Haycraft.

Q. Do you recognize this? A. Yes.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: No objection.

Examiner Bennett: Without objection it will be received in evidence.

(The document referred to, heretofore marked for Identification Commission's Exhibits 101-A and 101-B, were marked as exhibits and received in evidence.)

743 Mr. Haycraft: I ask that this document be marked Commission's Exhibits 102-A to 102-G, inclusive, for pages 296 to and including page 302, and Commission's Exhibits 102-H to 102-N, both inclusive, for pages 303 to 311, and Commission's Exhibits 102-O to 102-X, inclusive, for pages 312 to and including 321, inasmuch as pages 296 to and including 391 are for the month of November; whereas, pages 302 to and including 311 are for the month of December, 1935, and pages 312 to and including 321 are for the month of January, 1936.

(Monthly report of Returns—November, pages 296 to 302, inclusive, were marked Commission's Exhibits 102-A to 102-G, inlcusive, for Identification.)

744 (Monthly report of Returns—December, pages 303 to 311, inclusive, were marked Commission's Exhibits 102-H to 102-N, inclusive, for Identification.)

(Monthly report of Returns—January, pages 312 to 321, inclusive, were marked Commission's Exhibits 102-O to 102-X, inclusive, for Identification.)

By Mr. Haycraft.

Q. What is this document, Mr. Post, Commission's Exhibits 102-A to 102X, for Identification? A. This is the monthly report of returns for November. It does not say what year. I think this probably is 1935.

Q. To whom is that report made? A. To me.

Q. By whom? A. The Piracy Department.

Q. Mr. Goldston's department? A. It is under his supervision.

Q. Where does he get the information contained in the report? A. It is a recapitulation of the reports that come in in detail from the shoppers during the month, the current month. I was just trying to see whether it is all No- 746
vember.

By Mr. Seidman.

Q. It is for three months. A. Is it? Will you change that to January, December, and—November, December, and January?

Q. What year? A. The years are not marked.

Mr. Weisman: This thing is not in evidence. I object to the witness discussing or testifying concerning an instrument that is not in evidence.

Examiner Bennett: Sustained.

Submit it to the attorney for inspection.

Mr. Haycraft: In view of what the witness has said as to the document, I ask that the November 747
report be marked Commission's Exhibits 102-A to 102-G, the December report marked Commission's Exhibits 102-H to 102-N, and the January report marked Commission's Exhibits 102-O to 102-X.

Examiner Bennett: That has already been done.

Mr. Haycraft: With the correction in the identification. I offer it in evidence.

Mr. Weisman: No objection.

(The documents referred to, heretofore marked for identification Commission's Exhibits 102-A, 102-B, 102-C, 102-D, 102-E, 102-F, 102-G, 102-H, 102-I, 102-J, 102-K, 102-L, 102-M, 102-N, 102-O, 102-P, 102-Q, 102-R, 102-S, 102-T, 102-U, 102-V, and 102-X, were marked as exhibits and received in evidence.

By Mr. Haycraft.

Q. Did you say this was prepared by Mr. Goldston and submitted to you? A. I said it was prepared under his supervision and direction. I believe it comes to me.

749 Q. What disposition do you make of it? A. File it.

Q. Nothing more? A. Just as a reference.

Q. That is not submitted to the members themselves? A. Well, the individual members may receive the information regarding their own merchandise but that would be simply in not exactly extracts, but there would be a recapitulation as to that particular type of merchandise.

Q. But not the whole report? A. No.

Q. What is the significant fact of the first column in this exhibit, the names that appear in the first column? A. The Guild-manufacturer-members.

Q. The names of the Guild members? A. Yes.

Q. Of the dress or garment manufacturers? A. Yes.

Q. What is the significance of the second column, "Sales

750 Price"? A. That is the sales price—no, you must refer to the style number; there is no sales price on there.

Q. I beg your pardon. I meant to say "style number." A. Yes, sir. That is the style number of the garment.

Q. What is the significance of the third column entitled— A. (Interposing) That is the manufacturer who copied that particular style of that Guild number. It is entitled "Copyists."

Q. What is the significance of the next column entitled "City"? A. That is the city where the copyists were located.

Q. Where the retail dealers were located? A. No, where the copyists—where the shoppers or the stores, themselves, advised us that they had returned goods.

Q. Where the dresses were found and picked up? A. Where the goods were found.

Q. What is the last, "Quantity and Amount"? A. The quantity returned from that particular city on that particular style.

Q. Would the total number of the various figures in the last column be the number returned during any given 752
month? Take, for instance, Exhibit No. 102-A, for the month of November, would the total of the figures in the last column be the total number of dresses returned during that month? A. Generally, yes, although it means really the number of dresses which were removed from sale. We assumed that they were returned. We do not know that. Secondly, there might be dresses removed from sale that we do not know about, therefore not included on this list, and, thirdly, those are the dresses that we find that the store acknowledged that they had that they said they were removing from sale that unfortunately sometimes we find they have not done so, although they have said they were removed.

Q. They were supposed to remove them? A. They were 753
supposed to remove them from sale, but they sometimes do not do it.

Q. Now, do you have available the report— A. What?

Q. First, when did you first inaugurate the system of monthly reports from Mr. Goldston to you of their shoppers? A. Some time around the time that the shoppers were employed the first of the year 1935, so I would think it would be along about February or March of that year.

754 *Albert M. Post—For Commission—Direct.*

Q. Is it your testimony that Commission's Exhibit No. 102-A for November and Commission's Exhibit 102-H for December is for the year 1935, and Commission's Exhibit 102-O is the only report you have for the year 1936, being for the month of January? A. That is the only one here. We probably have others, or can get them.

Q. You have other reports for the year 1935 and for 1936 here in the court room? A. I think we have such reports. I would not be certain.

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755 Room 901, 45 Broadway,

New York City, N. Y., July 17, 1936.

Met, pursuant to adjournment, at 9 A. M.
Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

Mr. Haycraft: I offer in evidence as Commission's Exhibit No. 121 for Identification, being a letter from Mr. J. M. Golby, executive secretary, Fashion Originators Guild of America, Inc., to Miss Rose E. Phillips, 420 N. Charles Street, Baltimore, Md., under date of January 14, 1935.

756 Mr. Weisman: This letter is a little different. If this letter is offered for the purpose of showing the background or evolution of the matter, I have no objection to it going into evidence. If it is offered for the purpose of showing the present existing fact, I have no objection to it. The reason therefor is that this refers to the practice which is wholly discontinued and had been discontinued long before the institution of this matter. It refers to the fact that they should be members of a retail guild. It is no longer the practice, and was not the practice at the time of the investigation or the filing of the complaint.

Mr. Haycraft: There is no evidence of that fact which has so far been introduced into this record. If that be the fact, that is one thing, but we do not know that now. So far as the testimony now goes, of course, there is no proof to that effect.

When the respondents' case is put in I will be willing then that it may not be considered for present practice, if that fact be shown conclusively to my satisfaction, but until then the offer is not restricted.

Mr. Weisman: I think Mr. Haycraft is unintentionally mistaken, I think; if he will refresh his recollection he will remember that Mr. Post testified that our contract with the Baltimore Guild expired in 1935, so obviously— 758
is that correct?

(The witness shook his head.)

Mr. Weisman: The witness shakes his head and says what?

The Witness: Yes.

Mr. Weisman: Yes. So, obviously, I am correct in my statement that it can only show evolution or what went on before.

Mr. Haycraft: The failure to renew a contract does not mean by any means that there was not a continuation of the practices thereunder, and until there is proof to my satisfaction that there has not been a continuation of the practices thereunder, I am making no stipulation to that effect.

Examiner Bennett: I will overrule the objection. The 759
document is received in evidence.

(The letter referred to, heretofore marked for identification Commission's Exhibit 121, was marked as an exhibit and received in evidence.)

Examiner Bennett: I understand that all of these matters contained in this mess of correspondence is received as indicating the general activities of this concern. It

seems to be the center of certain activities. Whether that will mean anything or nothing when it is all brought together, I do not know. However, I am allowing this evidence to go in because I think a picture of their general activities is the best thing that we can secure; certainly, the best foundation which the Commission could have for action. It is upon that basis that it is being received in evidence.

By Mr. Haycraft.

Q. I would like to ask you some questions regarding Commission's Exhibits 281 and 282 just now received in
761 evidence. I will ask you what the names indicate in the first column? A. The names of the Fashion Guild manufacturer members.

Q. What are the numbers in the second column? A. Those numbers refer to the style of their styles that were reported as being alleged copies.

Q. What about the numbers in the last column—what do they purport to represent? A. The number of styles involved. Let me explain that by saying that this style No. 100, there may be five complaints on the same style, so that the last column, you will note, sometimes, is smaller in number than the other column. There may be five complaints on style No. 100. Therefore, in that first column, there would be five complaints, the number of
762 styles involved would be one style. In other words, it could be copied by numerous other copyist-manufacturers.

Q. These exhibits do not contain the names of the cities where the shoppers were located and made the selection? A. No; you will recall that I told you that we advised the members of this report. This is the way it has been gotten out since the last report stopped.

Q. Was the last report the one that has heretofore been received in evidence, the only one preceding these two, or have there been others in the year 1935? A. No. We had no others.

Q. You have the shopper reports in your files from which ese were made up?

Mr. Weisman: I object to the form of the question because we do not—the witness testified yesterday it was not made up from shoppers' reports. It was made up from various sources.

y Mr. Weisman.

Q. Is that correct? A. The other report was made up om shoppers' reports. This was made up from piracy ports.

y Mr. Haycraft. 764

Q. You mean piracy reports in the usual form? A. Yes.
Q. Do you have those piracy reports in your file? A. Yes.
Q. You still have the shoppers' reports from which the her exhibits were made up? A. We have all the shoppers' ports. They come in daily.

Mr. Haycraft: I would like to have the privilege of asking Mr. Post to step down as a witness and calling another witness for a few minutes.

Mr. Weisman: No objection.

Examiner Bennett: You may be excused temporarily.

(Witness temporarily excused.)

Mr. Haycraft: I will call Mr. De Lisser. 765

Mr. Weisman: You are going to call him now?

Mr. Haycraft: Yes. I will call Mr. Austin M. De Lisser.

766 *Austin M. De Lisser—For Commission—Direct.*

AUSTIN M. DE LISSER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Please state your full name, address, and occupation. A. My full name is Austin M. De Lisser. My residence is 140 Franklin Avenue. I live in the City of New Rochelle, N. Y. I am executive secretary of the Textile Affiliates.

Q. Of the Fashion Originators Guild? A. Of the Textile Affiliates of the Fashion Originators Guild.

767 Q. How long have you occupied that position? A. Approximately a year and a half.

Q. What are your duties in that position? A. Administrative duties and carrying out the instructions of the membership the way the membership has expressed it through the governing committees or the steering committees. It is just the general administrative duties that fall upon the secretary.

Q. What governing duties do you have to do? A. I do not do anything in the way of governing. I follow out the Governing Committee's rules.

Q. I see. What governing committees and what steering committees do you have in mind? A. I have the committees that are appointed by the membership to speak for

768 them, or to conduct the affairs and business of the Textile Affiliates.

Q. What are the names given to those committees? A. They were called the Steering Committee previously and Governing Committee more recently.

Q. They are composed of members of the Textile Division? A. That is right.

Q. Do you have any contact with the Board of Governors of the Guild; that is, the Fashion Originators'

Guild? A. Not officially. I know them and see them, but I have no official contact with the Board of Governors.

Q. What did you do before you became executive director of the Textile Affiliates of the Fashion Originators' Guild? A. I worked for the firm of Cheney Brothers, a silk firm.

Q. They are not associated with the Guild at all? A. No.

Q. I hand you Commission's Exhibit 243 for Identification A to J, inclusive, and ask you to identify that. A. Yes, I looked at this before. This is a compilation of resolutions as it states here of the Textile Affiliates.

Q. Who prepared it? A. I don't know what you mean by "prepared." 770

Q. Did you have anything to do with the preparation of this document? A. I had the administrative duty of seeing that it was typed and so forth. I had nothing to do with the actual regulations as to making them or forming them, no.

Q. Where did they come from? A. Oh, they came from the vote of the membership body.

Q. Do you recall who it was that told you to prepare those documents or instructed you to prepare it? A. Well, this particular document, if I recall right, was compiled simply to take out of the minutes those definite——

Mr. Weisman: I object. I ask that the answer be stricken as irresponsive. He was asked who told him to get this up and now he is proceeding to tell 771 what was done, and I do not think it is a proper question to be asked and be answered in that form. In other words, I do not think it is a responsive anwer to the question and I move that it be stricken out.

Examiner Bennett: If your answer is "Who," of course that could be answered very definitely.

By Mr. Haycraft.

Q. Will you tell us who it was, then later on you may tell how it was done? A. May I have the question read again?

Q. (Question read.) A. I do not recall who it was, frankly.

Q. Do you recall the circumstances under which it was prepared? A. I am afraid I cannot be very helpful on that. It took place in March. I do not recall just when it was. This was just to help the members so certain regulations which they had put in without requiring the particular member to go through a great conglomeration of
773 other rules and regulations in order to know. But I cannot tell you how it came out or who brought it out. All I know it was given to me to have prepared, and I had it prepared and sent it out. I do know that it was sent out. Yes, I can state that very definitely. As to just who it was who directed that it be put out, that I cannot tell you.

Q. What did you do with it? A. It was sent to the membership.

Q. Did you check it back against the minutes of the organization to see that it was correct? A. Whether I did or whether I had somebody else do it I do not know, but it should have been checked back, of course.

Q. You are satisfied that it is correct? A. Well, now, I have not checked it back against the minutes of every
774 one. I presume it is correct. It was sent out in this form.

Mr. Weisman: Well, as I understand it, these are resolutions up through April 15; is that correct?

The Witness: March 5.

Mr. Weisman: March 5.

The Witness: Yes, sir.

Mr. Weisman: The complaint in this case is drawn as of April 16, as I understand it, and the charge is being tried here on July 17.

These resolutions are totally incomplete in that they are only a part of a large number of resolutions, modifying, amending, and changing these particular resolutions which will throw a great deal more light on this matter; if the Court is desirous of receiving them merely to show the evolution or background of the matter, that is one thing and I have no objection. If, on the other hand, they are received as showing the resolutions as of to-day, I object, because they do not set forth what are the resolutions as of the date of the trial, and are not evidence of any present existing practice.

Mr. Haycraft: I am offering them for whatever 776
use they may be put to. It may turn out that later resolutions were passed before the issuance of our complaint, and respondents' answer thereto.

Mr. Weisman: Or thereafter, for that matter. I think it will be.

Mr. Haycraft: That is something else.

(There was a discussion off the record.)

Mr. Goldwater: May it please your Honor, I would like to interrupt at this time in order to ask some questions in connection with this matter, which I think will have a bearing on the introduction or non-introduction of this exhibit.

Examiner Bennett: State for the record whom you represent.

Mr. Goldwater: My name is Goldwater, and I 777
represent the Textile Affiliates. May I but briefly examine this witness to show and establish to your Honor's complete satisfaction, as I am sure I can, that this is an incomplete record of the rules and regulations; of the substance of the effective resolutions of the board governing the conduct of the members and their practices and that it does not establish the binding regulations upon them as they

exist at the time of this trial. I ask for permission to examine this witness to establish that factual evidence as a preliminary to offering the objection that they are incompetent, immaterial and irrelevant, and certainly improper from every standpoint to be introduced into evidence at this time.

Mr. Haycraft: I do not think that that is a sound objection to the admissibility of the exhibits. It is not any different from the objection that has been made previously and overruled.

Mr. Goldwater: It is a further objection in that it does not appear in the record that these are not
779 the regulations and rules that bind the body at the present time. I would like to establish that fact.

Mr. Haycraft: Even conceding that they are not for the sake of argument, that would not disturb the admissibility of this exhibit and would not defeat it. That was the contention of the respondent which was made previously and overruled by the Examiner, very properly, in my opinion.

Examiner Bennett: I think it is well settled that the attorney for the complainant or the attorney for the Commission in this case is entitled to offer that much as is contained therein, and that it is important to his case, and that the respondent when it puts in its defense in its own case is entitled to supplement it with anything that throws any light
780 upon that document that has been previously put in by the other party.

I will sustain that and overrule your objection.

Mr. Goldwater: I understood, now—do I now understand that my request for opportunity of examining the witness is denied?

Examiner Bennett: If you want to examine the witness for the purpose of making an objection you may do so. I did not understand that is what you wanted.

Mr. Goldwater: I would like to examine the witness upon that point. This does not contain the information that it should contain to be a proper portrayal of the situation as it exists.

Examiner Bennett: I will allow you to cross-examine for the purpose of making your objection.

Cross-examination on the voir dire by Mr. Goldwater.

Q. Mr. De Lisser, have there been rules and regulations which modify, alter, or amend this group contained in this exhibit which has just been handed to you, marked Commission's Exhibit 243 for Identification? 782

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant in this case, whether there have been subsequent changes in them because these are offered for and can only speak for what they have in them, and they are not intended to be offered for anything beyond what they contain themselves. Of course, if there has been something else at a later time that is another matter which has nothing in the world to do with the admissibility or lack of admissibility of this witness. As a matter of fact, that same objection was made a while ago, and it was passed upon and overruled. It seems to me it is simply wasting time.

Mr. Goldwater: No. I want to show that the rules and regulations, resolutions and so forth that have been placed in this document have since been modified, amended and altered so that they do not present a true picture of what is governing the membership at the present time. 783

Mr. Haycraft: It seems to me that it is quite immaterial as to whether it has been changed since that time. What we are talking about is these

rules and regulations as they are set forth in here What may have taken place at some other time can have no bearing upon the admissibility of this document.

Examiner Bennett: The witness may answer the question.

A. Yes, sir.

By Mr. Goldwater.

Q. Have there been, sir? A. Yes, sir.

Q. I show you an instrument which is entitled "Min-
785 utes of General Meeting of Textile Affiliates, Fashion Originators' Guild of America, July 1, 1936," and ask you if that is a correct transcript of the minutes?

Examiner Bennett: July 1, 1936?

Mr. Goldwater: Yes, sir.

By Mr. Goldwater.

Q. I will ask you now whether this is a correct transcript of the minutes of the meeting held on that day, which contains resolutions, rules and regulations which alter, amend, modify or affect resolutions which are contained in Commission's Exhibit No. 242 for Identification? A. I so believe.

Q. Do you know that that is a fact? A. Yes, sir; I know
786 it is a fact.

Mr. Goldwater: I ask this be marked for identification.

Examiner Bennett: You desire to mark that for identification at this time?

Mr. Goldwater: Yes, sir.

Mr. Haycraft: I think this is the wrong time even to mark it for identification.

Examiner Bennett: It is a convenient matter. He has the witness on the stand. It is irregular, but it is convenient to do it that way and I will permit it.

(The document referred to was marked Respondents' Exhibit 2 for Identification.)

By Mr. Goldwater.

Q. I show you another instrument marked "Minutes of General Meeting of the Textile Membership of the Fashion Originators' Guild of America, Inc., May 25, 1936." I will ask you if that is a correct transcript of the minutes 788
of the Textile Affiliates of that day and contain resolutions, regulations, and rules which alter, amend, modify or affect those contained in Commission's Exhibit 243 for Identification, offered by counsel for the Federal Trade Commission? A. Yes, sir.

Mr. Goldwater: I ask that that may be marked for identification.

Examiner Bennett: It may be so marked.

(The document referred to was marked Respondents' Exhibit 3 for Identification.)

Mr. Goldwater: I offer in evidence as preliminary to the objection these exhibits which I have had just marked for identification so that it may 789
be clear to the Court that there are rules and regulations in existence at the present time, and at the date of this trial, which are different from and do alter, modify, amend or overrule those contained in Commission's Exhibit 243 for Identification.

Mr. Haycraft: I object to that.

Examiner Bennett: Objection sustained. They are ruled out at the present time. You may offer them again when you come to the case for the defendant.

Mr. Goldwater: I except.

Examiner Bennett: Exception noted.

Mr. Goldwater: I object to the admission of Commission's Exhibit 243 for Identification. It appears from exhibits now in court, namely, Respondents' Exhibits Nos. 2 and 3 for Identification that the exhibit offered does not contain the rules, regulations and resolutions which bind the members of Textile Affiliates at the date of this trial.

Examiner Bennett: The objection is overruled. It will be received in evidence.

Mr. Goldwater: Exception.

791 Mr. Weisman: Exception.

Examiner Bennett: Noted.

(The document referred to, heretofore marked for identification, Commission's Exhibit 243, was received in evidence.)

Mr. Haycraft: At this time I should be glad to have a ruling as to the date that is considered to be the date of the admissibility of evidence as to time. For instance, these two exhibits which your attention has been directed relate to dates subsequent to the issuance of the Commission's complaint.

Examiner Bennett: I will follow the practice

792 which I have been following very generally of receiving anything which will indicate to the Commission whether or not the practice is being continued or has been discontinued. I think that they are wholly irrelevant so far as bearing on the complaint itself, or on the issues of the complaint itself, but I think that they are informative to the Commission and may well be before them as indicating whether the practice has been abandoned or has not been abandoned. That may be true as to any testimony you may have to offer on that point also.

Mr. Haycraft: When it comes to the time for the defense to put in its evidence, they may then have this offer renewed by counsel for the respondent at that time?

Examiner Bennett: Yes. When the defendants come to put in their case counsel for the respondents may make this offer again and I will consider it at that time. Have you anything further to ask this witness?

Mr. Goldwater: Not at this time, your Honor.

Examiner Bennett: You may proceed, Mr. Haycraft.

794

Direct examination (resumed) by Mr. Haycraft.

Q. I show you Commission's Exhibit 244 for Identification and ask you if you can identify that in any way? A. Yes, sir.

Q. Did you prepare it or have it prepared under your supervision and direction? A. Yes, and I think this was prepared at the request of Mr. Seidman. Our office prepared it for him.

Q. What is it? A. It is a list of the various accounts of the various garment manufacturers that we have—I do not know just how to express this—that have been in what we term a violation of our fair trade practices.

Q. Was that taken from the records of your Textile Division? A. That was taken from the records of the Textile Division; yes, sir. 795

Q. Where was the information obtained from from which this was prepared? A. It is a record, I believe, that shows a list of all of the—I do not know just how to tell you this readily—I will start all over again—at any time that we have sent a notification to our affiliates that a certain account has violated our fair trade practices, this is a list of all of the notices that have ever been sent out to the affiliates telling them about one of these accounts.

Q. When you say "affiliates," you are referring to the members of the Textile Division? A. Yes, sir.

Q. They are textile manufacturers? A. Yes, sir.

Q. As distinguished from garment manufacturers? What is the purpose of sending out the information contained in that? A. We never sent this list out to anybody.

Q. Or a duplicate of it? A. No, a duplicate of it was never sent out.

Q. Did you send a notice on the date indicated in this list to anybody? A. If the date is right when this went to the Textile Division concerning the particular one, it went
797 out on the date, I presume, listed here. Yes, I think these dates are right, and on that date it went out to them.

(Witness temporarily excused.)

Examiner Bennett: We will take a recess until 2.10 o'clock P. M.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2.10 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: We will be in order, please. Is Mr. De Lisser here as yet?

798 Mr. Weisman: No, sir. Mr. De Lisser has not come back as yet, but I expect him to be here in a few moments. I saw him downstairs just a moment ago talking to somebody and waiting outside of a telephone booth. I understand that Mr. Goldwater was talking to someone about a matter in which Mr. De Lisser was concerned. I think he will be here in about two minutes. Oh, here he is now.

Examiner Bennett: Mr. De Lisser, will you resume the stand?

AUSTIN M. DE LISSER resumed the stand and testified further as follows:

Direct examination (continued).

Mr. Haycraft: What is the last question and answer?

(Last question and answer read.)

Mr. Haycraft: I offer this exhibit in evidence at this time, if your Honor please.

Mr. Weisman: Oh, I object to that. That exhibit has nothing to do with the issues before this hearing, and certainly it is not a proper piece of proof to introduce into this case upon any theory whatsoever. As I understand, the witness states that it was made up in his office by some stenographer at the request of Mr. Seidman, and that he made it up, including this list, and that it was not used in any of the activities of the Textile Affiliates, and is not a part of their records, and was simply a memorandum or record made up for the information of Mr. Seidman. He could have made it up himself, and, instead, he asked them to make it up, to make up a list for him, and Mr. De Lisser's office made it up. Certainly, the list is not evidence of anything. 800

Examiner Bennett: You have the witness on the stand. If you want to get this matter in, you will have to question him further about the contents of the matter to which you desire to direct his attention. I do not think the list, itself, would be properly admissible at the present moment, at least. 801

By Mr. Haycraft.

Q. Mr. De Lisser, Commission's Exhibit No. 243, this group of resolutions, or compilation of resolutions, rules

and regulations, binding upon the members of the Textile Division, did you have occasion to, as executive secretary, notify any of the members of the Textile Division of a violation of any rules and regulations by garment manufacturers who were members of the Guild? A. I do not think those rules and regulations and resolutions have anything to do with the garment manufacturers.

Q. By members of the Textile Division, as set forth in this document, Commission's Exhibit No. 243?

Mr. Weisman: May I have the question again? Co-counsel asked me to get him a chair, and while I was getting him a chair I lost the question. I am
803 stating the reason so that I may have the question read.

Examiner Bennett: Under the circumstances, it may be read.

(Question read.)

Mr. Weisman: Why, your Honor, most assuredly I object. I cannot understand the question. I ask counsel be asked to reframe the question so I can understand it.

Examiner Bennett: The witness does not seem to have any difficulty in understanding the question, however, and since he is the one who will have to answer it, I think he may proceed.

Mr. Haycraft: In order to save time, I will with-
804 draw the question and ask another one.

By Mr. Haycraft.

Q. I notice on page A of Commission's Exhibit No. 243, that right was given to you, Mr. De Lisser, to send accountants from the Guild to silk firms holding membership in the Guild for the purpose of checking the books so far as necessary to obtain adherence to the Guild's resolutions, regulations and practices. I will ask you whether or not you did do that. A. Yes.

Q. With what result? Did you find that some of the rules had been violated? A. No, sir.

Q. You found they had not? A. Yes, sir.

Q. Did you ever find any of them had violated any of the rules? A. Not through accounting.

Q. Did you in any way find that any of the manufacturers had been violating any of the rules of the Textile Division? A. Yes, sir.

Q. What did you do upon finding that out? A. Asked the manufacturer in question to come before a Grievance Committee.

Q. What was the procedure of the Grievance Committee? A. The procedure was to hear my own facts that I 806
had, whatever it might be at hand, and to listen to the story of the so-called "defendant" and to judge whether or not he had infringed our rules.

Q. Then what was done as a result of that? A. What?

Q. Did the Grievance Committee make a report? A. The Grievance Committee sat and made their findings.

Q. To whom did they make their findings— A. (Interposing) Well, they made their findings—they were conclusive in themselves, any findings were conclusive unless an appeal was taken.

Q. Then what was done with the manufacturer that had violated the rule? A. That depends upon the case, and there were a number of things that happened. Either, for instance, we just dismissed the case upon a better understanding in the case where the defendant claimed that 807
there was an error or oversight, or, again, it was simply dismissed with a clarification and a promise not to repeat it in the future. Each of those depended on the case.

Q. When the Grievance Committee found there was a violation, what was done? A. Well, it was handled, in other words, it was then brought out for conclusion under a proper procedure, either for fixing penalties and then determining the penalty to be affixed under that provision.

Q. Were penalties ever assessed? A. A penalty was assessed in one instance. Penalty was assessed once.

Q. This Exhibit No. 244 for Identification that I showed you a moment ago, referring to that again, were there in among the rules of the Textile Division rules which related to the conduct of the dress manufacturers who were members of the Guild or not members of the Guild?

Mr. Weisman: I object to it on the ground it is incompetent, immaterial and irrelevant, and has no possible bearing upon the issues in this case, Mr. Examiner. The best evidence of that would be the rule or the minutes itself, and not the witness' opin-
809 ion with regard thereto.

Examiner Bennett: Read the question.

(Question read.)

Mr. Goldwater: I object to it on the further ground that the question refers to an exhibit which has nothing to do with the substance of the question which the witness is required to answer, and the paper being merely a list of names, it has nothing to do with the rules and regulations, and is simply a left-handed method of trying to get this into evidence which is decidedly improper.

Mr. Haycraft: Just let me read you the title of that, and I will show you. It says, "Notice of Accounts in violation of our rulings."

810 Mr. Weisman: The exhibit is not in evidence in this case. The Court has ruled that it is not competent yet and I submit again that it is highly improper in the first place, and that it is incompetent in the second place to read from it in this manner.

Examiner Bennett: Will you reframe the question? I do not see there is any necessity for your bringing in that reference to that exhibit. So long as it is marked simply for identification, I think

you can reframe your question and get what you want without going about it in that manner.

There is no objection apparently as to whether the witness has these things of his own knowledge, but the objection runs to the reference to the document.

By Mr. Haycraft.

Q. Referring again to Commission's Exhibit No. 244 for Identification, which is entitled, "Notice of Accounts in violation of our rulings"; I will ask you what is referred to in the phrase, "Our rulings"?

812 Mr. Weisman: I object to referring to the contents of a document not yet in evidence. Your Honor has ruled that this document may not be offered in evidence. Now my friend is referring to it and trying to get it in through the back door when the front door has been closed. The impropriety of that is so obvious that it is not necessary to call your Honor's attention to it.

Examiner Bennett: Are you trying to refresh the witness' recollection from it?

Mr. Haycraft: I only read the title of it.

Mr. Weisman: He is stating what amounts to the substance of the exhibit.

Mr. Haycraft: The title.

813 Mr. Weisman: The title is a part of the substance.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

Mr. Goldwater: Exception.

By Mr. Haycraft.

Q. You may answer. A. I am not positive of the question. It is very difficult for me to understand what it is now. Will you read the question to me again?

Q. (Question read.) A. May I see the document so that I may know clearly what you mean?

Q. Yes (document handed to witness). A. Well, frankly, this was drawn up, and this statement here I cannot explain what that means. It is not what it says in so many words, because it was a list compiled because he wanted that, Mr. Seidman, and it was headed probably by the stenographer that way. I do not know how to answer your question as to what is meant by the title put on there. I do not know how to answer the question, frankly, unless you can make it more clear. It is not what this title says, identically. It was drawn as a refer-
815 ence for Mr. Seidman. It is not what this title identically says.

Q. Do you have any rulings which affected garment manufacturers? A. Certainly.

Q. What were they?

Mr. Weisman: I object to that question on the ground that the rulings are the best evidence and not what this witness thinks what they are.

Examiner Bennett: That is true. If you want to find out what the rulings were, subpoena those things into the hearing.

Mr. Haycraft: Pardon me.

Examiner Bennett: If there is an objection, I shall have to sustain it, and there is an objection.
816 You may, of course, bring out what they are in a general way.

Mr. Haycraft: I am trying to find out what they are. I do not know.

Examiner Bennett: What they are is the text of the rulings, as I understand it. If you are desirous of finding out what they relate to, that is another thing. I am willing to have him answer that question. I think it is perfectly proper to get that in-

formation. I think it is perfectly competent to get a general characterization as to whether there were any such rulings, and so forth.

Mr. Haycraft: That is what I am trying to find out.

A. The rules you have are incorporated in the agreement.

Mr. Weisman: Certainly, and they are in evidence.

Mr. Haycraft: I am getting there as fast as I can. I cannot ask all of my questions at once.

818

By Mr. Haycraft.

Q. What did you do in enforcement of those rules in connection with the garment manufacturers?

Mr. Weisman: I object because that presupposes that he did something, and the testimony does not show that he had anything to do with the enforcement, or anything like that.

Examiner Bennett: He is asking him that.

Mr. Weisman: The vice of that question is that it presupposes something.

Examiner Bennett: You can chop that in two and ask it in two questions if you want to take a longer time.

819

Mr. Weisman: I do not want to take more time, but I want to get the evidence in properly so there will not be any confusion or incorrect conception of it on the record.

A. I had nothing to do—I did nothing—pardon me—I did nothing.

By Mr. Haycraft.

Q. Who did? A. It depended upon the rulings that you were discussing. Upon what particular ruling you were discussing at the time would depend that.

Q. What happened if the garment manufacturer did not pay 10 per cent. cutting charge imposed by the textile manufacturer? A. The textile manufacturer pursued the necessary course to collect on the basis of his bill, the bill charged, such was explained to him at the time, of course, as to the charge that was going to be made, and the basis of the collection was upon the understanding he had and the charges set forth in the bill when he got it.

821 When the garment manufacturer got the merchandise and got the bill, he could decline the merchandise and the bill with perfect propriety, but if he accepted the merchandise and the bill and declined, later, to pay, the manufacturer pursued the matter in the ordinary way to make collection.

Q. That is what the manufacturer did in his own internal organization? A. Yes.

Q. What did he do with respect to the Textile Division of the Fashion Originators Guild? A. If he failed in all attempts to collect the cutting charge he so reported the fact to the Textile Division, or to myself or to our committee that he could not collect the charges in view of proper bills and so forth. We would follow the course as

822 to whether or not that garment manufacturer had reason for not paying it, because I would, or one of my committee would, communicate with the garment manufacturer to find out the basis for his not paying the cutting charge which accompanied the bill for merchandise. If he still declined we further offered him the right to return the merchandise.

If he had used the merchandise regardless of the bill and could not return it and still did not wish to pay it, then it was a question of discussing the matter with him

and showing him the unfairness of his position. If he still declined, then we would contact a number of the members who were textile firms, and if we understood that he was going to continue denying our bills—the manufacturer's bill for cutting charges and keeping the merchandise regardless of the bill and then refusing to pay, it would then be recommended to notify our membership of the manner in which this man was handling his goods and merchandise and a notification will be sent to the members telling them this was the case.

Q. Is the first item on this exhibit, Commission's Exhibit 244 for Identification, such a notice as was sent?

824 Mr. Weisman: I submit that is a vitally and highly improper form of question here. This is a paper which was ruled out and now we are discussing the contents of it, something on this paper for which no proper foundation has been laid.

Examiner Bennett: I asked him to get the information from the witness. It is neither mine nor anybody's else affair where he gets the questions with which he seeks to elicit the information. As I understand it, that paper is of no consequence unless there is some explanation of it. I think that the obvious thing to do in view of the objections is to get that information from the witness that is in the paper if you want it.

825 Mr. Haycraft: That is what I am trying to do.

Mr. Weisman: I have no objection to his getting information I refer to the improper way of getting it. This paper is not before the Court. He has the information obtainable from a proper source. Now he says what is this information you have given me that is on the first line of this paper?

I object to it. I believe this to be a rule of law—in fact, a most elementary rule of law—that you may not read in or refer to the contents of a paper

which is not in evidence in the examination of a witness. In other words, it is obviously an indirect method of getting this paper in when he cannot get it in directly.

Examiner Bennett: I think that is the way of making the paper competent by questions, that is to find out whether it is proper or not proper. In this case, I have requested the attorney to get that information by asking questions of this witness. I think it is entirely feasible to do so. I do not see why he should bother with this piece of paper.

Mr. Haycraft: I withdraw the last question.

827 *By Mr. Haycraft.*

Q. Did you on July 16, 1935, send such a notice to the Mary Elizabeth Frocks with respect to the 10 per cent.— A. (Interposing) What?

Q. I will repeat the question. Did you on July 16, 1935, send a notice to members of the Textile Division of the Fashion Originators Guild with respect to violations of your rule in the Textile Division of the Fashion Originators Guild of the 10 per cent. cutting charge by the Mary Elizabeth Frocks, Inc.? A. I believe I sent out a notification at that time to the members regarding that.

Q. Was that charge listed on July 19, 1935? A. I do not have anything to bear out whether it was on that date or not, but the charge has been listed.

828 Q. Do you want to refresh your recollection (counsel hands witness Commission's Exhibit 244 for Identification)? A. Yes, I am ready to believe that is the date on which we notified our members that the charges had been paid by Mary Elizabeth Frocks.

Q. Did you ever, in the year 1935, notify the Textile Division of a violation of the 10 per cent. charge by other garment manufacturers? A. During the year?

Q. Yes. A. '35?

Q. Yes. A. 1935?

Q. Yes. A. That is right. We did.

Q. Did you send such a notice with respect to Sakin & Lindner? A. I believe so.

Q. Did you send such a notice with respect to A. Goodman & Son? A. Yes.

Q. Did you send such a notice with respect to Linde & Rubin? A. I believe so.

Q. Did you send such a notice with respect to Price & Schlessinger? A. Yes, sir.

Q. Did you send such a notice with respect to the Japanese Silk Garment Company on February 14, 1936? A. 830
I believe so.

Q. By the way, has that charge been lifted? A. Yes, sir.

Q. Do you know when it was lifted? A. No, I do not know. Very briefly after that.

Q. Now, did you ever send a notice to the Textile Division with respect to a violation of their rulings as to copying? A. I do not know what you mean by "copying."

Q. Copying dresses. A. We have no regulations of ours regarding copying.

Q. Did you co-operate with the Fashion Originators Guild——

Mr. Weisman: I object to that because the word——

Mr. Haycraft: I have not even finished the ques- 831
tion yet. I demand I be allowed to finish the question.

Mr. Weisman: You have said enough already to show that the question has an elemental vice in it. I object to that because he uses the word "co-operate," and what co-operating may mean to the Court and what it may mean to me may be altogether different. It is a word which itself is speculative and is an interpretation of some action of one

sort or another. Let him state what he did do and we can determine whether he co-operated or failed to. It is a word not only of interpretation but of degree.

Mr. Haycraft: I think I should be allowed to complete my question before the objection is made.

Examiner Bennett: Yes, I think so.

Mr. Weisman: I withdraw the objection at this time, so that he may finish the question, although I think it is obviously improper.

By Mr. Haycraft.

833 Q. Did you at any time co-operate, as executive secretary of the Textile Division of the Fashion Originators Guild with the Guild; and by that I mean the Fashion Originators Guild in the enforcement of their rules against the copying of designs of garments?

Mr. Weisman: I object to that question.

Mr. Haycraft: One moment. I have not finished my question yet.

Mr. Weisman: I am sorry. You dropped your voice and I thought that you had completed the question.

Mr. Haycraft: No.

By Mr. Haycraft.

834 Q. —by refusing to sell garment manufacturers who were known to be copyists and who were not co-operating with the Guild?

Mr. Weisman: Now I certainly want to object to that question, but because it has been broken up in so many parts I will ask to have it read as a unit so that I can frame my question.

(Question read.)

Mr. Haycraft: I withdraw the question and I will ask another one.

Mr. Weisman: I think that will be better because I cannot understand it in its present form.

By Mr. Haycraft.

Q. Did you ever send out notices to members of the Textile Division giving the names of garment manufacturers that had violated the Fashion Originators Guild rule against the copying of designs? A. Well, I am not familiar with the rule of the Fashion Originators Guild, as you call it, regarding copying. I would not have sent one for that reason; I would—— 836

Mr. Weisman: And I submit that that is an answer. I want to know generally what he did.

Mr. Haycraft: I think the witness should not be interrupted in his answer.

Mr. Weisman: He said he did not for that reason. You asked him for that reason.

Examiner Bennett: Is there anything further to add to your answer?

The Witness: Well, I did not know about the rules.

Examiner Bennett: You were going to——

The Witness: I would not send it out for a ruling.

Examiner Bennett: You are willing to answer: what was it? 837

By Mr. Haycraft.

Q. What is your answer? A. I was going to add that we might—we have told our members of a copyist, that is known, you know, to be, as you say, a copyist. We have at times informed our members that such a copyist did exist.

Q. That is, you sent out the notice to the members, yourself, as executive secretary? A. Well, I saw that a letter of information was sent out.

Q. Where did you get the information upon which you based that letter? A. That information was gotten in various manners, depending upon the case. It would—it would always come after proper conversation with the dress manufacturer in question himself, with me, or with my committee, with me.

Q. Did you ever consult either Mr. Post or Mr. Golby with respect to such a situation? A. Well, I suppose I discussed it with them, but it had no bearing on what we might do.

839

Q. Do you recall sending out, on August 21, 1935, such a notice, of copying, by the Franklin Dress Company?

Mr. Weisman: I object to the form of question, "such a notice," and I submit I would like to see that notice that my friend is going to offer. I don't know what such a notice is. The best evidence of such a notice would be the notice, and let us see what it is.

Examiner Bennett: Well, I will overrule your objection; the context shows what such a notice is.

The Witness: We advised our membership of the Franklin Dress Company being a continual copyist, yes.

840

By Mr. Haycraft.

Q. Has that ever been listed? A. Oh, yes.

Q. Do you recall when? A. No, but it was a few weeks after notification went out. That is no listing, I don't know what you mean by listing. We put down no decree, or no stipulation. We just advise, and when Franklin Dress told us that it was not their policy any longer to copy, we advised our members that he has told us that it is no longer his policy to copy.

Q. Do you recall giving such notice to the membership of the Textile Division with respect to copying by the Ed-Mar Frocks, in November, 1935? A. I remember sending a letter regarding Ed-Mar Frocks to the membership.

Q. Do you remember that charge was listed in January, 1935? A. Well, I still don't agree on the word "listing," if it matters; they were told about the difficulty, because some of them don't pay any attention to the advice that is sent out, anyway.

Mr. Haycraft: I move to strike out the last part of the answer.

Mr. Weisman: I submit——

Examiner Bennett: What is the answer? 842

(Last answer read.)

Mr. Haycraft: I move to strike out the answer beginning with the words "because of some of them," and so forth.

Mr. Weisman: There wasn't a question of passing, or listing, the mere thing he did was send out a notice. There wasn't anything to be listed. When a notice was sent out it was out, there was no penalty imposed upon it.

The Witness: I think the witness explained that, and it is not necessary that you bring that out.

Mr. Weisman: Oh, excuse me, your Honor, I thought we were arguing on his statement, as to whether or not that should be stricken out. 843

Examiner Bennett: Oh, I think the witness looked after that.

Mr. Weisman: Then, I submit it is responsive.

Mr. Haycraft: I move to strike out the last part of the answer.

Examiner Bennett: I will let it stand.

Mr. Weisman: Excuse me, your Honor, I thought you wanted it out.

By Mr. Haycraft.

Q. How do you know that the members did not pay any attention to those notices? A. Well, I have no way of knowing whether they do or do not, other than through conversation with the members, their own choice in the matter, as to whether they consider it good business to continue business with that particular account.

Q. Did any of them tell you that they did not pay any attention to those notices? A. Oh, I have been told many times that attention had not been paid to the notice.

Q. Were you ever told that attention had been paid to it? A. Oh, yes, I have been told that attention had been
845 paid to them; if they had not, I would not have sent notices if people did not think it was valuable.

Q. Do you recall sending out such a notice to the members of the Textile Division with respect to copying by the May Clohissie Garment Manufacturers? A. Yes, I do.

Q. In January, 1936? A. Yes.

Q. Do you remember sending out such a notice of copying by the Emanuel Gowns in February, 1936? A. I do.

Q. Do you recall sending out such a notice of copying by the Far East Bookbinder, in February, 1936? A. Yes.

Q. Did either of those last two named firms indicate that they discontinued copying? A. Oh, yes.

Q. Did you send out notice of such discontinuance to the membership? A. Yes.

846 Q. Did you ever send out any notices to the members of the Textile Division of the Fashion Originators Guild with respect to the violation of the returns rule?

Mr. Weisman: Wait a moment—what returns rule?

Mr. Haycraft: Resolution No. 4, Commission's Exhibit 243.

Mr. Weisman: That is all right; now we know what you are talking about. Go ahead.

The Witness: May I hear that question again? (Last question read.)

A. Yes, we sent notification on that.

Q. Do you recall sending out such a notification on January 24, 1936, with respect to the Letty Lee Garment Manufacting Company? A. Yes.

Q. Did you ever send out a notice that settlement had been made of that? A. Certainly.

Q. Do you recall sending out such a notice with respect to the returns rule violation by the Phoenix Dress Company in February, 1936? A. Yes, sir.

Q. Do you recall sending out notice of violation of the returns rule by the Fred A. Block Company in February, 1936? A. Yes, sir. 848

Q. Do you recall sending notice to the members of the Textile Division with respect to the violation of returns rule by M. A. Lipkin in February, 1936? A. Yes, sir.

Q. Do you recall a pledge of co-operation of dress manufacturers, or garment manufacturers, who were expected to sign, as to the purchase of goods from textile manufacturers that were registered with a certain bureau? A. No, sir; no, sir; not with respect to purchase, to the textile members.

Q. Do you recall a pledge of co-operation on the part of dress manufacturers, as a matter of notice to the members of the Textile Division? A. I did not understand that question. 849

Q. (Question read.) A. Matter of notice of what?

Q. Violation of a pledge of co-operation—did you ever send to the members of the Textile Division notice of the violation of pledge of co-operation by garment manufacturers? A. No, no.

Q. Are you familiar with the firm of Germaine-Monteil? A. Yes, Germaine-Monteil.

Q. Do you recall sending a notice of the violation of any of the rules of the Textile Division, in January, 1936? A. Yes.

Q. What was that rule? A. Refusal to sign the pledge of co-operation.

Q. What pledge of co-operation did Germaine-Monteil refuse to sign? A. A pledge—have we got that here? It is in evidence.

Q. Do you have a copy with you in the court room? A. Yes, I thought you had one. We have one. We have a pledge, declaration of co-operation pledge. We have not?

Q. It was asked for.

Mr. Weisman: See if you have it.

(Counsel search for the paper.)

Mr. Weisman: We have it (handing paper to
851 counsel).

Mr. Haycraft: That may be marked Commission's Exhibit 250 for Identification.

Mr. Weisman: What is the question?

(Record read.)

(The pledge of co-operation referred to was marked Commission's Exhibit 250 for Identification.)

Mr. Weisman: Now, I understand Mr. Haycraft offers this paper?

Mr. Haycraft: I have not offered it yet. I have not got it identified.

Mr. Weisman: He has identified it.

Mr. Haycraft: No, he has not. The record does
852 not show it.

Mr. Weisman: All right, I will try to help you, but you do not need my help.

The Witness: What do you want?

By Mr. Haycraft.

Q. Is that the paper which you have before you, Commission's Exhibit 250 for Identification; is that a copy of such a pledge of co-operation (indicating)? A. Yes.

Mr. Haycraft: Mr. Examiner, I offer that paper in evidence, Commission's Exhibit 250 for Identification.

Mr. Weisman: No objection. Of course this is an entirely different declaration of co-operation than the dress manufacturers. I do not want the two to be confused because of the nomenclature.

Mr. Haycraft: By the dress manufacturers?

Mr. Weisman: This has nothing to do with the type of pledge of co-operation that the dress manufacturers obtained from the retailers.

Mr. Haycraft: That is not what he said what it was.

854

Mr. Weisman: I know that. I just want to say by reason of using the same name, the nomenclature, I do not desire that the two shall be confused.

Examiner Bennett: Commission's Exhibit 250 is received in evidence.

(The document referred to was marked Commission's Exhibit 250 and received in evidence.)

By Mr. Haycraft.

Q. Do you recall giving notice to the members of the Textile Division of a violation, or refusal to sign a pledge of co-operation, by the Mary Elizabeth Frocks? A. Yes, I do.

Q. In February, 1936? A. About then.

855

Q. Has that concern later signed such pledge? A. Yes, they have.

Q. Did you send notice to that effect to the membership? A. Oh, yes.

Q. I show you Commission's Exhibit 245, and ask you if you identify that paper in any way? A. Yes, sir.

Q. What is it? A. A letter to Mr. Grossleight, United Textile Print Works.

Q. Did you send the original of that letter, of which that is a copy? A. Certainly.

Mr. Haycraft: Mr. Examiner, I offer that copy in evidence, as Commission's Exhibit 245, being copy of a letter from A. M. De Lisser, Textile Division, Fashion Originators Guild of America, Inc., under date of January 27, 1936, to Mr. Grossleight, United Textile Print Works, 3621 33rd Street, Long Island City, New York.

By Mr. Haycraft.

Q. That is the copy you furnished Mr. Seidman, is it
857 not? A. I don't know; I presume so.

Mr. Weisman: May I ask a question, Mr. Examiner?

Examiner Bennett: Yes.

Mr. Weisman: When this letter was sent out, did it bear your signature on the bottom? I notice the copy has no signature?

The Witness: I could not possibly tell you; I do not know.

Mr. Weisman: Then I object to the offering in evidence in this form, making it appear as if it was sent by us, when it may have been sent by this witness. He says he does not know, whether it is in the form of the original or not.

858

By Mr. Haycraft.

Q. Do you have a carbon copy of your letter that you sent out on that date to Mr. Grossleight? A. We should have one, certainly.

Q. Did you check this copy against that carbon? A. I have not checked this copy against it, no; I recall the letter, that is all.

Q. Do you recall when you first saw this copy? A. I think this morning when you gave it to me to look at.

Q. Do you recall giving it to Mr. Seidman? A. No, I don't recall giving it to him.

Q. You do not? A. No.

Q. Do you recall that Mr. Seidman called at your office once upon a time? A. Oh, yes.

Q. Did you at that time give him some papers? A. Certainly.

Q. Or copy? A. Or I provided them, provided that he have whatever papers he wanted.

Q. Can you look at that paper and tell from looking at it whether it is a paper from your office? A. Why, no, sir; I could not do that, no.

Q. Could you not? A. No. 860

Q. Is there any doubt in your mind that that is not a copy, or a carbon copy of a letter that you sent?

Mr. Weisman: There is no doubt in my mind either. The only question in my mind is whether it is complete. I do not deny that this is a copy of the letter that went out, but I do not think it is complete, and I would like to find out.

Have you got the carbon copy here?

The Witness: I don't know that there is a carbon copy; I don't think so.

By Mr. Haycraft.

Q. It was furnished, it was a memorandum submitted to the respondents the last two weeks ago asking for information. 861

A. Then it is here. If it is in that memo, it is here.

Q. That is why I gave it to you this morning, Mr. De Lisser, so that you could check it. A. If it is here, I will see.

(Witness searches among papers.)

Mr. Weisman: So that your Honor may not think that these are fanciful objections, I want to

show the difference between the carbon copy and the one offered in evidence. I do not want the Court to think that I am trifling with it. Your Honor can see how serious a difference there is between the two of them (indicating papers to the Trial Examiner).

Mr. Haycraft: If there is any difference that is not any fault on our part.

Mr. Weisman: That is all right; I am not blaming you. I am merely seeking to justify myself. Of course it is not your fault. There is a difference between those two letters.

863 Examiner Bennett: There is a difference in the signature.

Mr. Weisman: Yes, there is.

Examiner Bennett: Well, this is——

Mr. Weisman: Let us identify it.

Examiner Bennett: This is Commission's Exhibit 245 for Identification, which is submitted to the Commission as a copy of this letter of January 27, 1936, is it?

The Witness: Yes.

Examiner Bennett: It was?

The Witness: Yes.

Examiner Bennett: Yes. I think his testimony supplies the signature, and you can show——

Mr. Weisman: We will give you a copy, with

864 your signature.

Examiner Bennett: The signature will remain right there.

Mr. Weisman: How?

Examiner Bennett: At the present time, it can be made on the typewriter right here.

Mr. Weisman: That is all right. Conform these two copies. Put the signature there—conform these two copies—that is all.

(Witness supplies signature to exhibit referred to.)

Examiner Bennett: The Commission's Exhibit 245 may be received in evidence.

(The letter referred to, heretofore marked for Identification Commission's Exhibit 245, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Do you say you sent the original of that letter? A. Yes.

Mr. Haycraft: Has that been received in evidence, Commission's Exhibit 245? 866

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. Was the Doucet firm a member of the Textile Division? A. How?

Q. Was the Doucet firm a member of the Textile Division? A. Yes.

Q. Of the Guild? A. That is right.

Q. Was the United Textile Print Works a member of the Guild? A. No, sir.

Q. What was the industrial design registration that you mention in this letter? A. That is the bureau that we used to—or, rather, the whole, practically, trade uses to register designs; the design bureau in New York. 867

Q. Registration of textiles? A. Yes, registration of textiles.

Q. I now call your attention to Commission's Exhibit 246 for Identification, being minutes of luncheon meeting of textile members of Fashion Originators Guild, held at Empire State Club, Friday, June 16, 1933. A. What?

Q. And ask you if you can identify this as the minutes of the Textile Division of the Fashion Originators Guild,

copy of the minutes, which carries through June 16, 1933, through January 22, 1936? A. Yes, I believe that to be a copy of the minutes.

Mr. Haycraft: I would like to offer them in evidence. I do not know whether counsel for the respondents is going to require me to do the same with this as I had to do with the correspondence, but I make the offer in the form they are now. If that is not acceptable——

Mr. Weisman (interposing): That is all right. I mean, these are minutes. You may offer them all at once. You can offer them at once. The cor-
869 respondence was a different matter.

Examiner Bennett: That is Exhibits 246-A to EE, inclusive.

Mr. Haycraft: Yes, being minutes of meetings of Textile Members of Fashion Originators Guild, dated June 16, 1933, October 18, 1933, November 7, 1934, January 8, 1935, January 25, 1935, February 11, 1935, February 20, 1935, March 5, 1935, March 19, 1935, April 18, 1935, May 8, 1935, June 6, 1935, June 25, 1935, July 16, 1935, July 23, 1935, August 21, 1935, September 28, 1935, November 18, 1935, January 20, 1936, and January 22, 1936.

Examiner Bennett: They may be received.

(The documents referred to were marked Com-
870 mission's Exhibits 246-A to 246-EE, both inclusive, were received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 247 for Identification, which purports to be a copy of the minutes and meeting of the Embroidery Group of the Textile Division of the Fashion Originators Guild of America, Inc., February 3, 1936. and ask you to identify that as a copy?

Mr. Weisman: Does that run after this date?
Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I ask you if you identify that as a copy of the minutes of that group at that time?

Mr. Weisman: No objection.

A. I believe so, yes.

Mr. Haycraft: I offer that in evidence.
Examiner Bennett: That is what number?
Mr. Haycraft: That is Commission's Exhibit 247, being copy of minutes of the meeting of the Embroidery Group of the Textile Division of the Fashion Originators Guild of America, Inc., dated February 3, 1936. 872
Examiner Bennett: Received.

(The document referred to was marked Commission's Exhibit 247, and received in evidence.)

Mr. Haycraft: I have shown the witness Commission's Exhibit 248 for Identification, purporting to be a copy of the minutes of the general meeting of the Textile Division of the Fashion Originators Guild of America, Inc., February 21, 1936.

By Mr. Haycraft: 873

Q. Do you identify that? A. Yes.

Mr. Haycraft: And I offer that in evidence, Mr. Examiner, as Commission's Exhibit 248.
Examiner Bennett: It may be received.

(The document referred to was marked Commission's Exhibits 248-A and 248-B and received in evidence.)

By Mr. Haycraft.

Q. I now show the witness Commission's Exhibits 249-A and 249-B, purporting to be copies of a meeting of the Screen Print Group affiliated with the Textile Division of the Fashion Originators Guild of America, Inc., held on February 3, apparently of 1936, which I ask the witness to identify.

Mr. Weisman: It bears no date.

Mr. Haycraft: I would like to have that supplied on there; will you write it in there in pencil?

875 A. Yes, I identify that.

Mr. Haycraft: I offer it in evidence, Commission's Exhibits 249-A and 249-B.

Examiner Bennett: They may be received.

(The document referred to was marked Commission's Exhibits 249-A and 249-B and received in evidence.)

By Mr. Haycraft.

Q. I will ask you if you can produce a copy of the resolution or the agreement between the Fashion Originators Guild of America and the Registration Bureau, the Industrial Design Registration Bureau?

876 Mr. Weisman: Are you asking me to produce that?

Mr. Haycraft: No, I am asking the witness.

Mr. Weisman: I think you should ask me.

Mr. Haycraft: I think I should ask who I want to ask.

Mr. Weisman: But you should want to ask me, I am the counsel.

Mr. Haycraft: Sorry, but I am asking the witness.

By Mr. Haycraft.

Q. Answer the question. A. There is no agreement.

Q. No? A. Therefore, I cannot produce it.

Examiner Bennett: We will take a recess for five minutes.

(There was a short recess taken.)

Examiner Bennett: The hearing will be in order, please. You may begin, proceed.

Mr. De Lisser, will you come around and resume the stand, please?

Mr. Weisman: Mr. De Lisser was downstairs, and I do not think he has gotten back yet. 878

Examiner Bennett: Very well. We will wait for him.

Mr. Weisman: Here is Mr. De Lisser now.

Examiner Bennett: Will you come around and take the stand, please.

The Witness: I am sorry, your Honor, to have been late.

By Mr. Haycraft.

Q. Mr. De Lisser, to your knowledge, did the members of the Textile Division of the Fashion Originators Guild of America agree to buy only print, metal, Jacquard, laces and embroideries as well as printed from those that had been registered with the Industrial Design Registration Bureau? A. Not specifically as members of the Guild. 879

Q. Or did the members of the Guild pledge themselves to do something—I will put it this way: What did the members of the Guild pledge themselves to do in that respect? A. As members, they did not pledge themselves.

Q. Did you secure from the members of the Guild, and keep on file a list of pledges of firms from members of the Guild to buy only registered material that I have de-

scribed? A. Both in and out of the Guild similar types of pledges were given, not specifically Guild.

Mr. Haycraft: I ask that this document be marked for identification. This is page 3, section 2, Women's Wear Daily, Monday, December 23, 1935, the heading being "Attention! Manufacturers and Converters of Metals, Jacquards, Laces, and Embroideries for the Garment Industry."

I asked the document to be marked for identification only, Mr. Weisman. I just handed it to you for you to hand to the reporter to mark.

Mr. Weisman: Well, I just wanted to save some
881 time. I thought I might read it over in passing it to him and possibly I could agree to it.

(The advertisement referred to was marked Commission's Exhibit 283 for Identification.)

By Mr. Haycraft.

Q. I hand you Commission's Exhibit 283 for Identification, and ask you if you can identify that in any way, Mr. De Lisser? A. Yes, sir; this is an advertisement appearing in "Women's Wear" under date of Monday, December 23, 1935, Section 2, page 3, an advertisement to the manufacturers and converters advising them of the facilities for registering of designs which were afforded to them by the Industrial Design Registration Bureau.

882 Q. How do you identify it? A. I recall that it was an advertisement. I see that it is an advertisement.

Q. Did you have anything to do with the publication of it? A. I recall the publication of the advertisement. I know that our committee approved of the publication of the advertisement.

Mr. Weisman: May I see it now?

Mr. Haycraft: Yes.

Mr. Goldwater: May I see it?

Mr. Haycraft: Yes. I offer this in evidence.

Mr. Weisman: There is no objection.

Mr. Goldwater: No objection.

Examiner Bennett: It will be received in evidence.

(The advertisement referred to, heretofore marked for Identification Commission's Exhibit 283 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I ask that this document be marked for identification, being an advertisement appearing in "Women's Wear Daily," on Monday, January 6, 1936, Section 2, page 7, the title reading as follows: "Manufacturers and Converters Register Metals, Jacquards, Laces, and Embroideries for the Garment Industry." 884

(The advertisement referred to was marked for identification Commission's Exhibit 284 for Identification.)

By Mr. Haycraft.

Q. Can you identify that exhibit in any way, handing you, Mr. De Lisser, Commission's Exhibit 284 for Identification? A. I recall seeing that advertisement in the "Women's Wear Daily."

Q. Do you recall having anything to do with the text of it? A. No. I did not have anything to do with the text of it. 885

Q. Was it shown to you before it was published? A. I believe not.

Q. How many garment manufacturers voluntarily agreed to restrict their purchases to registered textiles, as indicated? A. Registered textiles or registered designs?

Q. Registered designs. A. Registered designs?

886 *Austin M. De Lisser—For Commission—Direct.*

Q. Yes. A. Well, I would say approximately 200. I do not know identically, but just approximately 200.

Q. Would that include practically the entire membership of the Guild? A. I think most of the Guild members, not all, but most of them were included.

Q. Do you have any records from which you can refresh your recollection on it? A. Yes, sir.

Q. Can you do so now? A. Yes.

(Witness left the witness stand, obtained a document and studied it for several minutes.)

Q. What is the paper that you have there? A. That is
887 the list that you called for of the firms that have signed the pledge with us.

Mr. Haycraft: I will ask that be marked for identification with the Commission's next number.

(The list of names of firms who have signed textile pledge was marked Commission's Exhibits 285-A, B, C, D, and E for Identification.)

Mr. Weisman: What is that?

The Witness: He just asked me to refresh my memory by looking at the list.

Mr. Haycraft: I offer it in evidence as the next Commission's exhibit number.

Mr. Weisman: No objection.

888 Mr. Goldwater: No objection.

Examiner Bennett: Received.

(The list referred to heretofore marked for Identification Commission's Exhibits 285-A, B, C, D, and E, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Did you make an investigation to determine whether or not the men whose names were on this Commission's Exhibits 285-A to E, both inclusive, had lived up to their promises? A. No.

Q. Is the pledge which these concerns signed the one illustrated and set forth in Commission's Exhibit No.—referring now to the firms listed in Commission's Exhibit 285—the concerns of which you have— A. I do not quite understand, Mr. Haycraft, your question.

Q. Perhaps it is a little involved. Is the pledge which these concerns signed, the concerns listed in Commission's Exhibit No. 285, and concerns of which you have a copy 890
in front of you—do you recall the pledge, first, that they signed and that we are talking about? A. Yes.

Q. Is that the one? A. Yes, it is this one here.

(There was a discussion off the record.)

Mr. Weisman: If you want to offer this document which you have marked 284 for Identification, in evidence, I have no objection to it.

Mr. Haycraft: I offer it in evidence.

Mr. Bruce: I have no objection to it being offered in evidence.

Mr. Goldwater: No objection.

Examiner Bennett: It will be received in evidence.

891

(The advertisement referred to heretofore marked for Identification Commission's Exhibit 284, was marked as an exhibit, and received in evidence.)

Mr. Haycraft: I have no further cross-examination for the witness.

Mr. Goldwater: Mr. Examiner, it is now 4 o'clock. How long do you intend to sit this afternoon.

Examiner Bennett: I usually sit until 4.30. Unless there is some serious reason why we should not, I shall follow that practice this afternoon.

Mr. Goldwater: I hardly see how I can complete the cross-examination of this witness this afternoon.

Mr. Weisman: Oh, as far as that is concerned, I suppose Mr. Goldwater is entitled to the first cross because it is his witness, but I shall have a very lengthy and exhaustive cross-examination of this witness after he has finished.

Mr. Goldwater: Well, if your Honor please,
893 really I think it will take me about an hour and a half to two hours to question this witness, and perhaps longer.

Examiner Bennett: You will be given ample time in which to conduct your cross-examination, Mr. Goldwater. I do think, however, that we should proceed this afternoon and get along as far as we can. I want to carry the proceedings along as expeditiously as possible, yet, to deny to no one his rights.

Suppose you start your cross-examination now and we will see how we get along.

Cross-examination by Mr. Goldwater.

894 Q. Mr. De Lisser, you identified, this morning, minutes of a general meeting of the Textile Affiliates dated July 1, and which has been marked Respondents' Exhibit 2 for Identification, and the minutes of May 25, 1935, which has been marked Respondents' Exhibit 3 for Identification? A. Yes.

Q. Will you look at this again? A. Yes.

(Witness examines documents.)

Q. I ask you again, are they correct copies of the minutes of the meeting of the Textile Division as of those dates which contain resolutions, rules, and regulations which were and are in modification, alteration, or in any way affecting the regulations, resolutions, and rules offered by the Commission as Commission's Exhibit 243? A. Yes, they are and they do.

Mr. Goldwater: I offer these in evidence.

Mr. Haycraft: I object to it at this time.

Examiner Bennett: Are these the same documents you offered this morning?

Mr. Goldwater: Yes, sir.

Examiner Bennett: Sustained. 896

Mr. Goldwater: Exception.

Mr. Weisman: Exception.

Examiner Bennett: You can offer them again when the defense is being made in this case.

Mr. Goldwater: It only makes for a complication of the issue. We are examining the witness with respect to the matter brought out on direct examination. We cannot proceed very far with the cross-examination if the witness is to be restricted after the ruling of your Honor, so that the respondents may not show what the facts are in the proceeding.

Examiner Bennett: That is one of your defenses, and a very common defense that the practice has 897
been abandoned. I am not going to do it at this time. I will when you put in your case. I think it is perfectly proper with a witness who is really connected with the respondent should put in his own defense on direct examination so that it is the subject of cross-examination.

Mr. Goldwater: I did not understand and do not now understand that in an administrative proceeding there is any great adherence to the strictest laws of evidence.

Examiner Bennett: I understand that is a correct decision that would hold in any law tribunal. I cannot picture one that would have permitted you to have that entered into evidence at this time. In any event, probably, I should not have even allowed you to have marked that for identification, but I did grant you that concession. Beyond that, I do not care to go.

Mr. Goldwater: Very well, if your Honor please, if that is your Honor's ruling we will have to abide by it. I think they are competent at this time and, therefore, I respectfully except.

899 Examiner Bennett: Noted.

Mr. Weisman: May I join, rather than go through this same procedure, join in the objection and have an exception?

Examiner Bennett: You may.

Mr. Weisman: May I state for the purposes of the record further, the ground upon which I would urge that these minutes are now admissible and competent, and that they are properly offered.

Examiner Bennett: You may.

Mr. Weisman: As I understand the situation, Mr. Haycraft for the Government has tendered a witness who has testified and identified minutes of the Textile Division. He has, however, on direct testimony not submitted all of the minutes that are

900 extant at this time, only some of them, and I submit to your Honor with the greatest humility that it is the proper function of cross-examination for the examining attorney to bring out from this witness now that the minutes which Mr. Haycraft has submitted on direct examination are not all of the minutes, and that they are not the minutes that exist now and are in effect and force and binding upon the membership thereof at the present time of the trial.

Examiner Bennett: That has been brought out already. It is in the record. You will have your opportunity to present that when the proper time comes. You are not being deprived of any right whatever.

Mr. Weisman: Exception.

Mr. Goldwater: Exception.

By Mr. Goldwater.

Q. Mr. De Lisser, is the Industrial Design Registration Bureau a part of or in any way connected with the Fashion Originators' Guild or Textile Affiliates? A. No part of it and in no way connected. 902

Q. Is there now, or has there ever been, to your knowledge, any contract existing between the two? A. There is definitely not, and there definitely never has been any contract existing between the two.

Q. To your knowledge, is the registration of design in the Industrial Design Registration Bureau open to all persons in the industry regardless of whether or not they may be affiliated with the Fashion Originators Guild, or Textile Affiliates?

Mr. Haycraft: That question is objected to as the witness is obviously incompetent to answer it. There is no foundation to show that he has any such knowledge. In fact, he has just said that there is no connection between the two of them, and I think he 903 has definitely estopped himself, or rendered himself incapable of answering the question due to lack of knowledge.

Mr. Weisman: Ridiculous; the witness should be allowed to state what he does know, and if he does not know he can say so.

Mr. Goldwater: I asked him whether it is a fact that he has any knowledge or not. If he has no

knowledge he can say so. If he does have knowledge he can state what the knowledge is.

Mr. Haycraft: Yes, but that is not the difficulty there. The difficulty there is that the question is so framed that his answer would be a double one. You are first asking him whether he has any knowledge and at the same time you are asking him what the fact is. You should first ask him whether he has any knowledge, and then ask him what that knowledge will show.

Mr. Goldwater: Mr. Haycraft, if you will be kind enough to permit me to do so, I shall ask the
905 questions in my own way, in the form that I think is proper, and I shall not call upon you to assist me in asking the question. In the event you should disagree with any of my questions, you are at perfect liberty to object to them, but I will ask the questions in the form that I think proper.

Mr. Haycraft: And I shall object.

Mr. Goldwater: You have a perfect right to do so.

Examiner Bennett: It is a question again of chopping up the question. I think you made the same objection when the questions were being asked by Mr. Haycraft. In order to be consistent, I would have to sustain the objection, and I sustain the objection, furthermore, upon its merits.

906 Mr. Weisman: I think your Honor will notice that this is not objectionable upon the same grounds as the other question. This is a question as to whether he knows.

The Witness: Am I to answer?

Mr. Haycraft: No.

Mr. Goldwater: Wait a minute until this is settled.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: I will say, as I said before, that in his previous answer he said there is no relationship and no agreement between the two, and, therefore, there is no foundation for the question.

Mr. Goldwater: He still may know. He does not have to have a stock certificate in order to gain knowledge.

Mr. Haycraft: He has yet to show whether he knows or not. You must show what he does know first, and then get it out.

Examiner Bennett: Read the question again.

(Question again read.) 908

Examiner Bennett: I will overrule the objection and listen to his answer.

A. To my knowledge, as having worked in the textile industry for ten years previous to the Fashion Guild employment, I do know that the Industrial Design and Registration Bureau is open to anybody that wishes to use it in the industry.

By Mr. Goldwater.

Q. Now, you have shown Mr. De Lisser minutes of the meeting of the Screen Group of Textile Division, marked—or, rather, it has been shown to you, this exhibit containing minutes of the meeting of the Screen Group of the Textile Division, marked Commission's Exhibits 249-A and 249-B. Do you recall that? A. I am sorry. I did not check the question on account of the noise. 909

Q. You have been shown, Mr. De Lisser, minutes of the meeting of the Screen Group of the Textile Division, marked Commission's Exhibits 249-A and 249-B. Do you recall that? A. Oh, yes.

Q. Is that a copy of the minutes of the only meeting? A. What?

Q. Do you know of any other meeting of the Screen Group of the Textile Affiliates besides this one which purports to have taken place on February 3, 1936? A. That is the only meeting.

Q. Only? A. Only.

Q. Was there ever a perfecting of a Screen Group of the Textile Affiliates?

Mr. Haycraft: That is objected to.

A. No, sir.

Mr. Haycraft: Just a minute.

Examiner Bennett: Read the question.

911 (Question read.)

A. No, sir.

Mr. Haycraft: I object to the witness answering until I get my objection in.

Mr. Goldwater: You must not answer until the objection is ruled upon, Mr. De Lisser.

The Witness: I am sorry.

Examiner Bennett: The objection is overruled; you may answer.

A. No, sir.

By Mr. Goldwater.

912 Q. Was there a Screen Group of Textile Affiliates on April 6, 1936? A. Oh, no.

Q. No? A. No.

Q. Did any members of the so-called Screen Group of the Textile Affiliates ever pay any dues to the Textile Affiliates? A. No, sir.

Q. Has there ever been any agreement between Textile Affiliates and the Screen Group—in other words, has ever

there been any agreement between the Textile Affiliates, as such, and the Screen Group? A. No, sir. There has never been any agreement between the Textile Affiliates and the Screen Group.

Q. Now, will you tell us what occurred with respect to this so-called "Screen Group of Textile Affiliates" immediately after February 3, 1936? A. Immediately after this meeting which was at the request of the screen printers to affiliate themselves with our Guild and which proceeded with this particular meeting which they held with me immediately following that, I called the various ones in our Textile Division that have an interest in screen printing, and told them that the screen printers did wish 914
to affiliate. Further, that they had been discussing privately and on the side between members and screen printers this matter, and they had had this meeting for affiliation purposes, and these people disagreed and felt I had no right personally to take it that far—I am telling you what happened about it now, and——

Mr. Haycraft: I object, if your Honor please, as irresponsive, and I think furthermore this question is susceptible to the objection raised before because it is a violation of your ruling.

It is a matter of defense and should be put in on the part of the respondents' defense. It is not proper cross-examination.

Mr. Goldwater: It is a direct explanation of an 915
attempt in connection with the Commission's offer in its effort to establish here a connection between the so-called Screen Group and the Textile Affiliates.

By Examiner Bennett.

Q. Can you identify the time that all of this took place? A. Yes, sir. Right after February 3.

Q. It was in February? A. It was in February; yes, sir.

Mr. Haycraft: I do not think it is proper for this witness to be allowed to tell what the members of the group told him. That is hearsay.

Examiner Bennett: That objection is sound.

By Mr. Goldwater.

Q. Did you have certain conversations, without telling what they were, with the members in regard to this matter? A. Yes, sir.

Q. After such conversations what did you do with re-
917 spect to this Screen Group? A. I conveyed the fact that they did not wish that affiliation and they promptly withdrew the desire for affiliation.

Q. Has there been any affiliation since that time? A. No, sir.

Q. At any time? A. No, sir.

Q. Was there ever any actual affiliation and co-operative action between the two? A. There was never a consummation of affiliation; there was never dues paid; there was never any co-operative action between the two.

Q. I call your attention to Commission's Exhibit 245, being a copy of the letter signed by you and sent to Mr. Grossleight. A. Yes.

Q. Prior to the sending of that communication, namely,
918 Commission's Exhibit 245, had there been any conversation with Mr. Grossleight, the person addressed in that letter, with respect to the subject-matter therein? A. Oh, yes.

Q. Did you have conversations with him? A. Oh, yes, I acted as chairman, if you will, of one of the particular committees which he asked for.

Q. This letter refers to a determination of certain issues in dispute, does it not? A. It does.

Q. Wherein you discussed those matters with Mr. Grossleight? A. It very decidedly discusses them with Mr. Grossleight.

Q. Were they discussed at any other time? A. Yes.

Q. At a committee meeting? A. Yes.

Q. Did a committee sit? A. Yes.

Q. And based upon the facts there shown? A. A committee after the request of Mr. Grossleight.

Q. He requested the committee? A. Yes, sir; he requested the committee.

Q. Did he ever express satisfaction or dissatisfaction with the selection of the committee?

Mr. Haycraft: Object. 920

Examiner Bennett: Sustained.

Mr. Goldwater: Exception.

By Mr. Goldwater.

Q. Can you tell us the circumstances which led to the selection of this committee?

Mr. Haycraft: I object.

Mr. Goldwater: It seems to me that that is perfectly competent. Here we have the letters which seem to be the result of certain action. Now, whether or not that was arbitrary action or whether it was considered action with the co-operation of the person addressed is extremely relevant here. 921

Examiner Bennett: Overruled.

A. You will note that the date of the letter, January 27, is just in advance of the one meeting which the screen printers had on February 3. The reason why Mr. Grossleight of the United wished to have——

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

By Mr. Goldwater.

Q. Tell us what happened, and not why it happened. A. He requested the Textile executive secretary, myself, to appoint a committee that he would approve, in fact, a committee that he would provide of his own choice, to sit and hear a disclosure of the misunderstandings between himself and the firm of Doucet, and to act more or less as an informal arbitration committee and to advise both the firm of Doucet and the United how they felt about this particular disposition, or, rather, how they felt about this particular matter of which he enumerated two or three items.

923 Q. That was done? A. That was done. He came to that meeting with his sales manager.

Q. Did he present his facts to this committee? A. He presented his acts and his facts in full to that committee.

Q. Were you present at that time? A. Yes.

Q. Was he afforded every opportunity to present the material that he desired? A. Yes, sir. He was afforded every opportunity that he asked for.

Q. That committee rendered its decision after such a hearing? A. Yes, sir; it rendered its decision after that.

Q. Do you recall counsel for the Federal Trade Commission's questions with respect to certain firms who were in violation of the cutting charge rule? A. Yes.

Q. There were certain others to whom notices were sent,
924 or, rather, of whom notices were sent to your Textile members that they were confirmed copyists? A. Yes, sir.

Q. And certain others of which notices were sent that they were violative of the fair trade practices returns rule? A. Yes, sir.

Q. Then there were two cases, Mary Elizabeth Frocks and one other concern of which notices were sent that had refused to sign the pledge of co-operation? A. Yes, sir.

Q. The total number of cases that counsel read to you was seventeen? A. Yes, sir. I believe my recollection is that there are seventeen there.

Q. Six of them come into the cutting charge category? A. Possibly.

Q. Five in the copyists? A. Possibly.

Q. Four returns? A. Possibly.

Q. Two, refusals to sign the pledge? A. That list will verify that.

Q. Will you look at this memorandum and see if that is a fact? A. That is correct.

Q. How long has the Textile Affiliates been in existence? A. Since the inception of the Guild in 1932. 926

Q. Between 1932, the inception of the Guild, and April, 1936, is this the total number of cases——

Mr. Haycraft: That is objected to. This witness has said that he has only been with them for a year and a half.

The Witness: I was a member of the industry before and had the information.

Mr. Haycraft: As secretary, and this witness has not been properly qualified, and I do not think the foundation has been laid.

Mr. Goldwater: I withdraw the question.

Mr. Weisman: He said he was a member, and would know.

Mr. Haycraft: Just because he is a member does 927 not give him a right to make wild statements.

Mr. Goldwater: It would not be a wild statement.

By Mr. Goldwater.

Q. Prior to your association with the Textile Affiliates was the concern that you were a member of connected with them? A. Yes.

Q. You were familiar with its operations? A. Yes.

Q. Which firm were you with? A. Cheney Brothers were members of the Textile Affiliates.

Q. What committee were you on, if any? A. I was on the Governing Committee.

Q. You were on the Governing Committee while you were employed by Cheney Brothers? A. Yes, sir.

Q. Did you attend meetings regularly? A. Yes, sir.

Q. And were you familiar with all of the actions taken between the period, June, 1932, and the period when you became associated with it as executive secretary? A. Yes, sir.

929 Mr. Haycraft: That is not proper cross-examination.

Mr. Goldwater: It is a direct reference to this particular matter brought up by the Commission.

Mr. Haycraft: He is going back of the time I took up.

Mr. Goldwater: I assume you do not mean to say that you left out any of these violations—that you were so violative of your duty as to perfectly omit any violations you knew of at any other time—in other words, if you could find any from 1932 to 1936 you would have put that in; if you knew of any before you would put them in?

Mr. Haycraft: You may have made some vio-
930 lent assumption, but I cannot help that.

Mr. Goldwater: I do not believe that you would be so remiss to your sworn duty as to fail to do so.

Mr. Haycraft: Do not worry about my sworn duty. My understanding from the witness was that this record was begun with 1935, and these rules and regulations during that period of time existed. This witness was not asked anything about before this; about this early period with respect to this transaction.

Examiner Bennett: I will confine it to the period of this request upon the part of Commission's counsel upon direct when he inquired about this matter. If you want to ask questions about that you may do so.

Mr. Goldwater: I will accept your Honor's ruling. I will have to take his answer within the period that you have limited me to. I think we should be allowed to show the full picture on cross-examination.

Examiner Bennett: That seems to be the thing that is under consideration here. Your examination will be limited to the period of time covered 932
by counsel on direct examination.

By Mr. Goldwater.

Q. Confining your answer to the period in question, Mr. De Lisser— A. Yes.

Q. —which is the time during which there were in existence the regulations and resolutions which have been offered in evidence as an exhibit——

Mr. Goldwater: I withdraw that question.

Mr. Haycraft: These violations were all for 1935.

Mr. Weisman: Let me see the exhibit containing those regulations and resolutions.

(Mr. Haycraft hands counsel a document.)

Mr. Weisman: What is the idea? Don't you 933
understand English? You know what I asked you for. I asked you for the resolutions. These resolutions go back to 1932. Can you get that?

Mr. Haycraft: I gave you something which will give you the information you ought to have.

Examiner Bennett: I think they are in evidence.

Mr. Haycraft: The direct examination relates to 10 per cent. cutting charges, the return rule, and those were during the year 1935.

The Witness: I think we had them before that. We had them before that.

By Mr. Weisman.

Q. When did you have them? A. We had cutting charges before.

Examiner Bennett: You are cross-examining upon the direct examination, and you must confine it to the scope of the direct examination.

Mr. Goldwater: For the present, I will confine myself and confine the witness to the period between March 19, 1935, and April 19, 1936.

935 Mr. Haycraft: All right.

By Mr. Goldwater.

Q. Were there any other notices of violation of any of the rules, regulations, or resolutions of the Textile Division sent to any of the members during that period of time except those concerns which you have already testified, seventeen in number? A. That is all.

Q. All? A. All.

Q. That is the total number in that period of over a year? A. Yes.

Q. Now I direct your attention to the six that have to do with the 10 per cent. cutting charge that you enumerated. A. Yes.

936 Q. In connection with the cases of Mary Elizabeth Frocks concerning which you were asked questions by counsel for the Federal Trade Commission, are you familiar with the sending of the notices? A. I am familiar with the sending of the notices.

Q. Are you familiar with the circumstances which led to the sending of the notices? A. Yes, sir; I am.

Q. Was there a hearing held with respect to that? A. There was a hearing held in respect of that, and there were

many committees that went to see Mary Elizabeth and to talk with him, and I personally saw Mary Elizabeth on several occasions and discussed this problem.

Q. Was it your endeavor to persuade Mary Elizabeth Frocks that the refusal to pay the 10 per cent. cutting charge in that case was an unfair practice? A. Yes, sir; on the basis of the fact that he accepted the merchandise and the bill and used it and that he should not protest the bill after using the merchandise.

Q. Did you see Mary Elizabeth on more than one occasion and explain in that point of view? A. Yes, sir; I saw Mr. Louis Lipscheetz, the head of Mary Elizabeth Frocks, on several occasions.

938

Q. After you had exhausted your efforts to explain that it was an unfair practice, was it then that the notice was sent to your members that he had violated the fair trade practice provisions? A. After everything had been done; after our Steering Committee had heard the evidence and we were satisfied that nothing further could be done we sent word to our members that this was the attitude of Mary Elizabeth Frocks.

Q. I call your attention to the matter of Sakin & Linder, which is in the category of the 10 per cent. cutting charge violation. Was there a hearing in that case? A. It followed exactly the same procedure. There has been much time and effort spent between the time when we first knew of the deduction and the time that we notified our members in which we discussed this matter in every conceivable way and tried to reach a settlement.

939

Q. In each one of these cases did the Textile Affiliates satisfy themselves that there had been an acceptance of the merchandise and the bill prior to a refusal to pay the 10 per cent. cutting charge? A. Yes, sir.

Q. In the case of Gutterman & Company, and the Japanese Silk Garment Company and others, were there hearings in those cases? A. Yes, sir.

Q. Were persons representing those firms at the hearings? A. Persons representing those firms were at the hearings.

Q. And were those persons representing those firms heard? A. Yes, sir.

Q. Representatives of those firms were heard. In each of those instances was it established to the satisfaction of the committee which heard the cases that there had been an acceptance of the merchandise and the bill prior to the cutting of the goods, so that they were fully advised that there would be this 10 per cent. cutting charge, and previous to the notice by the accepting firm that they would
941 not pay the 10 per cent. cutting charge?

Mr. Haycraft: I object.

Examiner Bennett: What the committee reported is objectionable?

Mr. Haycraft: I do not think he should state hearsay.

Examiner Bennett: What the committee reported he could state. He is competent to state what the committee reported, but he is not competent to state whether it was satisfied or not. That would be a conclusion.

Mr. Goldwater: I see.

By Mr. Goldwater.

942 Q. Did the committee report in each instance, Mr. De Lisser, what— A. I did not understand.

Q. Did the committee report in each instance that the merchandise had been accepted and the bill accepted prior to the refusal to pay the 10 per cent. cutting charge? A. Yes, sir.

Q. Did you satisfy yourself, personally, in each case that that was the fact? A. Yes, sir.

Q. Did you communicate with each one of these persons as executive secretary? A. Except those out of town and there I communicated either with the representative if there happened to be one in New York, as there usually was, maybe there might have been one out of town only that I had not spoken to, but I doubt it because I usually saw the New York representative or talked to someone in the Chicago market who talked for me. Otherwise, I personally saw them.

(Witness temporarily excused.)

Examiner Bennett: We will adjourn until Monday morning at 10.15 o'clock A. M.

944

(Whereupon, at 4.15 o'clock P. M., July 17, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y., July 20, 1936.

Met, pursuant to adjournment, 9 A. M.
Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

PROCEEDINGS.

Examiner Bennett: You may call your witness, and proceed. Be in order, please: 945

Mr. Goldwater: Shall I proceed, your Honor?

Examiner Bennett: Yes.

AUSTIN M. DE LISSER was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Cross-examination (continued.)

Mr. Goldwater: Your Honor, before I proceed, there are several obvious errors that should be corrected, typographically, principally, I think, on some misunderstanding of the reporter.

I refer first to page 335 of the record, the first question on that page is: "Q. What did you do before you became executive director of Textile
947 Affiliates of Fashion Originators Guild?" That question was addressed to this witness. The answer, as it appears in the record, is: "A. I worked for the firm of Cheney Brothers, a silk firm."

By Mr. Goldwater.

Q. Is that correct, Mr. Witness? A. That is correct.

Mr. Goldwater: The next question is: "Q. They are not associated with the Guild at all?" The answer, as it appears in the record, is: "A. No."

By Mr. Goldwater.

Q. Was that question and answer so asked so answered
948 by you? A. No, I believe the question was, "Was I at that time affiliated with the Guild, not Cheney's," and I said, "no"; in other words, the question was that I had no relation to the Guild.

Mr. Weisman: I think that is correct.
Mr. Martin: That is correct, I think.
Mr. Goldwater: Is that correct, Mr. Martin?
Mr. Martin: Oh, yes.

By Mr. Goldwater.

Q. You so understood? A. Yes.

Q. Cheney Brothers was associated with the Guild? A. Yes.

Q. But you were not associated with the Guild at the time you were employed by Cheney Brothers? A. That is correct.

Mr. Goldwater: I believe we all understand that now.

On page 351 of the record a question is continued on the first line which begins at the bottom of page 350 as follows: "Q. Did you in any way find that any of the manufacturers had been violating any of the rules of the Textile Division? A. Yes, sir." 950

By Mr. Goldwater.

Q. To which manufacturers did you understand that question to have reference, the dress manufacturers or the textile manufacturers? A. He was referring at the time to textile manufacturers, I believe, entirely.

Q. When you answered "Yes," your answer referred to—. A. Textile.

Q. —to textile manufacturers? A. Yes.

Q. Not dress manufacturers? A. Yes, that is right.

Q. On page 373 of the record a question by Mr. Haycraft, just below the middle of the page: "Q. Do you recall giving notice to the members of the Textile Division of a violation, or refusal to sign a pledge of co-operation, by the Mary Elizabeth Frocks? A. Yes, I do. Q. In February, 1936? A. About then." 951

By Mr. Goldwater.

Q. Now, Mr. Witness, that question is in the alternative, or, rather, conjunctive, it says "of a violation, or

refusal to sign a pledge." Which was it that occurred in February of 1936? A. Refusal to sign a pledge.

Q. And that is the subject of which notice was given to members of Textile Division? A. That is right.

Q. Now, which pledge of co-operation was it that you gave notice of refusal to sign, was it the Fashion Originators Guild pledge or that of the Textile Division? A. That of the—pledge of co-operation with the Textile Affiliates.

Q. The Textile Affiliates? A. Yes.

Q. Now, Mr. Witness, will you tell us, if you know, whether the Industrial Design Bureau, which has been
953 referred to frequently in your last examination, was in existence prior to the formation of the Guild? A. Yes, it was definitely in existence.

Q. You know that of your own knowledge? A. I know that as a fact.

Q. Do you know how long it was in existence prior to that time? A. I believe it to be three years prior to that time.

Q. In your testimony, at our last session, you were asked what occurred when notice of violation of your rules or regulations of fair trade practice requirements occurred, and you testified that hearings were held before the Grievance Committee, and so forth. Do you want us to understand that that occurred in every instance, in the seventeen cases of violation which were cited here by Mr.
954 Haycraft the other day? A. No, I just want it understood that opportunity of hearing was given in every opportunity—I mean in every case of violation, but sometimes an account refuses that opportunity regardless of how much I may urge them to avail themselves of it.

Q. Do I understand, then, that there was no notice that a violation existed ever given to the members of Textile Affiliates until after a reasonable opportunity had been afforded? A. I believe that is absolutely true on all of them.

Q. Now, these rules and regulations which incorporated your fair trade practices were first promulgated in November and December, 1934? A. That is when they had their start.

Q. Is it fair to say that generally there were four of these principal headings under these fair trade practice requirement sections, that is, the returns regulations, the subsidized advertising, and uniform terms of sale, uniform discounts, and the cutting charges? A. That is the substance of the fair trade practices.

Q. Now, prior to November or December, 1934, was there in existence any agency which recognized those particular vices in the trade generally? A. Well, at least three 956
of them were recognized by the N.R.A. codes.

Q. Which three? A. The returns regulations, subsidized advertising, and the uniform terms or discounts.

Q. The one which was not recognized in the code was this 10 per cent. cutting charge? A. Not in all codes——

Mr. Martin (interposing): Your Honor please—

A. (Resumed) In some.

Mr. Martin: I object to this line of questioning. The question of the code is not before the Court, and the questions that counsel are asking here is not proper subject of cross-examination.

Mr. Goldwater: Well, I will desist from anything further on that line, if there is any objection 957
to it.

Mr. Weisman: I, of course, Mr. Examiner, do not agree, but in the friendliest spirit disagree with my co-counsel, and at the proper time I will urge the materiality of showing what were the accepted vices adopted by the industry under N.R.A., believing that they will be of some probative force, so that the Court may decide the true and correct

background, but I do not urge that now since my conferee, in his examination, has waived it. I do want to reserve the right to argue it at length.

Examiner Bennett: All right; I will sustain the objection at this time. I understand the facts that the attorney has acquiesced in,

Mr. Goldwater: I will desist any further inquiry on that line.

By Mr. Goldwater.

Q. Mr. De Lisser, your attention was called here to several exhibits, two exhibits, one of which was marked only
959 for identification and one in evidence, the other day, containing advertisements in connection with the Industrial Design Bureau registration. You recall those exhibits, do you not? A. Yes, sir.

Q. I ask you whether there or not if there were registration—first of all, I ask you whether or not, to your knowledge, firms other than members of the Guild had available to them the services of the Industrial Design Bureau? A. Firms other than Guild firms had available the same service at the same rates from the Industrial Design Bureau. Might I state that there, I happen to know, far more designs are registered by non-members of the Guild, in total, than the designs registered by Guild members at that same Bureau.

960 Mr. Haycraft: I move to strike the last part of the answer, it is not responsive.

Mr. Goldwater: It may not be responsive, it is extremely material. Why put me to the trouble of asking another question if it is material?

Examiner Bennett: I will let it stand; go ahead.

By Mr. Goldwater:

Q. Now, do you know, of your own knowledge, that if there were a registration by a firm not a member of the Guild, would the patronizing of a firm so registered constitute a violation of a pledge or of any rule or regulation of the Guild of Textile Affiliates?

Mr. Haycraft: That is objected to, Mr. Examiner. The pledge is in evidence; it speaks for itself. I am going to object to this type of question as being a part of their defense, Mr. Examiner, not a part of proper cross-examination of this witness. He will have a number of other witnesses to testify in 962
this case. An opportunity will be given respondents to put in their case when the time comes.

Mr. Goldwater: An opportunity should be given us to inquire concerning an exhibit you have in evidence from which an inference or conclusion, or any other determination, might be drawn.

Mr. Haycraft: The witness——

Mr. Goldwater: This concerns your exhibit.

Mr. Haycraft: It will speak for itself.

Examiner Bennett: Excuse me. The question is defective, as the Examiner sees it, as a hypothetical statement. If you can make it affirmative and factual, why——

Mr. Goldwater: I will make it affirmative and factual. I will withdraw the question. 963

By Mr. Goldwater:

Q. Mr. De Lisser, do you know of any case in which the patronizing of a firm which registered a design, which firm was not a member of the Guild, by such member or by members attached to affiliates was considered or treated as a violation of pledge, or of any rule or resolution of your Textile Affiliates?

Mr. Haycraft: That is objected to.

A. I think you mean——

Examiner Bennett: Just a moment——

A. I think you mean——

Examiner Bennett: Just a moment, now, please.

Mr. Goldwater: Just a moment, there is an objection, Mr. Witness.

Examiner Bennett: What are the grounds of objection?

965 Mr. Haycraft: On the ground, Mr. Examiner, it is not proper cross-examination of this witness on the exhibits that have been offered in evidence and identified by him.

Examiner Bennett: You believe it is going outside of the direct examination, you mean?

Mr. Haycraft: Yes.

Examiner Bennett: Well, I think it is outside of the direct examination; I will sustain the objection.

Mr. Goldwater: Exception.

By Mr. Goldwater.

966 Q. Mr. De Lisser, is there any provision in the rules, regulations or by-laws, or resolutions, Textile Affiliates, providing for a penalty or sanction of any kind in connection with a member selling an account which may be in violation?

Mr. Haycraft: Same objection.

A. No.

Mr. Haycraft: It speaks for itself.

The Witness: No.

Mr. Haycraft: Same objection.

Mr. Goldwater: Withhold the answer.

Mr. Haycraft: It is a matter of evidence, Mr. Examiner; not proper cross-examination on exhibits that have been identified and received in evidence.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Overruled. You may answer.

A. There is no ruling or regulation regarding a member selling an account that is in violation. 968

Examiner Bennett: We will have a recess of five minutes. I am obliged to make a telephone call.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Goldwater.

Q. Mr. De Lisser, I direct your attention to the pledge which is in evidence as Commission's Exhibit No. 250. I will ask you whether or not the invitation to sign that pledge was sent by your members only to members of the Guild? A. No, sir.

Q. Can you tell us to whom it was sent? A. It was sent in stages to all garment manufacturers with whom our firms dealt irrespective of whether the garment manufacturer was a Guild member or not. 969

Q. Now I ask you categorically with respect to the six firms who were in violation on account of cutting charges. A. Yes.

Q. There were, in all, some seventeen firms that were in violation for all cases? A. Yes.

Q. You say that with respect to each of those six, and all of them, an opportunity for explanation and hearing

was given before notice of violation was sent to the members; is that correct? A. Yes, sir.

Q. As to the other eleven, those who were violators in the category of copyists, returns-rule, and the two who refused to sign the pledge of co-operation, were each of those invited to discuss the violation before notice of violation was sent to members? A. They were all given the same opportunity before violation notice was sent, to discuss in any way they wished the matter which was under discussion.

Mr. Goldwater: That is all.

Mr. Weisman: May I ask the witness a few ques-
971 tions, your Honor?

Examiner Bennett: You may.

Mr. Weisman: Thank you, your Honor.

Examiner Bennett: Go right ahead.

By Mr. Weisman.

Q. Mr. De Lisser, you were asked at your last examination at the hands of Mr. Haycraft what you had done before you came with the Guild. I believe you answered that you were engaged or employed by Cheney Brothers. A. Yes, sir.

Q. What business is Cheney Brothers in? A. Silk manufacturing and selling of textiles.

Q. How long were you engaged by them prior to com-
972 ing with the Guild? A. Between nine and ten years.

Q. During all of this nine or ten years with Cheney Brothers, were you engaged in the same business that you have testified that you were engaged prior to your coming with the Guild? A. During the entire time.

Q. During that time, briefly what were your duties with Cheney Brothers?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial.

Examiner Bennett: I will overrule the objection. I will allow you to bring that out so long as you confine it to reasonable length.

The Witness: What is the question?

(The question was read as follows: "Q. During that time, briefly what were your duties with Cheney Brothers?")

A. I went into Cheney Brothers as a stock boy and took charge of the stock room, the putting of pieces together and things of that sort. Then I rose in short stages to be assistant salesman on the floor, and following that I went into the mill contact, the contacting of those to whom we might sell. From then I went into the selling directly, and from that I went into the work of an adjuster, and I then became assistant sales manager, and from that I became sales manager to the garment manufacturers, and assisting in the styling of lines, and the manager of salesmen selling the line. 974

By Mr. Weisman.

Q. In connection with the exercise of your functions and duties in the various positions you have told us about, did you become acquainted with all of the problems that presented themselves to Cheney Brothers in connection with the operation of their business as a manufacturer and a seller of silk? 975

Mr. Haycraft: May I have an objection to all of this line of testimony, if your Honor please?

Examiner Bennett: I will sustain an objection to that.

Mr. Weisman: Quite true, your Honor. That is what I am attempting to do now. I am attempting to come to that very point, but I am trying to lead up to it by logical steps. In order to lay my proper

foundation, and in order to have my record properly made up here, I am trying to show his experience and knowledge before I ask him other questions which otherwise would not be proper for me to ask.

Examiner Bennett: If that is all you desire, I think I will admit that he is experienced in the line.

Mr. Weisman: The Court has ruled that his experience and his expertness is conceded.

Examiner Bennett: I will admit that he is a practical expert. Proceed.

Mr. Weisman: I submit it is a matter of great
977 importance, your Honor.

Examiner Bennett: You have your concession on the record. Go ahead and examine the witness.

By Mr. Weisman.

Q. Mr. De Lisser, Mr. Haycraft has queried you somewhat at length upon these cutting charges. Do you remember that line of inquiry? A. Yes, sir.

Q. I believe there were about six or seven examples thereof. Will you explain those briefly, just what cutting charges are? A. The cutting?

Q. The practice generally with regard to that before you came into the Guild, and what you did with relation thereto.

978 Mr. Haycraft: I have no objection to a brief explanation of the cutting charges, as to the facts thereof, but it seems to me that any argument upon the desirability or undesirability thereof is quite improper at this time. I do object to anything of that kind.

Mr. Weisman: There has been a lot of argument put into the record by counsel for the Commission, and it seems to me that we would have been through

with all of this a long time ago if we had not been so continuously interrupted during the time that we were trying to put it in.

Examiner Bennett: Further argument by counsel is not necessary. The objection, if it be one, Mr. Haycraft, is overruled. You may go ahead.

y Mr. Weisman.

Q. Answer the question. A. The cutting charge repre-
nts at least 10 per cent. additional, or 10 per cent. of
e price of the merchandise whenever the textile firm
ust cut less than 15 yards of material. Due to the
ct that they are all wholesale houses engaged for years 980
the sale of pieces of material in quantity lots, and that
e attempt on the part of the purchaser not to hold any
ability or risk of any type or to narrow that down to the
oint when he ordered exactly the yards required to make
garment throughout the day as the garment orders came
, without the loss of a yard, cutting charges were es-
blished.

This attempt of the manufacturer to secure these small
ieces was made after the fixing of a price on the basis of
uying quantity. In other words, the garment man says,
I have sampled this material and I like it, and I am go-
g to buy a lot of it if I can get a run, and I want to talk
rice."

After competitive prices are given and a firm gets it on 981
e lowest bid, and after giving this price, the garment
anufacturer comes in and he wants a number of cuts
hich have to be put through the same amount of work as
bookkeeping, paying factors, and delivery charges, and
ey find that this is a very disastrous procedure, and
e firms found that the trouble with an arbitrary charge,
service charge, is that after they have set up an arbi-
ary service charge to take care of this additional ex-

pense, and it really does not take care of it, that the other firms in the industry, one of them, at least, will in a desire to get the business, say, "If you will switch over to me maybe I will not charge your this cutting charge." And it broke down the practice to the point where all of the firms simply let it go.

We recognize that this service charge represents at least 20 per cent. to 25 per cent., and we charge a man—a man can always buy 15 yards or more, which is the minimum quantity, without any additional charge, but if we must cut 2-6/8 yards and be cutting that all day long, we feel, after having established a price for the
983 material on the basis of quantity, the lowest price that we can consistently give, and in addition to that we have to cut this yardage in these small lengths, we feel that we should have at least a minimum of 10 per cent. on this basis of small cuts below 15 yards, and that is the basis—when I say "we," I mean the manufacturers—and that is the basis on which the cutting charge is sought to be sustained. I can go into it in considerable detail, but I suppose you want just a brief summary of it, and that is what I have given.

Mr. Haycraft: I move to strike the answer out as not responsive, and——

Mr. Weisman: I submit it is quite responsive.

Mr. Haycraft: Will you please not interrupt me
984 when I am trying to make a statement to the Examiner? It is very rude.

Mr. Weisman: I thought you had finished. I am sorry.

Mr. Haycraft: The answer is not responsive, and he went into a defense of the——

Mr. Weisman: It is just an explanation, if your Honor please.

Mr. Haycraft: I insist, Mr. Examiner, that I be permitted to make a statement to you without being constantly interrupted by counsel.

Mr. Weisman: I am sorry. I thought you had finally finished.

Mr. Haycraft: You knew I had not. I insist, Mr. Examiner, it is a part of the defense and I will be deprived of the opportunity of cross-examining this witness on these various questions because he is bringing in here apparently as a part of his attempted cross-examination a really definite part of his defense, and that deprives counsel for the Commission of the right of cross-examination when this is a matter of defense.

Mr. Weisman: I will concede that you can examine him when I am finished as long as you 986
want to.

Mr. Haycraft: All right, then make him your witness and we will go ahead on that basis.

Mr. Weisman: No. That is obviously unfair. You called this man as a witness for the Federal Trade Commission and put him on as a part of your case. You brought out all of this testimony to attempt to sustain the charges that you have made against the respondents, and I submit that I am entitled to illuminate the record properly as to just what the situation is in that regard.

Mr. Haycraft: This is not an illumination of the record, but it is simply to show why, it is an attempt to present a justification and why they should be 987
paid this cutting charge. This is a matter of defense. I move to strike the answer out, and let the witness be required to make an answer which is responsive to the question.

Mr. Goldwater: Before your Honor rules, I would like to state that as attorney for this witness I do not have the slightest objection to Mr. Haycraft going into the subject-matter of this examination on further redirect examination as far as he desires.

Mr. Haycraft: I want to do that at the proper time. I have at least twenty-five or thirty witnesses to present to-day and during the course of this week, and there is apparently an attempt made in the cross-examination to drag out the testimony of this witness so that I will not be enabled to do so.

Mr. Weisman: I object to that as entirely improper, unjustified, and without any foundation whatsoever. It may be what Mr. Haycraft will try to do when he has the opportunity to do so, but it is certainly not a part of the tactics of the respondents' counsel in this case. I do think we have the
989 right of proper cross-examination, and I do not think that a cloud should be attempted to be thrown over it by counsel for the Commission in this way, which I conceive to be highly improper.

Examiner Bennett: The rest of the argument will be off the record.

(There was a discussion off the record.)

Examiner Bennett: Back on the record. Read the answer as given by the witness.

(Answer was read.)

Examiner Bennett: Beginning with the phrase "Due to the fact," the remainder of the answer will be stricken. Proceed.

By Mr. Weisman.

990 Q. These textile houses which are engaged—I will withdraw that. These textile houses, are they engaged in the business of selling cuts or pieces of merchandise? A. They are intended to be in the business of selling wholesale pieces.

Q. How many yards to a piece? A. Depending upon the fabric; most of the fabrics are in lengths of 70 yards.

Q. When the price of fabric to the dress goods manufacturer—to the dress manufacturer, the man who makes

up the dresses, is figured by the wholesale house, is it figured on the basis of a purchase of a certain number of pieces of fabric, or on the basis of a certain number of so-called particular cuts or particular yardage?

Mr. Haycraft: I object to the question as not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. How do manufacturers figure—I will withdraw that. How do the wholesale textile people figure their prices in submitting it to the dress manufacturers, if you know? 992

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I at this point wish to state if I were permitted to pursue this inquiry and I make this offer and tender of proof that the witness would have testified that the textile manufacturer in submitting a fixed price to the dress manufacturer fixes such price on the basis of the purchase by the dress manufacturer of the entire piece or numbers of pieces.

Mr. Haycraft: I move to strike that out as entirely improper and having no place in the record at this point. I again state to your Honor that this is obviously a part of the defense of this case. 993

Mr. Weisman: I certainly do object to such a statement as that. I have always had the opportunity heretofore of making an offer of proof, and I think that I have it now.

Mr. Haycraft: Please do not interrupt me continually when I am trying to make a statement to the Examiner.

Mr. Weisman: I thought you had made it and finished.

Mr. Haycraft: I had not. Your continuation of that practice, in my opinion, is entirely rude.

Mr. Weisman: Excuse me. I apologize. I had no intention of being rude whatsoever.

Mr. Haycraft: When the Examiner has made a ruling of this kind and when counsel is allowed to put in the evidence by his statement of an offer to prove, I think it is entirely improper, and I think it should not be allowed, and that the Examiner should not be disregarded in such a manner. It
995 seems to me that this is entirely irregular, and it is unnecessarily so because he will be given an opportunity to prove the facts in support of his defense as far as he desires when he comes to his case. I am not trying to deprive him from the opportunity of putting anything that is proper in evidence. There is nothing here that will have that effect. He is not being deprived of anything to which he has a proper right. I think it is untimely, and it serves only the purpose of cumbering and beclouding the record at this point.

Mr. Weisman: I certainly think you are wrong there. I object to that most strenuously. I think that I am in any court in this land entitled to make an offer to prove. We are not before a jury here
996 and you know it.

Examiner Bennett: There will be no further objection-argument made. The argument that is made is sufficient for me to make a ruling.

The offer to prove stands. The motion to strike it from the record is denied.

By Mr. Weisman,

Q. Does this cutting charge refer to a practice which had grown up among the dress manufacturers of obtaining from the textile people a price on the basis of the piece in its entirety, and then attempting to or getting from the manufacturer of the textile a particular cut only sufficient to make up a few dresses and attempt to pay him for the cut at the same price per yard as had been quoted for the entire piece? A. Yes.

Mr. Haycraft: I object.

Examiner Bennett: Objection sustained.

Mr. Weisman: I make this offer to prove. If the witness had been permitted to answer he would have answered in the affirmative. I will try to make the offer as brief as is possible with clarity. 998

Examiner Bennett: I am going to sustain objection to everything that was covered by the witness in his statement after the place I have stricken it out.

You are simply trying to get in in another way the thing that the Examiner has already ruled out, and that is not legitimate practice.

Mr. Weisman: May your Honor please, I had no such intention.

Examiner Bennett: This is a practice that we are not particularly fond of. If you want to pursue that, you will not find that it will help you very much. I think when a ruling is made that the attorney should pay some attention to it. I think he should pay some respect to the ruling. You are not deprived of any rights. You have your whole defense to make and all of that can go in on your defense at the proper time. 999

On the other hand, I am willing to have you take up these documents and if he can explain them he

may do so. But I will not permit him to give a lecture of five to ten minutes on every term, giving the history and everything else about it. That is not a fair cross-examination. We will get along better if you will pay attention to the Examiner's ruling, I am quite certain.

Mr. Weisman: Of course, your Honor, I believe you must be quite cognizant of the great respect in which I hold the Court. I desire to call your Honor's attention to the fact, however, that we poor lawyers practicing for our clients' interests are frequently met in the Appellate Court with the
1001 statement, "Well, counsellor, why didn't you protect your record?"

If, in my endeavor to protect the record, I run counter to your Honor's ruling I wish it would appear on the record that such running counter to your Honor's ruling is because of no lack of respect of the Court or lack of respect of the Court's erudition and knowledge of the subject-matter, but merely because of my own poor lack of knowledge and belief that it is honestly necessary for me in this court to make my record and protect my clients' record so that if this case should go to the Circuit Court of Appeals, I will be in a position where I will not be met with the question, "Well,
1002 counsellor, you should have done so and so." I admit most frankly and honestly that this is a very difficult problem that presents itself to any lawyer who tries fairly to try his case. He does want to accede to the Court's ruling and to his duty to his client and to the questions which he knows, from experience, he will be confronted with when the case reaches the Circuit Court of Appeals, if it should do so.

Examiner Bennett: I think the matter is clear. You may proceed.

By Mr. Weisman.

Q. There has been some testimony here about "uniform discounts." Without giving us any of the argument of the reasons about it, will you please explain to the Court what is meant by "uniform discounts," at least so far as you understand it?

Mr. Haycraft: I would like to have it pointed out in the record in the direct testimony where any reference was made to uniform discount. I do not want to object, but I am not familiar sufficiently with the record, apparently, to know where it is.

Examiner Bennett: I will overrule your objection, if that is what you are making, and let the witness answer. 1004

A. Uniform discount is the adoption of certain terms by certain trades upon certain materials. If it happens to be velvet, for instance, it would be 2 per cent. fifteen days, or net seventy days, as being stated by the majority of the velvet houses as a good uniform term to maintain. Or, it may be for silk, 6 per cent. for ten days, sixty days net, or 8 per cent.—8 E.O.M.; in the case they are considered by the trade in general to be a good uniform term to maintain. So, I can go into the category of all of these materials as to what is considered a good uniform discount.

1005

By Mr. Weisman.

Q. Is the effort of the Textile Division to maintain that uniform discount to all purchasers? A. It was our direct intention to maintain those uniform discounts.

Q. Do you know what brought about the necessity of the effort for such maintenance?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. One of the other matters that the Textile Guild addresses itself to was what you describe as "subsidized advertising." A. Yes.

Q. Will you explain to the Court what is meant by "subsidized advertising"? A. Subsidized advertising was cooperative advertising as is referred to, but in short quite often means an attempt on the part of the purchaser to get an allowance of money after he has made his purchase in order, in his claim to help him pay for his advertising which resulted only in a beating down of the price under another type of reason or excuse. It is not the direct ad-
1007 vertising of a textile firm, but it is the contributing of money to another firm to pay for his advertising, supposed to be for the promoting of the other firm's material, but really to secure a reduction in the price of the goods which are purchased from that firm rather than to promote the sale of those goods.

Mr. Haycraft: I move to strike that part of the answer beginning with "promote."

Examiner Bennett: The answer will be stricken beginning with the words "which resulted only in the beating down of the price."

Mr. Weisman: Exception.

By Mr. Weisman.

1008 Q. You referred to "return regulations"; will you explain to us what that term refers to or just exactly what that term means? A. The returns regulation is incorporated——

Q. Do not tell us where it was incorporated but tell us what it was. A. It prevents——

Q. Do not tell us what it does or Mr. Haycraft will move to strike it out, but tell us what the return regula-

tion is; what returns were and under what circumstances they were made. A. I am afraid I do not understand the question.

Q. Well, I will try to reframe it. You stated that one of the matters the Textile Guild members addressed themselves to was returns regulations. A. Yes.

Q. Tell us what returns were; what is sought to be regulated? A. We sought to regulate the return of material after an unwarranted length of time and for no reason on the part of the person returning, or wishing to return other than, having overpurchased, now wishing to not carry the loss themselves.

Mr. Weisman: All right. That is fine. 1010

(There was a discussion off the record.)

By Mr. Weisman:

Q. My friend Mr. Haycraft just stated in answer to the statement "Not if it is discriminatory." Were any of these practices with regard to the return regulations, subsidized advertising, uniform discounts, or cutting charges, were they generally applied with all people that you did business with, or were they discriminatory and in effect only to some and not to others?

Mr. Haycraft: I object. That was off the record.

Mr. Weisman: I know it, but I am putting it on the record.

Examiner Bennett: What is the question? 1011

(Question read.)

Examiner Bennett: Overruled.

A. It was not discriminatory, and it applied to all accounts with whom we dealt.

(There was a discussion off the record.)

Mr. Weisman: It is now conceded that they were not illegal, and I take that concession on the record.

Mr. Haycraft: No. I do not say that.

Mr. Weisman: Didn't you just say that they were not illegal?

Mr. Haycraft: The advertising allowances were not.

Mr. Weisman: I thought you wanted to consent to an order of dismissal.

Mr. Haycraft: No.

Mr. Weisman: You really should have.

Mr. Haycraft: Certainly not.

By Mr. Weisman.

1013 Q. Prior to the formation of the Textile Guild, do you know whether or not in the silk business there was generally, by all manufacturers, an effort to guard the copying of designs, of registered designs?

Mr. Haycraft: I object as not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: I desire now to offer to prove that if the witness were permitted to answer, the witness would have answered in the affirmative.

Examiner Bennett: That offer will be received for the record.

Proceed.

1014 *By Mr. Weisman.*

Q. On your direct examination, you testified that in connection with an effort to—I withdraw that. On your direct examination you testified that on certain occasions accountants were sent in to examine the books of the members of the Textile Division. A. Yes.

Q. Is that so? A. Yes.

Q. Did the Textile Division maintain a regular staff of accountants? A. No.

Q. Were these examinations sporadic and far apart and only in cases where some claim had been made that there was a violation? A. They were far apart and sporadic, in fact we only had—we only sent an accountant at one time, not because of a claim against the firm, simply as a check-up.

Q. What is that? A. They were far apart and sporadic, as I said before; as a matter of fact, we only had one occasion of that kind. We only sent accountants at one time. And at that time it was not because of a claim made against that firm, but simply was more or less of a check-up.

Q. Now, when you obtained notice or information—I withdraw that. When you obtained information which in your opinion put you on notice that there has been, or caused you reasonably to believe there had been a violation of those four matters that you have enumerated—to-wit: First, the return regulation; second, the subsidizing of advertising; thirdly, the uniform discount; fourthly and lastly, a violation of cutting charges. Did you on behalf of the Textile Division thereupon initiate your own dependent examination with regard thereto? A. I always do the initiating of my own examination. 1016

Q. Did you initiate such—I withdraw that. Did you in connection with such examinations or examination come to your judgment independently of the Fashion Originators' Guild, or any direction by it? A. I come to my decision entirely independently on the first or preliminary examination before the Grievance Committee sits, yes. 1017

Q. Is this Grievance Committee wholly from the Textile Division on this claim? A. Well, from their own members.

Q. When you ascertain in your opinion, or in the opinion of the Grievance Committee, I should say, that there has been some violation of these rules of fair trade—or these fair trade practices, I take it you then notify the members of the Textile Guild? A. Yes, we do.

Q. That merely takes the form of a notification? A. All in that case.

Q. After you notify them is there anything further that you do about it? A. There is nothing beyond that point.

Q. So that as a matter of fact, all the Textile Affiliates do in the extreme operation is to notify the members of those manufacturers who, in their opinion are engaged in unfair trade practices with relation to the textile manufacturers; is that so? A. Mr. Counsel, I think I may be a little mixed up about your "manufacturers"; once or twice you referred to textile or garment manufacturers. I think you have been referring to textile manufacturers all
1019 the way through, and now I think you have been referring to garment manufacturers and to textile manufacturers.

Q. I meant to make that clear. I was referring to textile manufacturers. A. Now, you are referring to a garment manufacturer?

Q. Well, I will reframe the question so as to clarify that. I will see if I can clarify it so that you can understand it. A. All right.

Q. The Textile Guild imposes no fine beyond its own members, does it? A. On its textile members?

Q. Yes. A. It has imposed fines in accordance with the penalty clause on its own members.

Q. To what extent? A. The extent as outlined in the penalty, which happens to be—it happens it has never been
1020 over $100.

Q. Have you got—I withdraw that. With regard to this notice, what is the form that the notice takes? A. Regarding the textile people who have violated their own rules?

Q. Yes. A. There is no notice that goes out on that, but simply at the next membership meeting we usually tell the membership that a certain firm had been before the Grievance Committee.

Q. Let me see. Assuming that you notify your membership that the dress manufacturers engaged in these unfair

ctices that you have enumerated, four in number, that ertain dress manufacturer is engaged in certain of those fair practices? A. Yes.

Q. Assuming further that certain of your silk or textile nufacturers receive such notice, are they privileged, if y desire to do so, to continue to do business with such ss manufacturers? A. They are not expected to, but y are privileged to.

Mr. Weisman: I ask that the first part of it be stricken out.

Mr. Haycraft: I object to that being stricken out.

Examiner Bennett: Let it stand. 1022

Mr. Weisman.

Q. Is there among your rules or regulations any sanc- n or authority in such cases to fine the textile member? There is no such provision.

Q. Then, I take it there is no such authority? A. There no such authority.

Mr. Weisman: May I see Commission's Exhibit No. 406.

Mr. Weisman.

Q. I also take it that the four trade practices, or, rather, four denominated unfair trade practices are the sole 1023 tters to which your Textile Affiliates addressed themves? A. In the matter of so-called fair trade practices? Q. Yes. A. They are the only four.

Q. Yes.

ur. De Lisser, from your experience and knowledge of industry—when I say "industry" I am referring to textile industry—would you say that the adoption by Textile Affiliates of these fair trade practices had erally aided the industry?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Mr. Weisman: I assume that the objection is not to the form of the question but to the fact your Honor thinks it is a part of the——

Examiner Bennett: Yes, I think it is wholly irrelevant.

Mr. Weisman: I do not want to pursue it; if it is a question of form I would have reframed it, but since it is not, I will not reframe it.

Examiner Bennett: No, not to the form.

1025

By Mr. Weisman.

Q. These fair trade practices were adopted in or about the early part of 1935, were they not? A. I have already said that they had their inception about November, 1934, the starting of it.

Q. Do you know whether or not these fair trade practices were approved by the National Recovery Administration?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. At the time of their adoption?

1026

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I assume the same reason, your Honor? I do not want to pursue this inquiry further unless——

Examiner Bennett: It is not a matter of form; I think it is irrelevant.

Mr. Weisman: I wish to state that if the Court had permitted the answer to that question I would have proved that these fair trade practices were

approved by the National Recovery Administration after submission to the industry generally and to all affiliated or kindred or associated branches of the industry having an interest therein.

By Mr. Weisman.

Q. I see that in Commission's Exhibit No. 246-0 this resolution appears: "that no cuts shall be made of strips of levers lace edges or flouncings. Nets and all overlaces may be cut, but such cuts must carry a minimum 10 per cent. surcharge. Trimming laces may be cut at seller's option, but in such event must carry the same surcharge."

Will you tell me the circumstances and facts which led 1028
to the passage of that resolution, if you can?

Mr. Haycraft: Objected to.

Mr. Weisman: I submit I can always show what is behind, what is the circumstance.

Examiner Bennett: I am going to let him answer.

By Mr. Weisman.

Q. You may answer.

Examiner Bennett: Make it short.

By Mr. Weisman.

Q. Make your answer short.

1029

Examiner Bennett: Not long drawn out.

A. This is nothing more than exactly the same thing that the other cutting charge is; it is a cutting charge applicable to the lace business, and made up simply with an understanding which I would have to explain of the lace business, for the same purpose and in the same way that the cutting charge is on the other.

By Mr. Weisman.

Q. The same thing applied to this? A. Applicable to this.

Q. As to the other? A. That is right, yes.

Q. I show you in Commission's Exhibit 246-P a discussion concerning this 10 per cent. charge, and it says: "If there are still accounts which have failed to pay the overdue 10 per cent. charges, the accounts be turned over to Mr."—blank, the attorney's name, I prefer not to read it—"who will institute collection for all houses at the same time against the one account."

Do I understand, then, that if this 10 per cent. cutting
1031 charge was not paid the Textile Guild merely instituted suit in a regular court of law for its members to collect this charge?

Mr. Haycraft: Objected to; the document speaks for itself.

Mr. Weisman: I am asking now generally whether that was the practice.

Examiner Bennett: Oh, he may answer.

By Mr. Weisman.

Q. The Court says you may answer.

Examiner Bennett: What the practice was.

A. That was not a practice. That was a discussion.
1932 It never happened to reach any concrete basis.

By Mr. Weisman.

Q. In other words, you never even sued? A. No, except individually a firm.

Q. I see. A. Nothing to do with the textile group.

Q. I see.

There has been admitted into evidence here as Commission's Exhibit No. 283 this advertising (indicating). Will you tell us where that advertisement appeared? A. That appeared in "Women's Wear."

Q. What is "Women's Wear"? A. That is a recognized trade paper for the textile firms, the dress manufacturers and retailers.

Q. And generally received by them? A. Generally received by all textile firms.

Q. So, in other words, this ad was open and notorious and went to all members in the industry or affiliated or associated with the industry?

1034 Mr. Haycraft: Objected to as argumentative.

Mr. Weisman: You put in a paper and nobody knows what it is all about. I am showing what it is.

Mr. Haycraft: I object to the form.

Examiner Bennett: I will sustain the objection to that question, the form; it is merely argumentative.

Mr. Weisman: May I have the question?

(Question read.)

Examiner Bennett: He has already given the facts; there is no doubt about it.

By Mr. Weisman.

1035 Q. Well, does this paper, to your knowledge, have general circulation among all of the——

Examiner Bennett: He has already answered it.

Mr. Weisman: Well, I did not take it that——

Examiner Bennett: He has already answered the question.

By Mr. Weisman.

Q. Is the same true of Commission's Exhibit No. 284? A. It is in the same paper with the same scope.

Q. I show you Commission's Exhibit No. 250 and ask you whether you remember when that form came in general use, or when you promulgated or sent that form out? A. We promulgated and sent it out just about January 1, 1936. May I recollect again on that——?

Q. I show you——

Mr. Goldwater: Did you say 1936?

The Witness: Well, I——

By Mr. Weisman.

Q. I show you this exhibit, Respondents' Exhibit 1 for Identification, and ask you with regard to the relation of
1037 the time, whether or not this came into general use after you had seen and received Respondents' Exhibit for Identification 1? A. Oh, certainly, we discussed this exhibit here before we agreed to go ahead with the pledge.

Q. I see.

Mr. Haycraft: Off the record.

(There was a discussion off the record.)

Mr. Haycraft: I move to strike the last question and answer, Mr. Examiner, referring to an exhibit not in evidence.

Mr. Weisman: Wait a moment. I merely refreshed his recollection in point of time.

Mr. Haycraft: Then there is no probative value of the testimony; he says this and that, this and
1038 that, and this and that.

Examiner Bennett: All right, it may be stricken.

By Mr. Weisman.

Q. I show you Respondents' Exhibit 1 for Identification, and ask you whether or not you have ever seen that before?

Mr. Haycraft: That is objected to: not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I now wish to make this offer of proof, that if the witness had been permitted to answer, he would have said yes; further, that I would have then inquired——

Examiner Bennett: The matter has already been passed upon as irrelevant, and I don't see why you should consider that an irrelevant document proves anything.

Mr. Weisman: Well, I think now this has been offered in evidence. Now, I wish to show by cross-examination that the adoption of the use of this document was because of receipt by the respondent of this letter from the Federal Trade Commission. 1040

Examiner Bennett: Yes, but you can do that on defense.

Mr. Weisman: The Court has ruled that I may do that on defense.

May I have an exception?

Examiner Bennett: Yes, you may have an exception.

Mr. Weisman: That is all.

Mr. Haycraft: I have about two questions, Mr. Examiner.

Mr. Weisman: Wait just a moment, I think I have something. Oh, yes. I would like to have Respondents' Exhibits 2 and 3 for Identification. 1041

(Reporter hands exhibits mentioned to counsel.)

Mr. Weisman: May I speak to the Court off the record?

Examiner Bennett: Yes, surely.

(There was a discussion off the record.)

Mr. Weisman: That is all.

Redirect examination by Mr. Haycraft.

Q. Mr. De Lisser, you were questioned Friday on cross-examination with respect to your letter of January 27 to Mr. Grossleight, Commission's Exhibit 245, and in your answer to questions propounded to you by counsel you said that Mr. Grossleight requested the Textile Executive Secretary, that is yourself, to appoint a committee, that he would approve; in fact a committee that he would provide of his own choice to sit and hear a disclosure of the misunderstandings between himself and the firm of Doucet, and to act more or less as an informal arbitration committee, and so forth. Page 403 of the record.

1043

Mr. Weisman: Well, wait a moment. Let me follow you. (Referring to record) Yes.

By Mr. Haycraft.

Q. Now, I want to know just how you came to be interested in this misunderstanding or controversy between Doucet and Grossleight? A. That was because I—I thought I had explained that the screen printers, including the United Textile Print Works, wanted to form their own group, at that time, and be affiliated with our textile members; they thought that difficulties arising in trade practice, and others between the screen printers that members deal with, and our members, could be ironed out if

1044

they had a little group affiliated where such things could be discussed, and that was the time we were talking affiliations, so that when a difficulty definitely arose between Doucet and members of our group, and the United Textile Print Works, it immediately came to my attention, simply because——

Q. Who brought it to your attention? A. I can't tell you who first did. I talked to both sides quite a bit, because both sides submitted it, due to the fact that it was

very evident the screen-printers wanted to affiliate with us, and wanted to iron out their troubles in our organization. A thing like that had not come up previous, or since.

Q. As a matter of fact, was it the Doucet firm that first apprised you of the controversy and asked you for assistance?

Mr. Weisman: I object to this. This is the Commission's witness, and a question stating "As a matter of fact" is not proper. It is argumentative in form. His own witness; he has testified he does not remember; now Mr. Haycraft is arguing with him, with his own witness, and asking him "As a matter of fact didn't this and that happen."

1046 Mr. Haycraft: Why the emphasis on your own witness?

Mr. Weisman: He is your——

Mr. Haycraft: The record shows he is a respondent in this proceeding.

Mr. Weisman: No, he is not.

Mr. Haycraft: Certainly he is.

Mr. Weisman: No, he is not.

Mr. Haycraft: Yes, he is.

Mr. Weisman: I do not see his name mentioned.

Mr. Haycraft: It is in there.

Mr. Goldwater: Yes, it is; he is a party.

Examiner Bennett: Read the question.

(Last question read.)

1047 Examiner Bennett: Overruled. You may answer.

A. I have already said that I don't recall which firm came to me first; there were too many discussions at that time, almost daily.

By Mr. Haycraft.

Q. You refer in your cross-examination to the instances where you sent notices to the members of the textile group,

of instances of the violation of textile group rules by garment manufacturers, cutting charges, copying, and so on? A. Right.

Q. And I believe you testified that you had given these garment manufacturers, or their representatives, an opportunity to state their side of the case? A. Right.

Q. Was that by word of mouth or in writing? A. That depends upon the case. It has been both ways, and has been referred to previously. The thing evolved, as we got under way, got to a more concrete basis. At times, it has been by word of mouth only, where I have gone and talked to them; at times it has been letters.

1049 Q. Now, would it be possible for you to find the letters that you had written to these garment manufacturers, if you looked in your files? A. I believe so.

Q. I would be glad to have you make a search and see if you can find any correspondence which you had with garment manufacturers you have named in your testimony on this point. A. (Witness makes note.)

Q. Now, in those instances where you had oral conversation with either the garment manufacturer or his representative, did you tell him what use you were going to make of the information that they gave you with respect to the textile manufacturers? A. I don't know what you mean by "use."

Q. Well, that you would give notice to the textile manufacturers if they declined to obey or live up to the rules?

1050 A. He was told that these textile manufacturers would know of his attitude.

Q. Then what were the circumstances under which he came in line and agreed to abide by those rules and regulations? A. Well, that usually occurs because I have found that every textile firm is friendly with certain garment manufacturers. It may be that when Cheney was friendly with this one and somebody with the other one, as might happen, that these forty-five, or so, textile firms, know of

a certain condition, of a certain guarantee made among them, there are always some who are particularly friendly, and they always go over to that man and say, "What is the matter? I am surprised to hear this, am surprised to hear that, and is it good business to deal with a fellow that does this type of thing? Why do you do it?" It must be because of the fact that somebody in there, or member, that goes and settles with that man, always has resulted in that man clearing up any misunderstanding that occurred.

Q. In other words, he then agrees to abide by the rules and pays the charge, or does whatever is necessary? A. He doesn't agree to abide by the rule, but he——

Mr. Goldwater: I object to that question. That 1052
question is not only argumentative, but it is suggestive of an answer.

Mr. Haycraft: Certainly it is suggestive of an answer. This is a respondent in the proceeding. I am going to have a few privileges.

Mr. Goldwater: No use of yelling about it, Mr. Haycraft.

Examiner Bennett: Certainly, let the gentleman make his statement. Go ahead.

Mr. Goldwater: I object to the form of the question on the ground it is improper to suggest an answer to a witness on redirect. This is all cross-examination, and the suggestion made is not in line with the witness' previous testimony, and is, therefore, argumentative. 1053

Mr. Haycraft: Mr. Examiner, it is in line, merely a summary of his previous testimony.

Mr. Goldwater: Then I object on the ground it is a summary. Certainly that is not a proper form of question, if it is a summary.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I sustain the objection; it does not seem to add to anything.

Mr. Haycraft: That is all.

Mr. Goldwater: That is all.

Mr. Haycraft: Subject to recall, of course, upon finding this correspondence that I have requested a moment ago.

The Witness: Yes, I have made a note of it.

Examiner Bennett: That is all.

Mr. Goldwater: May I ask one more question of Mr. De Lisser, Mr. Examiner?

Examiner Bennett: Yes, all right.

Recross-examination by Mr. Goldwater.

1055 Q. Mr. De Lisser, reference has been made by the introduction of one exhibit, the number of which I do not now recall, to the Embroidery Group. Do you recall such an exhibit? A. I believe it is in the minutes.

Q. In the minutes? A. Yes.

Q. That was about the minutes of one meeting of the Embroidery Group, if I recall correctly. A. That is right.

Q. Is that correct?

Mr. Haycraft: Commission's Exhibit 246, I think.

Mr. Goldwater: Because I don't recall which exhibit it was.

By Mr. Goldwater.

1056 Q. Is the Embroidery Group a separate group of manufacturers, or are they members of Textile Affiliates? A. Oh, they are regular members of Textile Affiliates; they just have a more direct interest in embroidery.

Q. That is, they are Textile Affiliates? A. Yes.

Q. Who have a primary interest in embroidery, rather than other textiles? A. That is right.

Q. Have they separate rules, or separate regulations, or separate resolutions? A. No, only where it would be prac

tical, like lace cut charge; I mean applicable to that particular material. They have always been one with our Textile Group, but there are rules which might be applicable to laces or velvets or embroidery, which would alter in accordance with the section it was applicable to, and are adjusted in that way.

Q. Such as you explained before? A. Yes.

Q. In the matter of discounts or cutting charge? A. Yes; right.

Q. And pertaining to one type of material as against another? A. That is right.

Mr. Goldwater: That is all. 1058

Mr. Haycraft: No further questions.

Examiner Bennett: All right.

(Witness excused.)

Examiner Bennett: What is your further pleasure?

Mr. Martin: At this time, your Honor, we would like to call Mr. Hirsch.

BEN B. HIRSCH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?

The Witness: Ben B. Hirsch.

Examiner Bennett: Where do you reside, Mr. 1059
Hirsch?

The Witness: 317 West 89th Street, New York City.

Direct examination by Mr. Martin.

Q. Mr. Hirsch, please state your name, residence and occupation. A. Ben B. Hirsch, H-i-r-s-c-h, 317 West 89th Street.

Examiner Bennett: Talk louder, please.

The Witness: Yes, sir; Ben B. Hirsch, 317 West 89th Street.

By Mr. Martin.

Q. What is your occupation? A. President-treasurer of the Melba Dress Company, Inc., of 1375 Broadway, New York City.

Q. How long have you been connected with the Melba Dress Company, Mr. Hirsch? A. Since its inception in 1928.

Q. What business is the Melba Dress Company engaged
1061 in? A. In the manufacturing of women's dresses.

Q. What priced dresses do you manufacture? A. $6.75 wholesale.

Q. That is the wholesale price? A. Yes, sir.

Q. Are you a member of the Fashion Originators Guild of America? A. No, sir.

Q. Are you in an way affiliated with that organization? A. No, sir.

Q. Where do you sell the dresses that you manufacture, Mr. Hirsch? A. You mean, which customers? Where are they located?

Q. I mean, what is your outlet, what type of customer? A. The majority are retail customers and department stores throughout the United States, and some foreign.

1062 Q. In the selling of dresses, do the orders which you receive for your products contain any statement on them to the effect they are subject to return if they are deemed copies?

Mr. Weisman: I object; the best evidence of that is the order.

Examiner Bennett: Well, now——

Mr. Martin: What does your Honor say? I could not hear your Honor's ruling.

Examiner Bennett: It is sustained. There is better evidence of that, of course.

By Mr. Martin.

Q. Have you any copies of orders for dresses? A. Yes, sir; but not with me.

Q. Have you them with you? A. No, sir.

Q. Have you any with you? A. No, sir.

Q. Can you produce them? A. No, sir.

Q. In the course and conduct of your business do you receive any returns of your dresses? A. Yes, sir.

Mr. Weisman: I object to that as immaterial; calling for a conclusion of the witness. How does 1064
he know why a man in Oshkosh or Duluth, or some other place——

Examiner Bennett: Overruled. He ought to know.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Go ahead and answer the question. A. We receive them for various reasons, some may be for——

Mr. Weisman: Now, I object to any further answer. He has answered. The answer is "For various reasons."

By Mr. Martin. 1065

Q. All right, sir. What are some of the various reasons, Mr. Hirsch?

Mr. Goldwater: I object on the ground that whatever reasons may now be offered for the return are reasons stated by other persons, and therefore this witness' testimony with respect thereto would be merely hearsay.

Examiner Bennett: Overruled.

Mr. Goldwater: Exception.

Examiner Bennett: It is very obvious that a man in the line of business that he has been for a number of years knows the reasons why his goods are returned, as well as other things connected with his business. If a man does not, why, he is a good deal of a chump.

By Mr. Martin.

Q. Go ahead and answer the question.

Mr. Goldwater: Exception.

1067

A. It might be late deliveries, imperfections in materials, and cancellations that we may have gotten in before. Very little is received back to-day on account of an alleged copy of the Guild, although we did suffer quite a good deal with that——

Mr. Weisman: I ask that that be stricken out.

Mr. Martin: Let him finish.

The Witness: In the past few——

Mr. Weisman: I object.

Mr. Martin: Let the witness finish his answer.

Mr. Weisman: I don't like it in the record.

Mr. Martin: It can be stricken if it is improper. Sit down, now, and let him answer the question.

1068

Examiner Bennett: Go ahead.

Mr. Weisman: Really, Judge, this is quite——

Examiner Bennett: Finish your answer.

Read the answer.

(Last answer read.)

A. (Continuing) Those are primary reasons for the returns.

Mr. Goldwater: I ask so much of the answer be stricken out that states he did suffer quite a good deal with them in the past, as being indefinite, too general, and not responsive to the question, and a conclusion.

Examiner Bennett: Overruled.

Mr. Goldwater: Exception.

By Mr. Martin.

Q. Now, in the fall of 1935, did you have any request from customers that they be afforded the right to return garments if they were deemed copies of garments registered with the Fashion Originators Guild? 1070

Mr. Weisman: Just a moment, Mr. Hirsch.

The Witness: Yes, sir; I shall wait.

Mr. Weisman: I object to the form of the question as being improper, calling for a statement of some other witness; furthermore, I would ask your Honor to advise counsel to cease leading the witness. Obviously, this is not a respondent. This is not one of our men. It was brought out he was not a member of the Guild. I think it is wrong, and I object to the leading, and, furthermore, I object to the question as improper in form.

Mr. Martin: Your Honor please, I do not agree with my friend that that is a leading question. I asked him the direct question whether or not he 1071 had any request for the privilege of returning goods. I have not asked him to state what anybody told him. I have asked him to make his answer a "yes" or "no" answer.

Mr. Weisman: Oh, no.

Mr. Martin: Did he or did he not have a request?

Mr. Weisman: Now, if you will read the question you will see that you did not ask what you

say to the Court you asked. You said did somebody ask him for the privilege of returning goods. Did somebody deem something a copy, and so on, ad nauseum. I say if you asked him whether he got requests to be privileged to return merchandise, that is one thing, then he is testifying to the fact of the request being made. Now, you are asking him in your question not as to the fact but as to the substance of the request, which is purely hearsay.

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: May I have an exception?

1073 Examiner Bennett: Certainly, you have an exception to all adverse rulings.

A. We were offered orders by most of our accounts with the stamp on it warranting the right to return the merchandise if it was an alleged copy of a Guild dress.

Mr. Weisman: Now, I move that the answer be stricken out as being not responsive. It has a further vice, that your Honor has ruled that the best evidence of these orders is the orders themselves. Now, this answer is wrong in saying something that the Court has ruled is not competent, in this fashion.

Examiner Bennett: Will you please read the

1074 answer?

(Answer read.)

Examiner Bennett: It is not the best evidence.

Mr. Weisman: What did the Court rule?

Examiner Bennett: I sustained the objection.

Mr. Weisman: Thank you.

Mr. Martin: Go ahead.

Mr. Weisman: And may the answer be stricken?

Examiner Bennett: Yes, it may be.

By Mr. Martin:

Q: Referring to Commission's Exhibit 3-A, Mr. Hirsch, I will ask you to read the last paragraph and refresh your memory by reading that paragraph of that exhibit.

(Witness refers to paper.)

A: Yes, sir.

Q. Have you ever received any orders containing that provision?

Mr. Weisman: I object to that. The best evidence is the order itself. Your Honor has ruled that he should produce the orders. As a matter of 1076
fact, he has stipulated he would bring them back after lunch, he said this afternoon. Now, we are still on this question, seeking to get this matter in indirectly which your Honor has ruled on my objection should only be produced directly.

Examiner Bennett: Yes, I think you better get the documents. It is subject to the objection which was made to it, undoubtedly.

Mr. Martin: Your Honor please, at this time it is 12.30. I would like to ask that we adjourn for lunch until 2 o'clock, during which time this witness will have an opportunity.

Examiner Bennett: Yes, all right, we will adjourn to 2 o'clock.

Mr. Weisman: Will your Honor also direct this 1077
witness to bring with him all of his orders since 1932?

Examiner Bennett: No, I will not ask him to do anything that——

Mr. Weisman: May I examine him for a moment voir dire?

Mr. Martin: You can do that when it comes to your case.

Mr. Weisman: You are asking——

Mr. Martin: You can ask him when you get around to it.

Examiner Bennett: Your time will come later.

Mr. Martin: This is my turn now.

Examiner Bennett: As to the motion asking for certain papers, I am going to let the attorneys handle it; I am not going to say that you bring this in or that.

Mr. Weisman: Will your Honor permit me to obtain a subpoena duces tecum directing the witness to bring in certain papers that I require?

1079 Examiner Bennett: You can do that if you wish to, apply to the Commission for that.

Mr. Weisman: Then I will.

Examiner Bennett: You can apply to the Commission for such subpoena. The Commission is the only one that has authority to issue it; you will have to apply to the Commission formally.

Mr. Weisman: I want a subpoena issued——

Examiner Bennett: Will you waive the subpoena duces tecum?

Mr. Weisman: ——as some of the others have.

Examiner Bennett: Just what do you want brought in?

Mr. Weisman: I want the financial statements, the amount of business done during the year, all of

1080 the orders received by him, and everything that will generally illuminate his testimony and show to what extent he received orders such as this. I will give you the list of the papers, otherwise I shall apply forthwith and get a subpoena duces tecum.

(There was a discussion off the record.)

Examiner Bennett: We will recess until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., Daylight Savings Time, a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: The hearing will come to order. Mr. Hirsch, will you come around and take the stand?

BEN B. HIRSCH was thereupon recalled as a witness for the Commission, and, having been previously sworn, tes- 1082
tified further as follows:

Direct examination (continued) by Mr. Martin.

Q. Mr. Hirsch, you are appearing here pursuant to a subpoena issued against you, are you not? A. Yes, sir.

Q. Have you at this time a copy of the data that you were asked to bring? A. The boys left my place of business about twenty minutes ago—about twenty minutes of two, and came down by taxicab and they have not got here yet, but they will be here in a few minutes.

Q. Mr. Hirsch, when did you first become acquainted with the Fashion Originators Guild? A. Oh, that goes back——

1083

Mr. Weisman: Will you clarify that question, "became acquainted," I do not know what you mean by that.

By Mr. Martin.

Q. When did you first have knowledge of the organization known as the Fashion Originators Guild of America, Inc.?

Mr. Martin: Is that definite enough to suit you, Mr. Weisman?

Mr. Weisman: Yes; thank you.

A. That goes back, I think, to 1934; I think it would go back as far as the early part of 1934, or the latter part of 1933.

By Mr. Martin.

Q. How did you become acquainted with or familiar with this organization? A. About August, 1934, the N.R.A. had before it the matter in connection with the
1085 putting into a code of a restriction setting up a style registration bureau, and from the information I ascertained at the time the Fashion Originators Guild as behind that, and the——

Mr. Weisman (interposing): I ask that that be stricken out.

Mr. Martin: We consent to that, your Honor.

Examiner Bennett: It may be stricken out.

By Mr. Martin.

Q. Are you familiar with the organization known as the Popular Priced Dress Manufacturers? A. Yes, sir. I am the president of that organization.

Q. President? A. Yes.

1086 Q. Did that organization, of which you have testified you are the president, file a complaint with the Federal Trade Commission against the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: I sustain the objection. We have not gone into those things under the rules of the Commission. The Commission is the complainant in this case.

Mr. Martin: If your Honor please, I understand that, but I wish to bring out the fact as to whether or not they requested any action on the part of the Commission.

Mr. Weisman: I object to that as immaterial and ask that the statement be stricken from the record. Suppose anybody asks for anything. That has no probative value in this record.

Examiner Bennett: It may be stricken.

By Mr. Martin.

Q. Are you familiar with the conduct of the business of the Melba Dress Company, Inc.? A. Yes, sir. 1088

Q. Did the Melba Dress Company ever sell any goods to the Palace Store, Kansas City, Mo.? A. Yes, sir.

Q. They did? A. Yes.

Mr. Martin: I ask that this be marked for identification as Commission's Exhibit No. 286.

(Memorandum from The Palace Company, Twelfth and Grand, Kansas City, Mo., to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked Commission's Exhibit 286 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 286 for Identification, and ask you can you identify that as having been received by the Melba Dress Company? A. Yes, sir. 1089

Mr. Martin: I offer this in evidence.

Mr. Weisman: I object. No proper foundation has been laid, and the mere fact that this is some paper that was received by this company does not make that paper competent in evidence. There is no proof who sent it, and whether the person who

sent it was authorized to send it, and there is no proof to show the basis upon which it was sent, or anything about it. It is simply a loosely presented document. I do not think we should be bound by any such document as this and do not see how we can be.

Mr. Martin: I am offering this not for its value as to the truth of its contents, but I am simply offering it as being identified by him as being received by him.

Mr. Weisman: I object to its entry in evidence on any such ground as that. Anything that this
1091 firm has received does not make it proper as an exhibit to be offered in evidence unless it was shown that this paper was sent out in due course, that it was sent out by someone who was authorized by the company to send it out, and those facts and circumstances surrounding it, it seems to me that it is entirely improper, immaterial and irrelevant, illegal and highly improper. If they sent this witness any kind of papers how would that be competent in this particular case?

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Objection overruled.

(The document referred to, heretofore marked
1092 for identification Commission's Exhibit 286, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Was this document——

By Examiner Bennett.

Q. Just a moment. Mr. Hirsch, was this paper received by your firm in the ordinary course of business? A. Yes, sir.

By Mr. Martin.

Q. Was this document, Commission's Exhibit 287—first, I ask that this be marked for identification.

(Document from Jordan Marsh Company, Boston, Mass., under date of October 9, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 287.)

By Mr. Martin.

Q. Mr. Hirsch, in the conduct of your business have you ever transacted any business with Jordan Marsh Company 1094
of Boston, Mass.? A. Yes, sir.

Q. I hand you Commission's Exhibit 287 for Identification, and ask you if you can identify that as having been received by the Melba Dress Company in the conduct of their business? A. Yes, sir.

Mr. Martin: I offer that in evidence, if your Honor please, at this time.

Mr. Weisman: I make the same objection as to that, if your Honor please, and I suppose you will make the same ruling?

Examiner Bennett: The same ruling. I shall expect you, of course, to connect this up directly with this case before you get through with it. They are received merely as a foundation for further 1095
testimony.

(The document referred to, heretofore marked for identification Commission's Exhibit 287, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that these documents be marked for identification.

(Copy of card from Marshall Field & Company, 121 North State Street, Chicago, Ill., by R. Lundin, per E. A., under date of October 3, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 288.)

(Copy of card from Kresge Department Store, by "Phillips," under date of October 17, 1935, to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 289.)

1097 (Copy of card from Marshall Field & Company, 121 North State Street, Chicago, Ill., by E. Abbott, under date of October 10, 1935, to Melba Dress Company, 1375 Broadway, New York," was marked for identification Commission's Exhibit 290.)

By Mr. Martin.

Q. Has the Melba Dress Company ever transacted any business with the Marshall Field & Company of Chicago? A. Yes, sir.

Q. I hand you herewith Commission's Exhibit 288 for Identification, and ask you if that was received in the ordinary course of business by the Melba Dress Company? A. Yes, sir.

1098 Q. I hand you herewith Commission's Exhibit 290 for Identification, and ask you if that was received in the ordinary course of business by your firm? A. Yes, sir.

Q. Has your firm ever transacted any business with the Kresge Department Stores? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 289 for Identification, and ask you if that was received by your firm in the ordinary course of business? A. Yes, sir.

Mr. Martin: If your Honor please, I offer in evidence Commission's Exhibit No. 288, No. 289 and No. 290 for Identification.

Mr. Weisman: Same objection as to each of them and collectively.

Examiner Bennett: Same ruling.

(The documents referred to, heretofore marked for identification Commission's Exhibits 288, 289 and 290, were marked as exhibits and received in evidence.)

Mr. Martin: I ask that this document be marked for identification.

(A document from Marshall Field & Company, under date of October 19, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked Commission's Exhibit 291 for Identification.) 1100

By Mr. Martin.

Q. I show you Commission's Exhibit for Identification No. 291, and ask you if that was received by your firm in the ordinary course of business? A. Yes, sir.

Mr. Martin: I offer in evidence this document, your Honor, being Commission's Exhibit 291 for Identification.

Mr. Weisman: The same objection and the same ruling, I suppose, Mr. Examiner? 1101

Examiner Bennett: Yes, same ruling. The document is received in evidence.

(The document referred to, heretofore marked for identification Commission's Exhibit 291, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that these two documents be marked for identification.

(A copy of a letter from Melba Dress Company, Inc., under date of October 8, 1935, to Marshall Field & Company, Chicago, Ill., attention Section 75/284, was marked for identification Commission's Exhibit 292.)

(A letter from T. C. O'Donnell, Marshall Field & Company, Chicago, under date of October 10, 1935, to Melba Dress Company, Inc., 1375 Broadway, New York City, N. Y., attention of Mr. Ben B. Hirsch, was marked for identification Commission's Exhibit 293.)

1103 *By Mr. Martin.*

Q. I hand you Commission's Exhibit No. 292 for Identification, and ask you can you identify that as a carbon copy of a letter to Marshall Field & Company, Chicago, Ill., under date of October 8, 1935—to Marshall Field & Company, and sent out by the Melba Dress Company? A. Yes.

Q. I hand you Commission's Exhibit 293 for Identification, and ask you if you can identify that as an original letter received by Melba Dress Company from Marshall Field & Company and whether that was received by you in the ordinary course of your business? A. Yes, sir.

Mr. Martin: I offer in evidence Commission's
1104 Exhibit No. 292 and Commission's Exhibit No. 293 for Identification.

Mr. Weisman: I object to the introduction of these letters. There has been no proper foundation laid, and they are both self-serving documents.

Examiner Bennett: I will receive them in evidence on the same basis as the others except here again they must be followed up by direct examination.

(The documents referred to, heretofore marked for identification Commission's Exhibits 292 and 293, were marked as exhibits and received in evidence.)

Mr. Martin: I ask that these two documents be marked respectively Commission's Exhibits 294-A and 294-B for Identification.

(Letter from W. B. Norwood, Traffic & Invoice Department, N. Snellenburg & Company, Market, Eleventh to Twelfth Streets, Philadelphia, Pa., under date of October 18, 1935, to Melba Dress Company, 1375 Broadway, New York, was marked for identification Commission's Exhibit 294-A.) 1106

(Copy of documents from N. Snellenburg & Company, Philadelphia, Pa. to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 294-B.)

By Mr. Martin.

Q. Mr. Hirsch, did Melba Dress Company ever sell any of its dresses to N. Snellenburg & Company, Philadelphia, Pa.? A. Yes, sir.

Q. I hand you Commission's Exhibit 294-A for Identification and Commission's Exhibit 294-B for Identification, and ask you were those received by Melba Dress Company in the ordinary course of their business? A. Yes, sir. 1107

Mr. Martin: I offer these in evidence, if your Honor please.

Mr. Weisman: I object to it on all the grounds already urged and on the additional ground that this order blank does not even seem to tie up with the letter which states that there were six dresses at $2.15 and the letter refers to four. And the let-

ter refers to an order given with stamp, and I say that it does not show where they put this on this order blank here. I have looked at it very carefully and I think they are quite different. They do not tie up with the order at all.

Examiner Bennett: Are they related papers?

Mr. Martin: The letter refers to the return shipment.

Mr. Weisman: It appears from a reading of the paper that they are not tied up at all.

Mr. Martin: It is obvious that they are connected.

1109 Mr. Weisman: Your Honor will see that they are not. Your Honor will see that there are six dresses at $2.15, and obviously—also, they are the same style number, and this letter refers to four.

Mr. Martin: That is not the order to which reference is made. There is no stamp on the return slip. This is a return slip.

Mr. Weisman: They are certainly not competent because he returns six and not four, and he could not possibly refer to this. It seems to me that it is absolutely impossible for him to refer to that. He sends back six when he only claims for four, hardly possible as I see it.

Examiner Bennett: We are going to Philadelphia anyhow, perhaps it would be better to take care
1110 of the matter then if you desire to do so.

Mr. Martin: I withdraw those for the time being.

(Commission's Exhibits 294-A and 294-B withdrawn temporarily.)

(There was a discussion off the record.)

Mr. Weisman: I object to the witness talking to counsel.

Mr. Martin: It does not make any difference anyway, because I am not going to offer them now.

Mr. Weisman (to the witness): You are supposed to answer questions here and not talk to counsel.

Mr. Martin: I will direct my own witnesses if you do not mind.

I would like to have this document marked Commission's Exhibit 295 for Identification.

(A document from N. Snellenburg & Company, Philadelphia, Pa., under date of October 19, 1935, to Melba Dress Company, 1375 Broadway, New York City, N. Y., was marked for identification Commission's Exhibit 295.)

By Mr. Martin. 1112

Q. I hand you Commission's Exhibit 295 for Identification, and ask you if that was received by you in the ordinary course and conduct of your business? A. Yes, sir.

Mr. Martin: I offer in evidence, if your Honor please, Commission's Exhibit No. 295 for Identification.

Mr. Weisman: The same objection and the additional objection that it is immaterial. On the further objection that the wording on its face is wholly unintelligible. It says "Being returned by or for some other reason."

Examiner Bennett: The "or" is evidently a misprint. It will be received. 1113

(The document referred to, heretofore marked for identification Commission's Exhibit 295, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked for identification Commission's Exhibit 296.

(A letter from Kline's, St. Louis, Mo., under date of October 11, 1935, to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 296.)

By Mr. Martin.

Q. Mr. Hirsch, has your firm ever transacted any business with the Kline's Store of St. Louis, Mo.? A. Yes, sir.

Q. I hand you Commission's Exhibit 296 for Identification, and ask you if that letter was received by your firm in the ordinary course and conduct of its business? A. Yes, sir.

Mr. Martin: I offer this in evidence, if Your Honor please.

Mr. Weisman: Same objection as I stated before, and I assume the same ruling, Your Honor?

Examiner Bennett: Overruled. It will be received in evidence.

1115

(The letter referred to, heretofore marked for identification Commission's Exhibit 296, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked Commission's Exhibit 297 for Identification. I also ask that this document be marked Commission's Exhibit 298 for Identification.

(Document from Kline's Incorporated, St. Louis, Mo., to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 297.)

1116

(Document from Kline's Incorporated, St. Louis, Mo., to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 298.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 297 for Identification, and ask you whether that was received by your firm in the ordinary course of its business? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 298 for Identification, and ask you if that was received in the ordinary course of your business? A. Yes, sir.

Mr. Martin: I offer in evidence, if Your Honor please, Commission's Exhibits Nos. 297 and 298 for Identification.

Mr. Weisman: I object to that on the ground that they are not connected up with anything in addition to the other objections which I have heretofore made.

Mr. Martin: They are part of the subject matter that is set forth on them and which makes them perfectly admissible. They are perfectly plain as 1118
to what they are. It is right there on their face. You do not have to go any further than their face to see just what they are.

Mr. Weisman: They are not connected with the other letters.

Mr. Martin: Certainly not. This is a different transaction.

Mr. Weisman: I see. I object. I make the same objection. I suppose the Examiner will make the same ruling?

Examiner Bennett: Yes. They will be received. Objection overruled.

(The documents referred to, heretofore marked for identification Commission's Exhibits 297 and 1119
298, were marked as exhibits and received in evidence.)

Mr. Martin: I ask that this document be marked Commission's Exhibit 299 for Identification.

(A letter from Carson Pirie Scott & Company, by Mr. George G. Brown, Chicago, Ill., under date of

September 4, 1935, to Mr. Larry Hirsch, Melba Dress Company, New York City, was marked for identification Commission's Exhibit 299.)

By Mr. Martin.

Q. I hand you, Mr. Hirsch, Commission's Exhibit 299 for Identification, and ask you if this is a letter which was received by you from Carson, Pirie Scott & Company, Chicago, Ill., in the ordinary course of your business? A. Yes, sir.

Mr. Martin: I offer this in evidence, if Your Honor please.

1121

Mr. Weisman: I make the same objection.

Mr. Martin: All of these, if Your Honor please, are of the same type.

Examiner Bennett: The objection is overruled. It will be received in evidence.

(The letter referred to, heretofore marked for identification Commission's Exhibit 299, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked Commission's Exhibit 300 for Identification.

(A document from Carson Pirie Scott & Company, Chicago, under date of October 18, 1935, to Melba Dress Company, Inc., New York, N. Y., was marked for identification Commission's Exhibit 300.)

1122

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit for Identification 300, and ask you if that was received by you in the ordinary course and conduct of your business? A. Yes, sir.

Mr. Martin: I offer this in evidence, Your Honor, as Commission's Exhibit 300.

Mr. Weisman: Same objection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 300, was marked as an exhibit and received in evidence.)

(Documents from Palace Clothing Company, Kansas City, Mo., to Melba Dress Company, New York City, were thereupon marked for identification Commission's Exhibits 301-A and 301-B for Identification.)

1124

By Mr. Martin.

Q. I hand you Commission's Exhibits 301-A and 301-B for Identification, and ask you if these were received by you in the ordinary course and conduct of your business from the Palace Clothing Company, Kansas City, Mo.? A. Yes, sir.

Mr. Martin: I offer these in evidence, Your Honor.

Mr. Weisman: May I have the same objection and exception?

Examiner Bennett: Yes, certainly.

Mr. Martin: It is all of the same character.

Examiner Bennett: Same character?

1125

Mr. Martin: Same character, sir.

Examiner Bennett: Received, exception noted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 301-A and 301-B, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Mr. Hirsch, did Melba Dress Company ever transact any business with Leah Rubenstein of St. Louis? A. St. Louis?

Q. St. Louis, Mo. A. Yes, sir.

Mr. Weisman: I take it you are offering these?

Mr. Martin: I will put this in evidence, Your Honor. He has not identified it yet.

Mr. Weisman: I won't raise any question on it. Same objection, I take it, and ruling by the Court?

Examiner Bennett: Yes, same ruling, received.

1127 (A letter from Leah Rubenstein, Leah Rubenstein Dress Shop, Saint Louis, Mo., under date of October 28, 1935, to Melba Dress Company, New York, N. Y., was marked Commission's Exhibit 302, and received in evidence.)

Mr. Martin: Will you give them a number?

(An invoice from Frank & Seder, Philadelphia, Pa., to Melba Dress, New York City, was marked for identification Commission's Exhibit 303-A.)

(Letter from Frank & Seder, Philadelphia, Pa., by O. Massell, under date of November 1, 1935, to Melba Dress Company, New York, was marked Commission's Exhibit 303-B for Identification.)

1128 (A copy of a letter from Melba Dress Company, Inc., under date of November 2, 1935, to Frank & Seder, Eleventh & Market Streets, Philadelphia, Pa., attention of Mr. O. Massell, was marked for identification Commission's Exhibit 303-C.)

Mr. Weisman: Where is the letter to which this is an answer?

Mr. Martin: There is the letter and there is the answer (indicating).

By Mr. Martin.

Q. Mr. Hirsch, did the Melba Dress Company ever have any transaction or sell anything to Frank & Seder, of Philadelphia, Pa.? A. Yes, sir.

Q. (Indicating) I hand you herewith Commission's Exhibit for Identification 303-A, which purports to be an order from Frank & Seder, and ask you can you identify this as having been received by your company in the ordinary course of business? A. Yes, sir.

Mr. Weisman: Why do you not offer these separately, and have one separate objection.

Mr. Martin: Just let me get them all identified.

By Mr. Martin. 1130

Q. I hand you a letter from Frank & Seder, dated November 1, 1935, and ask can you identify that as having been received by you in the ordinary course of business? A. Yes, sir.

Q. I hand you what purports to be a carbon copy of a letter from the Melba Dress Company to Frank & Seder under date of November 2, and ask you can you identify that as a carbon copy of a letter sent by your firm to them under that date? A. Yes, sir.

Mr. Martin: Now, if Your Honor please, I offer in evidence Commission's Exhibits 303-A, B, and C.

Mr. Weisman: Now, I object to the introduction into evidence of Commission's Exhibit 303 for all 1131 the reasons I have before given, and, further, for the separate reason that it is wholly immaterial, it has no connection with the charge here, it is an order from this company.

Mr. Martin: And part of a completed transaction.

Mr. Weisman: That does not make it a completed transaction.

Mr. Martin: All of those papers refer to each other.

Mr. Weisman: The fact that a paper refers to another still would not make it competent evidence under the rules of evidence, and if there is some other reason connecting it with this Guild, or connecting it with us—nothing about Fashion Originators' Guild in that.

(There was a discussion off the record.)

Mr. Weisman: I have separate objections to these as we come to them, Your Honor.

Examiner Bennett: I wish you would find out
1133 whether they actually got these dresses or not.

Mr. Weisman: I also object to Commission's Exhibit 303-C, because, while on the theory that Your Honor has allowed this in—somebody said to them, obviously an ex parte statement made, in their letter to Frank & Seder, would have no bearing on the issues in this case.

Examiner Bennett: It is not evidence of the wrongdoing of the Guild, or anything of that sort. It simply explains the whole transaction.

Mr. Weisman: I submit, Your Honor, if you will read this letter it explains nothing, but states this witness' characterization of the Guild's activities.

Examiner Bennett: It shows a protest on the
1134 part of the merchant against the action of the buyers because of the influence of the Guild. It is received in the regular course of business, I imagine. I wish you would ask about that. I am asking for further examination before I pass on it. I want to know whether he actually shipped those dresses to that man and whether he actually received them back.

By Mr. Martin.

Q. Will you refer to Commission's Exhibit 303-A, and tell me whether that order refers to this letter or this letter refers to that order, Commission's Exhibit 303-B refers to Commission's Exhibit 303-A (indicating).

Mr. Weisman: Wait a moment. I object to that as incompetent. The exhibit speaks for itself.

Examiner Bennett: Yes, it does for what it has on it, but for nothing else it does not speak for itself. It was this man's transaction; he can say whether they were part of the same deal or not.

The witness: Your Honor, this refers to the same as the style 175, eight dresses, excepting in this 1136
letter which we have been reading, there were returned eight dresses, 875; evidently the stenographer in taking that down got that 875 instead of 175, eight dresses.

Mr. Weisman: I object to the witness'——

The Witness (interposing): It refers to the identical——

Mr. Weisman: —guessing as to what the stenographer said or did. I mean, that shows the vice of this type of testimony. The order does not refer to any style number as given in the letter. Now, in an effort to get this into evidence after Your Honor has made that statement, the witness proceeds to prognosticate or read somebody else's mind, or 1137
tell you how he can tie it up by something he thinks somebody else made a mistake about. I submit that is the vice of this type of testimony.

Mr. Martin: Your Honor please, this is a transaction arising in the ordinary course of the conduct of the witness' business with which he is fully familiar, and he has testified that these two papers do refer to the same transaction.

Examiner Bennett: Yes.

Mr. Weisman: He hasn't done anything of the kind.

Examiner Bennett: I want to ask one or two questions.

By Examiner Bennett.

Q. Did you actually sell and ship those dresses to that customer? A. Yes, sir.

Q. Did you actually receive them back? A. Yes, sir; we actually got back eight dresses of style 175.

1139 Examiner Bennett: Overruled. Received.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 303-A, 303-B, 303-C," were marked as exhibits and received in evidence.)

(An invoice from Samuel Hoffman, Inc., 128-136 West 31st Street, New York, to Melba Dress Co., New York, and charged to Philip Sapadin, Cincinnati, Ohio, was marked for identification Commission's Exhibit 304 for Identification.)

By Mr. Martin.

1140 Q. Before we adjourned for lunch, Mr. Hirsch, I asked you if you had any of your orders which contained the Guild stamp giving the purchaser the right to return the goods if they were judged to be copies, and you said that you would attempt to locate one for me. Have you located one? A. Yes, sir.

Q. I hand you Commission's Exhibit 304 for Identification, which purports to be an order from Philip— A. Philip Sapadin.

Q. Philip Sapadin of Cincinnati, Ohio, and ask can you identify that.

Mr. Haycraft: I think Counsel for the Respondent should refrain from going into the witness' papers until they have been put in evidence.

Mr. Weisman: You are mistaken; he brought those down for me; those are my papers.

Mr. Haycraft: He has not said so on the record.

Mr. Weisman: I don't care; he has not said they are his.

Mr. Haycraft: That is all right.

Mr. Weisman: Mr. Hirsch was kind enough to bring me down these papers. I did not take him 1142
to lunch to go over his testimony with him. I did not need it. He was kind enough to say he would bring those papers down to me. Please do not take this.

Mr. Haycraft: I suggest, Mr. Examiner, that we proceed in the orderly way.

Mr. Weisman: No one is interrupting this proceeding.

Examiner Bennett: I wish you gentlemen would stop your bickering back and forth, and I will ask Counsel to keep out of those papers until the proper time.

Mr. Weisman: May it please Your Honor, those are my papers.

Mr. Haycraft: Ha, ha. 1143

Examiner Bennett: Well, if those are your papers you have not come to the point of using them, and you are not going to at the present time.

Mr. Weisman: May I take them out of there, then, and put them behind the tail and go over them?

Mr. Haycraft: I object until they are properly identified.

Mr. Weisman: You have nothing to do with those papers.

Mr. Haycraft: We will see about that.

Mr. Weisman: I want to see about it now.

Mr. Haycraft: All right.

Mr. Weisman: You are telling me what I can do with my papers.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for 10 minutes. You gentlemen can cool off. I am not listening to that kind of stuff.

1145 (There was a short recess taken.)

Examiner Bennett: Be in order, please

Will you come around and resume the stand, Mr. Hirsch?

Mr. Weisman: Mr. Hirsch is not here yet, Your Honor. He just stepped out.

Examiner Bennett: We will wait until he comes.

Mr. Weisman: Here he is now.

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit 304 for Identification, and ask you if you can identify that as an order received by Melba Dress Goods Company from that concern? A. Yes, sir.

1146 Mr. Martin: I offer this in evidence.

Mr. Weisman: Same objection.

Examiner Bennett: Overruled. It will be received.

(The document referred to, heretofore marked for identification "Commission's Exhibit 304," was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Mr. Hirsch, when did you first start receiving orders which contained the stamp as set out in Commission's Exhibit No. 304, which reads as follows: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc.: the purchaser reserves the right to return any merchandise which is not as warranted." When did you first start receiving orders with that stamp on it? A. I believe several months prior to the date of that order which was in August, 1935. Some time prior to that, I am not certain of the exact date.

Q. Did you at first accept orders with that stamp on 1148
it? A. No, sir. We refused to at first, and——

Mr. Weisman (interposing): May I submit the answer to that question would be "yes" or "no."

Mr. Martin: I think, if your Honor please, he has a perfect right to answer that question and is not limited to any "yes" or "no."

Mr. Weisman: May we have the question read and I think the Court will readily see that it is only such a question as to which the answer is limited to "yes" or "no" properly.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: He can say he did or he didn't.

1149

By Examiner Bennett.

Q. Go ahead and answer the question. A. We refused to at first—does that cover you?

By Mr. Martin.

Q. What did you do, Mr. Hirsch, when you first began receiving those orders?

Mr. Weisman: I object to the question as incompetent, immaterial and irrelevant what this witness did. How can that bind us any way? How can we be bound in any way by a statement of that character?

Mr. Martin: If your Honor please, that is a perfectly proper question. Here we are dealing with the Fashion Originators Guild of America, Inc., that places certain requirements upon and in the conduct of his business with which he is fully familiar, and I think he is perfectly qualified to testify to what he did.

1151 Mr. Weisman: Mr. Martin I regret to say is still in error, of course. He did not at any time do business with members of the Fashion Originators Guild. I think you will concede that you are wrong about that. Members of the Fashion Originators Guild are dress manufacturers, and that is all. No one else except members of the Fashion Originators Guild exist except dress manufacturers.

Mr. Martin: All of these people who signed the declaration of co-operation and entered into the agreement with the Fashion Originators Guild concerning requirements which were placed by those people in order to do business with them, and I think that this witness has a perfect right and is at

1152 perfect liberty to tell what occurred to his business and what was done and so forth.

Examiner Bennett: Make your questions a little more specific along that line.

By Mr. Martin.

Q. I believe you were asked whether you did or did not accept orders with this stamp on them, and I believe that you said that at first you did not accept them. A. Yes

Q. Did you later accept orders with this stamp on them? A. Yes, sir.

Q. What prompted you to make this change in that regard?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant what prompted him to make changes in that regard.

Examiner Bennett: Overruled. We will see whether he has any factual information or not, and if he has not then we can act accordingly.

A. I could not get business from those offices unless I did accept the order with the stamp on it. The buyer in- 1154
variably told us that they had no jurisdiction over that.

Mr. Weisman: Just a moment. I ask that the latter part of this be stricken.

Examiner Bennett: No. It is perfectly proper in this connection. Proceed.

A. The buyer invariably told us that they could not leave the order with us without the stamp on it.

Mr. Weisman: The witness in this case uses the word "buyer" in a sense that is not generally used in law, if your Honor please.

Examiner Bennett: I understand what he means. Proceed.

1155

A. They said they had their orders from the head office, or, rather, the head of their firm to leave no orders without this warranty stamp on it. Fearing losing our business completely, we were compelled to take these orders with the stamps on them.

Mr. Weisman: I renew my motion to the latter part of the answer.

Examiner Bennett: It may be stricken as a conclusion beginning with the word "fearing."

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit No. 93-A, which purports to be a list of resident buyers, or, rather, resident buying officers who have signed the special declaration together with the regular declaration as of April 16, 1936.

Examiner Bennett: What is the exhibit?

Mr. Martin: That is Commission's Exhibit 93-A.

1157 *By Mr. Martin.*

Q. I will ask you if you ever transacted any business with any of those buying firms? A. With at least 70 per cent. of them.

Q. Have you ever transacted business with the Associated Merchandisers Corporation? A. Some business, not very large, I am sorry to say.

Q. Now, I ask you did any of these buying offices on this list, Commission's Exhibit No. 93-A, require that the Guild stamp be placed on their orders? A. Most of these 70 per cent. that I referred to did, perhaps all of them.

Q. Did the Associated Merchandisers Corporation require the stamp on those orders that they let? A. I be-

1158 lieve they did.

Q. Now, Mr. Hirsch, what effect on your business did those requirements of these buying offices that all orders containing the Guild stamp have this requirement?

Mr. Weisman: I object to that as calling for a conclusion of the witness, and asking for his opinion and not a fact. How do we know whether or not the depression affected his business, and whether his inability to get credit affected his business.

I submit that the question does not call for any fact at all, and is entirely improper.

Mr. Martin: I think it is a perfectly proper question and calls for a definite fact, and——

Mr. Weisman (interposing): I do not think so.

Mr. Martin: Let me finish, Mr. Weisman, then you may go ahead as long as the Judge will hear you.

Mr. Weisman: All right. I beg your pardon. I thought you had finished.

Mr. Martin: No. Mr. Hirsch is thoroughly cognizant with the running of his own business, and he certainly is able to tell what effect his requirements 1160
had on his business.

Mr. Weisman: May I reply?

Mr. Martin: Go ahead. I have concluded.

Mr. Weisman: Thank you.

I submit any witness is qualified to tell what factual things that happened to his knowledge, as to what has gone in his business, and actions, and so forth, and so forth.

Obviously, it would be highly contrary to our Anglo-Saxon safeguards in the law of evidence to put a witness on the stand and say what effect did this have on your business? I have no opportunity of cross-examination. Our theory of evidence under the Anglo-Saxon law is one of the production of 1161
facts. I think this is the Roman style of examining where the witness is asked to give his opinion and state what his neighbor said and everything else. It is perfectly obvious that I cannot cross-examine the witness on any such sweeping statement as this where he simply covers the whole compass of the horizon in one swift blow. He is covering the whole gamut of industrial relations in one wide sweep.

How can we possibly cross-examine on that? I think it is very unfair to us to ask a question of this sort. Let him answer facts and we will see what they mean.

Examiner Bennett: I do not want to hear any more argument further on that question.

I will let him answer. You will have to develop it in detail, of course.

The Witness: May I ask what the question was again; I have forgotten.

(Question read.)

1163 A. Practically none as far as the selling end of it, and—

Mr. Weisman: I submit that is an answer "practically none as far as the selling end of it."

Examiner Bennett: No.

The Witness: As far as the selling end of it is concerned only.

Examiner Bennett: Obviously it is not the answer. Go ahead.

The Witness: Practically none as far as the selling end is concerned, because, as I stated before, we were not in position to refuse to take the orders without the stamp on it, but in the returns end of it we suffered quite a bit.

1164 *By Mr. Martin.*

Q. Explain how you suffered in the return end?

Mr. Weisman: I object to the part of the answer beginning "suffered quite a bit," and ask that that be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Your Honor allowed that to remain? My motion was denied?

Examiner Bennett: Denied.

Mr. Weisman: Exception.

A. Now, I will give you an accurate statement of my sales and returns and the percentages of each of those years of 1934 as compared with 1935.

During the latter part of the year, a five-month period in which the damages or the losses that we sustained by reason of the returns were greater than at other times of the year.

In the month of August, 1934, our percentage of returns against sales was 4 per cent. For the year August, 1935, or, rather, for that month, it was the same, 4 per cent. For the month of September, 1934, our returns against sales 1166
were 6 per cent.; September, 1935, we only went up 1 per cent. in the percentage of returns against sales, however, meaning an actual increase in the returns of about 16 per cent.

For the month of October, 1934, our returns against sales was 9 per cent., and for the month of October, 1935, we had 10 per cent. again, an increase of 1 per cent. in the proportion of returns, meaning an actual percentage increase in the proportion of returns of approximately 16 per cent. on the average against the returns themselves.

For the month of November, 1934, our percentage of return against sales was 8 per cent., and for the month of November, 1935, they had jumped up to 11 per cent., that only being an increase of 3 per cent. of sales against re- 1167
turns, or approximately 33 per cent. increase in the returns; that is, for the month of November, 1935, against that of November, 1934.

In December, 1934, our percentage of returns against sales was 10 per cent., and for the month of December, 1935, we were 11 per cent., against an increase of 11 per cent., or 16 per cent., for which—this 16 per cent. average in the returns themselves is apparent there. In other

words, in December, 1934, our percentage of returns against sales was 10 per cent. For the month of December, 1935, they were 11 per cent., again an increase of 1 per cent., or 16 per cent. average in the returns themselves.

These figures for the month of October, especially, and December—and November and December, I attribute directly——

Mr. Weisman: I object to "I attribute directly."

Examiner Bennett: All right. I think he may answer.

Mr. Weisman: May I have an exception.

Examiner Bennett: I think he may answer to
1169 that point. That may be stricken. The latter part of the statement may be stricken.

Mr. Weisman: Thar . you.

The Witness: May I go ahead?

Mr. Weisman: No, you cannot. The Court said for you not to say anything more.

By Examiner Bennett.

Q. That will conclude your answer there.

Examiner Bennett: Go ahead and question your witness.

By Mr. Martin.

1170 Q. To what do you attribute this increase in returns?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant; and highly improper.

Mr. Martin: I think it is a perfectly proper question, your Honor. Mr. Hirsch is only competent to testify as to what goes on in his business.

Mr. Weisman: Exactly.

Mr. Martin: But he is fully competent to testify to anything that did go on in his business, and that is all I am asking him about.

Mr. Weisman: He is not competent to testify as to conclusions.

Examiner Bennett: I will overrule the objection. Go ahead.

A. I attribute the increase in these returns primarily to the activities of the Guild in asking my customers to return to us dresses that they claim, or, rather, the Guild's representatives claimed were alleged copies of dresses made by their members and registered by their members.

By Mr. Martin.

Q. Now, Mr. Hirsch, at the times that these returns increased were you working with the same contractors and the same workmen and the same delivery people? A. Yes, sir. 1172

Q. And under similar conditions as you had always conducted your business with the exception of this Guild stamp? A. Correct.

Q. Can you determine what percentage of your customers during those months insisted upon placing the Guild stamp upon their order blanks? I refer to the Guild warranty. A. About 50 per cent. of my customers, which amounts to about 80 per cent. of our business.

Q. By volume? A. Yes, by volume.

Mr. Martin: The witness is with you.

Mr. Weisman: What is that? 1173

Mr. Martin: The witness is with you. You may cross-examine, Mr. Weisman.

Mr. Weisman: Thank you.

Cross-examination by Mr. Weisman.

Q. Mr. Hirsch, there has been some testimony here this morning that—or, rather, this afternoon, that you are the president of the Popular Priced Frocks—is that the name of the organization? A. No.

1174

Q. What is it? A. Popular Priced Dress Manufacturers Group, Inc.

Q Is that a group of manufacturers who are people who believe in copying? A. No, sir.

Mr. Martin: I object, if your Honor please. There is no evidence to that effect. It is not a proper subject of cross-examination. There is no evidence along that line at all.

Mr. Weisman: There certainly is. The record is just full of it.

Mr. Martin: Wait a minute. Please wait until I finish my statement before you start on yours.

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There is no evidence in this record, as far as this witness has testified, dealing in any way with copying.

Mr. Weisman: Have you finished?

Mr. Martin: Yes.

Mr. Weisman: I submit that this hearing is full and replete with evidence that this is a hostile witness to the respondent, who has testified that he is president of an organization known as the Popular Priced Frocks—is that it?

The Witness: Popular Priced Dress Manufacturers Group.

Mr. Weisman: I think it is perfectly competent for me to show animus or lack of animus on the

1176

part of this witness; prejudice, or anything of that sort which would color and affect his testimony. I think it is further proper for me to show the conduct of this group of manufacturers in the past, and the policy to which they have been committed, not only originally, but operating as a group, so that the Commission in its review of the testimony of the president of this organization may see whether it has any probative value or not.

Therefore, I submit it is a proper subject of inquiry on cross-examination so that I may show just as I might show that a witness has a bad character, or has been convicted of a felony or anything of that sort in a court of first instance.

Examiner Bennett: I will allow you to show anything that indicates prejudice on the part of this witness.

Mr. Weisman: Thank you.

Examiner Bennett: Certainly. Go ahead.

By Mr. Weisman.

Q. The Popular Priced Group of Manufacturers appeared in Washington at certain N.R.A. hearings; do you remember that? A. Right. 1178

Q. And they appeared there in opposition to the proposition to put into the Code of Fair Competition for the Automobile—for the Dress Industry a provision which would make copying of originations, style originations, an unfair trade practice; is that right? A. Not completely that. Not completely that.

Q. Do you remember on one occasion when they did come there completely for that purpose, when their counsel, Mr. Thomas Sheridan, who is now associated with your counsel, Mr. Charles Ballin; do you remember that occasion? A. Of course I do.

Q. On that occasion they came there completely for the purpose of lending all of their efforts to defeat the proposition of writing into the Code of Fair Competition for the Dress Industry a provision to the effect that a copying of an original style was an unfair trade practice; is that so? 1179

(There was a discussion off the record.)

Mr. Martin: Is counsel asking a question or making a statement?

Mr. Weisman: I am asking a question.

Mr. Martin: I just want to make certain.

Examiner Bennett: Have you finished your question?

Mr. Weisman: Yes.

The Witness: What is the question?

(Last question read.)

A. They were there to oppose starting an amendment to the Dress Code, setting up a style registration bureau in the Dress Industry, which would have created havoc to every dress man in the dress business, irrespective of
1181 whether he was making $99.50 or $49.50 stuff.

Q. You mean that is your opinion? A. Yes, sir.

Q. The Code Authority had a different opinion? A. There was no decision from the Code Authority. By the time the N.R.A.—there was no decision from the N.R.A. Administration by the time, on that thing, by the time that the N.R.A. was declared illegal.

Q. Is not your association composed of men who have gone on record as being opposed to the protection of original styles? A. On the ground that there are no original—

Q. No, not on the ground——

Mr. Martin: Please let the witness answer.

By Mr. Weisman.

1182 Q. Will you please answer my question?

Mr. Weisman: I submit the witness should answer that question "yes" or "no." Mr. Martin can bring out the grounds, if your Honor thinks it is immaterial. I am interested in the facts.

Mr. Martin: If your Honor please, I think Mr. Weisman is perfectly right in asking any question to show the witness' prejudice, but certainly he is not entitled to show prejudice of an association to which the witness belongs.

Mr. Weisman: No, he does not belong; he is the chief executive officer and president.

Mr. Martin: —for which he is the president, and a member of the board of directors.

Examiner Bennett: I am going to let him——

The Witness: What is the question?

Examiner Bennett: —I am going to let him testify as to his understanding as to the exact purposes of this particular organization where he was identified with them.

Were you, at the time that you speak of, president?

The Witness: Yes, sir.

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Examiner Bennett: Were you president?

The Witness: Yes, sir; at all times.

(Last question read.)

Examiner Bennett: He is going to be permitted to explain his answer.

A. We are not opposed to the protection of original styles, but we are opposed to an organization setting up that they are creators of original styles. We are not opposed to the design patent bureau of the United States, where a man who is a creator of original styles can go for protection. We do oppose any organization setting up that they are the judge and jury of the originality of any style.

1185

By Mr. Weisman.

Q. What do you know about design patents? A. I have subscribed to the——

Q. I do not ask you what you subscribe to.

Mr. Martin: Let him answer the question.

Mr. Weisman: May I be——

Mr. Martin: He is telling you what he knows.

Examiner Bennett: Yes, let him answer your question; that is what he is trying to do.

Mr. Weisman: I submit that the witness——

Examiner Bennett: You asked what he knew.

Mr. Weisman: I asked what he knew.

Examiner Bennett: Yes.

Mr. Weisman: Not what he subscribes to.

A. I know plenty of designs, but I don't know very much of the legal questions involved in connection with patents. I am not an attorney, but I am a dress man.

1187 *By Mr. Weisman.*

Q. Is it your belief that original designs should only be protected through design registration in the Patent Office? A. Correct.

Q. Because—— A. I am sorry. Excuse me.

Q. You say that is correct. Have you that belief because you have been advised that the design patent law is totally inadequate for the protection of such designs? A. Of course not, Mr. Weisman. If it is adequate for the protection of a man who invents an electric bulb, or something new in radio, or something new in an automobile accessory, it certainly is adequate for a dress manufacturer.

Q. In other words, you say that the protection given to
1188 an electric bulb manufacturer is the same type of protection that an original design in dresses requires; is that your best answer? A. I dispute the question of originality in dresses, Mr. Weisman.

Q. No, you said that you felt that the design protection laws of the United States Patent Office, as enacted, and through the Patent Office, if they were sufficient to protect automobiles—I mean, inventions of matters going into automobiles— A. Yes.

Q. —or for bulbs in electric lights, that then they were sufficient to protect original designs in dresses; is that so? A. The United States Government can protect the property rights, and it is their business to do it, and they do it.

Q. And that is your best answer? A. That is my answer.

Q. Let me ask you this: Do you know how long it takes to get a design patent issued? A. To-day—totally too short a time—from three to four weeks.

Q. Three to four weeks? A. Correct.

Q. Do you say that is too short a time? What do you mean by too short a time? You mean it should take 1190
longer? A. You make a design investigation of the styles available——.

Q. You say— A. —to get a property right, Mr. Weisman, I believe that a thorough investigation should be made of an application for a property right before even the United States Patent Office would issue it, let alone a private guild, or anything else along that line.

Q. How long do you think it ought to take before a design patent should issue from the Patent Office? A. Depends upon the set-up of the Patent Office, and how many——

Q. You just said you thought that three to four weeks was too short a period. A. If it takes two to three years to make an investigation of the application for a patent 1191
on a mechanical contrivance, it certainly should not be issued in the dress business in a period of two or three weeks, when millions of dresses must be investigated to see you have anything like that, anything similar to a dress that an application for a patent has been made from what has been made before.

Q. In other words, you believe that before a design patent should issue and the originator be protected in his claim of origination, that it should take two or three years? A. I don't say anything of the kind.

1192 Q. I find you— A. I am saying that a thorough investigation should be made of the application for property rights before it is issued by any governmental body.

Q. I am trying to find out. You volunteered the information to me that you thought three to four weeks was too short a time. A. With the present set-up of the bureau.

Q. How long would be an adequate time? A. Depending upon the set-up of the Patent Office.

Q. What, in your opinion, in the science which you say —I will withdraw that. You had some opinion of the set-up of the Patent Office, when you said three to four
1193 weeks was too short a time, did you not? A. Yes, sir.

Q. Now, with that knowledge, how much time do you think should be taken to adequately do that job? A. Depending upon the set-up of the Patent Office and its personnel.

Q. You use the same set-up that you had in mind when you gave me your answer, that three to four weeks was insufficient. Using that set-up that you then had in mind, how much time do you think would be sufficient? A. That is a hypothetical question and I could not answer that.

Q. Well, you said you could answer that three to four weeks was not sufficient. A. Because, Mr. Weisman, that is predicated——

Q. No, no. A. I am sorry.

1194 Q. Could you answer that? A. Answer that what?

Q. Did you or did you not say that three to four weeks was too quick to issue a design patent to protect originations? A. I am basing that upon some——

Q. I did not ask you about what you based it on, Mr. Hirsch. I am asking you, did you make that statement? A. Yes, I did make that statement.

Q. When you made that statement you believed it to be true? A. Of course.

Q. And you had certain knowledge upon which you based that statement under oath, did you not? A. Now—

Q. "Yes" or "no." A. I don't know what you mean.

Q. Did you have any knowledge— A. I don't know what you——

Q. Which was the basis of that statement? A. May I tell you what that knowledge is?

Q. No, I want to first find out whether you had knowledge. A. You may call it knowledge, perhaps it was.

Q. Was that a dress that you had— A. No, that was based upon the dresses that they have already issued patents on.

Q. Well, do you know anything about the facilities of the Patent Office? A. No, I do not. 1196

Q. So that, notwithstanding your lack of knowledge as to the facilities that the Patent Office had, you made the gratuitous statement to me that you thought three to four weeks was too quick to issue a patent? A. Well, that is——.

Q. Is that so? A. That was predicated——

Q. "Yes" or "no." A. I made that statement to you, of course I did.

Q. All right. What is the average style life of a dress in the dress industry? A. Sometimes it is twenty minutes if it is a dud.

Q. Suppose— A. (Interposing) And sometimes it will last for years. I have made one number for four years' time.

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Q. What number have you made for four years' time? A. I have made No. 734 for the period of three to four years, until about a year ago.

Q. Well, now— A. (Interposing) I am not sure, I may not remember the number, but I will give your a description of it to make sure.

Q. No, I want to get the number of this dress you made for four years. A. For three years' time, I don't——

Q. Wait a moment, now. Didn't you say a moment ago four years? A. Between three to four years.

Q. Which was it? A. Between three to four years.

Q. Well, was it for two and three years? A. I haven't made any definite check-up about it. The best of my recollection is it was a period between three and four years.

Q. Will you make a definite check-up to-night and tell me when you first manufactured that dress? A. I will attempt to if I have the available files.

Q. Will you tell me how long you continued to sell that dress? A. I will attempt to.

Q. Will you also give me the number of orders and re-
1199 orders that you got on that dress— A. I will——

Q. —for the first six weeks after you manufactured it— A. I——

Q. —and for the last six months of the three-year period? A. I won't be able to. I don't believe these records are available.

Mr. Martin: I object.

Mr. Weisman: I think I can show on the credibility of this witness——

By Mr. Weisman.

Q. Where are those records? A. Which records? Manufacturing records?

Q. Wait a moment. You know what records. You said
1200 to me those records are not available? A. They may not be available.

Q. And then when I said to you— A. I said they may not be available.

Mr. Weisman: Will you please read the record. The last two or three questions and answers.

(Record read from.)

By Mr. Weisman.

Q. Now, then, you know what records I was referring to when you replied to me, which records? A. If you want the charge books, sales books, we have them all. If you are referring to cutters' tickets, we don't keep cutters' tickets for four or five or six years.

Q. I am not referring to—wait a moment—do you keep any records of the number of units shipped of each style in your business? A. No, we don't.

Q. Did you ever keep such a record? A. No, we don't.

Q. I asked you, did you ever keep such a record? A. No, we have never.

Q. Now, whom did you sell this dress to over a period of 1202
years? A. A specific account?

Q. Yes. A. I cannot say.

Q. How? A. I cannot say now.

Q. What is a hot number in your business? A. A number that reorders.

Q. Well, this number was the hottest number that you ever had, wasn't it, if it sold for three or four years? A. That is correct.

Q. And you do not remember who you sold this so-called— A. Perhaps to every retailer we may have been doing business with.

Q. That was during what period? A. To about a year ago, and for about three years prior to that. That is correct. We discontinued the number about a year ago.

Q. How many numbers do you make a year? A. Oh, 1203
somewhere between three and five hundred.

Q. How many seasons are there a year? A. Really three, spring, summer and fall.

Q. You would not say there were five seasons? A. I don't think so.

Q. Would you say— A. Although I may say this, every month is a season—I mean things are constantly switching.

Q. You mean every month is a season? A. Every day is a season.

Q. You mean— A. Every day brings forth new business.

Q. Every day. Do you not design particular lines for the spring, light-colored merchandise and light-weight merchandise? A. It all depends—in November we leave a manufacturer—the type of stuff for certain territories in the country that we won't manufacture until May of the following year. I will refer to washables, for instance, that we will make in November for the southern trade that we won't start to make again until May of the follow-
1205 ing year.

Q. What do you sell your washables for? A. $6.75.

Q. What do you sell your silks for? A. $6.75.

Q. Do you have the same type of silks, the same type of prints, the same colors for the spring as you have for the fall? A. Of course not, Mr. Weisman.

Q. We are agreed on that. A. Oh, sure.

Q. So we are agreed that you have at least two seasons. A. I believe we have three seasons, if you want to call it a season.

Q. I believe you have five. I want to see whether or not you believe we really have five. A. I figure you know the dress business, Mr. Weisman.

Q. You mentioned a few moments ago that you are in
1206 business every month. A. Every day.

Q. That you have a different season every month. Wasn't that what you said? A. I don't know what you mean by seasons exactly, Mr. Weisman.

Q. Do you deny that the dress business is a seasonal business? A. Of course I don't deny that.

Q. Then it is a seasonal business. A. But the seasons——

Q. (Interposing) No, no—then it is a seasonal business? A. Yes, if you want to call it that way, certainly.

Q. You just said you don't know what I mean when I say that the dress business had seasons. Now, what did you mean when you said the dress business was a seasonal business? A. Naturally we cannot sell heavy-weight stuff in the month of July, nor can we sell light stuff in the winter months, or sheers or acetate, in light pinks and light colors, we certainly cannot sell them to local trades or northern trades, in the month of October and the month of November.

Q. So there are seasons? A. Of course there are seasons.

Q. Tell me what, in your opinion, the seasons are? A. Spring, summer and fall.

Q. Spring, summer and fall? A. Correct.

1208

Q. Do you have any known differentiation between the fall and winter garments? A. I don't believe the dress business has a fall and winter.

Q. You think that the fall business is the same as the winter business? A. Pretty much so.

Q. Well, what is the difference, if it is only pretty much so? A. Well, in the cloak and suit business of course you have fur trim.

Q. I am not talking about cloak and suit business, you don't sell cloaks and suits. A. No, we don't.

Q. I am asking you about your business. A. Not many excepting a new material may come in demand, a new color may come in demand——

Q. Well, now— A. —as far as the weights are concerned, you mean.

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Q. Let us see. Aren't your winter colors usually a little darker than your fall colors? A. For instance, black certainly cannot be blacker than black, can it? I have not heard of light and dark shades of black. We have black that we are selling right now in the month of August, and we will still sell black in the month of January.

Q. And you will still sell black all the year around. Don't you know that black is the absence of color, and I

have asked you about colors? You are an expert. How long have you been in the business? A. Twenty-eight years.

Q. Do you not know that black is the absence of color? A. That is right, black is not a color.

Q. Then when I asked you about color being lighter or darker, then why do you have to run into black when you know that is not a color? A. About 80 per cent. of the stuff that is being sold in the industry is black, anyhow.

Q. As to textile, is it not a fact that the textures of the various merchandise used in the dresses are heavier in the winter garments than in the fall garments? A. I answered
1211 that, I said that. I told you that before.

Q. That is a fact, is it not? A. Certainly.

Q. And you make up separate, different garments of the heavier kind for the winter, do you not? A. Well——

Q. Heavier merchandise, heavier materials? A. Do you mean for the fall? Are you talking about August or September, January, February or March? I don't know which. I said before we really have no winter season in the dress business. We have a spring, summer and fall season, and in the winter we are selling practically the same type of merchandise that we sell in the fall.

Q. Now, you stated before that you made about 500 styles a year? A. I said between three and five hundred.

Q. So that would be from 100 to 166 a season, on the average; is that not so? A. That is about right.
1212

Q. Now, how long do you employ your own designers? A. We do have a designer, and assistant designer, and five sample hands.

Q. Do you make up original designs? A. I don't know what you mean by original designs. I don't believe anybody makes up original designs in the dress business.

Q. In other words, you think there is no such thing as an original design in the dress business? A. That is my honest conviction.

Q. And having that conviction, you think that everybody in the business copies from everybody else, or everybody else's merchandise is a copy of somebody else's? A. Not copies from everybody else, but copies of styles that are available, and data that is available to every manufacturer in the dress business.

Q. Do you know the difference between a style and an original design? A. I said before that I don't believe there is such a thing as an original design in the dress business.

Q. Do you know the difference between style and design as applied to the dress business? A. Well, I have been in the dress business for a long time. I think I know as much about it as anybody does. 1214

Q. Based on the long experience that you have referred to, do you know whether or not there is a difference between style and design in the dress business? A. I don't believe there is. I don't know what you mean by style and I don't know what you mean by design. To me, both of them are the same.

Q. That is what I want to find out, whether to you both of them are the same. A. I believe they are.

Q. And that is your best answer? A. That is correct.

Q. And you feel that the statement that style should not be protected is synonymous with the belief that design should not be corrected, since there is no difference between the two; is that right? A. No, I don't believe you have me correct. I said that I don't believe that there is 1215 originality in design or in style, call it whichever you please, in the dress business, and if there is such originality in it, we have a bureau, a government bureau, to go to for protection of property rights.

Q. That was not my question, whether we have a government bureau. We will come to that in time. I want to know from you, Mr. Hirsch, with the large experience which you have claimed in the dress business, whether

you know the difference between design as applied to the dress industry, and style? A. I can't say that I can answer that, I don't know just what form——

Q. Don't you know? A. I don't know just what form you mean it in.

Q. Take it in any form that you like. I want to probe the operation of your mind. A. Do you mean trends of style?

Q. I want to find— A. (Interposing) Are you referring to——

Q. —I want to find out what you understand. A. Be specific, Mr. Weisman. I will be very glad to answer you.

1217 If you are referring to trend, like a Marget influence, or Princess influence, I can answer that definitely, that trends in the dress business——

Q. Let me see, the trends of what——

Mr. Martin (interposing): Let him answer.

A. Trends of style.

By Mr. Weisman.

Q. Do you believe the trend of style is the same as the trend of the design? A. Well, what is the difference? I don't know what you are referring to.

Q. I want to know whether you think there is no difference. A. I don't understand what you mean by the difference in the style and design.

1218 Q. I don't mean anything. A. You don't mean the mechanical manufacturing of a thing, do you?

Q. I am going to start all over again. I want to find out what you mean. I want to find out from you, whether you know the difference, or whether you can see there is a difference between dress style and dress design? A. In style you have trends, designs are the trends.

Q. Well, if— A. I can't see the difference, and I am answering you as frankly and truthfully as I can.

Q. Well, in the— A. If you are referring to a trend, an influence, that is one thing. Anything else that you may be referring to, I don't know. If you mean a thing, whether it is a puffed sleeve, or wide skirt, or princess effect, or a low belt line, or a tunic dress, or a plain dress, or a gore dress—if you will be specific, I will be very glad to answer you. A hypothetical question like you are giving me is hard to answer because I don't know the variance you are referring to.

Q. Well, would you call a puff sleeve a design, or a trend, or a style? A. A puff sleeve is a copy of a Marget influence, for the sake of argument; something that 200 years ago, or 160 years ago, was worn definitely by everybody then, because it was taken after something that Miss 1220
Marget of Alevia, or someone of that name, some name like that, wore then.

Q. Wait a minute. A. I believe it was Marget of Aloysious, or some kind of name like that.

Q. You do not mean Margot of Navarre, by any chance? A. That's it, that's the one.

Q. A sister of the King of France? A. I am not certain about the history, whether she was a sister of the King of France.

Q. You would not mind calling her Margot instead of Marget? A. If that is the correct pronounciation of it I accept it.

Q. How do you know Margot of Navarre wore puffed sleeves? A. Because I study the business I am in, the 1221
dress business, and in France——

Q. (Interposing) Well, now, will you— A. —when France comes along, and I read in the newspapers, and I read in "Vogue" and "Harper's Bazaar," and when I see in the papers and all the other publications that are in Paris, that they are showing the Marget influence, and they are going to be made here, I make it a business, and find out what that is, or what the Margot means——

Q. As a result of that intensive study you made, you came to the conclusion that Margot was Margot of Aloysious? A. Well, it may have been Navarre, but I don't believe you are right about that, either—of Navarre—it is not Navarre, it is something else. It is spelled with an "A."

Q. You take it from me that Margot was the sister of Prince Henry of Navarre. A. That may be O.K., but I don't believe that is Margot of Navarre. Maybe we have somebody here that will give us a better definition.

Q. Aloysious was a saint. A. It is nearer to Aloysious than Navarre. I am referring to the one, that influence of Margot, the trend is taken from.

1223

Q. I am greatly interested in your study of styles and trends. A. O.K.

Q. And I would like to proceed in that inquiry a little further. A. All right.

Q. As I understand, your studies of style and style trends in the matter depend upon your reading of Harper's is that correct? A. Oh, that is just one of any number of them. You have Harper's you have Vogue's, you have the sketches that we are getting from the sketch makers and from the model makers and from the newspapers. There is plenty of stuff that is available, and plenty of styles that are available, as to what is being shown in Europe at this time. I will be very glad to show you, I have a file, I have a batch of them like that (indicating) of foreign importations here, of sketches that we are receiving, for which we pay, and which are available to every dress manufacturer in this market, reproductions of the various things that are being shown in Europe and that will be and are being manufactured by manufacturers here. If there is any such thing as copying, it may be done from the things that are being shown at the Europe showings, but even there, if you please, there is no originality of creation. If you have made a study of the

1224

manufacture of dresses in Europe, for style purposes, and I am referring to the couturiers like Chanel, Vionnet, Paton or Ballou or Schiaparelli. I am not referring to the Schiaparelli, I am referring to all the French couturiers over there—you will find just what styles or trends of styles may emanate from, and if there is such a thing as copying—if there is such a thing—it is developed, and definitely being done by the highest price manufacturers and everybody in the industry.

Q. Do you not know the difference between novelty and origination? A. I have maintained before that in the dress business, if you are referring to origination in the dress business, it is my honest conviction that there is no 1226
such thing, unless you are to take this desk and hang it on a dress in place of a flower, or take that electric fixture up there and hang it on a dress instead of a buckle, that might be origination, but the women of the country would not take to that kind of origination because it is impracticable, and they could not work with it. Every dress follows a certain silhouette of the woman, and you cannot get away from that.

I can show you a stack of sketches like that, and that, of dresses (indicating). If you made nine millions of dresses there isn't a single feature of them that could be made, that a woman would wear, that is not incorporated in some of the sketches before, a dozen times before.

Do you know how many styles are shown by the mail 1227
order houses alone? If you go through a period of twenty-five years, and if you can develop one single element of a style that is different than anything they made before, and which files are available, because you can get them and I can get them, then you are a better man than I am. I cannot find them.

Q. Well, I concede the latter statement. A. O.K.

Q. But I won't press it.

Mr. Weisman: Now that my good freind on the witness stand has given us an example of his bias and volubility, I object to that.

Mr. Martin: I object to that remark. He has not given an example of bias; he has simply answered a question asked him by Mr. Weisman.

Mr. Weisman: I ask that the latter answer, latter part of the answer be stricken out; it was not responsive to any question that I asked.

Examiner Bennett: What do you want stricken?

Mr. Weisman: I want the whole thing stricken, if your Honor will turn back——

1229 Examiner Bennett: What do you mean by the whole thing?

Mr. Weisman: Will you give me my last three questions?

(Last three questions read by reporter.)

Mr. Martin: Your Honor please, all of this is relevant to what Mr. Weisman was asking, and just because he does not like the answer he got——

Mr. Weisman: I liked it very much.

Mr. Martin: Then let it stand on the record.

Mr. Weisman: I rather enjoyed Margot of Aloysious instead of Margot of Navarre or Avignon.

The Witness: That's different, Avignon was the one. I told you it was with an "A," that's the girl that's the baby.

1230

By Mr. Weisman.

Q. Now, you have got it. A. Now I have got it.

Q. But Avignon is not a woman, Avignon is a place. A. All right, then it is a place. Margot of Avignon, I told you it started with an "A."

Q. As the result of your studies to get style, the closest you could come to Margot of Avignon was Margot of Aloysious? A. It was nearer and closer than Margot of Navarre.

Q. Wait a moment. A. I started with "A."

Q. Don't you know that Avignon is a province of Navarre, that all France was divided into provinces and Avignon was a city in Navarre—don't you know that with all of these studies that you have made? A. I remember my Gaul and I that was divided in three parts.

Examiner Bennett: Let us have some work done; let us have some work done; let us not wander all over creation.

Mr. Weisman: I agree with your Honor. I am sorry. I did not want to stop this witness as he went on.

Examiner Bennett: Well, let us get through. 1232

Mr. Weisman: I thought it might help.

Now, will you go back and read my question.

(Last question read.)

Mr. Weisman: I move to strike out the answer.

Examiner Bennett: As far as the Examiner is concerned, he is not going to strike out anything from the record. I want the record to stand, to show the character of the examination that was asked.

Mr. Weisman: And also the character of the responses.

Examiner Bennett: The whole character of the testimony.

1233

By Mr. Weisman.

Q. Well, having this belief that you have, that there is no origination in style, or in design, then, I take it you also have the belief that no design is entitled to protection against being copied; is that right? A. Well——

Q. Can you not answer the question "yes" or "no"? A. Mr. Weisman——

Mr. Weisman: May it please the Court.

Examiner Bennett: All right.

Mr. Weisman: Will your Honor not direct the witness to answer these questions "yes" or "no."

Examiner Bennett: He may answer "yes" or "no," but he may add such explanations as will show what he means by "yes" or "no."

Mr. Weisman: I submit that if there is an explanation to a question, the proper and orderly way would be for counsel for the Commission to ask him as to such questions.

Examiner Bennett: Let us find out.

1235 Mr. Weisman: If he wishes to explain——

Examiner Bennett: We are going to let him explain, if it is relevant, if it modifies the categorical answer. And you know that a categorical answer to a question that is asked by a cross-examiner never does give the whole truth.

Mr. Weisman: Well, I—your Honor has a much greater experience than I have; I won't subscribe to it; I will accept it, if your Honor state that it is his Honor's conclusion from the wealth of your Honor's experience.

Examiner Bennett: It is a conclusion from experience.

Mr. Weisman: That is what I say. Now, with

1236 that understanding with the Court, perhaps I won't urge my objection so strenuously.

Now, may I have the last question?

(Last question read.)

A. Of course not. I have said that if there was such a thing as originality in style there was a governmental bureau for the protection of property rights to the owner thereof.

Examiner Bennett: That may be stricken. Will you answer the question?

(Last question read.)

A. Oh, I have no such belief. I believe that an originator is entitled to protection.

By Mr. Weisman:

Q. Have you ever seen an original design? A. No.

Q. In your twenty-eight years how many designs have you seen? A. Hundreds of thousands.

Q. And among these hundreds of thousands, it is your statement that none of them were originals? A. Pretty much so. 1238

Q. What do you mean by "pretty much so"? Did you not just say no? You did not say "pretty much no"? A. I did say no.

Q. And it is your belief that these various styles that you employ designers to make up, none of them are originals; is that correct? A. Pretty much so. There may be a single incident, I don't know. I may have come across something that I did not see—in other words, that I did not examine microscopically.

Q. You do not think that a design has to be examined microscopically, do you? A. Of course not.

Q. Well, why did you say that you could not answer because you did not examine them microscopically? A. 1239 You asked me if in all of my experience I did not see a single instance of originality in a dress.

Q. And you said no. A. I answered mostly no.

Q. And out of the hundreds of thousands of designs that you saw produced every year in the American market, your statement is that there was not a single original design among the lot of them? A. My statement is that I don't ever remember seeing a single original design, original creation, in a dress in this market.

Q. Well, if you saw it would you remember it? A. I don't ever remember seeing such a freak.

Q. Now, in other words, your statement is now that if a dress were an original design it would be a freak? A. Of necessity, yes.

Q. What do you mean by "of necessity"? A. Because every angle, or every possible part of a dress, has been made time and time before, and if there is such a thing, and as I said before that the only way that you could create an original dress in this industry would be to take this desk and hang it on, instead of a flower, or take that chandelier and hang it on instead of a buckle, but that
1241 would be so idiotic that the woman could not wear it.

Q. Well, holding this opinion that you do, then you also hold the opinion that there is never an originality in design of dresses; is that not so? A. I haven't seen any in my experience.

Q. I asked you before, and I hope your Honor will pardon me when I use this word, which is a word used in the vernacular of the business, and which was used first by the witness, and I take it from him in this instance; what is known as a "hot number," and that is the word which you understand as well as I do, and which we have both used, and you said that it was a "hot number" because it was a number that had received a great many reorders? A. Yes, sir.

1242 Q. Reorders in your meaning that there has been a demand acceptation of the dress, is that correct; is that the way you understand it? A. Correct. Reorders unquestionably mean that there has been a demand acceptation of the dress.

Q. What makes the consumer accept one dress as against another dress in your opinion? A. Trend, set-up, comparison, for the whole world, not for America alone.

Q. When you design your line, you copy or you adapt the general style trend; is that so? A. Yes, sir.

Q. By "style trend," you may have a trend—first, you mean if the trend is, for example, a high waist and a long skirt, that is a trend of style? A. Yes.

Q. Design, on the other hand, is an adaptation of the style trend; is that so? A. Nobody has explained to me what "adaptation" means in the dress business. I have heard the word before but I have never understood what it meant. I am frank to tell you that I have never understood what was meant by that word.

Q. You do know what the adaptation of a style means? A. Unless it means copying.

Q. Do you or do you not? A. I believe it means copying.

Q. In your mind the adaptation of a style to a particular design is synonymous with copying the original into another garment? 1244 A. Not the original, not the original, taking the various units and the parts of the dresses, and assembling them together and calling it an "original."

Q. How often do you go abroad for the purpose of ascertaining, personally, the style trends in Paris? A. I do not go abroad at all, but I subscribe to several services that give me that.

Mr. Weisman: I ask that the latter part of the answer be stricken from the record.

A. I have never been to Paris.

By Mr. Weisman.

1245

Q. Never in all of your twenty-eight years? A. That is correct.

Q. You never went abroad to observe style trends? A. That is true. I am sorry to say I have not.

Q. You say you are sorry to say you have not? A. Yes.

Q. Would you have known better if you had gone over there? A. Well, I think I would have accomplished perhaps more in my business had I been able to follow myself

all of the styles that Paris sets up as being in vogue for that particular year or season, or for the developing of the trend.

Q. Do you not know that the Parisian woman's silhouette is different from the American woman's silhouette? A. Of course not, she is still a woman. Every woman has what every woman has although it may vary here and there.

Q. Did you ever hear the fact stated that the American woman is more lissome than the French woman, she is also more athletic, she is more of an outdoor woman, and the silhouette of a French woman if copied for an American woman would not find ready consumer acceptation? "Yes" or "No." A. Well, she is still a woman. She has the same hips and she has the same waist and she has the same limbs, and she has the same—well, she has the same everything else.

1247

Q. That does not answer my question. My question can be answered "yes" or "no." Did you ever hear that, or did you ever not hear it? A. Why, make it more explicit.

Mr. Weisman: I think you can answer that question like it is.

Examiner Bennett: Read the question.

(Question read.)

A. I cannot answer eight questions "yes" or "no."

1248 *By Mr. Weisman.*

Q. I never asked you eight questions. A. You are asking me eight questions now.

Q. The question is whether you ever heard that, "yes" or "no"? A. You are asking me eight questions, you are asking me whether she is lissome, whether she is athletic, whether she has the same silhouette. What are you asking me?

Q. All of those things. A. I cannot answer that "yes" or "no." Some of them I have heard, yes; some of them I have not heard.

Q. Tell us which one you have heard and which one you have not heard.

Examiner Bennett: Ask it in detail.

By Mr. Weisman.

Q. I would like for you to tell me what you have heard and what you have not heard. A. I have heard that the American woman is athletic. I have heard that the French woman is more style inclined, that she is gaudier, that she likes, perhaps, stronger colors and a little bit more bold 1250
colors than the American woman, but as far as style or silhouette is concerned, if it is a French woman, or if it is an American woman, or if it is a woman from Australia, or if it is a woman from Germany, or if it is a woman from England, she is still a woman whether she is in France, England, Australia, America, Germany, or wherever she may be unless she happens to be in the jungles, and a jungle woman they do wear entirely different styles, because she would simply wear a sheath.

If she lives in any of those places she will wear a broad skirt if they are wearing broad skirts, and she will wear a pleated sleeve or a full sleeve, and she will wear a pleated dress or a plain dress, and she will wear a plain bodice or a pleated bodice, and they will wear one buckle 1251
or two buckles, or they will wear a tie or something else in place of a buckle or in place of a flower, they may wear a flower, but all of these things are the same things, and they have been from time immemorial. In other words, outside of the woman who lives in the jungle and wears a sheath, they will wear just about the same things all over the world wherever style is known. It does not make any difference what the nationality is.

Q. Does your design consist of entirely copying what somebody else has made? A. In what somebody else has made 100 per cent.; 100 per cent. it seems to me.

Q. Your organization is 100 per cent. copyist; is that correct? A. Yes, 100 per cent. copyist, and——

Q. Now, going to something else.

Mr. Martin: No, let him finish the answer to the question.

By Mr. Weisman.

1253 Q. I thought you had finished. A. One hundred per cent. copyist of something that has been made before, and—yes, of stuff that has been made before. When I said "stuff," I am referring to the various parts of the dress, whether they were made in 1902 or in 1830, or whether they were made in 1936, it makes no difference, we have the files available, and we go to these various styles and take a sleeve out of one fashion magazine, or a waist out of another mail order book and we take a neck out of a fashion magazine that comes from Paris, and we assemble them together.

I cannot conceive of an original creation and I would never have the temerity to assert that I am entitled to a property right in that because we assembled it together and call it "Mammy."

Q. Call it what? A. An original creation.

1254 Q. That is not what you said. What did you say you called it? A. No, I was referring to the slang term. I was using that to mean when we put that altogether, and—as in the slang song, they put the words together and called it something. They put this thing together and that thing together and we would call it "Mammy," but we would not say we had the right to a property right in it.

Q. Will you repeat that statement that you were talking about? It was not clear to me. A. I was thinking of a

song that Al Jolson sang about Mammy, and he said that the "M" stood for mother, and the "a" stood for adoration, and the "m" stood for something else and when he put all of those words together it spelled "M-a-m-m-y." It just ran through my mind as an accurate description of this very thing, and when we put all these things together and have a dress, I cannot conceive of having the temerity on my part or the temerity on anyone's part to call that an original creation on which and to which they could assert a property right.

All we do is go through the files, and we can get all of these things out of the files, and they are available files that are open to any manufacturer in the industry, and 1256.
after we get a sleeve from this source and a waist from that source and a dress from the other source and we put it altogether and call it a creation, I do not see anything on earth that would warrant anybody in having a property right by which they could say that somebody else should not have the right to make that same dress.

Q. You said something about 1830 sleeve; have you any dress with sleeves as of 1830? A. We have—recently, of course, it may be 1830 or 1850—I refer to the files that are available, and there are plenty of files available, and they are available to me and they are available to you and to every manufacturer in the industry down at the public library, and plenty of them you can get from the sketch people, and you can get them from the model makers, and you get them from the Sears-Roebuck catalogs and from 1257
the Montgomery Ward & Company catalogs, every detail that goes into a dress, I repeat, every detail is available in some sketch some place. All we had to do is simply to go to these available files that are open to every manufacturer in the dress industry and take this sleeve here and the waist there and the neck there and the skirt some other place and a buckle here and a flower there, and a combination here, and put them all together, but we do not

1258 have anything that is original, we have simply a compilation of something that has been made many years before. There is nothing new in the creation of women's styles as I see it, unless you might go into the jungle some place, and I do not think you could get women to wear the sheath that women do wear in the jungle. After we have got this thing put together, taken these things from these common sources that are open to everybody, there is certainly nothing there that would entitle us or anybody else in the world to a property right in it which would exclude everybody else from making it.

1259 Q. Have you ever heard of something called inspiration? A. Of course I have.

Mr. Weisman: If your Honor please, it is now 4.30 and I would ask that we adjourn to to-morrow morning at 10 o'clock A. M.

Examiner Bennett: We will recess this hearing until 10 o'clock to-morrow.

(Whereupon, at 4.30 P. M., July 20, 1936, the hearing was adjourned.)

Room 901, 45 Broadway,
New York, N. Y., July 21, 1936.

1260 Met, pursuant to adjournment, 9 A. M.
Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

Examiner Bennett: We will be in order, please. You may proceed.

Mr. Hirsch, will you come around and resume the stand, please.

BEN B. HIRSCH resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Hirsch——

Examiner Bennett: One moment. I want to ask the witness one or two questions. 1261

By Examiner Bennett.

Q. Mr. Hirsch, I see that somebody who seemed to belong to your organization left a whole lot of matter in here, in my custody, yesterday; what was that for? A. I was asked by the Court to bring in all of my orders that I could lay my hands on. 1262

Q. Asked by respondents? A. Asked by counsel.

Q. You brought it for him, did you? You brought it at his request? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You are turning it over to him? You want him to have it? A. Well, I don't want to turn it over to him unless he——

Q. Do you want to make it available to him for the purposes of this case? A. Yes, sir.

Examiner Bennett: All right. Mr. Weisman, you may resume.

Mr. Martin: If your Honor please, at this time I think Mr. Ballon, who is personal attorney for Mr. Hirsch, desires to make an appearance. 1263

Examiner Bennett: In that case, let him make a special appearance in the record.

Mr. Ballon: I desire to enter the appearance of Hartman, Sheridan & Tekulsky, 285 Madison Avenue, New York City, N. Y., by Charles Ballon, New York City, appearance being specially for the wit-

ness Ben B. Hirsch, and perhaps others to-morrow.

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. Mr. Hirsch, you do employ designers and sample hands? A. Yes, sir.

Q. Would you tell us what are the duties of your designers—I withdraw that. I take it that you—from your testimony—that you employ one designer? A. Correct. And one designer's assistant.

Q. Would you agree to co-operate with me and try to confine your answers to the questions that I ask? A. Yes.

1265 Q. Now, you employ one designer? A. Yes, sir.

Q. You just volunteered the information that you also employ a designer's assistant? A. Correct.

Q. How long have you had in your employ a designer? A. In the dress business for eight years, in the Melba Dress Company, not the same party.

Q. You have changed your designers from time to time? A. Yes, sir.

Q. During a period of eight years did you ever have more than one designer? A. No.

Q. How many different designers would you say were employed by the Melba Dress Company successively during this time?

1266 *By Mr. Weisman.*

Q. I believe the last question that I directed to you was as follows, in substance: During this time how many designers have you had successively; in other words, seriatim? A. In all, three. One at a time.

Q. One at a time? A. One at a time.

Q. How many—I withdraw that. Why did you change your designers? Let us go into that first. A. Probably on account of inability. They may have slipped down on

their job. They were not doing as well, in my opinion, as they could. The last man that I let go I may have had other reasons, misgivings, and so forth, in connection with that party, and I let him go and changed for somebody else. I think that I thought at that time that it was wise to do so. I changed to somebody else whom I thought would be better.

Q. When you say "misgivings," do you mean misgivings as to his ability? A. There were other things involved as well as ability.

Q. Such as loyalty to the firm? A. Correct.

Q. Right? A. Right.

Q. In other words, you felt that your last designer might be divulging certain of the things that he was doing for you to others? A. No, it was something else. 1268

Q. I see. A. Yes.

Q. Now, you let some of them go because you thought you could get a successor with greater ability; is that right? A. Yes.

Q. Greater ability to do what? A. To do the job.

Q. What was the job? A. May I take some of the papers that I have here in connection with your last question, to explain just what it is?

Q. Wait just a moment. A. What?

Q. Wait just a moment. A. Very well.

Q. Is it that you cannot tell us at this time the answer to my question? A. No.

Q. No? A. It is not that. I can tell you the answer here to that. 1269

Q. Then, will you please tell us about it without going away? A. Very well. We would give him sketches from concerns that we subscribe to to copy dresses from those sketches and make samples from those sketches that we would like. It was his duty to copy those and make in accordance with our requests, with our ideas of what we could sell. It was first his duty to make, and is his duty to

make original samples from those sketches or from the sample that we might submit to him ourselves, or from the dresses that we may submit to him ourselves, or from—that we buy from model makers or buy in the open market.

It was his duty to make an original sample or samples so that it would fit properly.

Our prior designer, the one just before the one that we have employed at this time, also brought trimmings for the entire manufacturing end of our business, and this one does, too.

He has charge of the production end of the business, the other one; and when I refer to the production end of the
1271 business I mean the mechanical manufacturing end of our business.

I think that covers it pretty well.

Q. When you obtained the sketch of a dress you say you gave that to your designer to copy? A. Correct, to copy from the sketch.

Q. What do you mean by "copying": to adapt it to your business? A. To copy it for our business: for our purposes.

Q. In other words, you would see a sketch, I take it, and the sketch in its exactitude was not exactly what you wanted? A. That is correct.

Q. So you would say in words or in substance to your designer: "Here is a sketch, now, I think if you would
1272 apply your brains, your originality, your creative ability to this copy you could get something which would be better adapted to our trade." Is that correct; in words or in substance, is that correct? A. No, it is not correct. I use my own experience in connection with the business, too. He not only has one sketch, but he is getting a lot of sketches from various sources each and every week.

We subscribe to a number of concerns whose very business it is to supply us with sketches, either from imports

or from domestic sketches of their own in making. In other words, that they make up themselves.

That is their business. We subscribe to those. We get a number of sketches and we will tell our man, "I will want you to take this, Mr. Grunow, take that collar from that sketch and take that skirt from on there, and take—then use last year's No. 503 for the sleeves, and use this buckle, and use something else from something else, and we may tell him to take a flower, or some sort of an ornament from something else that we have used before, that we have seen before." Then we assemble the whole business and there you are—a dress.

Q. What are you trying to assemble? A. We are as- 1274
sembling a dress.

Q. What you are trying to assemble is not your own design? In other words, is it not the product of your own designer's ability, and beyond that do you not also use your own ability in that field, and you give him certain ideas that you have? A. Correct.

Q. These ideas that you have? A. Yes.

Q. And these ideas that he has, plus ideas generated in his own mind or in his own opinion takes substance in your ultimate style number as designed by you and by him? A. Yes.

Q. When this ultimate style number is designed and made up, then it is a product of your creative genius and the creative genius of your designer— A. Not exactly.

Q. Pardon me, I had not finished my question. I 1275
thought we were going to agree that you would wait until I finish the question, and I will wait until you finish your answer. A. I am sorry. I thought you had finished.

Mr. Weisman: May I have the previous part of the question again in order that I might finish it?

The Witness: I think I understand what you want.

1276

Mr. Weisman: No. I have not finished the question yet. I will just ask the reporter to read the first part of it so that I might pick up my train of thought.

The Witness: Oh, I see. You want to remember what you said.

Mr. Weisman: Yes.

The Witness: O.K.

(Question read.)

Q. (Continuing) —but you and your designers have drawn upon—in this case your designer—but you and your

1277

designer have drawn upon past things that you have seen, as you say, you may have taken a collar from one, and taken a sleeve from another, or a line from another, from the third; is that correct? A. Well, if I may answer—

Q. Yes. A. Well, it is the result, all the result of things that we have taken from.

Q. That you have seen? A. Yes.

Q. But the assembly of it I should say is something which you and your designer give birth to, speaking mentally, of course, and not physically? A. It would have to be. Assembly, yes.

Q. Yes. A. Yes.

Q. In other words, when you have one of your style numbers that is such a style number as you have conceived during your efforts, and is the result of and upon the fact

1278

that you have seen parts of it elsewhere, but nothing before totally in that particular arrangement. A. That is right.

Q. That is what you meant yesterday when you stated you had never seen something that was wholly new and original? A. That is correct.

Q. In other words—and I just want to get this straight—when you have one of your style numbers that is such

a style as you have conceived, drawing upon the fact that you have seen parts of it elsewhere before, but never totally in that combined arrangement as you finally produced? A. You are right.

Q. Furthermore, you had seen, however, such ideas you have described in your previous answer, which you took and put together into something which had never been put together in that particular conglomeration before whatsoever; is that correct? A. I can hardly say that. I can hardly say that, Mr. Weisman.

Q. All right, let us get at it in this way. We will just take our time and we will ultimately get there. A. Perhaps.

1280

Q. When you take a coat from—or, rather, a collar, and when you say to your designer, "I think the collar of last year's No. 507, together with the waist of two years ago, No. 402, we will take them and apply all of them to the style trend as shown in "Vogue" as to what Paris is doing, and we will make up a garment," and you do that. Have you then something new; have you ever before seen a garment exactly made up thus and thus? A. I cannot say whether I have seen, but the changes are that it may have been made that way. There are only a certain number of assembles that you can put together.

Q. I see. A. Is that an answer?

Q. Well, that is your answer.

1281

Mr. Weisman: Now, off the record, let me say this to you, Mr. Hirsch, and I think we will get along a little better. When I ask you the question, if you will just answer the question that I am asking you, I think that will be fine. You are not supposed to ask me the question. I am supposed to ask you the questions and you are supposed to answer the questions.

Mr. Martin: Quite true, but, on the other hand, Mr. Weisman, let me call your attention that you are not supposed to answer the questions. The witness is supposed to answer the questions and you are not supposed to answer them for him. Suppose we just let it go at that.

The Witness: I will answer them if you will ask them so that I can.

Examiner Bennett: Proceed, gentlemen. We are just taking up time. Discussions off the record will be directed by the Examiner, gentlemen, also.

1283 *By Mr. Weisman.*

Q. In order to get these ideas, you testified yesterday—first, by the way, what is the duty of your sample hands? A. Just to follow the instructions as to the—to mechanically put together the dresses.

Q. What you and the designer conceive? A. What we give them to make.

Q. Does the designer and the sample hand—designing staff and sampling staff—is that an integral part of your business? A. Is what a part of what?

Q. Is your designing staff and your sample room staff an integral part of your business? A. It is.

Q. It is? A. Yes.

Q. It costs you money to maintain it? A. Yes.

1284 Q. The purpose of its maintenance is so that in your business you may ultimately maintain, so that you may offer the same for sale, dresses which you think are appealing to the buying public? A. Yes, sir.

Q. Now, when you—I take it that when you make up such a dress which is born in your mind and in your designer's mind—by the way, I will withdraw that. A. What?

Q. How many dresses would you say you make up during a season: that is, which are the product of your know-

1285

edge, skill, creative genius, in putting together with your designer something that you think will find a consumer acceptation? A. How many?

Q. Yes, how many are there on your line? A. As I so testified yesterday, that we make between 300 and 500 dresses a year.

Q. That you make up? A. Well——

Q. Do you? You know what I mean. It is common in the industry. A. Samples in the line, do you mean?

Q. Yes. A. Yes.

Q. What I am trying to find out is whether or not all of the things that you tell your designer to make up, or that he makes up apparently without being told that he creates, whether or not they are all dresses that go on the line. In other words, do you not sometimes abandon certain of your samples because you think, after they are made up, that they do not sell, or find that out, and you do not put them on the line? A. Yes, we do abandon several, of course. We abandon them for various reasons.

1286

Q. What I want to find out from you is what, not with exactitude, but just your best guess, and I know it is a common thing in the industry—what proportion of the dresses that you so create with your designer, that ultimately finds their way onto the line, or what percentage you would say that you finally abandon because when they are finished you come to the conclusion that while the idea was a good one in your mind that when it is finally thoroughly executed and put into the materials it is not likely to sell? A. Well, Mr. Weisman, in the first place, we do not create, I said that before, but if you ask me what number we abandon, I will say that we do not get more than 25 per cent. of the dresses that we put on into production.

1287

Q. In other words, out of—if you have a lot of 100 dresses that means that you have probably experimented with 400 to produce this list of 100, and that you have

had to abandon and put out 300 off of your line? A. It means that we have not sold enough of the others, so that we do not cut them—may I amplify that?

Q. No, no, no. That is enough. That is enough. Just answer my question now, and we will get along a lot faster. A. All right, but that does not tell the whole story.

Q. I just want to ask you another question. A. All right.

Q. When you do not get any of these styles onto your line, and in sale, the work and the money and the material and the hours and effort that you have put into them is
1289 a loss; is that so? A. Correct. It is just too bad.

Q. In the exercise of your business, you hope, if your business is successful, to make up that loss by the sale of the ones that are successful? A. Correct.

Q. So that the successful or selling numbers of the line must carry along all of the expense of your experimentation so to speak in your business? A. Correct.

Q. I take it further that if, as and when you design such a number which is on your line, and which is the product of your assembly, since you seem to find objection to the word "creation," you then give that a style number? A. Yes.

Q. That is known as style, let us say, for example, 507 of the Melba Dress Company. A. Yes.

Q. I take it further that it is your economic philosophy,
1290 or industrial philosophy and belief, that anybody in the business is free if they see fit to copy that particular style number in its exact similarity as you have got it up, and sell it? A. That is correct.

Q. I also take it that you know that the Guild thinks that under such circumstances you would have some proprietary interest in that assembly? A. I believe the Guild takes that assumption. I do not know for a certainty.

Q. I take it also from your testimony that you believe that there is really nothing in the world that is new in so far as dresses are concerned, since women have always worn a covering? A. Yes, almost always.

Q. Therefore, since dresses are, in the main, only a variation of a covering, that there cannot be anything new about them? A. In a way, yes.

Q. I see. A. Yes.

Q. You do not hold to the belief that a woman buys a dress, perhaps, for the aesthetic value of the dress; that it may tend to beautify her? A. She probably buys it only for that purpose.

Q. She buys it only for that purpose—to beautify her? 1292
A. Yes, she hopes it will.

Q. We have new styles of beauty? A. Well, that is a rather broad statement. New styles of beauty. What do you mean by that? Women are women.

Q. Do you not know that styles in beauty change from time to time just like anything else? A. Referring to cosmetics or referring to dresses?

Q. Referring to pulchritude in the female being. I mean to say that may have been deemed beautiful in a woman ten years ago is not deemed to be beautiful to-day. A. Cleopatra had her own sense of pulchritude and imagination just the same as the present-day woman, I dare say. From the pictures of her she did pretty well.

Mr. Martin: I object to that.

1293

The Witness: I can amplify that if you want.

Mr. Martin: I object. I think this is getting into an abstract line of inquiry which will not get us anywhere.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. When you take and assemble such a dress— A. What is that?

Q. When you take and assemble such a dress, it contains a number of individual items following the particular style trend of that season, and you do not admit that you have created anything? A. That is right.

Q. What do you mean when you said yesterday that you were not opposed to the protection of original styles? A. You asked me whether we were opposed, as an organization; you asked me about it in reference to the popular-priced dress group, whether our organization was opposed to the creation of dresses, and I said no.

Q. No, no, wait a minute. Now, just let me say this to you off the record, if you will follow my question carefully,
1295 and not try to go into a discussion of it, or to try to ask me what I am telling you, I think we will get along a lot faster.

Mr. Martin: Your Honor, the objection to such a statement by counsel to the witness is perfectly obvious.

Examiner Bennett: Yes. Sustained. Gentlemen, we do not have off the record in this hearing without my direction.

By Mr. Weisman.

Q. You made this statement to me yesterday; it is in the record. You said: "We are not opposed to the protection of original styles," referring to your organization.
1296 Did you say that, and is that a fact? A. That is correct. That is correct. What about that?

Q. Now, I would just like for you to tell me—please do not ask me the questions and we will get along faster—since your organization is not opposed to the protection of original styles, what in your organization's opinion, in view of the opinions that you have expressed, which I take it are the opinions of your organization, would be an original style?

Mr. Martin: We object to going into all of this again. This has all been gone into by Mr. Weisman before, and it is certainly not proper cross-examination. It is simply a re-hash of his previous cross-examination, anyhow, and needless repetition.

Mr. Weisman: No, I do not think so.

Mr. Martin: Now, I thought we had agreed not to interrupt one another. It is certainly not proper cross-examination.

Mr. Weisman: If your Honor please, I certainly think that this is proper cross-examination if there ever was proper cross-examination of a witness. I would prefer to have this argument made off of the record unless the Court wants it on. 1298

Examiner Bennett: I will direct what goes off the record.

Mr. Weisman: Very well. I think we have a most unusual witness; I think the Court can readily appreciate that in view of this situation I think I am entitled to probe a little deeper than ordinarily would be the case, in such a case as we now find with a witness of this type.

Mr. Martin: I do not see anything extraordinary about this witness. He is just a regular witness. I do not think that comment is justified.

Examiner Bennett: Well, I think the answer of the witness speaks for itself. I shall sustain the objection to any further interrogation on that. 1299

I think it has been gone into very fully. Proceed.

Mr. Weisman: Exception.

Mr. Martin: If the Examiner please, there was scarcely anything on direct examination covering that line of inquiry, if anything, as I recall it. Certainly, there was nothing on the record that would justify such as extended an examination as this.

Mr. Weisman: Of course, when a witness is on cross-examination with reference to something that he has said on direct examination, then, certainly, the cross-examiner is not limited strictly to the range of the direct examination.

Mr. Martin: That is very true, but he cannot take up something new.

Mr. Weisman: I think that is correct, but I thought we had an agreement before we started in this morning that we were not going to interrupt each other. I had not finished my statement and I should like to be able to do so.

Mr. Martin: I thought you had finished. Certainly, I do not desire to interrupt you.

Examiner Bennett: I can settle the matter now. There is no use of carrying this discussion any further. The decision has been made in this case. There is no use discussing it further. Proceed with something else.

Mr. Weisman: All right. I will not discuss it further.

Examiner Bennett: No. Proceed.

By Mr. Weisman.

Q. What line have you now? A. $6.75 wholesale.

Q. When did you open that line? A. Oh, in the last ten days.

Q. Last ten days? A. Yes.

Q. How many numbers would you say were on that line? A. About ten velvets and about fifteen or eighteen—about twenty-five numbers.

Q. I do not care about the breakdown of them but just the total quantity. A. I would say about twenty-five.

Q. About twenty-five? A. Right.

Q. When were these numbers designed? A. Designed by whom?

Q. You. A. Assembled, you mean, or designed?

Q. Let us agree that you are going to call it assembled, and I am going to call it designed. You may, in answering the question, when I use the word "designed," not quarrel with me but you will think what I mean is what you have denominated as "assembled."

Mr. Martin: I object to this, your Honor. Let him go ahead and ask the question. As to setting up a series of speculations in the witness' mind in regard to a series of speculations in his own mind, I think that is highly improper. Where can we possibly get with that?

Mr. Weisman: This witness is not supposed to 1304
ask a question.

Mr. Martin: Nor is counsel supposed to answer the question.

By Mr. Weisman.

Q. When did you assemble them? A. Within the last month.

Q. In other words, within the last month you have a complete new line which consists approximately of twenty-five dresses? A. Right.

Q. You are offering them for sale to the buyer for the fall trade, buyer or buyers? A. Yes.

Q. When before that did you have another showing of a line? A. We make samples constantly. We have no official opening or official—I will call it official opening. We 1305
do not have that. We just keep on putting new things on the line all the time. There is no official or set time for any opening.

Q. Do you give the numbers on your line consecutive numbers? A. We do, excepting that we split them up into velvets. We will run one number, for instance, and in ensembles another number and dresses another range.

Velvets might be under eleven hundreds. Ensembles might run from three hundreds, dresses might run from eight hundreds.

Q. In your present line that you are showing, in your opinion when was that line designed? A. Within the last month.

Q. All of it? Every dress within the last month? A. Practically so.

Q. Do you mean to say that some of them you did not design two or three or four or six or seven months ago? A. They might have—we might have designed, we might have a very few dresses—what do you mean by this de-
1307 sign?. I cannot answer the question in such a form.

Mr. Martin: Are you making a distinction between designed and assembled?

Mr. Weisman: The witness understands the question.

A. I said before they are assembled numbers, and they might have been designed two or three years ago.

By Mr. Weisman.

Q. No, I mean as an entirety, as the dress is to-day on the line. A. That is a new fall line. That is correct.

Q. Completely new? A. What do you mean by completely new?

1308 Q. Did you have some of these dresses in your spring line? A. Very similar to them, yes.

Q. I didn't ask you whether you had any one very similar. I want to know whether you had any of these exactly the same? A. No, no.

Q. Do you want this record to show, and do you want this Court to believe, that each and every one of those dresses——

Mr. Martin: I object, your Honor.

Mr. Weisman: Let me finish.

Mr. Martin: I object to the form of the question.

By Mr. Weisman.

Q. (Resumed) Each and every one of these dresses are completely new in so far as design in its entirety is concerned, with the understanding that you mean of assembly and I mean of design, they are all new dresses? A. No, there are a few new dresses, and any——

Mr. Martin: I object to this as improper cross-examination, your Honor.

Mr. Weisman: I submit it is entirely proper, as 1310
will be developed in a few moments, subject to connection that I am about to make.

Examiner Bennett: You may save your exception.

Mr. Weisman: Thank you.

Examiner Bennett: But I think you are going further into details of this.

A. Within probably the last few weeks, if it is not a month, it might be six weeks.

Q. Yes. A. There are a couple of numbers of our line that go further than we run last year, with a change in the embroidery, with which we have nothing to do, because that is the embroidery——

1311

Q. Why do you make so many new dresses for this line? A. We are going into a new design.

Q. Why do you have to make new dresses for a new design? Why cannot you sell the same dresses you sold last season? A. Because the customers won't take last season's dresses.

Q. Do you know why the customers won't— A. (Interposing) Yes, right, I do know definitely why, because

of the new showings in Paris, developing a new trend, and we are every one of us manufacturers in America, irrespective of whether we make 99.50 stuff or 2.87½ stuff.

It is working on foreign trends from the stuff that has been shown in Paris, by Schiaparelli, by Paton. I can give you a list——

Q. (Interposing) You don't have to give— A. (Interposing) I have fifty of them to give you of all of the Paris showings. That is why the high-priced makers were at the showings, buying samples over there so they could go ahead and copy over there. I am referring to Lelong, Lanvin, Schiaparelli——

1313 Mr. Weisman: I do not care to object to this if my friend wants all of this in the record, to burden the record; I won't object. I do not think it means anything. It does not add anything to the weight of the testimony.

Mr. Martin: Your Honor please, he asked a question.

Mr. Weisman: It is all right with me.

Examiner Bennett: You are conducting this cross-examination.

Mr. Weisman: All right.

Examiner Bennett: You may go ahead.

Mr. Weisman: I would much rather have him go on and object than have a long lengthy argument

1314 with my adversary.

A. (Resumed) Alix—I do not know whether that is the way to pronounce it—Vionnet, Chanel, Paquin, Piquet, Fravieorement, Maggy Rouff, Patou, Goupy, Molyneaux, Paray, Rochas, Jodelle, Dormay, and I believe there are a lot more. Those are the best couturiers in Paris to whom the American manufacturers have been going for styles.

1315

Then we have here concerns like L. B. Wood, who brings over the original imports and rents them out to manufacturers for copying purposes, and in the main to high-priced manufacturers.

By Mr. Weisman.

Q. You know that the Guild does not protect copies of foreign merchandise, do you not? A. I do, as a matter of fact they do protect——

Q. No— A. —they do protect foreign merchandise.

Q. Do you or do you not know that? The answer is "yes" or "no." A. I say that I know they do protect imports.

1316

Q. I see. A. Copies of imports.

Q. That is just as worthy of belief as the rest of your testimony? A. May I prove it to you? (Witness rises.)

Q. (Interposing) No, no— A. (Interposing) By direct evidence?

Q. Will you please be seated? A. Yes.

Mr. Weisman: I am going to ask that this witness be reprimanded by the Court. I am trying to be gentlemanly with him. I think I am conducting myself within my rights of proper cross-examination, but this witness evidently believes he has a field day here, and I object to it, and I ask that the Court reprimand him.

1317

Mr. Martin: Your Honor please, it is a direct challenge.

Mr. Weisman: No direct challenge.

Examiner Bennett: The witness does not have to agree to a statement by you——

Mr. Weisman: Then the answer——

Examiner Bennett: —by the cross-examiner, as a statement of fact, when he thinks it is not a statement of fact——

Mr. Weisman: No.

Examiner Bennett: That is all the witness did.

Mr. Weisman: No, he did not. He jumped out of his seat and made a speech, and I submit——

Examiner Bennett: No harm has been done; he has not gone any further.

Mr. Weisman: I think it is indicative of his general conduct.

Examiner Bennett: I don't think his conduct is reprehensible at all.

Mr. Weisman: However—well——

Examiner Bennett: I would think that would

1319 be a wholly unwarranted reflection upon this witness. I think he is quite as fair and quite as intelligent as other witnesses.

Mr. Weisman: I think perhaps more intelligent.

Examiner Bennett: Yes.

The Witness: Thank you.

Examiner Bennett: Well, I think that there are two gentlemen of intelligence contending; it is rather interesting.

Mr. Weisman: There hasn't been any contention among the others yet.

The Witness: Mr. Weisman, my only mistake in that——

Mr. Weisman: I ask that this witness be directed to keep still until he is asked a question.

1320

Examiner Bennett: Yes, wait for the question.

The Witness: All right.

Examiner Bennett: Do not volunteer any information.

The Witness: All right, sir.

Examiner Bennett: We will get along better.

Mr. Martin: Your Honor please, I move at this time to strike the last remark and the question asked by Mr. Weisman from the record, as it is a reflection——

Mr. Weisman (interposing): I ask that it stand. Whoever reads the record may judge——

Examiner Bennett: I will grant the motion to strike.

Mr. Weisman: Exception.

May I have the last question?

(Last question read as follows: "Q. Why do you have to make new dresses for a new design; why cannot you sell the same dresses you sold last season.")

Mr. Weisman: I am going to ask, if it please Your Honor, that all after the "because" be stricken out. The question was, "Do you know?" Then he 1322
proceeded to give us a long stump speech that was not responsive to the question.

Examiner Bennett: Read the question and the answer.

(Question and answer read as follows:

"Q. Why do you have to make new dresses for a new design? Why cannot you sell the same dresses you sold last season? "A. Because the customers won't take last season's dresses."

"Q. Do you know why the customers won't— "A. Yes, right, I do know, definitely why, because of the new showings in Paris developing a new trend and we are every one of us manufacturers in America irrespective of whether we make 99.50 stuff or 2.87½ stuff"——) 1323

Examiner Bennett: The answer may be stricken beginning with "because."

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Now, before this line you had another line, a spring line? A. Yes, sir.

Q. And that spring line, what was your best recollection of the number of dresses that you had on that spring line? A. Commencing from what period to when, if I may ask?

Q. All right, I will try to get it from you. A. Thank you.

Q. This was your fall line, was it not? A. That is right.

Q. Now, what do you denominate the line that you had before this line? A. Summer line.

Q. How many dresses would you say were in that summer line? A. You mean how many we actually put in work, or how many samples we showed during the entire—

Q. How many samples did you show? A. Perhaps
1325 thirty, forty.

Q. How many did you have actually p. . in work? In other words, how many of these thirty o. forty were purchased? A. About 50 per cent.

Q. 50 per cent.? A. Yes.

Q. Those of the 50 per cent. were the hot numbers, that found consumer acceptation? A. That is right.

Q. And from the sale of that 50 per cent. you hope to make up the fourth of your experimentation and production with regard to the 50 per cent. that were discarded? A. Yes, sir.

Q. Now, were all of those new dresses, what you denominated new assemblies? A. No, to the same extent as all are.

1326 Q. Yes. Now, what line did you have before that? A. Spring line.

Q. Spring line? A. Yes.

Q. How many dresses, different kinds, were on the spring line? A. From November, 1935, until May, I would say we had about a hundred.

Q. A hundred.

Mr. Martin: Excuse me, please.

Your Honor please, I would like to renew my suggestion that this is not proper cross-examination

1327

There was nothing along these lines asked of this witness on direct testimony.

Mr. Weisman: I have told the Court I am going to connect this up in a few moments if you let me get along.

Mr. Martin: I would like to know how long we have to go on with this line.

Mr. Weisman: I believe less time than it takes you to intersperse these objections. This is a province of cross-examination, and I submit——

Mr. Martin: I submit there is a province for cross-examination, but you are not within that province.

1328

Examiner Bennett: Will you point out what part of the direct——

Mr. Weisman (interposing): I will.

Examiner Bennett: Will you point out in the record what part of the cross-examination you are directing this to?

Mr. Weisman: I would like to point it out to the Court.

Examiner Bennett: How?

Mr. Weisman: I would like to point it out to you. I don't like to make it——

Examiner Bennett: Yes.

Mr. Weisman: Come up here, Mr. Martin.

(There was a discussion off the record.)

1329

Examiner Bennett: Will you show me in the record of yesterday's testimony what you are cross-examining on? We follow the American rule, and we do not allow cross-examination on anything except the direct examination, the substance of the direct examination. If you can show me what you are cross-examining him on that goes into this style business——

(There was a discussion off the record.)

Examiner Bennett: I am talking about the direct examination. I want you to point out the part in the direct examination of this witness upon which you are now cross-examining, which makes a foundation for all that you are attempting to bring out?

Mr. Weisman: May I have the Commission's Exhibits 287 to 303?

(Reporter hands exhibits to counsel.)

By Mr. Weisman.

Q. With regard to Commission's Exhibit No. 286, you received an order for the dresses shown thereon, did you
1331 not, from the Palace? A. Yes, sir.

Q. Before you shipped the dresses? A. Yes, sir.

Q. Have you that order in court? A. It probably is among the orders that I have.

Q. Well, why didn't you get out the order as well as the return?

Mr. Martin: I object to that, your Honor.

By Mr. Weisman.

Q. I want to know. A. Why didn't I get it out? I will be very glad to.

Q. You were not asked to. A. I was not asked to. I will be very glad to, if I can.

Q. Will you please get out the order on this one (re-
1332 ferring to Commission's Exhibit 286), and you might, while you are about it, get out the orders on all of these (indicating exhibits).

Mr. Martin: I object to all of that, your Honor. It is unnecessary.

Mr. Weisman: That is a new ground of objection.

Examiner Bennett: Do you want to do that?

The Witness: Your Honor, it will take me two hours to go through all those orders there to find that order, unless you give me a recess to go back to my place, or call up to see if we can still find the cards that we kept of last year.

Examiner Bennett: Yes.

The Witness: I mean, we have index cards referring to the number of the order thereon.

Examiner Bennett: I sustain the objection.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes, you may have an exception.

Those things are placed at your disposal; if you 1334
want to find those orders, why, go ahead.

By Mr. Weisman.

Q. When the order was placed with you for the dresses shown on Commission's Exhibit 286, was there a stamp placed on that order?

Mr. Martin: I object to any reference to the order, if Your Honor please.

Mr. Weisman: Here is testimony introduced that he got back certain dresses. Now, I want to show from this witness that he properly got them back under the terms of the order. Now, it is a queer procedure when the attorney for the Commission will object to eliciting the facts with regard thereto. 1335
I submit if my friend does not——

Examiner Bennett: Well, I will let him answer, if he remembers.

A. It probably did have the stamp on it.

By Mr. Weisman.

Q. Give me the wording of that stamp? Have you got an exhibit there?

Mr. Seidman: You have one, of his exhibits.

Examiner Bennett: There is one of the exhibits in there with the stamp on it.

The Witness: May I find it?

Mr. Golby: Here is one, Exhibit 640 in the record.

Mr. Weisman: Exhibit 640?

Mr. Martin: Here it is.

1337

By Mr. Weisman.

Q. So that when you took that order for those dresses there was placed on the order by the buyer the words: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to retain any merchandise which is not as warranted"——

Mr. Martin: To return.

Mr. Weisman: What did I say?

The Witness: Retain.

Mr. Martin: Retain.

Mr. Weisman: Oh, return.

1338

By Mr. Weisman.

Q. —"to return any merchandise that is not as warranted." A. That is right.

Q. So that you took the order for this merchandise, and when you took it you warranted to the seller that it was not a copy of any styles originated by members of the Fashion Originators' Guild of America? A. We did not warrant anything; the order was placed that way because, as I testified——

1339

Q. (Interposing) And that is the way you accepted the order? A. Correct.

Q. I see. And at the time you accepted the order, you knew that the purchaser reserved the right to return any merchandise which was not as warranted. A. So the order was stamped.

Q. And so accepted by you? A. Yes.

Q. And you made that warranty. Didn't you understand that? A. We did not.

Q. Do you understand English? A. I do.

Q. You did not understand by the terms of this order, and your acceptance of it, that you were making the warranty therein expressed? A. We did not send the order.

1340

Q. I know, but you received it stamped? A. Correct.

Q. And did you not expect to abide by the terms of the order as stamped? A. As a matter of fact——

Q. No. Did you expect to abide by the terms of the order as stamped? A. No.

Q. In other words, you took the order, you made the warranty, but you did not expect to keep it? A. We made no warranty.

Q. In other words, you say that your acceptance of this order, in your mind, gave you the right to make a material reservation that, irrespective of what the seller to purchaser put thereon, you made no warranty? A. In agreement——

Q. No. "Yes" or "no," please. I thought you and I agreed that we were not going to quarrel? A. Repeat it, then.

1341

Q. (Last question read.) A. As far as the stamp is concerned, yes.

By Mr. Weisman.

Q. In other words, you took your chances on it? A. On the stamp.

Q. Yes. You did not tell that to the purchaser at the time that he gave you the order, did you? A. They told it to us.

Q. What did they tell you? A. To disregard it.

Q. To disregard it? A. That is right.

Q. If they told you to disregard it, why didn't you tell them to take it off? A. They could not. As I testified yesterday, the buyer had no prerogative in the matter at all. They were instructed by the heads, by the buying officers, that the orders must be left with the stamps on it.

Q. I see. A. And not to vary from that.

Q. Now, when they returned this merchandise to you,
1343 did you write any letter objecting to its return? A. Pointing——

Q. (Interposing) No, no, I am referring to Commission's Exhibit 286. A. I am not sure about this particular case.

Q. Well, this particular case was picked out by you and made the basis of a complaint to the Federal Trade Commission, was it not? A. That is right; correct.

Q. And did you not look up all your evidence other than the order to show all of the facts to the Federal Trade Commission? A. No.

Q. Well, did you suppress any evidence with regard to this transaction? A. No.

Mr. Ballon: Just a moment. I object.

Mr. Weisman: He has answered.

1344 Mr. Ballon: I ask that that answer be stricken out.

Examiner Bennett: I think the answer better stand to the question asked.

Mr. Ballon: What was your answer?

Examiner Bennett: I say, the answer better stand; he said "no."

By Mr. Weisman.

Q. Did you give them all of the evidence you had in connection with this transaction? A. Perhaps, yes; perhaps, no.

Q. What do you think now? "Perhaps, yes; perhaps no," is no answer. A. In connection with this particular transaction, you are referring?

Q. Yes. A. We may have written them on this thing; we may not.

Q. I don't ask you that.

Mr. Martin: Let him answer the question.

Mr. Weisman: Well, he did not answer that. That was my objection. 1346

Mr. Martin: You do not give him an opportunity.

Mr. Weisman: Oh, yes, I will give him plenty of chance.

Examiner Bennett: Now, gentlemen, one at a time.

Mr. Weisman: Now may the Court have the question read and see whether it is answered or not? The question I asked him was, Did he give all the evidence to the Commission?

Examiner Bennett: Well, you are examining a lay witness, not an attorney. He is not an expert in evidence. He gave the answer that a layman would give.

Mr. Weisman: I submit that the Court should 1347 direct him to answer my questions according to the rules of evidence and procedure.

Examiner Bennett: He may answer if he is qualified to do so, but you asked him a technical question.

Mr. Weisman: Nothing technical about asking whether or not a man gave to the Commission all the evidence he had concerning a transaction.

Examiner Bennett: It is technical so far as you refer to evidence in the lawsuit.

By Mr. Weisman.

Q. Well, this transaction with reference to Commission's Exhibit No. 286, did you give them all of the papers, memoranda, data, writings of every kind, nature or description which referred to this transaction? A. No.

Q. Now, what did you keep out? A. The order, certainly.

Q. Yes. A. And I don't know of anything else.

Q. Well, when you got this notice of return because of failure of the merchandise to comply with the terms of
1349 the warranty, did you write a letter to the Palace, at Kansas City, Missouri, therein referred to, saying that you were told when the order was placed that, notwithstanding the stamp, that you could disregard it? A. I don't remember.

Q. Well, will you look among your files and find out? A. Yes, sir (witness makes note).

Mr. Martin: I object, Mr. Examiner.

Mr. Weisman: Now——

Examiner Bennett: You can do that, of course, if you wish. That is voluntary with you.

By Mr. Weisman.

Q. Now, referring to— A. Just a moment, just one
1350 moment, if you don't mind.

(Witness makes note.)

The Witness: Yes, sir.

By Mr. Weisman.

Q. Now, referring to Commission's Exhibit No. 287, when the order for that merchandise was placed with you, did it have the words upon it, "This order is placed upon

1351

the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted"? A. It probably did.

Q. And you accepted it with that upon that warranty, did you? A. We accepted it with that stamp on it.

Q. Now, I notice that Commission's Exhibit No. 287 has been to some degree—I will withdraw that. A. I am sorry. Excuse me.

Q. At the time this was sent to you by Jordan Marsh Company did it have this price marked over, as it now appears, or did you do that? A. We marked it over.

1352

Q. In other words, this exhibit is not in the condition that it was when you received it from Jordan Marsh? A. With the exception of the price being crossed out, it is exactly the same.

Q. Why did you cross out the price? A. Because they have a special price from us.

Q. What do you mean, they have a special price from you? Are you not a 6.75 house? A. We sell some stuff at 662.50.

Q. Who do you sell at 6.62?

Mr. Martin: I object to that.

By Mr. Weisman.

Q. Are you a 6.62 house?

1353

Mr. Martin: I object to that. It is irrelevant and immaterial.

Mr. Weisman: On a secret discount?

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

chandise, that under the terms of the order the purchaser was entitled to return it? A. I did not——

Q. You did not know that? A. That's right.

Q. You did not know that notwithstanding the fact that the order says that the purchaser reserves the right to return any merchandise which is not as warranted? A. That is correct.

Q. Well, when you got these notifications of return, if you did not know prior thereto that it would be returned, did you write a letter of protest asking them why it was being returned? A. Well, they stated in their return memorandum.

1361 Q. But you said that you did not know that under such circumstances they would have a right to return it? A. Well——

Q. Didn't you just state that? A. That was a system that we were objecting to.

Mr. Martin: I object to——

Mr. Weisman: I am asking this witness what he stated a moment ago. I submit that is certainly the province of cross-examination.

Examiner Bennett: All right.

A. (Continuing) That is a system that we were generally objecting to.

1362 Mr. Weisman: Now I ask that the answer be stricken out.

Mr. Haycraft: I submit that is not a proper question, calling for a legal conclusion which this lay witness could not have, as to whether or not these retail dealers had the right.

Mr. Weisman: I did not ask him whether or not they had the right. I asked him whether they knew.

Mr. Haycraft: Read the question.

(Question and answer read.)

Examiner Bennett: Well, I am going to let it stand. Go ahead.

By Mr. Weisman.

Q. When you received notification of this return, you did not know prior thereto that the seller had reserved the right to return the merchandise if it was not as warranted, did you? A. In these particular cases?

Q. Yes. A. In these particular cases, so the order was stamped.

Q. Did you know that by that stamp the purchaser was reserving the right to return the merchandise if it was not as warranted? 1364

Mr. Martin: I object. It calls for a legal conclusion on the part of this witness.

Mr. Weisman: What this witness knew is not a legal conclusion.

Examiner Bennett: I sustain the objection. You are using it, a technical legal word.

Mr. Weisman: I beg your pardon?

Examiner Bennett: I say as you are using it, it is a technical legal word which the witness does not seem to take—to know the meaning of, from his testimony, as to warranty.

Mr. Weisman: All right, I will reduce it to words of one syllable, if I can.

By Mr. Weisman. 1365

Q. This letter was placed with you; is that correct? A. Yes, sir.

Q. Upon the order were the words that the same was placed—that the order was placed with you upon your warranty that the garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc.; is that not so? A. Right.

Q. Did you or did you not know that that meant that you were promising that any merchandise ordered was not copies of styles originated by members of the Fashion Originators Guild? A. I was not promising.

Mr. Weisman: Now I ask that the answer be stricken out. He says, "I was not promising." Well, I will let it stand. I will withdraw it.

By Mr. Weisman.

Q. In other words, you felt that notwithstanding the words on this order, if the merchandise was copies of
1367 Fashion Originators Guild styles you had a right to send it on just the same?

Mr. Martin: I object.

A. Correct.

By Mr. Weisman.

Q. And that the purchaser did not have the right to return it? A. The purchaser, correct.

Q. And notwithstanding that belief, when the purchaser did return the merchandise, as evidenced by Commission's Exhibit 291, you did not object, but accepted the merchandise for return? A. I don't believe we objected in this instance, but accepted it. May I see that?

1368 Mr. Weisman: Just a moment. You can see anything you want when I am finished.

The Witness: I am sorry. May I correct, Mr. Counsel, my answer on this Marshall Field?

By Mr. Weisman.

Q. Yes, certainly, if you want to correct it. A. I believe that we did object with Marshall Field in connection with

their return, that we did write them a letter and got a response to it, and I believe that that letter is in evidence.

Q. Are you referring to Commission's Exhibit No. 292 (indicating)? A. Then I am confused on that. Commission's Exhibit 292 refers to another return.

Q. So that when you got the return, Commission's Exhibit 291, you did not object to the return? A. I don't believe we did.

Q. Now I show you Commission's Exhibit No. 292. You said that that referred to the return other than the one on Commission's Exhibit 291? A. Yes, sir.

Q. And that was the sole objection that you made to the return referred to in that letter; in other words, the letter contains your sole objection? A. No, sir; we asked for information in this letter. 1370

Q. Well, did you anywhere in this letter say, in words or substance, you have no right to return the merchandise if it is copies, or did you only ask for the proof that it was copies? A. At first we asked for proof.

Q. Well, in this letter do you at any place say, in words or substance, that if our merchandise is copies you may not return it? A. No.

Mr. Martin: I object to this, your Honor. The letter is in evidence, it speaks for itself.

Mr. Weisman: I want his interpretation of it.

Mr. Martin: You don't have to have his interpretation. 1371

Mr. Weisman: The Judge has ruled on this, that we can get the interpretation.

Mr. Martin: The letter is in evidence.

Examiner Bennett: You can find the meaning of terms.

Mr. Weisman: That is what I mean.

Examiner Bennett: If there is a peculiar meaning to them.

Mr. Weisman: Yes.

Examiner Bennett: I doubt as to the interpretation.

A. (Continuing) We did not care to go into arguments with Marshall Field & Company before we got the information we asked for in that letter.

By Mr. Weisman.

Q. So that you did not at any time, notwithstanding the returns from Marshall Field, write to Marshall Field and say, in words or substance, that if our merchandise is
1373 copies of Guild members' merchandise you may not return it? You never did that, did you? A. No, I did not write that.

Q. Well, notwithstanding the fact that you believed that to be a fact? A. I did not believe it to be a fact; they had a right to return it.

Q. I say that, notwithstanding the fact that you did not believe that they had a right to return it, you never wrote them to that effect? A. From an economic standpoint——

Q. (Interposing) Not from an economic standpoint, from an actual standpoint, did you ever write them to that effect? A. I probably did not go further into these matters because we were helpless.

Mr. Weisman: I ask that the latter part of the
1374 answer be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, you were not helpless to write a letter, were you? A. Letters bring about antagonisms. We cannot afford to antagonize our customers; we would be driven out of business.

Q. You would rather make a false warranty to them in the hope that they would make a mistake and not find out the truth?

Mr. Martin: I object to that.

A. We never made a warranty——

Mr. Weisman: I want to find out.

Examiner Bennett: Sustained.

Mr. Martin: He used the words "false warranty."

Examiner Bennett: Sustained. I am not going to let you fill the record with questions containing accusations of that kind.

Mr. Weisman: I think the record speaks for itself on that score. 1376

Examiner Bennett: Then there is no need of that reflection upon the witness, or intended reflection.

By Mr. Weisman.

Q. Well, you were not helpless to write them for information concerning the query as to where or how it had been adjudged a copy, were you? A. No, that was conciliatory.

Mr. Weisman: I ask that the latter part of the answer be stricken out.

Examiner Bennett: Read the answer.

(Answer read.)

Examiner Bennett: Overruled. Motion denied. 1377

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Then I take it that if Marshall Field had returned this merchandise to you and there had been no stamp at all upon the order, you still would have accepted the return rather than antagonize Marshall Field?

1378 Mr. Martin: I object to that question, your Honor.

Mr. Weisman: It is perfectly proper in view of the witness' testimony.

Examiner Bennett: I will let him answer. Overruled.

A. Marshall Field don't do business that way.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: Well, I think I will let it stand.

1379 Mr. Weisman: I ask that he be directed to answer my question.

Examiner Bennett: If your question presents an impossible situation, that is a situation to be dealt with——

Mr. Weisman (interposing): Your Honor——

Examiner Bennett: ——of course, the witness is entitled to call your attention to it, and that is what he is doing.

Mr. Weisman: Of course, it is not impossible——

Examiner Bennett: His testimony is that it is with Marshall Field. Well, now, if you know better, I submit that you should——

1380 *By Mr. Weisman.*

Q. Well, you looked upon this stamp as being without meaning, did you not? A. As given——

Q. Yes or no, did you look upon it as being without meaning? A. Meaning only to a certain extent.

Q. Well, to what extent did you think it had meaning? A. It was given to us under duress, as far as we were concerned.

Mr. Weisman: I ask that the answer be stricken out.

Mr. Martin: It is perfectly proper.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. What do you mean, what meaning did it have to you, what meaning did it have to you? A. That it was a part of a scheme on the part of the Fashion Originators Guild to set up a combination in restraint of trade.

Q. What do you know about combinations in restraint of trade? A. I consulted with an attorney. 1382

Q. What attorney? A. Hartman, Sheridan & Tekulsky.

Q. And they told you the meaning of this phrase? A. They told me their interpretation of it, yes.

Q. And that was the interpretation that you have just given us? A. That it was under duress, that it was illegal, that it was a combination in restraint of trade and that I should not worry about it, but disregard it, as far as the orders that I was receiving with those stamps on them.

Q. So that you treated this stamp as a nullity? A. As a menace.

Q. Did you not treat it as having no force? A. Force like a bludgeon would have.

Mr. Weisman: I ask that the answer be stricken out as given. 1383

Examiner Bennett: I will strike it out until the witness answers it directly. Read the question.

(Question read.)

By Mr. Weisman.

Q. Did you not treat it as having no force? A. It had certain force.

Q. Have you not testified that you looked upon this warranty as giving to the purchaser no right to return the merchandise if it were found to be a copy? A. Correct.

Q. Then, since the entire warranty or promise directed itself to that, did you not treat this as having entirely no force whatsoever? A. I would like to have that question read again.

Q. (Question read) A. No, I cannot say that I did.

Q. Now I show you Commission's Exhibit No. 295. A. Yes.

Q. The dresses shown on that order, on that return notice, were also ordered by the purchaser by an order
1385 which had the warranty of the stamp on it as I have read; is that correct? A. I believe the order referring to this particular return had no warranty stamp on it.

Q. Well, then, why did you accept the return of the merchandise? A. May I refer to the correspondence in evidence on this?

Q. Do you know why you accepted the return of the merchandise? A. On the general principle that we cannot antagonize our customers.

Q. I see. So that if the customer sought to return the merchandise to you, using the Guild stamp as a reason, whether or not he had a right to return it by reason of the order bearing the stamp, why, you would, notwithstanding, accept the return; is that correct? A. It was a
1386 part of the whole thing.

Q. Would you or would not you accept that return, Mr. Hirsch? A. That is hypothetical.

Q. Did you not in that case? A. I did.

Q. You did? A. I did.

Q. If other customers had done likewise, to wit, returned the merchandise to you, notwithstanding the fact that the order contained no warranty to the effect that the garments returned—or, rather, that the garments ordered were not copies, would you likewise have accepted the

return of such merchandise and accepted the return so as not to antagonize them? A. If I understand your question, it would depend upon the customer.

Q. Suppose it were Marshall Field? A. That is hypothetical. I do not know what I would do in that particular instance.

Q. Suppose it were the Palace Clothing Company? A. I do not know what I would do in that particular instance.

Q. Suppose it were Kline's of St. Louis, Missouri? A. I do not know what I would do in that particular instance.

Q. Suppose it was Carson, Pirie, Scott & Company of Chicago, Illinois? A. I do not know what I would do in that particular instance.

Q. Suppose it were Rubenstein of St. Louis? 1388

Examiner Bennett: Let there be an end to this somewhere.

Mr. Weisman: The reason that I am going over all of these is that these are again references to people in evidence here. That is part of the necessity as indicated by your Honor, the necessity to connect these up, and I am also showing how necessary it is to connect them up.

Examiner Bennett: If you are checking these particular people who are shown on the exhibits, you may do so.

Mr. Weisman: That is all I am taking, if your Honor please. I am simply taking these that are 1389
shown on these exhibits. I think that is necessary because I want to show what has been done there.

By Mr. Weisman.

Q. Suppose it was Rubenstein of St. Louis, this one here? A. I do not know what I would do in that particular instance. That is hypothetical.

Q. Suppose of Frank & Seder? A. I do not know what I would do in that particular instance.

Q. What did you mean when you said to me a few moments ago that you would in certain cases and not in certain cases? A. Exactly the same thing that I meant then.

Q. In what certain cases would you accept the return of the merchandise even though the order did not have this warranty stamp on it? A. It would depend upon how valuable an account that particular account was.

Q. Are any of these accounts that I have mentioned so valuable that you would have accepted the return of
1391 the merchandise from them on the ground that it was copies even though the order did not specify the right to return it if it were a copy? A. That is a hard question to answer, Mr. Weisman.

Q. What is hard about it? A. Because the customer may be a very good customer one season and he may not be a very good customer in another season; you may not be getting enough from them in another season to warrant it. That is what I meant by saying that the economic question was involved there.

Mr. Weisman: I ask that what he said about that be stricken out. I did not ask him what he said before about the economic situation. I am asking what he means now.

1392 Examiner Bennett: The reference to the economic situation may be stricken.

By Mr. Weisman.

Q. That is the best answer you can make to this query? A. Yes.

Q. You accepted the return of the merchandise referred to on Commission's Exhibit 295? A. I believe I did.

Q. Did you not think that you did? Did you not testify yesterday in answer to Mr. Martin's question that you did? A. I did.

Q. What information did you have yesterday that you do not have now that permitted you to answer it yesterday that you did and to-day you have to simply say, "I believe I did"? What makes you so indefinite to-day in answer to my question when you were so definite yesterday in answer to Mr. Martin's question? A. I do not understand.

Q. What information did you have yesterday that you do not have now? A. None.

Q. Well, you were able to say to him that you received the return and to me you can only say that you believed 1394 that you received the return.

Mr. Martin: Just a second. If your Honor please, I asked Mr. Hirsch something else, but I do not recall asking Mr. Hirsch whether these goods were returned or not.

Mr. Weisman: I think you did.

Mr. Martin: I would like you to show it to me. I do not remember it and I wish you would permit me to finish before you interrupt, please.

Mr. Weisman: Excuse me.

Mr. Martin: If I recall it correctly—and if I am wrong I am perfectly willing to be corrected—but if I recall it correctly I asked him to identify these exhibits. If I asked him anything further than 1395 that, I do not recall it.

Mr. Weisman: You may not have asked the question. I think it was the Court that asked the question.

Mr. Martin: I do not remember that.

Examiner Bennett: I asked that question, I think.

Mr. Weisman: See?

Mr. Martin: That would be true. I would have to look at the record to see just what was said.

Mr. Haycraft: I think that is true.

Mr. Martin: I think, if I recall it correctly, your Honor, the Court's question was whether these goods were returned. I do not think there was any testimony that the witness testified that he accepted the return of these goods, or that he was even asked that particular question before.

Examiner Bennett: He testified to the physical conditions surrounding the handling of the goods, the shipping of the goods, and that they were re-
1397 turned. I do not believe it went further than that. The record will show.

By Mr. Weisman.

Q. With reference to Commission's Exhibit No. 283, to and including Commission's Exhibit No. 294, inclusive, concerning which I have heretofore asked you questions, did you refuse to accept the return of any of this merchandise? A. Does that mean all of the stuff that was accepted?

Q. I mean this here (indicating). A. To the best of my recollection at this time I believe we accepted all of these returns.

Q. To the best of your recollection did you write to
1398 any of these people that we have referred to with regard to Commission's Exhibit 283 to and including Commission's Exhibit 295, objecting that you were not obliged or obligated to accept the return of the merchandise which was a copy of merchandise produced by members of the Fashion Originators Guild of America, Inc.? A. Well, you have some copies of the letters there to that end—some of them, I think.

Q. See whether that answers my question.

Mr. Weisman: Let the question be read.
(Question read.)

A. I may have. I cannot remember at this moment. I would have to refer to the files.

By Mr. Weisman.

Q. Do you remember at this time a single instance where you sent such a suggestion? A. You have it right there.

Mr. Weisman: I ask that the answer be stricken out and ask that the witness be directed to answer the question.

Examiner Bennett: I take it that he refers to 1400
an instance which you have in your hand.

Mr. Weisman: That is why I want him to answer the question, because this is not an instance that I have in my hand.

Examiner Bennett: Perhaps not. I do not know.

By Mr. Weisman.

Q. Do you know of a single such instance? A. Yes.

Q. Tell me of an instance that you refer to, anywhere in Commission's Exhibit No. 293 to Commission's Exhibit No. 295, inclusive. (Counsel hands those exhibits to the witness.) A. I believe we wrote to Snellenburg.

Q. What leads you to believe that you wrote to Snellenburg, objecting that you were not obligated to accept the 1401
return of the merchandise which was a copy of Fashion Originators Guild? A. That is my recollection (indicating Commission's Exhibit 295).

Q. Did you not testify a moment ago, with regard to Commission's Exhibit No. 295, you accepted it without objection even though the order did not have the stamp on it? Have a look at Commission's Exhibit No. 295. Look at Commission's Exhibit No. 295. You were looking at something else. A. Which is 295?

Q. That is Snellenburg's. A. Snellenburg's?

Q. Yes. A. I am prompted to state, in view of this letter——

Q. No, the letter Commission's Exhibit 295. Did you not testify not ten minutes ago with regard to Commission's Exhibit 295 you did not object to the return of it and you did not object because you did not want to antagonize your customers, notwithstanding the fact that the order did not contain the warranty clause on it? A. May I——

Q. Did you or did you not, yes or no? A. I did testify to that if the record shows it.

1403 Q. Was it not correct or was it correct? A. My recollection is that I wrote Snellenburg about the returns.

Q. That is not an answer to the question. A. I don't know whether I wrote him with reference to that specific item.

Q. If you do not know whether you did or not, why did you say a moment ago that you did? A. Because you have several returns of Snellenburg's and one was a return I wrote him about and the others I probably did not. I could not tell exactly without looking at them.

Q. Will you try to give us answers to the best of your recollection? A. I will.

Q. Will you now do so? What are you trying to do? Are you trying to give us answers to the best of your recollection or are you just guessing? A. That is to the

1404 best of my recollection.

Q. Let us get this matter cleared up for once and for all. We will go back to Commission's Exhibit No. 295.

Mr. Weisman: I am sorry to take up all of this time, your Honor, but this witness is constantly changing his testimony and I cannot tell whether I am coming or going.

By Mr. Weisman.

Q. Did you not testify with regard to Commission's Exhibit No. 295, which is a return from Snellenburg, that the order in connection with the exhibit did not have a warranty on it? Did you testify to that effect or did you not? A. I believe I did.

Q. Was that correct? A. I believe it was.

Q. Well, we will put that aside.

Mr. Martin: If your Honor please, I think that this witness' testimony was that the order might not have had that stamp on it.

Mr. Weisman: This is one on which he did not. This was the exception. Do you want to testify? 1406

Mr. Martin: I will be perfectly willing to.

Mr. Weisman: Then will you step up here and be sworn as a witness?

Mr. Martin: Now, do not be like that. I would like to call the Court's attention to the fact that I think the testimony was that it might have contained the stamp or that it might not have.

Examiner Bennett: I do not know that there is anything to rule on there. The testimony will show. I doubt that we can see at this time without going to the record.

Mr. Weisman: I will not press that any further, your Honor.

1407

By Mr. Weisman.

Q. I show you Commission's Exhibit No. 300— A. Yes.

Q. I ask you whether or not the order for that—if those dresses had upon that order a promise that the goods that were shipped in compliance therewith would not be copies of Guild Originators garment originations? A. It had a warranty stamp on it.

Q. Did it have—. A. I believe it did.

Q. When you sent that merchandise out you knew that pursuant to the terms of the warranty stamp, that the seller or the purchaser claimed the right to return the merchandise if the merchandise was a copy of Guild merchandise? A. There was no such an arrangement with them.

Q. It had the stamp on it? A. That is correct.

Q. The wording of the stamp is, among other things, "The purchaser reserves the right to return any merchandise"——

1409 Mr. Martin: That is objected to, if your Honor please.

Examiner Bennett: Sustained. I am not going to entertain any further questions containing a recital of this stamp.

Mr. Weisman: Your Honor, may I take a respectful exception to your Honor's ruling?

Examiner Bennett: You may have an exception. Of course, that refers only to this witness.

Mr. Weisman: I understand, your Honor.

By Mr. Weisman.

Q. Referring to Commission's Exhibit No. 296, did the order which was placed with you in connection with the matter have on it the so-called promise or warranty or
1410 stamp which the Court says I am not to reiterate in detail, but you know what I am referring to? A. Yes, I believe it did.

Q. Did you accept the return of it? A. I believe we did.

Q. Did you write any letter stating that under the order you were not bound to accept the return of the goods? A. I do not remember.

Q. Have you—if you wrote such a letter, you would remember it? A. I would be able to find it.

Q. Can you find it? A. If I wrote such a letter, I will be able to find it.

Q. Will you between the time after this afternoon's examination and to-morrow morning examine your files to see whether or not you have any letters objecting to any of these returns on the ground that you did not understand the stamp to—or that the stamp did not give the purchaser the right to return it? A. Yes, sir. I will do so if you will give me the dates to look up, so that I may know what to refer to when I go to look it up.

Q. I will give them to you when we have finished, in order to save time. A. Very well.

Q. That will apply equally to all of these exhibits, 1412
namely, Commission's Exhibit 286 to and including Commission's Exhibit 303? A. Yes.

Q. With regard to the returns, does that refer to Commission's Exhibit 297? Does that refer to the same matter? A. No, that refers to style No. 207, and the style here has reference to style No. 172.

Q. With regard to Commission's Exhibit 297, did that order contain the stamp? A. What?

Q. Did that order contain the stamp? A. I believe it did. I believe it did.

Q. Did you likewise accept the return of that merchandise? A. I think I did.

Q. Did you write any letter objecting to its return? A. I do not remember.

Q. If you did, you would be able to find that letter. 1413
That was, comparatively, a recent transaction, was it not? A. What?

Q. That was a comparatively recent transaction. If you did, you would be able to find the letter in regard to it? A. I think that is last year, in November or October, is it?

Q. October, I think. A. Yes, there is no reason why I should not be able to find it.

Q. With regard to Commission's Exhibit 298, which is also a return from Kline's, if I asked you the same questions that I asked you with regard to Commission's Exhibit No. 297, your responses would be the same, would they? A. Yes, sir.

Q. Commission's Exhibit No. 299 refers to a return of your style No. 172? A. Yes.

Q. You did not produce the notice of return, you just got the letter? A. I cannot say. At the time I believe I did. It should be around here somewhere. I think I gave it to Commission's counsel and I suppose they have produced it, or will if they see fit.

1415 Q. Where is it? Is that it (handing witness a document)? A. No. That refers to style No. 207. This is another style. This refers to style No. 172, which dresses I know were returned. We took them in.

Q. You took them in? A. We took them in.

Q. We do not have it here. Have you given it to the Commission's counsel? A. I think so.

Q. If you gave it to Commission's counsel, they did not produce it. A. It is quite possible that we did not get a return slip on that, come to think of it.

Q. But the order, whether it had— A. I beg your pardon, Mr. Weisman. I was looking at this document.

Q. But the order upon which that merchandise was placed, I take it, was likewise—I withdraw "was likewise"—had likewise the stamp or warranty on it? A. I believe

1416 it did.

Q. You are very friendly with the buyer for Carson, Pirie, Scott & Company of Chicago? A. Yes.

Q. You are sometimes known as Larry? A. No, my brother.

Q. Who is Larry? A. My brother.

Q. This letter was written to your brother personally? A. Not personally. As a matter of business.

Q. I mean it was addressed to Larry Hirsch? A. Yes, it was addressed to Larry Hirsch, but it is a matter of business.

Q. Yes. A. Well, it is to his attention.

Q. No, it is not to his attention, but it is to him. Just take the letter and look at it. A. That is correct, but the letter came through an envelope addressed to the firm, if I recall correctly.

Q. Did you ever tell your brother to write Carson, Pirie, Scott & Company of Chicago that notwithstanding the fact that you had accepted the order with the stamp on it, that they had no right to return the merchandise? A. I do not believe I ever told him. I do not believe I would 1418
have told him. He would write his own letters.

Q. Would you know if he had written that? A. If I told him to, I might have, but I did not tell him to. He wrote his own letters.

Q. Well, did he ever tell you that he had before written them to that effect, or at any time? A. He generally took care of that himself.

Q. Did he ever tell you that? You are not answering my question. A. No, I do not believe he did.

Q. Why did you accept the return from Carson, Pirie, Scott & Company? A. We thought it was a good idea.

Q. You would not have written such a letter to Carson, Pirie, Scott & Company because you would have felt it would have antagonized them? A. It probably would have 1419
antagonized them.

Q. So you would not have written such a letter to them because you did not want to antagonize them? A. Correct. We did not want to antagonize them.

Q. Then, the chances are you did not? A. The chances are we did not.

Q. Well, why don't you say one way or the other? A. To the best of my recollection we probably did not write

them, but I can look it up. The files are available, if you want to get exact information with regard to it.

Q. Then you are going to look it up for me? A. Yes.

Q. All right. Now, with regard to Commission's Exhibits No. 301-A and B, which is the return from the Palace, the order upon which that merchandise was shipped likewise had this warranty stamp upon it? A. I believe it did.

Q. Notwithstanding, and you accepted the return of that merchandise? A. I believe we did.

Q. And before you accepted the return of that merchandise you received Commission's Exhibit 301-A, which gave
1421 you the reason why they were returning the merchandise? A. This letter seems to have come simultaneously with the return slip.

Q. Simultaneously? A. There is some confusion about this, because it says, "Answering your air mail letter," and so forth, "we wish to advise that we are returning these dresses to you," and so forth. I cannot recall whether they had taken up with us whether they wanted to return these prior to this, but I would have to look up the further correspondence with it in order to answer that definitely and correctly.

Q. Did you write them a letter that, notwithstanding the order was placed with the stamp upon it, you did not feel bound to honor the stamp? A. I will get you a copy of
1422 that letter.

Q. Did you write them? A. We wrote a letter to them, but I do not know what the contents of the letter were.

Mr. Weisman: I would like to get through with this batch of exhibits before the adjournment, so we can go to something new after the adjournment. It is now 12.30, but I would like to run on for about ten minutes.

Examiner Bennett: Proceed.

Mr. Weisman: One moment.

(There was a discussion off the record.)

By Mr. Weisman.

Q. With regard to Commission's Exhibit No. 302, I notice there is an "A" on here, but I do not know whether it is an "A" and "B" exhibit or not. Did the order upon which or by which the merchandise therein referred to was ordered have the stamp upon it? A. I believe it did.

Q. You accepted the return of that? A. Yes, sir, we did.

Q. Did you write to Rubenstein advising her that notwithstanding the terms of this stamp, you were not going 1424
to accept the return of it? A. I had quite some argument with the local office representing Rubenstein on that return.

Q. Did you write them? A. We took it up with the buyer, with the local resident buyer that represents that firm in connection with that return. We refused to accept that return, but they told us we would just have to take them in.

Q. The order upon which that was placed had the stamp upon it? A. I believe it did.

Q. I show you Commission's Exhibit 303, being——

Mr. Weisman: I find here Commission's Exhibits Nos. 303-B and 303-C, but I do not find 303-A.

Mr. Haycraft: That is the order itself. 1425

By Mr. Weisman.

Q. With regard to this transaction from Frank & Seder, reference to which is made in Commission's Exhibits Nos. 303-A, B and C, did the order which called for these goods have the stamp placed upon it? A. May I see the correspondence to refresh my memory?

Q. Yes. A. (Witness examines the document.) May I see the other two?

Q. Yes. A. I am not sure whether the stamp was on this order. I believe it was, but I am not certain of it. I am not sure about this order.

Q. You are certain you accepted the return of the merchandise? A. Ultimately we took it back.

Q. So that you would accept the return of merchandise upon the request of Frank & Seder whether or not the order had the warranty clause on it? A. No.

Q. Is that correct? A. No.

Q. You have just testified that you did not know whether
1427 the warranty—whether the order had the warranty stamp on it or not, and— A. (Interposing) Answering——

Q. Just a moment; let me finish my question. A. O.K.

Q. But you were certain you accepted the return. Therefore I ask you if it is not a fact that you would have accepted the return irrespective of whether or not the order contained the warranty clause? A. At this time I do not recall whether that order had the warranty clause on it or not.

Q. But you do recollect that you accepted the return of the merchandise? A. I say I am not even certain about that particular instance, whether we took it back or not.

Mr. Martin: I think we should refer to what is in evidence to see what he did say about that.

1428

By Mr. Weisman.

Q. I will find it out from the witness. Did you state to me a moment ago that "ultimately we took it back"? I believe those were your exact words—that you were certain you accepted the merchandise therein referred to. in any event. A. Well, I think I would like to have the answer read in regard to that.

Q. I am just asking you whether or not you said that? A. I said I was not sure.

Mr. Weisman: Let us see whether you did or not. May we have the question and answer read, your Honor?

Examiner Bennett: Yes.

(Question and answer read.)

By Mr. Weisman.

Q. Why are you certain? You just said you "ultimately took it back." A. I believe we ultimately took it back.

Q. You did not say you "believed" before. A. I said before I had in my mind that possibly we took it back. 1430
I think I said that I believed we ultimately took it back.

Q. You think the Reporter made a mistake? A. No. I do not think he made a mistake.

Q. The Reporter's record is you said you believed you took it back. A. Well, I tell you now I believe we took it back, but I am not certain of it.

Q. Now, tell me about the order, did you also and do you also now believe that the order had the warranty stamp on it? A. I do not recall that one way or the other at this time.

Q. Would you have taken the merchandise back if the order did not have the warranty on it? A. I do not know whether I would have done so at the time.

Q. That is the best answer that you can make? A. Yes, 1431
sir.

Q. Earlier, with regard to these exhibits you made the statement that the buyer for Jordan-Marsh told you that notwithstanding the fact that the stamp was thereon, you could disregard it? A. I did not say that.

Examiner Bennett: It is now 12.40. We will take a recess until 2 o'clock for lunch.

(Whereupon, at 12.40 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION

Examiner Bennett: The witness has not come. I presume he understood he was not through.

Mr. Seidman: I think Mr. Weisman asked him to get certain papers.

The Witness: I am sorry if I kept anyone waiting, your Honor.

Examiner Bennett: All right. Be in order, please. You may proceed.

By Mr. Weisman.

1433 Q. Mr. Hirsch, in your testimony this morning, you stated that certain of the buyers told you that you could disregard the stamp, that they wanted the stamp on the orders for merchandise; is that correct? A. That is correct.

Q. Did all of the buyers tell you that? A. No.

Q. Or only some of them? A. Just a couple.

Q. Who were the buyers that told you that? A. I would not like to mention the names, it might be betraying confidence, it might be betraying a person in a subordinate position who might be jeopardized with the firm that they were working for.

Q. They had authority to give you these orders, did they not? A. Yes, sir.

Q. Now, I want to know who were the people who told
1434 you that, although they had power to give you these orders, that you could disregard the context of the order?

Examiner Bennett: I will advise you to answer. I say, I advise you to answer. That is a proper question.

A. A buyer——

Examiner Bennett: Of course, if you decline, why, the matter can be stricken from the record.

The Witness: I did not get that, your Honor?

Examiner Bennett: I say, I advise you to answer.

The Witness: To answer, yes.

A. The buyer of Kirby, Block & Fischer.

Q. What is the name of the buyer for Kirby, Block & Fischer that told you that notwithstanding the fact that this order had this warranty stamp on it you should disregard it? A. Mr. Herman Levine.

Q. Mr. Herman Levine? A. Yes.

Q. Is Mr. Herman Levine still with Kirby, Block & Fischer, to your knowledge? A. Yes, sir. 1436

Q. Now, who else told you that? A. Miss Dunkleman of Weil & Hartman.

Q. Where is Kirby, Block & Fischer located? A. 128 West Thirty-eighth Street.

Q. Where does that buyer—what is the name? A. Levine.

Q. Where does that buyer Levine make his office? A. With Kirby, Block & Fischer.

Q. As to the second concern that you have mentioned, where is their office? A. 128 West Thirty-first.

Q. What was the buyer of Weil & Hartman's office that told you that your company could disregard the warranty; what was the name? A. Miss Dunkleman.

Q. Do you know Miss Dunkleman's first name? A. 1437 Lola.

Q. Lola Dunkleman. What is some other buyer's name?

Mr. Ballon: Your Honor, just a moment, before this line of interrogation proceeds any further, may I have an opportunity to consult with the witness with regard to his rights on this particular subject?

Examiner Bennett: Yes.

Mr. Weisman: May my exception be noted on the record, that I object to counsel privately consulting with the witness while he is under cross-examination.

Examiner Bennett: Yes.

Mr. Weisman: And I submit——

Examiner Bennett: Yes—well, he is not counsel for the Commission.

Mr. Weisman: Well, he is counsel for the witness.

Examiner Bennett: Yes.

Mr. Weisman: And I submit I am entitled to
1439 interrogate the witness on so vital a question of veracity as this without giving him the benefit of counsel.

Examiner Bennett: All right, he may have the benefit of counsel; go ahead.

Mr. Weisman: May I then make the further request that any conference between this witness and this lawyer be on the record so that the Commission may see the subject matter of this colloquy in the midst of my examination?

Mr. Ballon: I would be glad to make that public.

Examiner Bennett: All right.

Mr. Weisman: All right. Go ahead.

Examiner Bennett: All right. You may do so.

1440 *By Mr. Ballon.*

Q. Mr. Hirsch, I just want you to be fully cognizant of the possibility of jeopardy you place yourself in by mentioning the names of these people on the record, not from a technical viewpoint, but rather from an economic viewpoint, in so far as it may result in repercussions in the future. I want you to be presented with the full extent of the consequences——

Mr. Weisman: May I interrupt just a moment. Now, I submit from the statement of counsel made thus far, it is perfectly apparent that such statement is entirely improper, extra legal, is not the proper subject matter for legal advice, that any witness who tenders himself, or is tendered by the Commission, is sworn to tell the truth and cannot find recourse in the statement that the truth if further pursued might do him injury in his business. He should have thought of that when he made the first statement.

Examiner Bennett: Yes. Well, I, of course, overrule your objection. I will let his counsel con- 1442
tinue with giving him advice if he thinks it necessary.

Mr. Ballon: Thank you, sir.

Just one further admonition, Mr. Hirsch, that is, from the legal aspect. It is very possible that you might leave yourself vulnerable to a suit for damages in a civil suit, by reason of your mentioning the names specifically of buyers who thereafter might be discharged by their employers and institute suit against you.

I do not intend to pass judgment on the merit of such a case, I am simply wanting you to bear that in mind as an additional factor to be considered by you if you mention the names of these buyers.

The Witness: May I answer? 1443

Mr. Ballon: No.

Mr. Weisman: No.

Examiner Bennett: No, that is not necessary.

The Witness: That is what I meant before.

Examiner Bennett: You are simply getting the advice of your counsel.

The Witness: I understand that. I did not mean answer——

Examiner Bennett: You will be guided by that or by the advice of the——

The Witness: That is exactly what I meant when I made the remark before, when I objected to making the statement when you ordered me to.

Examiner Bennett: All right.

By Mr. Weisman,

Q. What other buyers did you receive instructions from that notwithstanding the fact that these orders that they were tendering you contain this warranty clause, that you might disregard them? A. In view of my attorney's ad-
1445 monition, I would like to consult with him before I give you any additional answers on that.

Mr. Weisman: I ask that the witness be directed to answer.

Examiner Bennett: I have advised him that if he remembers others to give the names, that is the——

Mr. Weisman: The Court has directed you to answer.

Examiner Bennett: The Examiner hasn't any jurisdiction.

The Witness: I don't remember of any of them.

By Mr. Weisman.

1446 Q. You don't remember. A moment ago before your counsel—. A. No.

Q. —made that admonition to you—. A. No, sir.

Q. Are you truthful in your statement that you don't remember? A. That is correct.

Q. And that is the best answer that you can give? A. That is right.

Q. All right. We will see whether we can refresh your recollection. But you are certain that these two people did give you that information? A. That is right.

Q. Did any buyer representing Frank & Seder tell you at any time that you could disregard the warranty stamp? A. No, sir.

Q. Did any buyer representing the Kresge Department Store tell you at any time that you could disregard the warranty stamp on the orders that they were placing with you? A. I don't remember.

Q. Who is the buyer for the Kresge Department Store? A. I don't remember. My brother waits on them.

Q. How much business did you do, do you do, with the Kresge Department Store, a year? A. Not very much.

Q. Well, how much would you say? A. Two thousand dollars.

1448

Q. Two thousand dollars a year or a season? A. A year.

Q. And you want to tell us at this time that you do not remember the name of the buyer for the Kresge Department Store? A. That is right. I don't do—I don't do very much of the selling; my brother looks after that.

Q. I do not ask you that. I ask you whether or not you do not remember the name of the buyer? A. It may—I believe it was Mr. Phillips.

Q. Did Mr. Phillips at any time tell you that notwithstanding the warranty stamp on these orders, that you could disregard them? A. He did not.

Q. You are certain as to that? A. That is right.

Q. Who is the buyer representing the Leah Rubenstein shops? A. Kirby, Block & Company, Herman Levine, the gentleman I spoke to you about before.

1449

Q. Who is the buyer representing the Palace of Kansas City, Mo.? A. May I look at the order? I will refresh my memory as to whose office that is (counsel hands exhibit to witness). A. It is one of the offices, and I do not remember which one it is.

Q. Would you say that the buyer for that concern advised you to disregard the warranty stamp on the order? A. I can't say that they did. I don't know.

Q. Well, then, would you say that they did? A. I don't know who the office is that bought it; I don't remember.

Mr. Weisman: Then at this time I move that this witness' testimony with regard to Frank & Seder, the Kresge Department Store, and the Palace Clothing Store, that he was advised by the buyers to disregard the warranty stamp, be stricken out.

Examiner Bennett: Well, I think that he did not so testify. I think his testimony was that some of the buyers——

Mr. Weisman: Well, that——

Examiner Bennett: ——and he has met that situa-
1451 tion.

Mr. Weisman: All right.

By Mr. Weisman.

Q. Who is the buyer for Carson, Pirie, Scott & Company? A. Mr. Brown.

Q. Where is Mr. Brown's office? A. Chicago.

Q. Where did he come to buy? A. At our place of business.

Q. The sale was transacted at your place? A. Yes, sir.

Q. And there consummated? A. That is correct.

Q. And you there saw him? A. I saw them there, yes.

Q. Did Mr. Brown of Carson, Pirie, Scott & Company tell you to disregard the warranty stamp on his order? A.
1452 He didn't tell it to me.

Q. Who is the buyer for Kline's, St. Louis, Mo.? A. I forget her name; she is in the New York office.

Q. What New York office is she in? A. Kline's Service Company, West Fortieth Street.

Q. What was her name? A. I don't remember.

Q. Did she tell you to disregard the warranty stamp even though it was placed on the order? A. I did not wait on her; my brother did.

Q. Well, did your brother say to you, in words or substance, that she had told you that you might disregard this warranty stamp? A. No, he did not.

Q. Did you ever get any information, then, with regard to Kline's buyer that they were placing this stamp on their orders that you might disregard it? A. I did not.

Q. Who is the buyer for Snellenburg & Company? A. Miss Goldsmith.

Q. With what office is Miss Goldsmith located? A. L. Snellenburg & Company.

Q. They have a New York buying office? A. No, they have not.

Q. Did you see— A. They may have. I don't think 1454
they have.

Q. Did you see Miss Goldsmith when you obtained this order? A. My brother waits on her.

Q. Where was she waited on? A. In New York at our place.

Q. She there gave the order? A. Yes.

Q. Did you ever hear from anybody that she had stated to your brother, in words, or substance, that you could disregard the warranty? A. No.

Q. Who is the buyer for Marshall Field & Company? A. I don't recollect.

Q. You don't remember the buyer from Marshall Field & Company? A. That is correct; my brother waits on her.

Q. Do you know her name? A. I don't at this time.

Q. Will you find it out for us tomorrow? A. Absolutely 1455
(Witness makes note).

Q. Did your brother ever tell you, in words, or substance, that the buyer from Marshall Field & Company had stated that you might disregard this warranty appearing on their orders? A. No, he did not.

Q. Who is the buyer for Jordan Marsh & Company? A. Miss Gateley.

Q. Did you see Miss Gateley? A. I may have seen her, but I don't wait on her; my brother does.

Q. Where is she waited on? A. In our place of business.

Q. That is where you also make your office? A. That is correct.

Q. Did your brother ever tell you, in words or substance, that Miss Gateley, or anyone else acting for and on behalf of Marshall Field & Company, has stated that you might disregard the warranty? A. He did not.

Mr. Weisman: I mean Jordan Marsh.

The Witness: Whether my brother stated it to me, you are asking?

1457 *By Mr. Weisman.*

Q. Yes, or anybody else? A. No, he did not.

Q. Now, of all of the people that you did business with, the only ones whom you can remember, as having stated to you that you could disregard this warranty, were the two you have mentioned? A. When I say disregarded, there may have been others that told me "Just forget about it."

Q. Well, who? A. If that is what you mean by disregard, forget about it, forget to put the stamps on.

Q. Who told you that you could just forget about it? A. I gave you the two names of the two persons.

Q. I asked you whether anybody else told you that you
1458 could just forget it? A. I can't—I can't recollect at this time.

Q. Do you remember anybody that told you that you could just forget it? A. I gave you the names of those that did tell it to me.

Q. Well, is there anyone else, that is what I am trying to find out.

Mr. Martin: Your Honor——

A. I can't remember anyone else.

Mr. Martin: I object.

By Mr. Weisman.

Q. How many customers in all, would you say, appear on your ledgers? A. Oh, I imagine a thousand.

Q. A thousand? A. I imagine so.

Q. Your do business with a thousand different concerns? A. Yes, sir.

Q. And out of these thousand different concerns but two buyers are, the sum total of your present recollection of those that told you that you could disregard the buying order? A. Excuse me.

Q. Is that correct? A. Remember that one——

Q. No, is that correct? A. One of these buyers repre- 1460
sents a hundred accounts.

Q. Which buyer represents a hundred accounts? A. Kirby, Block & Fischer represents a hundred accounts.

Q. Did Kirby, Block's buyer tell you that you could disregard this with regard to every order they placed with you, or only with regard to certain particular orders? A. It is just in reference to one particular order that I remember asking them "What is doing about the stamp?" and he said, "Forget about it."

Q. That is as to one particular order? A. That is correct.

Q. How many orders did you receive a year, would you say, from Kirby, Block & Fischer? A. Oh, in the hundreds of them.

Q. In the hundreds of them. And out of these hundreds 1461
of orders that you received from Kirby, Block & Fischer, the buyer told you that as to one particular one you could disregard the warranty? A. All he said——

Q. Is that so? A. All he said——

Q. Is that correct? A. Please.

Q. No, just a moment. A. I can't answer it that way.

Q. Well, we will try— A. If he meant forget it.

Q. Just a moment. If you won't answer it that way— A. Go ahead.

Q. —we will reduce it to a phrase in which we hope you can answer it. A. Go ahead.

Q. See whether this is correct. It is correct that you have approximately a thousand accounts on your books? A. I think so.

Q. It is correct that you can only remember two buyers that told you that you could disregard the substance of the warranty clause? A. All they said is "Just forget it"——

Q. All right, all right. A. If that means——

Q. "Forget it." We have agreed on it. A. If that means "disregarded," they said "forget."

1463 Q. "Forget it"? A. Yes.

Q. Now, you cannot remember anybody else who told you to forget it? A. No.

Q. Now, is it also true as to Kirby, Block & Fischer they represent about a hundred of your accounts? A. I dare say; yes, sir.

Q. Do you now state that the words "Forget it" applied to all of those hundred accounts, or just to the one particular account you referred to a moment ago? A. I inferred —I don't know what he may have meant, but I inferred that it referred to any orders that I might get from that buying firm.

Q. Did you ever query him further on that? A. No, sir.

Q. Now, what would you say is the total amount of business that you did in 1935? A. $578,000 approximately.

1464 Q. How many garments would you say that you shipped during the year to do that business, roughly speaking; about a hundred thousand? A. A little less than that, I suppose; I suppose eighty-five, or ninety thousand garments.

Q. Let me see. You sold your merchandise to some people for 6.75 and to others for 6.62½, you testified. A. To just a few for 6.62½.

Q. Was that 675 net or 675 gross? A. Less 8 per cent.

Q. Less 8 per cent., and 8 per cent. off that would bring the cost of the garment down to about 612; is that right? A. 62.

Q. 621 from 662? A. No, from 675.

Q. Ah, but how much from 662? A. Well, let us figure it out.

Q. Don't you know from your trade practices, without figuring? A. No.

Q. What your 662 garment— A. No, because it is so little I have to study it; I can tell you about 675, because that I know, but very, very little on 662.50. The way I make it, it comes down to 618. 1466

Q. You said you did a very little business at 662.50? A. A few accounts.

Q. Well, didn't you give the 662.50 business to those houses where you got the biggest volume? Wasn't that the purpose of this reduction in price?

Mr. Martin: Just a moment. I object to this, your Honor. This is not proper cross-examination.

Mr. Weisman: Here is a witness——

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: You may have the exception.

By Mr. Weisman.

Q. What was the basis of this reduction in price that you gave to some? 1467

Mr. Martin: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: We are not going into that question now.

Mr. Weisman: All right.

By Mr. Weisman.

Q. By the way, who was the buyer for the Associated Merchandising Corporation? A. Miss Dean.

Q. Did Miss Dean ever tell you that you could disregard or forget——

Mr. Martin: Just a second, Mr. Weisman. Excuse me, for interrupting. I thought you were through.

(Question read.)

By Mr. Weisman.

1469 Q. —the warranty that was on their orders? A. No.

Mr. Martin: I object to that question as being improper, and mere repetition. He has asked him two or three questions——

Mr. Weisman: I am going to find out——

Mr. Martin: Just a second.

Mr. Weisman: Pardon me.

Mr. Martin: He has asked him three or four times and the witness has definitely stated the names of all buyers who told him that statement. Now, he keeps asking him the same question.

Mr. Weisman: No, I do not.

Mr. Martin: After getting two or three answers to it, he is just asking him the same thing over

1470 again.

Mr. Weisman: I submit, now that I have a particular buyer, I can ask whether the particular buyers asked for that, as well as going down the line. We have had a lot of questions.

Examiner Bennett: I sustain the objection.

Mr. Weisman: May I have an exception?

Examiner Bennett: You have been over that. Yes, you may have the exception.

By Mr. Weisman.

Q. You did a large volume of business with the A. M. C. Stores? A. I testified yesterday that I was sorry to say that I did not do very much business with them, but I hoped to build it up.

Q. You are giving them a lot of copies.

Mr. Martin: I object to that, your Honor.

A. That is a silly question.

Mr. Weisman: Now——

Examiner Bennett: All right, withdrawn, as I understand. 1472

By Mr. Weisman.

Q. Now, tell me, who is the president of the Melba Dress Company? A. William B. Hirsch.

Q. Is he related to you? A. My brother.

Q. Who is the vice president? A. I don't believe there is a vice president—secretary-treasurer.

Q. And you are secretary and treasurer? A. That is right.

Q. And you maintain your office in New York? A. That is correct.

Q. And that is at 1395 Broadway? A. —75 Broadway.

Q. 13. How long have you had your office there? A. Four years. 1473

Q. Four years? A. Yes.

Q. That is your place of business? A. That is right.

Q. Do you have a show room? A. That is right.

Q. Where is your show room? A. At 1375 Broadway, on the ninth floor.

Q. Do you make up a catalog? A. I beg your pardon, on the third floor we are now; we were on the ninth floor.

Q. I see. Do you make up a catalog of your styles from season to season? A. Catalog? We issue a circular once in a while.

Q. Now the merchandise that you received the return of from Leah Rubenstein, was by order placed with you by Kirby, Block & Fischer; is that correct? A. Correct.

Q. And Kirby, Block & Fischer's place is where? A. 128 West Thirty-first.

Q. Did you go to Kirby, Block & Fischer's office? A. My brother takes care of that office.

Q. Well, did they come to you or did you go to them? A. Oh, we go to them pretty often to solicit business, but they
1475 usually come up to our place to place the orders.

Q. So that— A. Sometimes——

Q. So that you are not certain whether the order was placed in your office or in their office? A. This particular order?

Q. Yes. A. Might have been placed down there——

By Mr. Weisman.

Q. Now, with regard to Jordan Marsh Company, Massachusetts, referred to in Commission's Exhibit 276-A, did you receive that order in New York City; in your New York City show rooms? A. Yes, sir.

Q. You received it from the hands of the buyer? A. I believe so.

1476 Q. Was the same true with regard to Commission's Exhibit No. 295? A. I believe so.

Q. Is the same true with regard to Commission's Exhibit No. 293? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 286? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 292? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 276-A? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 298? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 297? A. I believe so. You are referring, of course, to the orders?

Q. Yes. A. This refers to?

Q. Yes. A. Yes.

Q. Was the same true with regard to Commission's Exhibit No. 296? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 300? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 299? A. I believe so. 1478

Q. Was the same true with regard to Commission's Exhibits Nos. 303-A, B, and C? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit Nos. 301-A and B? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 302-A? A. I believe so.

Q. As a matter of fact, you take and receive all of your orders in your show rooms, like any other New York City manufacturer? A. Excepting re-orders.

Q. Yes? A. Which do come in by mail at times.

Q. Well, I believe you also testified that you made about 85,000 garments in the year 1935? A. That is right.

Q. And you also testified, did you not, that about four per cent. were returned in August, 1935—no, that was the percentage—is that so? A. Let me get my data out, please 1479 (referring to papers).

Q. I will read from the record, if it will help you. A. I have it here. In August of 1935, 4 per cent., approximately 4 per cent., within a very small fraction, was returned, of the sales.

Q. Now, you also testified that your returns were due to late deliveries, imperfections in materials, and cancellations? A. That is correct.

Q. Now, in the month of August, 1935, did you receive the return of any of your merchandise by reason of Guild complaints? A. Not much in August, 1935, if any.

Q. Did you receive any? A. I can't say that at this time; I don't know.

Q. Now, you further testified that in 1935, your returns were 6 per cent; is that correct? A. In 193—in September, you mean?

Q. Yes. A. In September of 1934 they were 6 per cent. and September of 1935 7 per cent.

Q. In 1935, September, 7 per cent.? A. Right.

Q. What is 7 per cent. of your total number of units?
1481 How did you arrive at 7 per cent.? A. From my total amount in dollars and cents of what were shipped, the total amount in dollars and cents of what was returned, giving me the percentage of 7 per cent.

Q. Do you know how much of that 7 per cent. return was due, if any, to Guild complaints? A. Probably a half of one per cent., or three fourths of one per cent.

Q. Well, let us see. You shipped about 85,000 garments; is that correct? A. When? Are you referring to the month of September, 1935?

Q. During the year, how many garments did you ship? What were your total shipments in September, 1935? A. $77,799.32.

Q. Well, that would be approximately 12,000 garments; is that correct? A. That is right.

1482 Q. And 7 per cent. of 12,000 garments would be how many garments? A. 840—wouldn't it?

Q. That is right. Now, do you state that of the 840 garments that were returned, 50 per cent. of the said returns, or a total of 420 garments were——

Mr. Martin: I object.

A. No, I did not.

Mr. Martin: I object to that; the witness did not testify.

Mr. Weisman: I have not finished. If he did not so testify, say no. You don't have to object. Let us see.

Mr. Martin: I object on the ground it is a misleading question.

Mr. Weisman: What is that?

Mr. Martin: I say, I object to that on the ground——

Mr. Weisman: Nothing misleading about it. I asked him if that was a fact, or if it was not.

Mr. Martin: He testified—— 1484

Mr. Weisman: Let us see.

By Mr. Weisman.

Q. Didn't you testify in answer to my question that in your opinion 50 per cent. of the returns in September, 1935, were due to Guild complaints? A. Of course not.

Q. Well, what did you say about the Guild complaints? A. I said that the increase in percentage of returns from the year 1935, for September, 1935, as compared to the month of September, 1934, which was 1 per cent. of the—in proportion of the returns to the sales, about three fourths of that would be due, the difference would be due to the Guild's activities in urging customers to return it. In other words,——

1485

Q. Well, didn't you— A. —if in September, 1935——

Q. All right, I follow you. A. O.K., then. If you want me to call——

Q. What would that be in numbers? A. We got back approximately 800 dresses

Q. No, 840, on your own statement. A. Say 840 dresses; I haven't got the exact figure, except in dollars and cents. 840 dresses, 1 per cent. of that.

Q. One per cent. of that would be 84, wouldn't it? A. No, one per cent. is eight.

Q. Oh, eight? A. Eight dresses.

Q. So that it is your statement that due to the activities of the Guild, in September, 1935, you got four more dresses back than you got in the prior year; is that right? A. I cannot say exactly, but I believe it is more than eight dresses.

Q. What? A. I believe it is more than eight dresses.

Q. You just testified it is half of one. A. All right, would be eight dresses, let it go at that.

Q. That would be a 4 per cent. A. I said about half to
1487 three fourths of one per cent.

Q. And half of three fourths was from four to six. A. Oh, it is conjecture, anyway.

Q. Oh, this testimony of yours as to the effect of the Guild's program upon your returns is conjecture, is it? A. No, it is based upon——

Q. Didn't you say a moment ago it was conjecture? A. I said 1 per cent., there, it is a difference, out of 850 dresses, whether I get back two dresses, four or five less, I mean after all you can't pin it down to that specific amount.

Q. Didn't you keep a record of the returns you got back by reason of the Guild complaints? A. I did not.

Q. You have no record? A. I have a record of exactly what the reasons for the returns are, explaining in those
1488 particular instances where we have taken out these Guild complaints.

Q. In other words, the only record that you have of returns due to the Guild's activities are the records that you produced today? A. Not at all. There may be——

Q. What other records have you? A. There may be duplicates, there may be similar complaints, rather, similar returns made. When Mr. Ballon asked me to prepare and get out some of these returned slips from our customers

which were returned, representing merchandise that was returned, because of the Guild's activities, within a short time we got him out some of these complaints. Whether they represent all that I have got, I cannot say at this time, I am sure they don't. There must be a lot more.

Q. Well, can you, with any degree of certainty, tell us of these returns that you had in September, 1935, how many of them were due to late deliveries? A. I cannot, with any degree of certainty tell you that, no.

Q. Can you, with any degree of certainty, tell us how many of them were due to imperfection in materials? A. With a degree of certainty, I can't, no.

Q. Can you, with any degree of certainty, tell us how 1490
many of these returns during the month of September, 1935, were due to cancellations? A. No, sir; I cannot with a degree of certainty.

Q. Now, in the month of October, 1935, you stated that your returns went up 1 per cent. against 1934? A. Correct.

Q. What was your total volume in October, 1934? A. In dollars and cents?

Q. First in dollars and cents. A. $54,904.49, shipments.

By Mr. Weisman.

Q. What was your total volume in October, 1935? A. $70,004.38 and—that is the sales—and $7,272.23 returns.

Mr. Weisman: I move to strike that out. I did 1491
not ask the witness anything about returns. It was just a voluntary contribution, and I do not care for it.

Examiner Bennett: You want to strike out the latter part of the answer?

Mr. Weisman: Yes, sir. I asked him what his volume was, and I did not ask him anything about returns.

Examiner Bennett: It may be stricken.

By Mr. Weisman.

Q. How many garments would you say that that represented? A. The net sales or the gross sales or the returns or the sales, or just what do you want?

Q. Do you remember the question that I first asked you? A. You asked me to give you the total amount of sales which was $70,000 odd dollars, which represented about——

Q. Is that all I asked you? A. No, and that you——

Q. You went too far—you only had to repeat my question, to— A. Well, I am just trying to give the facts.

Q. You will not have to repeat my question if you will
1493 just answer the question that I ask you. Please do not go beyond that. It is quite unnecessary. A. I am seeking to give the facts as I have them. You did not tell me you only wanted the sales, or just what you did want. I did not know whether you wanted the sales or returns or when or how or just what you wanted.

Q. I only wanted what I asked for. I only asked you for that one thing, did I not? A. Yes, I guess you did.

Q. How many garments would you say were returns? A. Do you want me to tell you how many garments there were?

Q. Yes. A. There were about 10,500.

Q. How many garments would you say were returns of that group?

1494 Mr. Martin: For what period?

Mr. Weisman: The period we are addressing ourselves to, namely, October, 1935.

A. About 1,100 garments.

Examiner Bennett: I think you have now got to let in all of the other things which you asked be stricken out. In other words, you asked that certain things be stricken out, and in view of your latter questions just asked, I think it should be in.

Mr. Weisman: I think they are all subsequently in the record. The reason I asked that they be stricken out was because they were not responsive to the question.

Examiner Bennett: I know, but you have not established that anywhere. I think they have been stricken out of the record. By asking these extra questions I do not think you have stated all of them.

Mr. Weisman: I think so, your Honor.

Examiner Bennett: I will withdraw my ruling on those two things and let them stand. Go ahead with your examination.

By Mr. Weisman. 1496

Q. How many garments did you say were returned in October, 1935? A. About 1,100.

Q. Of those garments that were returned can you tell us with any degree of certainty how many of them were returned because of late deliveries? A. No.

Q. Can you tell us with any degree of certainty how many of them were returned by reason of imperfections in materials? A. No.

Q. Can you tell us with any degree of certainty how many of them were returned by reason of cancellations? A. No.

Q. Would the same thing be true with regard to the month of November, 1935? A. Yes.

Q. Now, would the same thing be true with regard to the month of December, 1935? A. Yes, sir. 1497

Q. Do you know as a matter of fact whether any dresses were returned to you during the month of December, 1935, because of a complaint of the Guild? A. There were dresses returned. I do not know the specific cases, but I know they were returned in December.

Q. What fixes in your mind that during the month of December, a year and approximately seven months ago,

there were returned to your dresses because of activities of the Guild? A. Oh, no, it is not a year and seven months at all. It is just seven months.

Q. Seven months; I beg your pardon.

Mr. Martin: It is only seven months.
Mr. Haycraft: Seven months.
Mr. Weisman: I know, I know, I know.

A. Now, I have not finished with your question. I should like to finish it.

By Mr. Weisman.

1499 Q. Yes. A. Because from August, commencing 1935 until the Guild—until the Federal Trade Commission had charged the Guild with being a combination, and so forth and so forth, every month we were getting some returns on account of their activities. I am sure of that.

Q. How do you account for the fact that you have not produced a single piece of evidence here showing any returns subsequent to November, 1935? A. I believe it was in November, 1935, that Mr. Ballon asked me to get him together all of the data with attendant papers with which to file our complaint about the Guild with the Federal Trade Commission, and of course I could not give him any subsequent data which we received.

Q. Do you not know as a matter of fact that there was
1500 no merchandise returned to you subsequent to November, 1935? A. That is not the fact in my opinion.

Q. Will you examine your records between now and tomorrow and see if it is not a fact exclusive of what your present information or your present opinion may be? A. Yes, I shall be glad to do so.

Q. And if you find it to be a fact will you tell us so? A. Yes, I shall be glad to do so.

Q. At the opening of the examination yesterday, Mr. Martin asked you whether you remembered— A. I beg your pardon.

Q. I will go to this first and we will come to that later on. At the very opening of the examination yesterday Mr. Martin asked you whether or not you appeared here pursuant to a subpoena. A. Yes.

Q. Do you remember that question? A. Yes.

Q. You answered bravely "Yes." A. I answered that "yes," whether it was bravely or not I do not know. What do you mean by that?

Q. I just did not want you to give us the information that you would not appear here if you had not been subpoenaed, served with a subpoena unless that is so. Is that so? 1502

Mr. Martin: I object. Improper cross-examination.

Mr. Weisman: May I ask the questions? In the first place, I would like to know the purpose of this objection.

Mr. Martin: Certainly. I object as improper cross-examination.

Mr. Weisman: Why do you ask the question then of the witness on direct examination? Just let me read this question to your Honor which appears at page 487 of the record.

Examiner Bennett: I remember the question very well. I will overrule the objection. Proceed. 1503

By Mr. Weisman.

Q. You did not need a subpoena to come here, did you? A. If the Federal Trade Commission had asked me to come whether by telephone or subpoena or otherwise, I would have been here.

Q. As a matter of fact, you just stated a few moments ago that you were one of those which you said initiated the complaint against the Fashion Originators Guild of America, Inc. A. Yes.

Q. You have always been ready to place all of your documents and records and information in the hands of the Federal Trade Commission? A. Of course.

Q. If you thought it would aid your complaint against the Fashion Originators Guild of America? A. Yes.

Mr. Weisman: May I have Commission's Exhibit 93-A?

Mr. Martin: Here they are, Mr. Weisman.

1505

By Mr. Weisman.

Q. Did I understand you correctly to have testified yesterday that with regard to Commission's Exhibit 93-A, that you did business with approximately 70 per cent. of the people listed therein? A. Those are the buying offices; these are the buying offices?

Q. Yes. A. Yes.

Q. These offices are all located in New York City? A. Yes.

Q. Did I further understand you to say that approximately 50 per cent. of your business is done with that 70 per cent. of the people appearing on this list? A. No. Approximately 80 per cent.

1506 Q. Approximately 80 per cent. of your business is done with that 70 per cent. appearing on this list? A. Yes.

Q. Just look over this list a moment and see whether by looking over this list your memory will be refreshed so that you can tell us whether or not any of the people therein mentioned told you that you could disregard the warranty stamp appearing on the order?

Mr. Martin: Now, if your Honor please, he is going into that again. He has gone into that at

length one or two or three times already before, and the witness has testified as to that and told him just whom had told him that he could disregard this stamp and everything about it.

Mr. Weisman: He did not tell me all. He said he could not remember all of them.

Mr. Martin: I object to any further questioning along this line.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception. I should like to urge upon the Court the fact that this witness testified he did not remember any more that occurred, at the moment—he did not say that that was all. If he 1508
said that that was all, I think that my friend could be correct. I am showing him a list which he says comprises the people with whom 80 per cent. of his business is done, and I would like to know if after looking at this list of people his memory is refreshed.

Examiner Bennett: The ruling will stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Going back for a moment to these returns— A. Yes.

Q. —in total I take it that you had returns in your business during the month of October, 1935, to the number of about 840; is that correct—I mean for August, 1935. A. 1509
No, I think you have got that wrong. I think that that was September, because returns were in all about 400 garments.

Q. August, 1935? A. Yes.

Q. August, 1934, about how many? A. August, 1934, there were about 500—to be exact, 475.

Q. 475? A. Yes.

Q. When? A. In August, 1934: the returns were greater in August, 1935.

Q. Were they also—I withdraw that. Was that during that month and up to that time— A. What do you mean by that?

Q. During that month and up to that time you had suffered no injury from the Guild activities? A. Very little.

Q. None according to your own statements? A. None as far as these returns are concerned.

Q. You do not mind telling that if that is a fact? A. No.

Q. That is the fact, then, is it not, that it should be "no"? A. What do you mean by that?

Q. Then, the answer should be no? A. Well, not ex-
1511 actly, because it cost me a lot of money, now, prior to that trying to knock out the Guild's activities with reference to the amendment to the N.R.A. Code at the time, that cost me money. If you say the Guild's activities did not cost me money you are wrong. It did cost me money prior to that time.

Q. You mean the injury and detriment that you say your business suffered. In fixing the injury and detriment you ascribed prior to that time, you ascribe such sums as you spent to appear in Washington to oppose the Guild program before the N.R.A. Administration? A. Only.

Q. Only. A. Up to and including August, 1935, the Guild's activities in that connection cost me a good deal of money to oppose in an effort to defeat their amendment before the N. R. A.

1512 Q. August, 1935? A. That is right.

Q. After August, 1935, and in September, 1935, I think the total number of returns was what—840? A. November, 1935, no, it could not be that. The returns for September, 1935, were $5,369.00, which would bring it out—let me see—it would be about—yes, that is correct. 840 is right.

Q. 840? A. Yes.

Q. I understood you further to have testified that what percentage of that 840 did you say were due to Guild activities? A. One per cent.

Q. You did not know—I withdraw that. Did you ever go to the Guild to complain about these alleged activities? A. I was asked to come there but I would not go there.

Q. You would not go there but you were asked to go there? A. Yes.

Q. And your reply was you would not go? A. Right.

Q. Were you asked on more than one occasion? A. I can remember just on one occasion.

Q. You knew you were always welcome to go there? A. I was asked by Mr. Post to come over there, or by Mr. 1514
Goldston.

Q. Were you not asked by Mr. Post and by Mr. Libby? A. I remember being asked by Mr. Goldston only. I do not remember Mr. Libby.

Q. Don't you remember that with regard to—I withdraw that. A. What?

Q. Drop it. Now, the only information that you had as to the Guild's activities was that which you received from others, which somebody told you; is that so? A. Received to my own business, do you mean?

Q. Yes. For example, you would get a letter from these people that this has been adjudged a copy? A. Yes.

Q. Did you ever go to the Guild and ask them if in truth and in fact they had adjudged this to be a copy? A. I told Mr. Goldston that I did not think they had the 1515
authority to tell any customers to return any merchandise to us. As a matter of fact, I told him over the telephone at the time that I intended to hold him responsible for any damage that I might sustain, or that my firm might sustain as a result of that.

Mr. Weisman: I ask that the answer be stricken out because it is clearly irresponsive.

Examiner Bennett: Beginning where?

Mr. Weisman: I ask that everything after "I told Mr. Goldston."

The Witness: Pardon me, I said that I spoke to him over the telephone. I never went to the Guild, and I stated that I never went to the Guild, but I went—I talked to Mr. Goldston over the telephone once. I believe that was my answer.

By Mr. Weisman.

Q. There is no quarrel that that is your answer. I just wanted to object to a certain part of it as irresponsive. A. Oh, well.

1517 Q. What I am seeking to elicit from you is whether or not other than the communications that you received from others such as these Commission's Exhibits Nos. 286 to No. 303, you ever received any information as to the Guild adjudging any of your dresses copies of dresses of their members?

Mr. Martin: I object to that as being immaterial.

Mr. Weisman: Of course it is entirely material to show the worth of those exhibits, that they are completely hearsay, and of no value whatsoever.

Examiner Bennett: No. They are not hearsay.

Mr. Weisman: The matter contained in them is hearsay.

Examiner Bennett: The matter contained in

1518 them is not hearsay. It is a matter of exchange in the regular course of business between business men. It is taken as meaning what it imports to mean. That is the reason it is in the record. But, I am going to let you answer the question.

The Witness: What is the question?

Q. (Question read.) A. The answer is that this list, these letters and these complaints and these notices of

returns are the information that I got, with possibly some similar information that I may have in my files as far as my business is concerned.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for 5 minutes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. Mr. Hirsch, you may resume the witness stand.

Mr. Weisman: Where is Mr. Hirsch?

Mr. Martin: He will be here in just a moment, your Honor. 1520

Examiner Bennett: Ask him to step in, please.

Mr. Martin: He is now here, your Honor.

By Mr. Weisman.

Q. What percentage of the orders that you received would you say in the month of September, 1935, had this Guild stamp upon them? A. I believe about 50 per cent.

Q. Fifty per cent.? A. Yes.

Q. Have you made any examination of your orders to ascertain whether or not that is a fair or correct estimate? A. I have not.

Q. No? A. No.

Q. Did you, pursuant to my request, bring those orders here? A. Yes. 1521

Q. I show you this batch of orders and ask you are these the orders for the month of August, 1929—I mean 1935? A. Well, that stamp started from August 29——

Q. Well, let us see whether we can get them all. A. They go down to September 3.

Q. They start from the 2nd; is that correct? A. This is August 2.

Q. What? A. This is August 2. Do you want September?

Q. I want for the month of August. A. You asked me about September.

Q. Well, start with August. A. Well, the month of August I do not believe there were very many orders placed with the Guild.

Q. What percentage would you say had the Guild stamp on them for the month of August, 1935? A. I cannot really say for the month of August.

Q. Suppose you look through these and tell us. A. I am sorry.

Q. That is all right. A. I have a lot more orders than these here.

1523 Q. This is August. A. This is from August 29; those are from No. 400 down.

Mr. Haycraft: May I suggest that the witness be allowed to withdraw from the stand in order that he may make up the calculation that counsel for the Respondent has asked him to make up. I do not think we can take up the time of this hearing for this detailed examination of hundreds of orders.

Examiner Bennett: It is not necessary to go this detailed examination at all.

Mr. Haycraft: I assumed that you were willing to permit it or I would have objected long ago. I object strenuously to it.

Mr. Weisman: Then, I think I will accept that.

1524 Will you stay here after the hearing and go over that?

Mr. Haycraft: I am objecting to the cross-examination and to the propounding of questions of this kind to the witness which would call for him to make a determination of that character, and for him to stay after hours and do all of that work.

Mr. Weisman: I do not want the record to show this necessarily, I am simply talking to this witness who is himself apparently willing to do this.

Mr. Haycraft: Yes. Leave it on the record. I am objecting to the question.

Mr. Weisman: I am not putting any question to him. There is nothing to object to.

Mr. Haycraft: I am objecting to the instructions to the witness or request which you made to the witness.

Mr. Weisman: What are you trying to do, suppress evidence that I am trying to bring in? I do not understand your objection. Just what is the basis of your objection?

Examiner Bennett: If you are going to get into that sort of a quarrel, I will sustain the objection. 1526

Mr. Weisman: I am not having any quarrel with anybody if he would just let me talk to this man. I cannot understand why he is objecting to me talking to him.

Examiner Bennett: The fact of the matter is that it is of no service to anybody to bring in a lot of documents on cross-examination. They are not, strictly speaking, something which may be marked for identification. If not marked for identification, from your own objections they could not be the subject of interrogation. If you want to have him go over his records and then come back, having refreshed his memory and report and testify to that, that is perfectly proper.

Mr. Weisman: That is perfectly correct. That is 1527 what I want him to do.

Examiner Bennett: Then let us do it that way and have an end to this.

Mr. Weisman: I will have one of my men stay with him instead of going through each one of these. That was my intention and that is what I was trying to do, and I understood the Court would permit me to do that, and cut out all of this discussion, but

Mr. Haycraft, while I was trying to do that, suddenly interrupted me, and in fact has been constantly interrupting me every time I want to ask this witness if he will do that. I cannot get anywhere with this series of useless and unnecessary objections.

Examiner Bennett: Well, I do not think that is necessary.

The Witness: I will stay here if you will stay here. You are asking me to do a terrific job here.

Examiner Bennett: Off the record. That is enough of that on the record.

1529 (There was a discussion off the record.)

Examiner Bennett: Back on the record. Continue your questions, Mr. Weisman, if you have any further.

By Mr. Weisman.

Q. Mr. Hirsch, did you, pursuant to my request, produce here today all of the orders received by you regularly in the course of your business for merchandise ordered from you from the month, and including the month of August, 1935, down to and through April, 1936? A. Not all of the orders.

Q. What orders did you bring, if any? A. Just the orders that we put on cards for future deliveries and not
1530 orders that are shipped out immediately from out of stock, or the same day, because those orders are not indexed and carded, and entered into the books, but are immediately filled and are put into our files, and it would be a terrific job to get those out within the time you allowed me yesterday to get them.

Q. What proportion of your business would you say is done through such orders as you have latterly described? A. Oh, somewhere between 15 and 20 per cent.

Q. So that you have produced here today the orders covering about 80 per cent. to 85 per cent. of the business? A. That is about right. That is about correct.

Q. Do these orders that you have produced—that is, 80 per cent. of 85 per cent—constitute a fair cross-section of your business? In other words, generally these apply to the 85 per cent. or 80 per cent. which was produced here; does that generally apply to the 15 per cent. or 20 per cent. that you did not produce? A. I believe so.

Q. So that the 80 per cent., or 85 per cent., that we have here, these give us a fair cross-section of the business you do? A. I believe it would.

Q. Have you produced the orders for the month of August, 1935? A. That percentage that you referred to. 1532

Q. The 80 per cent. or 85 per cent. A. I believe they do; yes, sir. I believe they are here.

Q. Will you look and see whether you have them before you? A. Well, these are just from August 1 until August 7. There may be more in the other files.

Q. Look and see if you have the rest of your files here.

Mr. Haycraft: I object to that as not proper cross-examination, and putting an undue burden upon the witness.

Mr. Weisman: I submit that you brought out the question of orders, and now I have a right to go through them and see what the truth is about the matter. 1533

Examiner Bennett: You can show anything you desire in the ordinary way, but you cannot show anything from those papers under objection on cross-examination.

Mr. Weisman: May it please your Honor, let me call your attention——

Examiner Bennett: I am going to rule that if there is any objection, I am going to not have them

marked for identification, and without marking them for identification you cannot refer to them.

Mr. Weisman: May I simply say this——

Examiner Bennett: One moment. You can prove what you want to prove by these orders by calling this witness as your own witness when the proper time comes. This witness seems to be willing to present these documents. When you are presenting your own case call your witness and make your witness subject to cross-examination.

Mr. Weisman: May I call your Honor's attention to the direct examination of this witness.

1535 Examiner Bennett: They put in a single one of the orders to show the type of the order. You have produced a stack of them that would keep us here for probably a month. I will not entertain it.

Mr. Weisman: I do not want to do that.

Examiner Bennett: I will not entertain it.

Mr. Weisman: May I point out to your Honor the point in the record to which I am addressing myself?

Examiner Bennett: If there is objection to it I will not entertain it. It will not make any difference what you are addressing yourself to.

Mr. Weisman: Does your Honor mean to hold that if it has been testified on direct examination that 50 per cent. of his orders have this Guild stamp

1536 on them, I may not on cross-examination produce the original orders through this very same witness and show from the originals that not even 10 per cent. have the Guild stamp on them?

Examiner Bennett: You may not. You cannot show that on cross-examination by calling for the original documents.

Mr. Weisman: I strenuously except to your Honor's rulings.

Examiner Bennett: Not under objection. If there is no objection on the part of the Commission's attorneys, if you want to remain here and go through them, you may do so.

Mr. Weisman: I asked this man to stay here, your Honor, if he would remain here tonight, and in that way we would not take up your Honor's time nor the time of the hearing. I do not want to take up your Honor's time unnecessarily. That would not do it.

Examiner Bennett: If I let the Respondent's counsel on cross-examination go over a mass of stuff like that, why, I do not know how long that would be. You should not ask for something that is utterly unreasonable. 1538

Mr. Weisman: I do not want to call for anything unreasonable. I think we can get this from the witness in 10 minutes, far less time than it takes to argue about it if he wanted to cooperate. Will your Honor for the purposes of the record let me get one month complete and then under your Honor's ruling I will stop?

Examiner Bennett: You may.

By Mr. Weisman.

Q. Will you get together all of the August, 1935, orders that you have here? 1539

Mr. Martin: I object to the introduction of these.

Mr. Weisman: I have not introduced them.

Mr. Martin: I object to instructions to the witness.

Examiner Bennett: I sustain the objection. I am not going into that mass of documents. You can go into them on your direct case when it comes. You can call this witness and contradict anything he said by his own papers.

Mr. Weisman: I wish to make this tender of proof for the record: That if the Court had permitted me to show from these original records produced by this witness for and on behalf of his firm, he would have testified for and on behalf of his firm that in the regular routine and order of business, the regular and ordinary conduct of business on behalf of his firm, if we show that his statement heretofore made that 50 per cent. of these orders contain the Guild stamp was wholly inaccurate, that an infinitesimal part of them contained such a stamp, and not 50 per cent. thereof.

1541 Mr. Haycraft: I move to strike the statement of counsel as having no proper foundation in this case. Counsel does not have any idea what they contain. Counsel does not know and he should not make statements like that when he does not know.

Mr. Weisman: Since when have you become a mind reader? How do you know what I know? How do you know what I have done? As a matter of fact, while you were sitting back there asleep in your chair I utilized the time during recess to go over these just so I could make that statement to the Court and properly. I want to say here and now that I resent the statement by counsel for the Commission that I did not know what I was talking about. I do not mind when it comes from a different

1542 source, but I do mind when it comes from that one.

Examiner Bennett: It is not necessary to argue this matter any further.

Mr. Weisman: I demand a retraction from counsel from such an improper statement.

Examiner Bennett: It is not necessary to discuss this further. The tender will stand.

By Mr. Weisman.

Q. Will you keep those records intact between now and the time that the Respondent, Fashion Originators Guild of America, Inc., will present its side of the controversy?

Mr. Haycraft: I object to a question of that character being asked of this witness on the record. If he wants to make some private arrangement with the witness that is another thing.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception. I ask off the record if he will present to the Court when our case comes up his records.

1544

Examiner Bennett: If you want that off the record, will you just ask me about it?

Mr. Weisman: I beg your pardon, your Honor.

Examiner Bennett: The Examiner will direct the Reporter when to be on and off the record. No one else will. Let us have that clear, gentlemen. Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, back on the record. Have you any further questions, Mr. Weisman?

Mr. Weisman: Yes, sir. Just one or two other questions and then I am done.

By Mr. Weisman.

1545

Q. In your business, do you keep any accurate record, or any record of any kind showing the reason for the various returns that you may have received? A. No, we do not keep a record other than perhaps the letters that we get from customers.

Q. Have you produced today all the letters that you can from customers setting forth the reasons for their returns of merchandise sent to you from the period August, 1935, to date? A. No.

Q. Have you such records and letters——

Mr. Martin: I object to that. He has already testified that he would look into his records and produce them.

Mr. Weisman: He has not. He said he would but he has not.

Mr. Martin: He has not had a chance to do so. I asked——

Mr. Weisman: What do you mean? I asked him to do that yesterday.

Mr. Martin: No. That was asked by you this morning.

1547 Mr. Weisman: Will you produce them to-morrow morning?

The Witness: Mr. Weisman, you are asking me for something I do not say it is impossible, but it is terribly harassing when you consider that we have to go through every possible folder of every customer that we have, many of them have been filed away, on the first of the year, and we will find them under three or four tables, and scattered all around. It is a tremendous task. You are putting me to a terrible task. If it is very exceptional and I must get this thing in tomorrow, I will try to do it, but you are asking me for something that in my opinion is harassing to me.

1548 Q. I do not want to annoy and harass you if such is a great trouble to you. However, I feel that I must have it. It is important to this case. I do not think it is necessary for you to bring it here unless I serve you with a subpoena, and I have not served you with a subpoena yet. So, I want to know will you bring it in without a subpoena because it is necessary, we think, for our case, and it is necessary for you to do so. It is not only necessary for our case, but it is vitally necessary, and unless we can have it with

out a subpoena I should like to know that first. A. In view of the fact that it is a tremendously harassing and terribly difficult thing for me to do, I must decline except under subpoena.

Mr. Weisman: That is all for this witness.

The Witness: Your Honor, may I say something?

Examiner Bennett: Yes.

The Witness: Your Honor, I believe in the computation of the figures and answering the percentage of returns where I stated it was 1 per cent. above, 1 per cent. of the amount of the returns as received, I did not consider the fact that it was 1 per cent. of the returns as against the sales. 1550

In the increasing returns in proportion, then, it appears to add to 16 per cent. instead of 1 per cent. on the returns themselves, because 10 per cent.—well, I will put it this way: Instead of 1 per cent. as on the returns themselves, because 10 per cent.—while the sales for the month of October, for instance 1935, were $70,000, and the returns were $7,273, the percentage of returns and sales for the month of October is 10 per cent. for 1935, and for the year 1934 it was 9 per cent., but that is the percentage above based upon the percentages of returns as against sales, but not the increase of returns against returns. It does not make 1 per cent., but it brings it up to 16 per cent. when you calculate it 1551 that way.

Examiner Bennett: That is a correction of your testimony?

The Witness: Yes, sir.

Mr. Weisman: That brings on another question.

By Mr. Weisman.

Q. Do you not also want to correct your testimony and state that you have no accurate record as to the number of returns that were due to Guild activities? A. I do not have to correct that. I stated that I have no accurate record of them.

Q. And the best you can do with regard to that is to give your guess or conjecture? A. Yes, sir.

Mr. Weisman: That is all.

Redirect examination by Mr. Martin.

1553 Q. Mr. Hirsch, you have testified that you did accept orders with the Guild stamp on them. A. Yes.

Q. Why did you accept orders with the Guild stamp on them?

Mr. Weisman: I object to that as improper redirect examination. He went into that on direct examination in this way: He was asked what prompted him to accept these orders, if your Honor will remember—of course, if your Honor wants this case tried and retried again and again with each witness, then I am quite content to do so, but I submit it is not proper redirect examination.

Mr. Martin: I think your Honor will find this
1554 is a perfectly proper question for redirect examination. He is certainly entitled to testify as to what was his motivation or what caused him to accept orders with these stamps on them.

Examiner Bennett: Overruled.

Mr. Weisman: Exception. I would like to call your Honor's attention to page 517 of the record, where these questions were asked——

Mr. Martin: That was brought out on cross-examination.

Mr. Weisman: My name is not "Martin," so it could not be brought out on cross-examination. The question asked was this:

"Q. What prompted you to make this change in that regard? Did you later accept orders with this stamp on them? A. Yes, sir.

"Q. What prompted you to make this change in that regard?"

I then objected on another ground. Now, I have to object on the further ground that this is not proper redirect examination, but was a part of the direct testimony of this witness. 1556

Examiner Bennett: Overruled.

Mr. Weisman: Exception. I further object on the ground that it is incompetent, immaterial and irrelevant and——

By Mr. Martin.

Q. Go ahead and answer the question.

Mr. Weisman: No. Do not do so until I finish my objection, irrespective of what Mr. Martin tells you to do.

I wish to make the further objection on the ground that it is incompetent, immaterial and irrelevant and that it is not in proper form.

Examiner Bennett: Overruled. 1557

Mr. Weisman: Exception.

By Mr. Martin.

Q. You may answer. A. We took the orders because we had to take them. The buyers——

Mr. Weisman: I ask that the words "We took the orders because we had to take them"—that the

words "had to" be stricken out as a conclusion of the witness and the witness be directed by the Court to state the facts and not his conclusion.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Martin.

Q. Answer the question. A. Economic necessity made it imperative for us to take the orders, because we could not get them otherwise. The buyers——

1559 Mr. Weisman: I object.

Q. Go ahead. A. The buyers would not leave them without the stamp on them and it was just a question as to whether we would go out of business or accept the orders with the stamps on them.

Mr. Weisman: Now I move that the words "economic necessity" and the words "made it imperative for us to take the orders" be stricken out as a conclusion on the part of the witness and not a statement of fact.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

1560 *By Mr. Martin.*

Q. Did you——

Mr. Weisman: I further ask that the witness be directed to testify as to what was the facts of these alleged occurrences so that we may have them with some particularity with regard to this matter.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Now, Mr. Hirsch, did the buyers of your products tell you why they had to put stamps on these orders?

Mr. Weisman: I object.

By Mr. Martin.

Q. You may answer that yes or no.

Mr. Weisman: Do not answer it yes or no or any other way until I make my objection.

I object to that on the ground that it is incompetent, immaterial and irrelevant and ask that counsel be directed not to lead the witness and that counsel be directed to ask the witness what the buyers did tell him in regard to the matter. It is perfectly obvious what the answer will be where counsel leads the witness in this fashion. 1562

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Martin.

Q. What is the question? A. What is the question?

Q. (Question read.) A. As I stated the other day——

Q. Just answer that yes or no. A. Yes.

Q. What did they say to you? A. That they had no alternative but they had to leave the orders with the stamps on them, take it or leave it. 1563

Q. Now, Mr. Hirsch, why did you accept the returned garments? A. Referring, Mr. Martin, to this group of garments that were returned on account of the Guild activities——

Mr. Weisman: I object to the witness referring to anything and ask that he be directed to answer the question the way that it is and not to refer

to anything else. If he does not understand it he should state that he does not understand

Mr. Martin: I will reframe the question.

By Mr. Martin.

Q. Why did you accept garments which were returned you because it was claimed that they were copies of Fashion Originators Guild of America, Inc. garments I had no alternative in the matter. It was either a question of going out of business or not. In fact, it was a question of getting into a fight with my customers antagonizing them or taking it. I just could not
1565 myself because we cannot afford to antagonize our

Mr. Weisman: I ask that the latter part of answer be stricken out as irresponsive.

Examiner Bennett: Will you indicate that that you wish stricken out?

Mr. Weisman: After the words "I had no alternative in the matter."

Examiner Bennett: It may be stricken. I it is quite complete up to that point. I think fact, that that was answered on cross-examina

By Mr. Martin.

Q. Now, Mr. Hirsch, on cross-examination you s
1566 that you knew the Guild protects copies of imports. is the basis of such statement? A. These two (indic two documents).

Mr. Martin: I ask that these document marked Commission's exhibits for identificatio

Mr. Weisman: My recollection is that that of the answer was stricken out. I am urging objection. If this witness is to testify to that if my friend wants to make this witness his wi

on that issue, I have no objection to it, but I do want to call the Court's attention to this, namely, that that answer was stricken out as far as the protecting of imports was concerned. He started out to make a statement like that and the Court, upon proper application, struck that portion of it out, and in my opinion very properly.

Mr. Haycraft: I do not think he struck all of that out. He was not allowed to make an explanation of it.

Examiner Bennett: It was in yesterday's cross-examination?

Mr. Weisman: No, sir. It was in the cross- 1568
examination this morning.

Examiner Bennett: Ask him what is the basis of his statement.

Mr. Weisman: He has not answered that.

Examiner Bennett: Are you going to answer it?

Mr. Weisman: I take it that another question is being put to him?

Examiner Bennett: I will clear this up myself.

By Examiner Bennett.

Q. What is the basis of that statement? Was it advertisements or newspaper articles or something else? A. One of each, your Honor, in a memorandum, I suppose you would call it, that was sent out by the Fashion Originators 1569
Guild of America to—or a copy of the memorandum that was sent out to Mr. Bergdorf, connected with the Associated Merchandising Corporation, who gave me this copy.

Mr. Weisman: I ask the statement be stricken.

Examiner Bennett: What statement?

Mr. Weisman: Your Honor, I ask that the statement by the witness that something was sent to this third party be stricken out, as it is clearly hearsay.

This witness has no knowledge. The person to whom he refers is within the jurisdiction of the Court. In fact, he has been in the court room two or three or four days. In fact, I think he is in the court room right now.

Examiner Bennett: I will sustain the objection. I am not going to allow you to go into anything unless he knows.

Mr. Martin: I ask that these documents be marked Commission's Exhibits 305-A and 305-B for Identification.

(A mimeographed sheet was marked Commis-
1571 sion's Exhibit 305-A for Identification.)

(A clipping from a magazine was marked Commission's Exhibit 305-B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 305-A and Commission's Exhibit 305-B and ask you can you identify these? A. Identify them in what respect, Mr. Martin, if I may ask?

Q. Just what are these?

Mr. Weisman: I object to the witness saying what the documents are. The documents are not in evidence as yet. In fact, the purpose of offering any
1572 document in evidence is that the Court may say what it is, not the witness.

By Examiner Bennett.

Q. Do you know of your own knowledge what these documents are? A. Yes, sir, I do. This is——

By Mr. Weisman.

Q. Do you understand what the words mean "of your own knowledge"? A. Yes, sir, I do.

Q. Do you understand by that that the Court means of your own direct knowledge, that somebody else told you about it? A. That is what I am going to say. This memorandum that I received from him, together with a letter from the Fashion Originators Guild of America, Inc., to him, had attached to it this memorandum, and it was addressed to his firm. He is in court here right now and I will be glad to turn it over with his permission. Without his permission I would not feel justified in doing it.

1574

Examiner Bennett: I think that the party to whom it was sent is the man to put this matter in by.

Mr. Martin: Do I understand from you—your Honor talks rather indistinctly and I can hardly hear you, and I did not catch it.

Examiner Bennett: I think that if this matter was sent through this other man from the Fashion Originators Guild of America, the respondents here, that he is the man to identify it.

Mr. Martin: I understand that, but I asked —prior to that I asked the question of the witness, "You stated that you knew the Guild protected copies of imports?"

The Witness: Yes.

1575

Mr. Martin: Now I want to know what the basis of such statement is.

Mr. Weisman: I submit it is improper. The Court ruled with me that he should not state it. It went out.

Mr. Martin: That is what I did not hear and I want to get that straight. That is what I am trying to do.

Mr. Weisman: Now that you have it straight, let us go to something else.

Mr. Martin: Yes, I am going to.

By Mr. Martin.

Q. Do you know whether or not the Guild protects copies of imports?

Mr. Weisman: Objected to as calling for the conclusion of the witness and improper redirect examination.

Examiner Bennett: That comes within the re-
1577 direct examination.

Mr. Martin: I will withdraw the question if counsel objects to it. That is all.

Recross-examination by Mr. Weisman.

Q. Did I understand you to say that all of your buyers said this, "You cannot have these orders unless the orders have this stamp on them"? A. No, sir. I said that a few of the buyers have told me that.

Q. Did you on your direct examination, in answer to Mr. Martin's question, say a few of the buyers, or all of them? A. A few of the buyers.

Q. That is the best recollection of your testimony? A. Yes.

1578 Q. Now, you are certain it was only a few? A. That is right.

Q. And as to the others, that they were in the vast majority; is that so? A. That is right.

Q. Since there were only a few of them, can you remember a few of them, the very few? A. I gave you the names of two of them this morning, or this afternoon.

Q. The two buyers that you have already mentioned? A. Yes.

Q. I asked you to name the buyers with whom you discussed the orders with the stamp, and the same two are the only ones that you can remember who also said to you that they had no alternative but to put them on your orders? A: Yes, yes, if you will allow me——

Q. Answer the question. No, I will not allow you. A. Those are the two buyers, but they represent large organizations.

Q. I did not ask you that, did I? Did I ask you that? A. I tried to amplify that.

Q. You wanted to amplify the question a little, you thought you would help out the Commission a little bit? A. I wanted to explain to you and to the Federal Trade 1580
Commission that these were material customers, one of these represents at least 100 customers.

Q. You said that economic necessity made it imperative for you to accept these orders? A. Yes.

Q. What did you mean by the words "economic necessity"? A. Taking orders, do business or get out of business.

Q. You mean that these people were willing to give you these orders provided you would agree that you would not ship them any copies of dresses or garments made by members of the Fashion Originators Guild of America? A. Not at all. We had no alternative. They said, "Forget it," as I testified several times.

Q. You said only two of them told you that? A. Yes, 1581
two, who are the big ones, said "Forget it," and I forgot it completely as to all of them.

Q. What percentage of your business do you do with Kirby, Block & Fischer? A. Practically—you mean, predicated on some percentage?

Q. Would you say it would be 10 per cent.? A. I cannot say offhand, but that is a pretty good percentage.

Q. What in your opinion is a "pretty good percentage"? A. I think you hit it about right.

Q. About 10 per cent.? A. Yes.

Q. In other words, you state that your firm last year sold through the offices of Kirby, Block & Fischer approximately $58,500 worth of merchandise? A. I have not made the calculations, but I am making an approximation or a conjecture, and that would be my conjecture.

Q. You said that you did a business of about $585,000 last year? A. Yes.

Q. Do you not think that 10 per cent. of $585,000 would be $58,500? A. I am not trying to dispute your calculation as to the percentage. I am stating that 10 per cent. is a conjecture on my part which I believe to be correct,

1583 but it is a conjecture that I have not made any figure on as yet.

Q. How much business did you do with the house represented by this other buyer? A. About the same.

Q. Weil & Hartman? A. About 10.

Q. You did about 10 per cent. of your business with them? A. Yes, sir.

Q. As a matter of fact, did not Mr. Levine only require this stamp to be used on certain orders? A. The only orders that I had with Mr. Levine—first, what do you mean by that?

Q. I mean just what I said. Can't you understand that question? A. I can understand any question that is clear. Just repeat it, please.

1584 Q. As a matter of fact, I said Mr. Levine, did he not require only this stamp to be used on certain orders? A. The only conversation that I had with Mr. Levine on that matter was on the first few or afterwards—in any event, just a short time—and I said, "What is doing about this stamp?" and he said, "Forget it. They must be on the orders."

Q. Did you not tell me this morning that Mr. Levine only said you could forget it with regard to one particular

order concerning which— A. That is correct. "Forget about it," he said, and I forgot about it as to everything else then. I did not think about it in regard to the others after that.

Q. What is that? A. I said I forgot about it as to the rest of them then.

Q. Why did you ? A. I had to.

Q. When he told you to forget it as to one, you then proceeded on your own initiative to forget about it as to all of them? A. Of course, I was not going to keep questioning everybody every day, because that is what I would call antagonizing him.

Q. That is what you would call antagonizing a customer, 1586
to ask a question of him about a matter of this kind? A. Yes, sir. Certainly.

Q. Then what you meant when you said you did not want to antagonize the buyer, you meant you did not want to ask him any questions? A. I did not want to argue with him.

Q. Is asking a question or arguing a question— A. I beg your pardon?

Q. Is asking and arguing the same thing in your mind? A. I did not want to lose an order because of any argument about this stamp.

Q. Did he not give you a lot of orders without the stamp? A. I believe that every order that came in after that, practically every order had the stamp on it.

Q. Did all of the orders come through without the 1587
stamp, or do or do you not want to hedge your answer? A. I cannot say. I do not want to hedge my answer. I want to state the fact. I mean in my opinion practically all of the orders placed by them after the month of August were with the stamp, or practically all of them, and those that they did not put the stamp on, those orders that came in were forms which bore the stamp on it. They were pads that had it printed on them.

1588 *Ben B. Hirsch—For Commission—Recross.*

Q. The stamp was on there in just the same manner that the other items were on the order? A. The same as they bore everything but the writing.

Q. Just the same as they bore the rest of the printed matter? A. Yes, sir.

Q. Did they ever tell you that you could disregard the other printed matter on the order? A. I did not discuss it with them.

Q. Did you ever ask them that? A. No.

Q. I want to ask you once more what was the "economic necessity"——

1589 Mr. Martin: He says he wants to ask that once more. He has asked it once already. I object.

Mr. Weisman: Yes, I want to ask that once more for the simple reason that he did not answer that when I asked him the first time.

Mr. Martin: He answered the question, your Honor.

Mr. Weisman: No, he did not.

Mr. Martin: I object to the question.

Mr. Weisman: You have no question to object to as yet. You have not even permitted me to ask the question.

Examiner Bennett: I will let you ask your question and then he can object to it if he desires.

1590 *By Mr. Weisman.*

Q. What was the economic necessity other than the one you have already described, namely, that you did not want to antagonize them by asking them any questions, which made it imperative for you to take these orders?

Mr. Martin: I object to the question. He is just going back to what he brought out again and going over the thing again. If you will go back to his first question you will see that it is the same thing.

Examiner Bennett: Read the first question.

(Questions and answers were read.)

Mr. Martin: Your Honor, I submit that covers the situation.

Examiner Bennett: I wanted to get the record and see whether it actually covered the question he is now asking. I think that has been answered.

Mr. Weisman: I desire now to go into this further and clarify it in the record. I do not think that that is a correct, or, at least, it is not a full, statement in regard to it, and it leaves the matter in a more or less ambiguous state.

Examiner Bennett: I remember that. That was merely testing that particular statement. Now you have gone back to the original matter again. I sustain the objection to that particular question. 1592

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In August, 1935, was this economic necessity present? A. Not quite as much as it was in September, October and Novemaber.

Q. Was it present? A. To some degree.

Q. To what degree was it present? A. I cannot say. It could have been to a very minor degree. I believe it was a very minor interest at that time.

Q. Is the fact that you have looked at these orders that you have produced caused you to refresh your recollection so now you state the economic necessity in August, 1935, was very slight? A. Yes, plus the return percentage, which in August, 1935, was no greater than in August, 1934, and my general knowledge of the thing there was no great activity in August, 1935, on that. 1593

Q. Mr. Hirsch, your returns in August, 1935, bear no relation to the economic necessity for your taking these orders, the returns were uneconomic for your business,

and you stated that an economic necessity arose which compelled you to take these orders; is that so? A. I frankly do not know whether I understand that question or not. If I understand it, I think that is the same question that you asked me before.

Q. That is right. You have given a different answer now and that is why I am querying you about that.

Mr. Martin: May it please your Honor, that is a very ambiguous question, but in my opinion he is talking now about something else which he did not talk about before. He is now talking about returns. That is entirely different.

1595

Examiner Bennett: I will sustain the objection.

Mr. Weisman: I just want to go to a few more months.

Examiner Bennett: I think you have had sufficient cross-examination on this redirect. I will sustain an objection to any further recross on it.

Mr. Martin: Well, we want that motion.

Examiner Bennett: All right, sustained. It is sustained.

Mr. Weisman: All right, I want to get my questions——

Examiner Bennett: We will have to stop this examination somewhere and I think we have arrived at that point with this witness.

1596

Mr. Weisman: Well, I will except to this, your Honor.

Examiner Bennett: Yes.

Mr. Weisman: Then, in view of this redirect examination by Mr. Martin, I submit that now these orders are very material and vital; in other words, the witness has testified——

Examiner Bennett: It is unnecessary to make an argument on that.

Mr. Weisman: Excuse me.

Examiner Bennett: Mr. Weisman, those orders, we are not going to bother with those orders. Now, if you can understand that, why, I wish you would pay attention to it.

Mr. Weisman: Well——

Examiner Bennett: And you may have your exception.

Mr. Weisman: Exception.

Mr. Martin: Your Honor, please, in view of your ruling that you will not permit any further cross-examination of this witness, it now being twenty minutes past 4 o'clock, I suggest that we adjourn until 10 o'clock to-morrow morning. We would not 1598
have time to start with another witness at this time.

Mr. Weisman: Well——

Examiner Bennett: I see. Will you have another witness at that time, Mr. Martin?

Mr. Martin: Oh, yes, we will be ready.

Mr. Weisman: I would like it if the hearing could go on to-morrow morning at 10.30.

Mr. Martin: At 10.30?

Mr. Weisman: I have another piece of business that I would like to get finished in between these hearings.

Examiner Bennett: We are attending these hearings, and there isn't any disposition to shorten them on the part of the attorneys, and we will have to 1599
put in hours if we are going to have to go over and over details.

(There was a discussion off the record.)

Examiner Bennett: We will adjourn until 10:20 to-morrow morning, because counsel for the respondent has an appointment.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken until Wednesday, July 22, 1936, at 10.20 o'clock P. M.)

1600 *Saul Lieber—For Commission—Direct.*

BEFORE THE FEDERAL TRADE COMMISSION

[SAME TITLE.]

Room 901, 45 Broadway,
New York, N. Y.
July 22, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

1601

SAUL LIEBER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name, please?

The Witness: Saul Lieber.

Mr. Ballon: May I have my appearance noted as counsel for this witness personally, please?

Examiner Bennett: All right.

Direct examination by Mr. Haycraft.

1602 Q. What is your occupation, Mr. Lieber? A. Manufacturer of dresses.

Q. Are you an official of any corporation? A. President of the Noxall Waist & Dress Company, Inc.

Q. How do you spell that? A. N-o-x-a-l-l.

Q. Where is the principal office or place of business of that corporation? A. 134 West 37th Street, New York City.

Q. Where does it have its factory? A. On the premises.

Q. What items of dresses does it manufacture? What kind of dresses? A. $4.75.

Q. You mean that is the price that you receive for the garment? A. That is the price of sale, $4.75.

Q. Are those ladies' or ladies' and misses' dresses? A. Well, it is misses' dresses exclusively.

Q. To what class of trade do you sell those dresses? A. Sell to all the department stores and specialty stores through the United States.

Q. Do you have customers in every State of the United States? A. Yes, sir; I have.

Q. What is the procedure or method of sale? How do you obtain the customer, or order? A. Well, we have a showroom, the people call on us in the showroom. We also have traveling salesmen, and also have men that call on the resident buying offices, or when the buyers are in town here naturally we go and meet them at hotels and so on, look for them all over, wherever they can get ahold of them. 1604

Mr. Haycraft: Where are the exhibits?

Examiner Bennett: I want to ask a question.

Will you describe the process of your sale and shipment?

The Witness: I beg your pardon?

Examiner Bennett: I say, will you describe briefly the process of your sale and shipment of goods?

The Witness: The process of sale and shipment? 1605

Examiner Bennett: Yes.

The Witness: Well——

Examiner Bennett: What do you do?

The Witness: Well, when we get our orders, naturally those orders for merchandise are manufactured or filled against the orders, each and every one—every garment has a number, and that is the way when the merchandise comes in from

the factory, it is simply consolidated against all the orders, and then when we get an order for a single shipment we usually make that shipment. Sometimes we ship a part of an order; for instance, we have an order of ten numbers on there, we only get four or five numbers, we think it is a decent, good-sized shipment, so we make the shipment. A few days later, when we get the balance of the styles in, we ship the balance of the order.

Examiner Bennett: You ship through from New York to your customers?

1607 The Witness: We ship them through American Railway, some are sent to New York packing companies; it is according to the instructions on the orders.

Examiner Bennett: All right. Go ahead, Mr. Haycraft.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 93-A, and ask you if you have sold to any of the buying offices who are listed in that exhibit? A. We sell to a good percentage of these here offices.

Q. What is the procedure followed? Do you call at their place of business?

Mr. Weisman: Just a moment.

1608

A. Well, yes, our men call at their place of business, yes——

Mr. Weisman: Just a moment. May I ask that the question and answer be stricken out, and that the prior answer, "We sell to a good percentage," be stricken out.

I submit nobody knows what that means; your Honor might have one opinion and I another. He

shows him a paper with approximately a couple of hundred names. He says, "Do you sell to these people?" The witness says, "I sell to a good percentage."

Now, I do not know what that means.

Examiner Bennett: Will you please read the answer?

(Question and answer read.)

Examiner Bennett: Well, I will let it stand. Make it more specific; follow it up and make it more specific.

Mr. Haycraft: All right.

By Mr. Haycraft. 1610

Q. Will you indicate on that Commission's Exhibit 93-A any of the buying offices that you do not sell to, or you never have sold to?

Mr. Haycraft: I will amend the last question, Mr. Examiner, to a period from 1932 to April, 1936.

A. Well, I can safely say that we sold during that period practically to every office that we see on this, during that period.

Q. Now, then, as to the procedure followed in making sales. You said that your salesmen called on the offices of these concerns. Do representatives of any of these concerns call at your offices? A. Yes, the buyers also call at our office; yes, sir. 1611

Q. Are orders placed by those buyers? A. Orders are placed by those buyers; yes, sir.

Q. And the method you have just described a few moments ago, as to filling orders, would apply as to filling orders from these buyers? A. The same way, the same way.

Q. Do any of these buying offices represent retail merchants located in the City of New York? A. Some do.

Q. Do you know which ones do? A. There is one, Associated Dry Goods, they buy just from certain stores, like McCreery's, they buy in the city here, business is brought through their office.

Q. Well, what other one? A. Well, the majority of them are usually for out-of-town concerns.

Q. Do you know of any other of this group that buys for New York stores, exclusively? A. Well, this is not exclusively for—Associated Dry Goods is not exclusively for New York City only.

1613 Q. It is not? A. They also buy for out-of-town accounts, too.

Q. Are there any of those buyers listed on that exhibit who buy exclusively from New York stores? A. No, sir.

Q. As a matter of practice in filling orders received and accepted, listed on this exhibit, to whom you sell, where are the goods shipped? A. The goods are shipped wherever their accounts are located, those are the stores they are shipped to. Mostly out of town, every part of the United States.

Q. Now, you have said that you manufacture a $4.75 line of dresses? A. Yes, sir.

Q. How many years have you been in that business? A. Twenty-two years.

1614 Q. How long have you been manufacturing that particular line, $4.75? A. Since 1933. Prior to that I was making $6.75 merchandise.

Q. $6.75? A. Yes, sir.

Q. In the conduct of your business, have you had any dealings at all with the retail dealers who are co-operating with the Fashion Originators Guild of America, Inc.— A. (Interposing) Yes, sir; I did.

Mr. Haycraft: I have not finished my question.

The Witness: Pardon me.

By Mr. Haycraft.

Q. —in the campaign of the Guild to eliminate what is known as style piracy?

Mr. Weisman: I object to the form of the question as being an incompetent, irrelevant and immaterial qualification by this interrogator, as to the Guild's policy, calling for a conclusion of the witness obviously framed upon a conclusion of the interrogator.

Examiner Bennett: Will you read the question? (Last question read.)

Examiner Bennett: Why, the question is all right except that it assumes a foundation. I wish you would make a foundation for the question and re-ask the question. That is, if he knows anything about that campaign. 1616

Mr. Weisman: Yes.

A. Well, the only——

Mr. Weisman: No, no, the Court has just said you are not to answer that question.

The Witness: I beg your pardon.

Mr. Weisman: At the present time.

By Mr. Haycraft.

Q. Did you ever hear of the Fashion Originators Guild of America, Inc.? A. I did. 1617

Q. When did you first hear of it? A. Well, the first I heard of it was the—that it interfered with my business, was in the month of September, 1935.

Mr. Weisman: I ask that the early part of the answer be stricken; he was asked when did he first hear of it. He testified he first heard of it in the

latter part of 1935. That is the answer to the question. The rest is mere surplusage.

Examiner Bennett: All right; denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. How did it come to your attention? A. It came to my attention when the buyers used to come in and place orders, and the only way that they wanted to place orders with us, providing we will accept their orders with a stamp on that they actually guarantee that these are not—these are merchandise not copies of the Guild.

1619 Q. When was it that you first met with that? A. November, 1935.

Q. Do you have with you many orders from dealers containing that same stamp? A. Yes.

Q. Which would be illustrative of this? A. Yes, sir.

Mr. Haycraft: I ask this be marked Commission's Exhibit 306 for Identification.

(Copy of invoice from Gimbel Brothers, Pittsburgh, to Noxall W. P. Dress, 134 West 37th Street, New York City, was marked for identification "Commission's Exhibit 306.")

By Mr. Haycraft.

1620 Q. I show you Commission's Exhibit 306 for Identification, and ask you if this contains the warranty stamp you have in mind? A. Yes.

Mr. Haycraft: I offer it in evidence. This is an order from Gimbel Brothers, Pittsburgh, Pa., dated September 17, 1935.

Mr. Weisman: No objection.

Examiner Bennett: Received.

(The invoice referred to, heretofore marked for identification "Commission's Exhibit 306," was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Liebermann— A. Lieber.

Q. I beg your pardon. Mr. Lieber, how extensive was this requirement on the part of dealers in September, 1935, the requirement of putting this warranty on? A. Practically every customer that walked in that was a Guild—that joined the Guild—they would—has forced—that joined the Retail Guild or Association has forced us to accept the orders. 1622

In other words, they will not leave the orders unless they put the stamp on there.

Q. How many dealers made that requirement? A. I should safely say at least 50 per cent. of our buyers that walked into our showroom.

Q. Do you mean 50 per cent. of the buyers that walked in the showroom? A. Yes, sir.

Q. What percentage of your total sales would that be? A. Well, I should judge only—in fact, fully 50 per cent. of our business.

Q. Fully 50 per cent. of your business? A. No.

Q. Now, as a matter of practice, did you make any objection to receiving orders of that kind with that warranty on there? A. I did. 1623

Q. What was the nature of your objection? A. The nature of my objection was——

Mr. Weisman (interposing): I object to the statement as to the nature of the objection. Clearly it is an ex parte statement made at a time when we were not present and no opportunity to cross-examine on any such statement. I object to it.

We have in the record (the nature of his objection is not competent evidence at this time) the fact that he made the objection. Inasmuch as we have in the record the fact that he made the objection, obviously the nature of the objection itself is not competent evidence at this time. That is, in my opinion, an elementary rule of law.

Examiner Bennett: No. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What was the nature of your objection? A. The
1625 nature of the objection was that I have absolutely nothing to do with the Guild, and that they cannot run my business in any shape, manner or form, that it has become a memorandum business, the moment we put that stamp on there, the moment I accept an order of that kind it has become a memorandum business, and I am not in business to run a memorandum business.

Q. What do you mean by "memorandum business"?

Mr. Weisman: I object to "What do you mean by 'memorandum business'?" because he has already testified as to what he did, and the words are plain, ordinary English words, and this is simply piling incompetency upon incompetency now. We have him stating what somebody else said and now he is
1626 asking him a question as to what he meant when he said something when they said something to him. At none of these times was any representative of the respondents present and within hearing. It is incompetent, illegal, immaterial, irrelevant, and highly prejudicial from every standpoint conceivable.

Examiner Bennett: No, it is not. Overruled.

Mr. Weisman: Exception.

A. In other words, if we were to ship merchandise out with this stamp on it means that they have a perfect right to return the merchandise whenever they want to. Naturally, that will mean the ruination of my business if I sell merchandise on memorandum.

By Mr. Haycraft.

Q. Did you refuse to do business with these dealers, insisting on putting that stamp on their orders; in other words, did you refuse to do business with such dealers as insisted on putting this warranty stamp on their orders? A. Well, for a short period I have refused. In the meantime it has been affecting my business. And after a short 1628
period I was forced to accept these orders because we lost receiving orders without the stamp, and I just took my chance on that. We could not get the orders unless the stamp was on there, and I just had to take my chance on that.

Q. Well, as a matter of practice, did any of the dealers, your customers, return goods? A. Yes, they did.

Q. Because they were supposed to be copies of, or found to be copies of, or claimed to be copies of garments manufactured by manufacturers who were members of the Guild? A. Yes. We did.

Q. Was that in more than one instance? A. Yes, sir.

Q. How often would you say that that happened during the months, we will say, of October, November and December of 1935? A. It is very hard to tell—— 1629

Mr. Weisman: I object.

A. —how often it happened.

Mr. Weisman: Oh.

By Mr. Haycraft.

Q. More than once? A. Yes.

Q. What effect did that have upon your business? A. Well, it had an effect to this extent: We have refused to accept quite a number of these returns, for example, for the simple reason they have marked——

Mr. Weisman (interposing): I object "for the simple reason," to the witness giving the operation of his mind. It may be a simple reason or it may be a complex reason, it may be a correct reason, or it may be an illogical reason. The inquiry is as to whether he got returns.

Mr. Haycraft: The inquiry was what effect did it have on his business.

1631 Mr. Weisman: Now, he is giving the reasons.

Examiner Bennett: It goes to the answer of that question. I will hear his answer.

Mr. Weisman: Exception.

Examiner Bennett: Granted.

Proceed.

By Mr. Haycraft.

Q. State your answer. A. What is the question?

(Question read.)

A. I have forgotten my answer up to that point.

Mr. Haycraft: Counsel interrupted the witness

1632 in the middle of his answer and I will ask that the answer so far as given be read.

(Answer read.)

A. For the simple reason that they have marked "return of this merchandise by the order of the Guild." In other words, the Guild has instructed them to return these merchandise, these goods.

Mr. Weisman: I ask that the latter part of his answer be stricken out as purely hearsay and without any support or foundation in fact.

Examiner Bennett: Well, it will be stricken until he shows knowledge of that situation.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. What effect did it have upon your business? Will you answer? A. We have refused to accept the returns on account of the Guild; that we have suffered; that we were not able to get any business from these accounts here owing to the fact that we have refused to accept these 1634
returns; that quite often I have cases whereby it can be proven; I have letters where people had reorders to me, and they have written me that they will not send me the reorders unless that I will accept the returns in my shop.

Mr. Weisman: I ask that the latter part of his answer be stricken out. It is clearly apparent on the face of it that it is pure hearsay, speculation and a conclusion, and it is secondary evidence in addition thereto. Now, the witness is testifying about something that somebody wrote him, when it is perfectly apparent that the best evidence is not what this witness thinks is in this particular writing, but the writing itself is the best evidence of what it contains. I move that all of that part of 1635
his answer be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. Can you recall any particular incident where such a thing happened? A. Well, here is a case right here, which is a case with R. H. White.

Mr. Haycraft: I ask that these be marked for identification.

(Invoice from R. H. White Company, Boston, Mass., to Noxall Waist & Dress Company, New York City, was marked for identification "Commission's Exhibit 307.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of November 1, 1935, to R. H. White Company, Boston, Mass., was marked for identification "Commission's Exhibit 308.")

1637 (Letter from L. Mandelson, R. H. White Company, Boston, Mass., under date of November 11, 1935, to Noxall Waist & Dress, New York City, was marked for identification "Commission's Exhibit 309.")

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibit 307 for Identification, being a return from the R. H. White Company, dated October 19, 1935. I ask you if you can identify that as having been received by you? A. Yes.

Q. Did you ship the goods originally to R. H. White described in this document? A. Yes.

Q. Were the goods returned to you? A. Yes.

1638 Q. I show you Commission's Exhibit 308, and ask if this is a carbon copy of an original letter sent to you by R. H. White on November 1, 1935, with respect to the return, Exhibit 307 for Identification? A. Yes, sir.

Q. I hand you Commission's Exhibit 309 for Identification, and ask you if this is a letter, original letter, received by you from R. H. White Company, dated November 11, 1935, relating to this same transaction? A. Yes.

Mr. Haycraft: I offer these three in evidence.

Mr. Weisman: I object to the introduction of these letters in evidence.

Examiner Bennett: Overruled. They will be received in evidence.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 309 for Identification, I notice that White & Company states, in part, as follows: "You will have to settle this matter with the Guild and accept the four dresses which you have refused to date, or we will be unable to send you any confirmation of the enclosed orders." Did you get in touch with the Guild? A. No, sir; I did not.

Q. Did you accept the return of the four dresses? A. 1640
The return was refused.

Q. Refused? A. Refused.

Q. Were you able to continue business with R. H. White & Company? A. No.

Q. On any other number? A. No. For a period after, for a period of time, for a few months, I have not done any business thereafter on account of refusing to accept that return.

Q. I show you Commission's Exhibit 310 for Identification, Commission's Exhibit 311 for Identification and Commission's Exhibit 312 for Identification. I ask you if you identify that return—I ask you to identify it first. A. Yes. Those are merchandise sent to us, slips were sent to us through the mail.

1641

Q. From Kaufmann's? A. Yes, sir.

Q. On October 5, 8, 12, 1935, did you receive the goods that were listed in these invoices? A. I refused to accept them. I received them, but I refused to accept them.

Q. The goods were sent back to you? A. Yes.

Q. You refused them? A. I refused to accept them.

Q. I show you Commission's Exhibit 313 for Identification, and ask you if you can identify that as an original

letter from Kaufmann's, dated October 5, 1935, and referring to the same garments referred to in Commission's Exhibits 310, 311 and 312 for Identification? A. Yes.

Q. Did you receive that original letter? A. Yes.

Q. I show you Commission's Exhibit 314 for Identification. A. Yes.

Q. Which purports to be a carbon copy of a letter from yourself to Kaufmann's, dated October 14, 1935, and ask you if you sent the original of that letter to Kaufmann's on October 14, 1935, and whether the transaction therein is one that relates to the same transaction as Commission's Exhibits 310, 311, 312 and 313 for Identification? A. Yes.

1643 Q. Did you send the original of that letter to them? A. Yes.

Q. I show you Commission's Exhibit 315, purporting to be an original letter from Kaufmann's to Bernard Sands, dated October 15, 1935, and ask you if you received that original letter? A. Yes.

(Letter from John C. Flynn, Kaufmann's, Fifth Avenue, Pittsburgh, under date of October 15, 1935, to Bernard Sands, Noxall Waist & Dress Company, New York City, was marked for identification "Commission's Exhibit 315.")

Q. Does that relate to the same subject-matter? A. Yes.

Mr. Haycraft: I offer these documents in evi-

1644 dence.

Mr. Weisman: Let me see them.

Mr. Haycraft: Yes. While you are looking at them I ask that these documents be marked "Commission's Exhibits 316 and 317" for identification.

(Letter from Joseph Horne Company, Pittsburgh, Pa., under date of October 4, 1935, to Noxall Waist & Dress Company, 134 West Thirty-seventh Street, New York City, was marked for identification "Commission's Exhibit 316.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of October 5, 1935, to Joseph Horne Company, Pittsburgh, Pa., was marked for identification "Commission's Exhibit 317.")

Mr. Weisman: As to Commission's Exhibit 310, I make the same objection as I made to Commission's Exhibit 307, for the purposes of brevity, instead of repeating it. I suppose the Court will rule the same way.

Examiner Bennett: Objection overruled.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification "Commission's Exhibit 310," was marked as an exhibit and received in evidence.) 1646

Mr. Weisman: As to Commission's Exhibit 313 and Commission's Exhibit 315 for Identification, I make the same objection as I made to Commission's Exhibit 309.

Examiner Bennett: Overruled.

Mr. Weisman: Except.

Examiner Bennett: Noted.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 313 and 315," were marked as exhibits and received in evidence.)

Mr. Weisman: As to Commission's Exhibit 314 for Identification, I make the same objection as I made to Commission's Exhibit 308. 1647

Examiner Bennett: Overruled.

Mr. Weisman: I except.

Examiner Bennett: Noted.

(The document referred to, heretofore marked for identification "Commission's Exhibit 314," was marked as an exhibit and received in evidence.)

Mr. Weisman: I make the same objection to Commission's Exhibits 311 and 312 as I did to Commission's Exhibit 310.

Examiner Bennett: Overruled.

Mr. Weisman: I except.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 311 and 312," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Exhibit——

1649

Examiner Bennett: One moment.

By Examiner Bennett.

Q. Was that transaction in the ordinary course of business with them? A. Yes, sir.

Mr. Weisman: In view of your Honor's question to the witness prior to the admission of those in evidence, that they were received in the usual course of business, I assume that your Honor is admitting them because they were received in the usual course of business, and that they be limited for——

Examiner Bennett: Do not assume that I am doing anything that I do not state, Mr. Weisman.

1650

Mr. Weisman: Then I will ask, if your Honor please, that they be admitted for that limited purpose that I will now describe, because I assume that your Honor is admitting them because they were received in the usual course of business, and I therefore ask that they be admitted for the limited purpose of showing that in the usual course of his business he received them.

Examiner Bennett: They are received for all purposes. There is no need in making those technical objections to this sort of thing.

You object to verbal statements and then you object to the documents when they come in. It is very proper for you to make your objection, but it is no use to make that sort of an objection.

Mr. Weisman: I am sorry I have to disagree with your Honor. We have to think of a future tribunal, too.

Examiner Bennett: I overrule it.

Mr. Weisman: My objection goes to the contents of this ex parte document or statement. 1652

Examiner Bennett: They are not ex parte statements, a fact I am quit sure you are aware of, Mr. Weisman.

Mr. Weisman: We did not make them.

Examiner Bennett: They are statements in the ordinary course of business and are regarded as true statements prima facie.

Mr. Weisman: I must respectfully differ with the Court.

Examiner Bennett: That is the way we do business, and the only way or basis upon which we can do business.

Mr. Haycraft: I am waiting for Mr. Weisman to sit down. He said he was not through until he sat down. 1653

Mr. Weisman: All right. He has invited me to sit down.

Examiner Bennett: Proceed.

By Mr: Haycraft.

Q: I show you Commission's Exhibit 316 for Identification, and ask you if you can identify that as an original

letter received by you in the ordinary course of busines from the Joseph Horne Company, dated October 4, 193 A. Yes.

Mr. Weisman: Are you going to—are you no making a mistake, Mr. Haycraft?

Mr. Haycraft: I think not.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 317, purporting t
1655 be a carbon copy of a letter from yourself to Joseph Horn Company, dated October 5, 1935, and ask you if you ca identify that as a carbon copy of an original sent b you to Joseph Horne Company in the ordinary course o business in reply to Commission's Exhibit 316 for Identifi cation? A. Yes, sir.

Mr. Haycraft: I offer these two exhibits in evi dence, namely, Commission's Exhibit 316 for Iden tification and 317 for Identification.

Mr. Weisman: May I see them?

Mr. Haycraft: Yes. While you are looking a them these three documents marked "Commission's Exhibits 318, 319 and 320" for Identification.

(Purchase return record from Luries, Baltimore
1656 Md., October 9, 1935, to Noxall Dress, New York City, was marked for identification "Commission's Exhibit 318.")

(Letter from Luries, Baltimore, Md., under date of October 9, 1935, to Noxall Dress, 134 West Thirty-seventh Street, New York City, was marked for identification "Commission's Exhibit 319.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of October 14, 1935, to Luries, 17 West Lexington Street, Baltimore, Md., was marked for identification "Commission's Exhibit 320.")

Mr. Weisman: May I have the same objection? I assume there will be the same ruling.

Examiner Bennett: Let me see the documents. There may be something in them that might change the situation.

(The Examiner examines the documents.)

Examiner Bennett: The objection is overruled. They will be received in evidence. 1658

Mr. Weisman: Exception.

(The letters referred to, heretofore marked for identification "Commission's Exhibits 316 and 317," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 318 and ask you if you can identify that as the return slip of Luries, Baltimore, Md., dated October 9, 1935? A. Yes, sir.

Q. Did you receive that in your ordinary course of business? A. Yes, sir.

Q. Did you receive the goods described therein? A. Yes, sir. 1659

Q. I show you Commission's Exhibit 319, and ask you if you received that original letter from Luries, dated October 9, 1935? A. Yes, sir.

Q. And that refers to the same subject-matter as Commission's Exhibit 318? A. Yes, sir.

Q. I show you Commission's Exhibit 320, carbon copy of a letter from yourself to Luries, dated October 14, 1935, and ask you if you identify that as a carbon copy of an

original letter sent by you to Luries in the ordinary course of business in reply to the Luries' letter of October 9, 1935? A. Yes, sir.

Q. Commission's Exhibit 319 for Identification? A. Yes, sir.

Mr. Haycraft: I offer these papers in evidence.

Mr. Weisman: To Commission's Exhibit 318 I make the same objection as I did to Commission's Exhibit 307, and as to Commission's Exhibit 319, I wish to make the same objection as to Commission's Exhibit 309, and as to Commission's Exhibit 320, I make the same objection as to Commission's Ex-

1661 hibit 308.

Examiner Bennett: Received in evidence.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 318, 319 and 320," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 321 for Identification, and ask you if you identify that as a return slip from Schunemans & Mannheimers, received by you in the ordinary course of business? A. Yes, sir.

1662 Q. Did you receive the dresses described therein? A. No, sir; we have received them, but we have refused them.

Q. You received them from them? A. Received—I mean, they were presented for delivery, but we have refused to accept them.

Q. Did they return those dresses to your office? A. Yes, sir.

Q. I show you Commission's Exhibit 322, and ask you if you identify that as a carbon copy of a letter from yourself to Schunemans & Mannheimers, dated February 13,

1936, with respect to the return of the goods described in Commission's Exhibit 321 for Identification? A. Yes, sir.

Q. Did you send the original of that letter in the ordinary course of business? A. Yes, sir.

Examiner Bennett: Just two papers, is that it?

Mr. Haycraft: I have not yet offered them. I just asked Mr. Weisman to look at them while I am describing the others if he wishes.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. I ask you if you identify Commission's Exhibit 323 as a notice from the Express Company that these garments had been received in New York that are described in Commission's Exhibit 321 for Identification? A. Yes, sir. 1664

Mr. Weisman: Is this all about the same?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 324, and ask you if you received that original letter dated March 16, 1936, from Schunemans & Mannheimers? A. Yes, sir.

Q. And does it relate to the same subject-matter? A. Yes, sir.

Q. I show you Commission's Exhibit 325 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by you to Schunemans & Mannheimers, under date of March 18, 1936, in reply to their letter of March 16, 1936, for identification? A. Yes, sir. 1665

Q. I show you Commission's Exhibit 326 for Identification, and ask you if you identify that as an original letter received by you from Schunemans and Mannheimers, dated April 11, 1936, relating to the same subject-matter? A. Yes, sir.

Q. I show you Commission's Exhibit 327, apparently a carbon copy of an original letter dated April 14, 1936, addressed to the Railway Express Agency, and ask you if you identify that as a carbon copy of the original letter sent to the Railway Express Agency, and whether it refers to the subject-matter of the garments heretofore described? A. Yes, sir; it is the same.

Q. I show you Commission's Exhibit 328 for Identification, and ask you if you identify that letter as a carbon copy of an original letter sent by you to Schunemans & Mannheimers, under date of April 14, 1936? A. Yes, sir.

Q. Does it relate to the same subject-matter? A. Yes,

1667 sir.

Q. I show you Commission's Exhibit No. 329 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by your organization to Mr. Dieckhaus, care of Schunemans & Mannheimers? A. Yes, sir.

Q. Under date of April 21, 1936? A. Yes.

Q. Does this relate to the same subject-matter? A. Same matter.

Q. I show you Commission's Exhibit 330 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by you to Mr. Dieckhaus, under date of April 28, 1936? A. Yes.

Q. Does that relate to the same subject-matter? A. Same subject-matter; yes, sir.

1668

Examiner Bennett: Do they all relate to the same transaction?

Mr. Haycraft: Yes, sir.

I offer this correspondence in evidence (referring to Commission's Exhibits 321 to 330 for Identification).

Mr. Weisman: May I have, instead of going through this——

Examiner Bennett: Pardon?

Mr. Weisman: Judge, do I have to go through all of this and repeat those objections? It takes so long. In the interest——

Examiner Bennett: If you do not wish to make the objections in detail.

Mr. Weisman: I say, would you rather permit me to make them in less detail?

Examiner Bennett: Yes.

Mr. Weisman: And say that I offer the same objections as to the others?

Examiner Bennett: Surely.

Mr. Weisman: Otherwise, the trial will be prolonged unnecessarily. 1670

Examiner Bennett: You may do so.

Mr. Weisman: Then, with leave of Court, I urge the same objections to these exhibits as I have heretofore made, with the particular explanations and exceptions as to the other letters as may be particularly applicable thereto.

Examiner Bennett: Yes.

Mr. Weisman: Otherwise it will take too long.

Examiner Bennett: Yes, I will make the same ruling, and they may be received.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330, were marked as exhibits and received in evidence.) 1671

Examiner Bennett: I want to call attention to what appears to be an error on the record; at page 609 there is an exhibit referred to as Exhibit 640.

Mr. Haycraft: That evidently is a reference to a page number from a record of the exhibits in the hands of the respondents.

(There was a short recess taken.)

Examiner Bennett: We will come to order. You may resume, Mr. Haycraft.

By Mr. Haycraft.

Q. Mr. Lieber, with respect to Commission's Exhibits 310 to 315, the transaction with Kaufmann's in October, 1935, described in that correspondence, I will ask you whether or not you continued to do business with Kaufmann's after October, 1935? A. No, I didn't do any business until May of 1936.

Q. Do you know the reason why? A. Well, usually,
1673 when we refuse to take merchandise back, there is always a bad taste in the buyer's mouth, or so, and things of that sort, and then they stop coming up.

Mr. Weisman: I object to that and ask the answer be stricken out.

Examiner Bennett: Well, it may be stricken, but I wish you would put it in a little different form.

Mr. Haycraft: Read the question.

(Last question read.)

By Mr. Haycraft.

Q. That can be answered "yes" or "no." A. I would say yes.

Q. What was the reason? A. The reason is——
1674

Mr. Weisman: Wait a moment. May I examine voir dire for a moment on this question? Does he know?

Mr. Haycraft: I do not think so, Mr. Examiner.

Examiner Bennett: Well——

Mr. Haycraft: He can do that on his cross-examination. I do not think he should interrupt the direct examination.

Examiner Bennett: I think that in a technical showing as to first-hand knowledge probably your voir dire will show that he had not that first-hand knowledge, but he has judgment as a business man as to why certain things happened, and that is all we may expect to get from him.

Mr. Weisman: I submit if I get that that it nullifies the rest of his testimony which is now about to be tendered.

Mr. Haycraft: Oh, no.

Mr. Weisman: I mean, he may have a guess and that is all this can be.

Examiner Bennett: All right, I will let him give his reason, if he has any. 1676

A. In the course of business we usually find when we have disputes of returns of merchandise, we find in most of the times that the buyer stops coming up because we refused to take merchandise back.

Examiner Bennett: Was that the fact in this case?

The Witness: Well——

Examiner Bennett: Did the buyer cease coming into your shop?

The Witness: Well, the buyer did not show up. We have not seen the buyer and we have been after the buyer right along to get business. Our men have been on the road and trying to get business. We were not able to get any business from these people. 1677

Examiner Bennett: I see. You did get business before that?

The Witness: Yes, we did.

By Mr. Haycraft.

Q. Now, referring to the Joseph Horne incident in October, 1935, as set out in Commission's Exhibits 316 and 317, have you continued to do business with Joseph Horne Company since October 5, 1935? A. We did not.

Q. For how long a period? A. We have not sold them 5 cents worth of goods since that time, while up to that time we were doing from four to five hundred dollars a month business right along. Since that time there, we had a dispute on account of this return; we got no business from the concern at all.

Q. Have you made attempts to get business from them?
1679 A. Oh, yes; yes, sir.

Q. Now, referring to the Schunemans & Mannheimers situation, where I observe in this correspondence that you made a five-dollar cash settlement. A. Since February 10 when we have refused this merchandise, why, this was all in dispute and we were unable—because the matter was settled some time in April, if I am not mistaken, where we had to give the account allowance of $5 on a dress, because we have refused to accept the merchandise, in order to retain the good will of the buyer, so we had allowed them $5—a dollar on each dress, allowance, and he took the merchandise in. We have not done any business as yet since February 10—since February 10 we have done no business with the concern.

1680 Q. Now, these instances that I have called your attention to, and which are contained in these exhibits, are they the only instances where you have had returns? A. No, sir; we have had others, too.

Q. I think you better wait until—all right. Now, in this question I just asked you, I refer, of course, on account of the warranty stamp, and on account of the Guild requirements. What is your answer, with that amendment to that question? Have you had other instances? A. We had. We had other disputes.

Q. Is it possible from the way in which you conduct your business, to determine the exact extent of the effect upon your business as a result of the refusal of returns on the part of customers, due to the Guild requirements? A. It is very hard.

Q. Why is that so? A. Why, after all, in a large business with so many customers, it is pretty hard to state whatever amount is hurt to my business, to what extent, to what rate, extent.

Mr. Haycraft: That is all, Mr. Examiner.

Mr. Martin: Wait just a moment.

Mr. Weisman: There seems to be a difference of opinion between counsel. 1682

Examiner Bennett: All right.

Mr. Haycraft: I will ask one or two more questions.

By Mr. Haycraft.

Q. Have you made any calculation as to the percentage of the returns that you have had similar to those you have referred to in your testimony and described in your exhibits, to the total number of returns?

Mr. Weisman: May I have that question?

(Last question read.)

By Mr. Haycraft. 1683

Q. Or to the total volume of sales?

Mr. Weisman: Well, now, which is it?

Mr. Haycraft: Either way. I don't know. Let us find out.

A. I did not go into that.

By Mr. Haycraft.

Q. You have made no such calculation? A. I have made no such calculations.

Mr. Haycraft: All right. That is all.

Cross-examination by Mr. Weisman.

Q. Mr. Lieber, what volume of business did you do in the year 1935? A. Over a million dollars.

Q. So was all this merchandise sold at $4.75? A. Yes, sir.

1685 Q. Well, didn't you sell some at lesser prices? A. I did not.

Mr. Haycraft: I object to the question as irrelevant and immaterial.

Mr. Weisman: Oh, it is very material.

Examiner Bennett: I understand that he so testified.

By Mr. Weisman.

Q. You are absolutely certain of that? A. Yes, sir.

Mr. Haycraft: May I have a motion to strike the question and answer, the last two, Mr. Examiner? To keep the record straight, on the ground it is irrelevant and immaterial.

1686 Mr. Weisman: I submit it is very material, because——

Examiner Bennett: I am going to let it stand.

By Mr. Weisman.

Q. I understood you to say, in answer to my last question, that you sold all your merchandise at $4.75? A. Yes, sir.

Q. That you sold none at less than that? A. With the exception of jobs.

Q. Well, when you— A. But the regular form of selling regular merchandise, that is the only price we sold at.

Q. Didn't you say before that you sold all of your merchandise at that price? A. I refer to our regular daily business, regular merchandise at $4.75.

Q. You do not— A. (Interposing) You know, in the dress business, we always got some jobs, or some that we call, undesirable merchandise, but I am talking of the regular course, of the $4.75 line, we are talking about.

Q. Did these Commission's Exhibits 310 to 330 refer to regular merchandise or jobs? A. With the exception of 1688
the sale in there, that was sold as our merchandise, and I have the order here to prove it.

Q. Is that the Commission's Exhibit 318, showing a sale price of these particular items at considerably less than $4.75? A. Yes, sir. They do.

Q. So that your answer before was not entirely correct, was it? A. It was correct because usually we refer to the regular merchandise. It is not referred to—this is not the regular every-day sale.

Q. Now——

Mr. Haycraft: Mr. Examiner, may I enter an objection again to this line of testimony as not proper cross-examination, not relevant or material to the issues in this case? 1689

Examiner Bennett: Sustained; I do not think there is an issue in the case on that.

Mr. Haycraft: I move to strike the last question and answer.

Examiner Bennett: As I understood it, I do not gather from the pleadings that you have any issue as to discrimination under the Clayton Act.

Mr. Weisman: Well, I think that our fair trade practices are in question, but, aside from that, the purpose of this is to establish a basis of the number of units that he sold during the year.

Examiner Bennett: Yes. Well, he can probably establish that from direct testimony, if that is of any consequence.

Mr. Weisman: Well, I submit upon my theory of this case it is of great consequence to show the number of units that this man sold a year.

Examiner Bennett: All right, but this matter can be shown without going into this matter of dis-
1691 criminations, if there is any such thing.

By Mr. Weisman.

Q. What volume of your business would you say, in percentages, is done at unit prices of less than $4.75 per dress?

Mr. Haycraft: Same objection, Mr. Examiner.

Mr. Weisman: The Examiner said for this purpose I might go on.

Mr. Haycraft: I did not so understand you, Mr. Examiner. As I understood you to say, in this case —if they must put in a defense on that, all right, let him go into that. It is not proper cross-examination. This witness said he did not make any calcu-
1692 lation as to the percentages——

Mr. Weisman: He did not say anything——

Mr. Haycraft: —it was impossible for him to do it.

Mr. Weisman: He did not say anything of that kind. I am asking him as to what percentage of his business was done at a price less than $4.75.

Examiner Bennett: I will sustain the objection to going into price discrimination, if that is what you are trying to do.

Mr. Weisman: That is not what I am trying to do.

Examiner Bennett: I see.

Mr. Weisman: I am trying to get a basis for the units of sales.

Mr. Haycraft: I am objecting to that as not proper cross-examination.

Examiner Bennett: Ask him about units of sale, not about——

Mr. Weisman: What is that?

Examiner Bennett: I say, ask him about units of sale. Why are you going all the way around?

1694

By Mr. Weisman.

Q. What was the total volume of your business in 1935?

Mr. Haycraft: I object.

A. Over a million dollars.

Q. Well, how much over a million? That might be ten million, that might be two million, that might be $1,500,000. Is that the best answer you can give us?

Mr. Haycraft: Mr. Examiner, I object to the further interrogation along this line. You must realize that this witness——

Mr. Weisman: He is president of this company in active charge of its operations, and knows all about it.

1695

Mr. Haycraft: May I continue my objection, without being interrupted by counsel for the respondent? He asked a while ago that courtesy of me. I think he should consider it as to himself.

Examiner Bennett: I think we should keep that rule religiously.

Mr. Haycraft: Your Honor, this witness is in an industry—naturally, these competitors would like

to know exactly how much business he is doing. I do not think he should be required to divulge that.

Examiner Bennett: I will not press the witness on anything like that. I think if his statement gives a general idea of the size of the business, why, it is sufficient.

By Mr. Weisman.

Q. Would you say that you do more than two million?

Mr. Haycraft: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

1697

By Mr. Weisman.

Q. Would you say you do more than a million, five hundred thousand dollars?

Mr. Haycraft: Same objection, Mr. Examiner.

Examiner Bennett: The same ruling.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Would you say you do more than a million, two hundred and fifty thousand dollars?

Mr. Haycraft: I object to this line of examination, Mr. Examiner.

1698

Examiner Bennett: Sustained.

Mr. Haycraft: I ask that counsel be instructed not to follow it any more.

Mr. Weisman: I am making a record in this case.

Examiner Bennett: As I understand it, he made the statement that his business was over a million dollars.

Mr. Weisman: Of course; that might be ten million.

Examiner Bennett: Well, it might not. It does not mean any such thing in the English language.

Mr. Weisman: It might mean a million, seven hundred and fifty thousand, which would materially——

Examiner Bennett: No, it is supposed to be approximate.

By Mr. Weisman.

Q. When you said that you did over a million, did you mean slightly over a million or a large amount over a million? 1700

Mr. Haycraft: Mr. Examiner, I ask that the witness be instructed not to answer these questions, and that counsel be instructed not to ask them.

Examiner Bennett: Yes——

Mr. Haycraft: And that the objection be sustained.

Examiner Bennett: I will sustain the objection to that—

Mr. Weisman: Exception.

Examiner Bennett: —to that cross-examination.

By Mr. Weisman.

Q. During the year 1935 can you give us an estimate of the number of units that were sold by the Noxall Waist & Dress Company—is that the name of your concern? A. Noxall. I have never gone into the facts to find out the amount of garments that we sold during that year. 1701

By Mr. Weisman.

Q. What is your best guess, as the head of this business? A. I would judge around 250,000 dresses.

Q. How many customers would you say that you had on your account—books of account, from the time you commenced business down to date?

Mr. Haycraft: Objected to as not proper cross-examination unless restricted to the period of time covered on direct examination.

Mr. Weisman: I will amend the question to cover that period—no, I will not amend the question to cover that period—I urge the question. I think it is perfectly proper.

Examiner Bennett: You may answer.

1703 A. Well, that question is very hard to answer. There may be, during that period, there may be 10,000 different accounts. It is a matter of twenty-two years.

By Mr. Weisman.

Q. During the year 1935 how many accounts would you say that you had actively on your books? A. I should judge at least about 3,000.

Q. How many active accounts would you say you had on your books during the year 1936? A. Same percentage as we had—same amount practically that we had during the year 1935.

Q. In the early part of—in the first six months of 1935, what is your best guess or approximation as to the volume
1704 of business done by your concern?

Mr. Haycraft: I object as not proper cross-examination, incompetent, immaterial and irrelevant to any purposes in this case.

Examiner Bennett: Well, you have gone into the loss of business. I presume you certainly have the right to make comparisons. I will overrule your objection and let him give his best judgment as to what that was.

A. I should judge about two-thirds of the business, anyway; two-thirds of the business done the first six months.

By Mr. Weisman.

Q. And you did approximately $750,000, then? A. I am making no statement of amount. I would just say about two-thirds of the business.

Q. If you did during the year slightly in excess of a million dollars, did you not then—two-thirds of that would be about $660,000, roughly speaking, and without any desire to pin you down to exact figures, or to have you divulge any information that might be of advantage to your competitors, as Mr. Haycraft claims—— 1706

Examiner Bennett: I cannot get away, logically, from the fact that that general statement as to losses can stand only unless it is inquired into or the permission given therefor.

Mr. Haycraft: I shall stand upon the testimony of the witness.

Examiner Bennett: Objection overruled.

Mr. Weisman, will you proceed?

By Mr. Weisman.

Q. Now, Mr. Lieber, can you give us your best opinion as to the volume of business as to the first six months of 1935, your business? A. Well, I believe about two-thirds of the total of the year 1935. 1707

Q. What, in your opinion, would that total be? A. It would be about $600,000 or $650,000 and around those figures.

Q. Yes. Now, the early part of 1935, was that a good year or a bad year in the dress business as it was generally understood? A. It was a pretty good year.

Q. Sales were rather high, were they? A. No different from any other year—no different from the year 1934.

Q. Do you mean that the dress business always had good years? A. I am talking about my own business at the present time.

Q. I asked you whether you would say whether the year 1935 was a good or a bad year as far as business was concerned? A. A year——

Q. Let me finish my question. Will you answer the question? Can you tell me whether that was a good year for you? A. Yes.

Q. The volume of sales were generally bad; is that so? A. No, no. It was pretty good.

Q. I just wanted to see if you were certain of it. A.
1709 I am.

Q. The volume of business—in other words, the volume of sales were generally up; is that correct? A. Yes, sir.

Q. We had begun to enjoy to some extent the recovery from the depression? A. Yes, sir.

Q. Do you remember whether or not subsequently in 1935 business continued to get better and better, or whether there was in the dress business a general recession from the advance that had been made in the early part of the year? A. There had been no recession in my priced merchandise.

Q. In other words, business has— A. (Interposing) Continued in my priced merchandise.

Q. Has continued at all times equally? A. Yes, sir.

Q. Good? A. Yes, sir.
1710

Q. Is that correct? A. Yes, sir.

Q. In 1936 what is your best estimate based on your twenty-eight years of experience in your business, and your general knowledge as to the volume of business that you will probably do this year? A. It is pretty hard to tell you at the present time, for the simple reason that, for instance, you take the early part of the spring we had quite a disturbance as far as labor is concerned that af-

fected business a great deal during the months of January and February; that is practically a total loss to the members of the industry in general, therefore it is pretty hard to judge at the present time.

Q. But you did not have—there was a rather serious strike in the dress business, or the dress industry, in the early part of the year 1936, was there? A. There was no strike.

Q. It was a stoppage? A. No, it was simply a disturbance on account of the new agreement.

Q. The readjustment of prices with the union and the contractors? A. Yes, sir.

Q. And the limitation of contractors? A. Well, whatever the new labor agreement that we had to go into. 1712

Q. As a result of these upheavals in the dress industry in the early part of 1936 the dress industry was very adversely affected from the standpoint of the manufacturer; is that a fact? A. Yes, sir.

Q. Unusual and extraordinary losses or recessions from previous years were sustained by the manufacturers generally throughout the trade; is that a fact? A. Well, in—not too general. It has to be individual. Everybody suffered in general, of course.

Q. You knew it was? A. In general, in general, in general; in general naturally we all did in that period.

Q. Yes. A. We were afraid to put our merchandise into operation.

Q. If you did not put merchandise into operation you did not have any merchandise to sell? A. No. 1713

Q. If you had no merchandise to sell you had to continue, notwithstanding, with the same general overhead? A. Right.

Q. Right? A. Right.

Q. You had the same employees and you had the same rent and you had the same bookkeepers and so forth and,

so forth? A. Well, that was an unusual season. That was an unusual occasion.

Q. Through that unusual occasion there was a serious setback to the manufacturers generally, and to yourself in particular? A. Yes.

Mr. Haycraft: I move to strike out all of this latter testimony as incompetent, immaterial, irrelevant, and having nothing to do with the issue involved here whatsoever.

Examiner Bennett: Denied.

By Mr. Weisman.

1715 Q. Now, that matter with the union was adjusted some time in the early part of March, was it? A. I think it was the early—no, I think it was the latter part of February.

Q. What? A. I think it was the latter part of February.

Q. Through the latter part of February or the early part of March? A. Yes.

Q. But in any event it did do serious injury to your general business for two months of this year? A. I would not say two months.

Q. January and February? A. The agreement expired February 1, since it was not signed as yet, so I would not say it affected anybody except in the latter part of February. It affected us only for the month of February.

1716 Q. For the month of February? A. Yes.

Q. Since then you have concluded your arrangements with the union, have you? A. Yes.

Q. Yes? A. Yes.

Q. Your business is moving smoothly now? A. Yes.

Q. Is your business still good? A. What?

Q. Is your business still good? A. Yes.

Q. It is? A. O.K. now.

Q. It is good at the present time? A. Yes.

Q. Is business with you generally better now than it was in 1935? A. My business is just as good now as it was in the spring of 1935. We had no disturbances of labor then or anything until as far as—let me get this straight—you mean in '35

Q. Yes. A. Well, I was right. My business is just as good now as it was in the spring of 1935 now. We had no disturbances of labor then or anything at all as far as labor or Guilds or anything of that sort was concerned, therefore, our business continued the same as it did before.

Q. As it did before? A. Yes.

Q. And you are going along rather smoothly and pleasantly? A. Yes. 1718

Q. Now? A. Now.

Q. And you are making money? A. If we do business we make money.

Q. That is right? A. That is right.

Q. I show you Commission's Exhibit No. 306— A. Yes.

Q. —I will ask you to read that stamp. A. Well.

Q. Can you read it? A. Yes, sir.

Q. Was that on the order when you took it? A. At the time when we took this order it was there.

Q. It was not? A. It was.

Q. It was? A. It was.

Q. That is what I wanted to know. A. You are getting the information. It was.

Q. Then I will read this just once. 1719

Mr. Weisman: If your Honor please, I will read it just once to this witness, if that will meet with your approval.

Examiner Bennett: That will be all right.

By Mr. Weisman:

Q. "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by

members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." Do you know what the word "warranted" means? A. Yes.

Q. What does it mean? A. It means that if they find the merchandise in their stock to be merchandise that is in any way a copy of the Guild, that it is to be turned back to us.

Q. Did you not understand by the acceptance of this order that you, in effect, promised the purchaser that none of the merchandise recited on here was copies of styles originated by the Fashion Originators Guild of America,
1721 Inc.? A. Will you read that question again?

(Question read.)

A. Well, we were——

Q. No. Do you not understand that that was your promise? A. That that was a promise?

Q. That you made? A. Yes.

Q. You did? Let us get this clear. A. Yes, I did.

Q. Did you not further understand by the second sentence thereof, to wit: "That the purchaser reserves the right to return any merchandise which is not as warranted," that the purchaser was putting you on notice that if any of the merchandise or goods was not as warranted he had the right to return it? A. Yes, but I was
1722 taking a chance——

Q. No; but did you not understand that by those words? A. Yes, I did. As far as reading is concerned, yes.

Q. Your answer is "yes"? A. Yes, as far as reading is concerned, yes.

Q. There was no doubt about your understanding of the meaning of the terms of this—the meaning of those words? A. Yes, sir.

Q. You understand English? A. Yes, sir.

Q. You do? A. I do, sure.

Q. You knew when you accepted this order that this was right there; that it was thereon; that there was no question about that? A. Yes, it was on there.

Q. It was on there? A. Yes.

Q. There was no artifice? You were not fooled about this? This was not put on there after the order was given to you? Was it? Or was it not? A. No, sir.

Mr. Haycraft: Which one of those questions is the witness answering?

Mr. Weisman: All of them.

By Mr. Weisman. 1724

Q. In other words, Gimbel Brothers being the purchasers referred to in this order before they placed that order with you, let you know that they were only willing to place it with you upon those terms; is that not correct? A. It is correct.

Q. Now— A. Or otherwise I could not get their business. If I could not accept it that way I could not get their business.

Q. From whom was this order received? A. From Gimbel Brothers.

Q. Gimbel Brothers? A. Pittsburgh.

Q. Pennsylvania? A. Yes.

Q. Who was the buyer representing Gimbel Brothers, Pittsburgh, Pa.? A. Miss Lucy. 1725

Q. Miss Lucy? A. Miss Lucy.

Q. Where did you receive that order from her? A. This order was by mail.

Q. Was this a reorder? A. No, sir. This was an order placed in our showroom, and then it was—the firm mailed a consummation to us of it.

Q. And did you get the order in your showroom? A. Yes, sir; we did.

Q. Did Miss Lucy of Gimbel Brothers at any time tell you that you could disregard this stamp? A. No.

Mr. Haycraft: I object as not proper cross-examination.

Mr. Weisman: I withdraw it. You are quite right.

Mr. Haycraft: It is 12.30, Mr. Examiner.

Mr. Weisman: My friend, Mr. Haycraft, has indicated to the Court that it is 12.30, and as a matter of fact, according to my watch it is 12.40, and I think that this is as good a time as any to stop. I am just starting in with this long list of wit-
1727 nesses to go over each one of them, and it will take some time to do so.

Examiner Bennett: We will take a recess until 2 P. M. I will ask you to be here promptly so we will start at 2 and not at 2.15.

(Whereupon at 12.30 o'clock P. M. a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: You may resume, Mr. Weisman.

1728 Mr. Weisman: Will you please read the last question?

(Last question and answer read.)

By Mr. Weisman:

Q. Mr. Lieber, in your business, is it a common thing for a purchaser to sometimes stay away from your business for a season and experiment with garments from another house of the same type and price range? A. That is unusual.

Q. Have you not seen it happen? A. Very seldom.

Q. Have you seen customers stay away because they believed you were not fulfilling the terms of their orders, that they could not do business with you on the basis of the orders that they gave you? A. No, sir; I always delivered my orders very promptly at all times, and we are pretty well known for that.

Q. I did not ask you whether you delivered them promptly, or whether there was a lack of promptness, but suppose you promised to give a merchant, or a purchaser, one type of garment, and you gave him another type in fulfillment of the order, do you not think that they would be inclined to stay away from you? 1730

Mr. Haycraft: I object, no foundation——

A. We never——

Mr. Haycraft: —in fact, it is not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Would your Honor request my friend that if he wants to shout, that he should sit back a little farther. He nearly burst my ear drum that particular time.

Examiner Bennett: Well, you rather assumed in framing that question that this man had shipped goods different from those which were ordered. 1731

Mr. Weisman: No, I had not.

Examiner Bennett: And there is nothing in the testimony to show anything of that sort.

Mr. Weisman: May I ask——

Examiner Bennett: I am merely going by the implication of the question.

Mr. Weisman: Well, then——

1732

By Mr. Weisman.

Q. I now ask you, without any implication that you had ever done such a thing being intended by the form or substance of the question, whether or not it is your opinion from the long experience that you have had in this business that if you made an agreement with a customer to give him one type of merchandise, and then shipped him another, whether in your opinion that would not be an inducing cause to have that merchant stay away from you the successive season, or thereafter?

Mr. Haycraft: Same objection.

1733 Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: It is irrelevant.

Mr. Weisman: Well, I wish to say to the Court very briefly that in view of the Court's ruling that he can only give as his opinion the reason that these people stayed away from him, I wish to show that there may have been other reasons, certainly in view of the fact that he did not comply with these orders in his shipments.

Examiner Bennett: Certainly, but bring out the fact that he did not comply with them. If he did not, then bring that out. There isn't any bearing in the record yet to indicate that he did or did not comply with them.

1734

By Mr. Weisman.

Q. Now, I understood you this morning in answer to my questions to say that your firm sold merchandise only at $4.75——

Mr. Haycraft: I object to the repetition——

By Mr. Weisman.

Q. —except——

Mr. Weisman: Wait until I finish my question.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. —except where there were job lots; is that correct?

Mr. Haycraft: I object to that question.

Examiner Bennett: Overruled.

By Mr. Weisman.

1736

Q. Is that correct? A. Yes, sir; that is correct.

Q. And is your practice with regard to the unit price of sale the same to-day as it was last year? A. No, I have changed this season, I have changed my price.

Q. Oh, this year? A. Not this year, only this—only right now for the present time, for the fall, I have changed my price line, that is all.

Q. In other words, your price line right now is $2.87; is that not so? A. At the present time, yes, been changed to $2.87.

Q. You did not tell us that this morning, did you?

Q. I show you a copy of the "Women's Wear" Daily for Tuesday, July 21, 1936, page 17, and ask you whether or not that full-page advertisement is an advertisement inserted by your firm?

1737

Mr. Haycraft: I object to the question as irrelevant and immaterial; not proper cross-examination.

Examiner Bennett: Well, I am going to let the answer in.

A. Yes, sir; it is.

By Mr. Weisman.

Q. Were you aware of that advertisement when you answered my questions this morning as to the price range of your garments? A. Well, since this case——

Q. No, I asked you, were you aware of the existence of that advertisement? A. Yes, sir; but since we have——

Q. No, no.

Mr. Weisman: I now offer this in evidence (referring to "Women's Weekly").

Examiner Bennett: You may make your explanation, Mr. Witness.

1739 Mr. Weisman: May——

Examiner Bennett: Yes, you are trying to reflect on the integrity of this witness. Now, this witness has a right to defend himself in connection with your question.

Mr. Weisman: May I first offer this in evidence?

Examiner Bennett: No, it may not be received in evidence.

Mr. Weisman: May I mark it for identification?

Examiner Bennett: No, it may not be marked for identification.

Mr. Weisman: I submit I have a right to mark a paper for identification, Judge. How can I bring an error proceeding if it is not identified?

1740 Examiner Bennett: You can call this witness again if you want to put that in, that sort of thing. It is irrelevant to this proceeding, and I am going to invoke my rights. The objection has been made on account of irrelevancy, and it is irrelevant, and I am going to shut it off. You cannot mark it.

Mr. Weisman: Do I understand your Honor has ruled I may not mark this for identification?

Examiner Bennett: Well——

Mr. Weisman: I may not? I submit——

Examiner Bennett: Yes, yes, I will rule that you may mark it for identification, but on the face of the matter it is irrelevant.

Mr. Weisman: May I have an exception?

Examiner Bennett: I do not see why we should have irrelevant matter marked for identification. It is not to be marked for identification.

Mr. Haycraft: May the witness complete his answer, Mr. Examiner, to the question propounded to him?

Examiner Bennett: All right, yes, go ahead and explain.

1742

A. My answer given this morning, which since I knew that this particular case refers to a period since the trouble began, as far as the Guild is concerned, until the latter part that referred to, up to the month of April, so therefore at that time I was making $4.75 merchandise only. Since this case refers to that period, and at that time I was making $4.75 merchandise only.

By Mr. Weisman.

Q. Were you slightly helped in that explanation that you are now giving me by the substance of Mr. Haycraft's speech in connection with his explanation, his objection? A. No, sir; I happen to know——

Q. That is all— A. I read the complaint—I read the complaint before I signed it, and, therefore, I knew what I was talking about this morning. 1743

Q. Are you now engaged in the sale of merchandise at a lesser price than $4.75? A. Yes, sir; I am making at the present time a line at $2.87½.

Q. And for how long have you been engaged in such a practice? A. Well, we have started in around the first of June, we made a promotion. It is customary in the dress business when it gets around the latter part of the sum-

mer for the different dress manufacturers to make sort of promotions. They usually cannot sell $4.75 merchandise, or the price of merchandise; retailers are looking for specials for different promotions, so I went in around the first of June and made a special promotion at $2.87½.

Q. You say this is customary in the dress business to make such promotions? A. Yes, sir; for quite a number of concerns, they usually do that around this time of the year.

Q. Will you name any other concerns that do that? A. Yes, sir.

Q. Will you give me the names of some of these other
1745 concerns that you say resort to such a practice and who have made it a custom so to do? A. Well, I can refer you, like the Paramount Fashion, where they ordinarily make $3.75 line, and went into promotion for $2.87½. There is a concern——

Q. Wait a moment. Is this the first time they have done that? A. Is this the first time? I don't know whether they have done it before or not. I know that is what they are selling.

Q. Why did you say it is customary, if you do not know it was ever done before? Does not the word "customary" imply to your mind that it had been done before? A. It has been done before; yes, sir; by quite a number of concerns.

Q. Did you ever do it before? A. I never done that
1746 before; no, sir.

Q. This is the first time you resorted to that practice? A. This is the first time I resorted, owing to the business conditions, and I felt I couldn't get enough business on $4.75 merchandise. I, therefore, have taken my best judgment and simply found that I can do more business, better business, at $2.87½ for the month of June. Therefore, I went into that line.

Q. Did not you tell us this morning that your business was good this year? A. It was good; yes, sir.

Q. Well, then, what was the necessity for you to go into this promotion, $2.87 line, if your business was good? A. Because in the field, around that time of the year, around June 1, the customers expect to come in and buy special merchandise for different sales, and they will not——

Q. Did not they expect— A. —and they will not pay——

Q. Excuse me. A. —and they will not pay $4.75 for the line, and I thought it was better business judgment to go in and make $2.87 merchandise.

Q. Did not you think it was better business judgment to do it last year also? A. It was not necessarily last year. Last year I was able to get the price. Since I have 1748
seen the trend towards cheaper merchandise for this year, so I use my best judgment in my own business.

Q. In other words, it was your judgment that this year there has been a trend by the purchaser towards cheaper merchandise? A. Yes, sir.

Q. And that trend of the purchaser for cheaper merchandise affected your business to such an extent that you thought it was wise to reduce the price of your merchandise from $4.75 to $2.87½? A. Simply that was my judgment.

Q. Yes. A. As far as my experience of business, and I felt what I can do better in, what I can sell more merchandise, because I am no different than any other merchant that does use his own judgment as to what is best for him to do in his business. 1749

Mr. Weisman: May the question that I propounded to the witness be read to him again so that he may have an opportunity of answering it?

(Last question read.)

Q. Is that correct? A. I simply felt that it was much better——

Q. No; is that correct or is that not correct? A. I simply use my judgment——

Q. Now— A. —in my own business, whatever is best for my own business.

Q. I see. A. And that is the judgment I have used, and I felt I could do more business at $2.87½ for the month of June, so, therefore, I went into it, no other reason.

Q. Well, didn't you just say that the reason was that there had been a trend towards cheaper prices? A. That has been my opinion in my own business.

Q. Then there was another reason, and that was the
1751 other reason; is that not so? A. That is my opinion, and my own business.

Q. Yes. A. That I felt I can do more in the other end of the business at $2.87½ merchandise than I could do at $4.75 for the month of June.

Q. And you felt that way because there was a trend to cheaper merchandise on the part of the consuming public; is that not so? A. That is what the demand was.

Q. Yes. A. That was my opinion of the demand.

Q. Yes. A. That is all of my own business, that's all, I only judge my own, I don't judge anybody else's business.

Q. That is all we want to find out, that is all this inquiry concerns itself with. Now, I show you Commission's Exhibit 307, and ask you whether or not the order which you took for that merchandise had upon it the warranty
1752 stamp, or the warranty stamped upon it, as the Gimbel Brothers' order had? A. It did not.

Q. This did not? A. No, sir.

Q. How do you know that? A. I have got the proof here to show it to you.

Q. Let us have it. A. (Witness hands paper to counsel.)

Mr. Weisman: I offer this in evidence.

Examiner Bennett: Do you want that in evidence?

Mr. Haycraft: No, I object to it.

Examiner Bennett: Well, you may mark it for identification.

(Invoice from R. H. White Company, Boston, Mass., to Noxall Dress, 134 West 37th Street, New York City, was marked for identification Respondents' Exhibit 4.)

By Mr. Weisman.

Q. Referring to Respondents' Exhibit No. 4 for Identification, is Respondents' Exhibit No. 4 the order which calls for the merchandise which was returned, and is referred to in Commission's Exhibits Nos. 307 and 308? Is it? A. Yes, sir. 1754

Q. And Respondents' Exhibit No. 4— A. I will put my glasses on.

(Witness examines papers.)

A. Yes, sir.

Q. And Respondents' Exhibit No. 4 is part of the same transaction which attorneys for the Commission have offered in evidence by their exhibits, Commission's Exhibits 307 and 308; is that not right? A. Yes, sir; that is.

Mr. Weisman: I now offer this in evidence, your Honor, Respondents' Exhibit No. 4.

Mr. Haycraft: That is objected to as irrelevant. 1755
The documents in evidence speak for themselves.

Examiner Bennett: Are you contradicting the witness by this evidence?

Mr. Weisman: Why, certainly.

Mr. Haycraft: How would you?

Mr. Weisman: I am contradicting him by showing that these orders did not have this stamp.

Mr. Haycraft: He has already said that.

Examiner Bennett: He has said that.

Mr. Weisman: And now I want to show that in connection with this.

Examiner Bennett: Well, he so testified.

Mr. Haycraft: He so testified in the record.

Examiner Bennett: He so testified. The testimony is complete on that. Why encumber the record with that?

Mr. Weisman: Because I think it is all a part of the same transaction, your Honor. All of these things went in on the basis they were part of the same transaction.

1757 Examiner Bennett: Oh, I will let it in as part of the transaction. It does not mean anything one way or the other.

(The document referred to, heretofore marked for identification "Respondents' Exhibit 4," was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. Well, did I not understand you this morning to state that if you did not accept the orders with the warranty stamp on them you could not get the business? A. Well, during——

Q. No. Did I not so understand you to testify?

1758 Mr. Haycraft: I object to the form of that question. How is the witness going to know what he understood?

By Mr. Weisman.

Q. Did you this morning testify in words or substance that in order for you to get these orders for merchandise it was necessary for you to accept them with the warranty stamp thereon? A. Whereby we were not able to get orders——

Q. No, no, did you so testify this morning? A. That what?

Q. That in order for you to get the business it was necessary for you to accept the orders with the warranty stamped on them? A. Well, I——

Q. There is no doubt in any event that the merchandise referred to in Commission's Exhibits 307 and 308 was the subject of an order which had been placed with you by R. H. White & Company of Boston, Mass., on September 9, and that the order did not have thereon the warranty stamp; is that correct?

Examiner Bennett: I will let him answer. 1760

By Mr. Weisman.

Q. The Court says you may answer. A. Well, there was no stamp on that order.

Mr. Weisman: Now, I move to strike out of evidence Commission's Exhibits Nos. 307 and 308.

Examiner Bennett: Motion denied.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. When were these dresses shipped?

Mr. Haycraft: Referring to the same exhibit? 1761

By Mr. Weisman.

Q. Referring to the exhibit for the respondent, No. 4. A. Those dresses were shipped September 18, 1935.

Q. I see that they were tendered for return on October 30; is that correct? A. Yes, sir.

Q. In other words, approximately six weeks after they had been shipped; is that correct? A. Correct.

Q. Assuming that any of your accounts had received merchandise from you and had retained it for six weeks and had attempted to return it at the expiration of such a six weeks' period, would you not have objected to its return at such a late date?

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant, and having nothing to do with the issues in this case.

Examiner Bennett: Overruled. You may answer.

A. Well, that is just a matter whereby who is the cus-
1763 tomer and so forth.

By Mr. Weisman.

Q. Am I to understand by your statement that with regard to R. H. White, you did not object to their returning it at so late a period to you; is that correct? A. I objected to the return because—and to the Guild's interference with the business; that is the only reason for that.

Q. Do you know that—do you not think that you should have objected because they waited so long?

By Mr. Weisman.

Q. Do you know that or not? A. I do not know what I would have done in this matter.

1764 Q. What do you mean you would not know what you would have done in this matter? Are you in the habit of receiving goods six weeks after they are shipped? A. In the matter of a business man, we may do that, yes, in order to keep on good terms with a retailer, sometimes we have to do that once in a while.

Q. Why do you do that from time to time? A. Yes, in the usual course of the business we have to do that sometimes.

Q. Your statement is to-day that you did not object to the allowance of the return from R. H. White & Company because you wanted to do business with them; is that correct?

Mr. Haycraft: That is objected to. That is not a correct statement of the witness' testimony.

Mr. Weisman: I am asking him whether it is or not. To save time I will ask it another way.

By Mr. Weisman.

Q. Did you or did you not complain to R. H. White about the allowance of this return? 1766

Mr. Haycraft: Objected to as immaterial, irrelevant and incompetent.

A. Complain about what?

Examiner Bennett: Overruled.

A. Complained, if I may recollect correctly the reason, I do not recall the letter we wrote to them in regard to this merchandise. It had been away from our stock, and also that he had—that the Guild has no control over our business, and that they have absolutely nothing to do with us, and that we have absolutely nothing to do with the Guild, and therefore we refused to accept this merchandise. I have the letter—that the Guild has not and is not 1767 running my business, and I absolutely refuse to accept the return.

Q. You refused to accept the return because the Guild is not running your business. Did you not also refuse to accept the return because of the lateness of the tender of the merchandise? A. They would never have returned that merchandise if it were not on the instructions of the Guild. They only returned the merchandise because they got from the Guild an order to return the merchandise.

Mr. Weisman: I move to strike out the answer as not responsive.

Examiner Bennett: I think that has been exhausted pretty thoroughly now.

Mr. Weisman: May your Honor hear the question?

Examiner Bennett: Yes, I will hear it.

(Question and answer read.)

Examiner Bennett: You can answer that "yes" or "no." If you did not do it on account of that, or as to why you did not do it.

The Witness: I did not understand.

1769

By Examiner Bennett.

Q. Look at those papers again, and I will ask you after you have looked at them, I will ask you a question and we will clear this matter up. A. Yes, sir.

Q. Have you looked at these papers? A. Yes, sir.

Q. Now, what was the reason given by your customer for the return to you of this merchandise? A. "Copies of Guild dresses; please credit."

Q. Is it because of that reason given to you that you refused to accept them? A. Yes, sir.

Examiner Bennett: There is your record.

By Mr. Weisman.

1770

Q. You are quite certain you have answered the Court correctly? A. Yes.

Q. Will you please explain to the Court why in your letter, Commission's Exhibit No. 308, if that was the only reason you said: "The merchandise in question was shipped to you under date of September 10, firstly, they have been out of our stock too long a period of time to warrant our giving you credit." A. Will you please finish the rest of the letter on that, please?

Mr. Weisman: I have read all I want.

Mr. Haycraft: The witness is entitled to have the whole letter.

Examiner Bennett: Yes, you must let him have the letter if you are going to base your questions on that.

The Witness: I would like——

Mr. Weisman: Your Honor has not heard my question. I want him to answer my question "yes" or "no" and the rest of the letter has nothing to do with it.

Mr. Haycraft: I object unless the witness is given an opportunity to see the whole letter. If he 1772
is going to insist on taking just one clause out of the letter that is highly improper. As I understand it, you are quoting a clause from the letter and propounding the question and you are withholding the letter from the witness, and I insist that is improper.

Examiner Bennett: It is. Give him the letter.

Mr. Weisman: Does your Honor understand my question?

Examiner Bennett: I understand it, and I gave him a correct summary of what you had asked him and now you contradicted it.

Mr. Weisman: No, his own letter contradicts it.

By Mr. Weisman. 1773

Q. Will you explain it, look at the letter and explain it. A. I want—there are additional—may I ask here that counsel has not finished the balance of this letter. There is—I would like the answer to it to be complete. There is more in that letter. I would like to answer it all the way through, as a whole. We have other reasons here why we refused to accept that return on this letter from which he read.

Examiner Bennett: All right. The reason given there is not the only reason.

The Witness: No, sir; that is not the only reason.

By Mr. Weisman.

Q. And the reason that you gave the Court in answering his query to you now appears by your very own letter, appears to be not the only reason. Since I have not done the writing of this letter, I do not do any of the letter writing, the correspondence of my office, therefore, I do not know possibly the contents of this letter, but I know
1775 that we refused this merchandise; as far as I know, we refused this merchandise for this reason, that it is on account of the Guild.

Q. If you did not know, why did you want the Court to believe you before when you told the Court that the only reason you refused to receive this return of the merchandise was because of the Guild situation. A. Because I think——

Mr. Haycraft: I call your Honor's attention to the fact that he did not state it was the only reason, but it was "the" reason.

Mr. Weisman: That is a very fine piece of pettifogging. What do you understand that the reason could be? What is this very fine lexicographer's
1776 distinction that you are trying to draw here between the word "the" and the word "only"; are they not synonymous?

Mr. Haycraft: You seem to think they are.

Mr. Weisman: What do you say?

Mr. Haycraft: Why should I tell you? You are the interrogator, not me.

Mr. Weisman: If you want to be fair about it, why not state what you think the difference is that you are trying to make here?

Mr. Haycraft: I will state what I please.

Mr. Weisman: Evidently you find yourself baffled by your own statements.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Haycraft: Mr. Examiner, we have no objection to this witness being asked whether this was the only reason, if that question was put to him. I have no objection, or asking him if there was any other reason.

Mr. Weisman: The Court did all the interrogation that was necessary on that point.

Mr. Haycraft: All right. 1778

By Mr. Weisman.

Q. With regard to Commission's Exhibits 310, 311, 312, 313, 314 and 315, inclusive, which was the order from Kaufmann's, did that order have the Guild stamp on it? A. No.

Q. I show you this paper. Is this the order referred to which ordered the goods referred to in Commission's Exhibits Nos. 310 to and including 315? A. Yes.

Mr. Weisman: I now offer this in evidence.

Mr. Haycraft: Same objection.

Examiner Bennett: I will allow it in. I think it is innocuous, but this seems to be the best way to show it in the record. 1779

(The invoice from Kaufmann's, Fifth Avenue, Pittsburgh, Pa., to Noxall Waist & Dress Company, New York City, N. Y., was marked "Respondents' Exhibit 5" and received in evidence.)

By Mr. Weisman.

Q. When you refused to accept the return of these dresses, why did you refuse to accept the return? A.

Owing to the fact that it has been ordered by the Guild, the return of this merchandise.

Q. Is that the only reason? A. I do not remember.

Q. As a matter of fact, does not your Exhibit No. 314 show that you refused to accept that for many other reasons, among which being the reason that they tendered the return of these too late to you? A. They were returned for both reasons.

Q. Was one of the reasons that you refused to accept the return because the return was tendered too late after the shipment by you to the purchaser? A. Oh, no, that was not the reason.

1781 Q. What did you mean when you said in exhibit—Commission's Exhibit 314: "Firstly, the dresses in question were shipped to you some time ago, and they are too old to warrant our acceptance." Did you not mean that they had kept them too long to now tender the return? A. I did; yes, sir; and also on account of the return of the Guild, for both reasons—and they never would have returned them if they didn't get instructions from the Guild to return them. They would not have attempted to return the merchandise.

Q. The first reason that you refused to accept the return was because the tender was too late; is that so? A. That was for both reasons.

Q. Do you in your letter give that as your first reason?

1782 A. What do you mean?

Q. "Firstly, the dresses in question were shipped to you some time ago and they are too old to warrant our acceptance." Is that so? A. That is just a matter of dictating a letter. Sometimes you make that reason first on account of that fact, and in the next letter it is first on account of the Guild.

Q. In this one you did give that as your first reason, did you? A. Yes, that is what the letter states.

Q. You were not telling these people an untruth, were you? A. That was the truth.

Q. The truth was that the first reason you would not accept these dresses was that they were tendered for return too late? A. Yes, but these people never would have returned them if they had not gotten instructions from the Guild to return them. This merchandise was salable merchandise, and they never would have returned it if it had not been on account of the instructions from the Guild for them to do so.

Mr. Weisman: I respectfully ask that the witness not seek to out-shout me. I submit that an orderly procedure here would be of greater benefit 1784
to all concerned.

Examiner Bennett: You are not trying this case before a jury. The more you labor in that way with your witnesses less attention will be paid to the testimony you bring out.

Mr. Weisman: I regret that exceedingly. Of course, your Honor, I cannot help it, but someone who is not present where this testimony is brought out does not have the opportunity to observe the witness.

Examiner Bennett: We are all present, but it does not serve any useful purpose for you with the Examiner, and I do not think it will serve you any useful purpose with the Commission to do that. 1785
This is all in the record and it cannot be missed. Why go ahead indefinitely and try to stress it?

Mr. Weisman: Because I think it is of importance. Perhaps I am mistaken, for the Commission, or for your Honor to observe the reluctance with which the witness will concede what is obviously the fact, as being highly illuminative of the worth to be given the rest of his testimony in this case.

Mr. Haycraft: I object to that.

Mr. Weisman: Do you object to my addressing the Court?

Mr. Haycraft: I object to the statement.

Mr. Weisman: Oh, you object to my statement?

Mr. Haycraft: Yes.

Mr. Weisman: It is the truth. I do not see why you want to object to it.

By Mr. Weisman.

Q. With regard to Commission's Exhibit No. 316, which refers to a transaction from Joseph Horne & Company,
1787 did the order for that merchandise have on it the so-called warranty stamp? A. Yes, it did.

Q. This is an order for that merchandise referred to in Commission's Exhibit No. 316? A. Yes, sir. Style No. 222?

Q. Yes. A. Yes.

Mr. Weisman: I now offer this order in evidence as part of the transaction.

Mr. Haycraft: I object.

Examiner Bennett: I will let it in. You will have an objection and exception. Evidently the witness brought this thing in here for some purpose.

1788 (Invoice from Joseph Horne Company, Pittsburgh, Pa., under date of September 13, 1935, to Noxall Waist & Dress Company, New York, N. Y., was marked Respondents' Exhibit 6 and received in evidence.)

By Mr. Weisman.

Q. I asked you this morning a number of questions with regard to the warranty stamp which appeared on the Gimbel order, which is Commission's Exhibit No. 306.

Then I asked you the same question—rather, I do not believe I did ask you that about any other exhibit. However, if I asked you the same question about this exhibit, would your answers be the same, to wit: You understand the meaning of the warranty and so forth?

Mr. Weisman: Your Honor, I am trying to save time by this method.

A. The meaning is the same, I think, but I would like to explain something in this matter that is different; this order, in particular, is different.

Mr. Haycraft: Let him try to explain the difference if he sees it. 1790

Mr. Weisman: Now, look. That is not right.

The Witness: This order in particular.

Mr. Weisman: Will your Honor advise this witness that when I make an objection he should cease talking until I complete my statement of my objection?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Have you heard that? A. Yes, sir.

Mr. Weisman: I will withdraw the last question.

By Mr. Weisman. 1791

Q. Where was this order taken, referring to Respondents' Exhibit No. 6?

Mr. Haycraft: For identification.

Mr. Weisman: No, it is in evidence.

Examiner Bennett: It is in evidence.

A. This order was taken in our showroom on September 13.

Q. Your showroom in New York? A. Our showroom in New York.

Q. At the time that it was taken, did it have the stamp on it? A. No. At the time this was taken, it was taken on one of our order sheets. It is customary for a lot of buyers to just leave the order and mail the confirmation afterwards. During that time in the course of the conversation the buyer distinctly called my attention to it that they could only place this order with this stamp on it.

I had quite a conversation with him and he says he cannot get the people to send in the order unless it has the stamp on it. Under those conditions I was forced to ac-
1793 cept the order with this stamp on it, otherwise it would mean a great loss in our business. If I did not accept this order with this stamp on it I did not get the business.

Q. When you say you were "forced," you mean that you could either accept the order with the stamp on it, or you would not get the order; is that right? A. That is right.

Q. Nobody offered to hit you? A. That is not the question about it; of course I did not have anybody that wanted to hit me, but in the meantime it is hurting the business if I do not accept the order.

Q. I understand. All I want to know is when you used the word "forced," you mean if you wanted the order you had to make it on the terms that it was tendered; is that correct? A. Otherwise I would lose the business. Joseph Horne & Company, if I did not accept it, because the
1794 buyer—she would not leave the order with me unless I got that stamp with it, they said.

Q. In other words, if you were not willing to abide by the terms of the stamp; if you were not willing to promise that the merchandise you were going to ship would not be copies of Guild merchandise, the buyer for Horne's did not want to buy what you were offering; is that so? A. Oh, no.

Q. No? A. Oh, no.

1795

Q. It placed upon the seller a warranty—you are the seller—and you told me this morning that you understood what the word "warranty" meant? A. Yes.

Q. "That this order is placed upon the seller's warranty that the above garments"—and you knew that the word "garments" that meant the garments ordered—"are not copies of styles originated by members of the Fashion Originators Guild of America, Inc." Is that so? A. Yes.

Q. You knew the meaning of those words? A. Yes.

Q. And the buyer said to you if you were not willing to take the order, an order which contains a promise on your part to that effect, I do not want to give you the order; is that so? A. If I——

1796

Q. Is that so? A. Well, if I keep on refusing orders I might as well go out of business.

Mr. Weisman: I ask that that be stricken out. I also ask that the witness be directed to answer the questions. Obviously this witness has had a little help over the noon recess.

Mr. Haycraft: I object to that. There is no evidence of anything of that sort. I think that is quite improper.

Mr. Weisman: I did not say you did it. If somebody yelled "Thief!" in this room I would not jump because my conscience is clear.

By Examiner Bennett.

1797

Q. Did that occur or did that not occur? A. The buyer simply stated that he could not leave the order unless—could not send in the confirmation unless it has that stamp on. This same thing occurred with quite a number of accounts in my showroom that walked in there.

Examiner Bennett: Just wait a moment.

Mr. Weisman: I move to strike.

Examiner Bennett: It may be stricken. That can be brought out on further redirect examination, Mr. Haycraft, if you wish, from this witness. If you will just answer the question perhaps it will stop some of the contention that we have been faced with here.

By Mr. Weisman.

Q. Your answer was "yes," I take it?

Examiner Bennett: He answered it. I struck from the answer, as shown in the record, what was in addition thereto.

1799

By Mr. Weisman.

Q. And you also knew by the further wording of that stamp that the purchaser reserved the right to return any merchandise which was not as you promised; is that so? A. It was a promise as far as the stamp was concerned; not me.

Q. Yes, yes. That is correct, is it? A. That is correct because I was forced to take it. I was forced to do so or lose the customer.

Q. That is not an answer to my question.

Mr. Weisman: Will your Honor tell this witness that he does not strengthen his case by reiterating time and time again that he was forced to take the order when it is perfectly apparent that he could take the order or leave it?

1800

Mr. Haycraft: No, no. He has to take it that way or else.

Mr. Weisman: I am addressing myself to the Court.

Mr. Haycraft: I move to strike out the statement of counsel as highly improper.

Examiner Bennett: I will strike out the additional matter that was in addition to the answer to the question.

By Mr. Weisman.

Q. I notice that the terms of this order were 8-10 E.O.M. Is that correct? A. That is correct.

Q. You were likewise forced to give them 8-10 E.O.M., were you not? A. That is our standard terms.

Q. In other words— A. We are in business, and that has been our terms for years; 8-10 E.O.M. That is our terms to everybody.

Q. If you did not give them 8-10 E.O.M. they would 1802
not give you the order? A. There is no question about terms. There was no discussion about discounts or anything. The people know that we have done business with them for years, and that those are my terms. There was no question about terms at all.

Q. They found it necessary to put that on the order, did they not? A. That is put on their order, but every house allows, at least our house allows 8-10 E.O.M. And anybody who does business with our firm gets that. We have no other terms.

Mr. Haycraft: I object as not proper cross-examination.

Examiner Bennett: There is nothing before the Examiner just now. Maybe this is through. 1803

By Mr. Weisman.

Q. I notice that there is also put on this order the following: "This merchandise is ordered and will be accepted only on the express understanding that no part of the work or the manufacture of any of the merchandise is done by a minor under the age of 14 years or in a dwelling or home or elsewhere that is not a regular, sani-

tary, mercantile establishment or factory." You were also forced to accept this order with that printed on it, were you not?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: That is the vice of letting in respondents' exhibits on cross-examination. You get in the exhibit for the respondents and then you devote your whole attention to cross-examination on that exhibit, which is not a part of the affirmative case.

1805 Mr. Weisman: Yes, it is, Judge, in my opinion.

Examiner Bennett: No, it is something that you asked to put in.

Mr. Weisman: I do not think so.

Examiner Bennett: No, no, it is not. The facts are all in the record that the Commission wants in the record up to that time. That is the reason that I am going to keep these things out hereafter just because of your abuse of them; just because of your abuse of this particular thing.

Mr. Weisman: May I explain my purpose and you will see it is not an abuse.

Examiner Bennett: Whatever the purpose is the proper place is in your defense of the matter. I am

1806 not going to permit it, and I am going to just shut right down on that sort of thing in the future to prevent any such abuse as this.

Mr. Weisman: I just want a moment's time, your Honor, so you will see that I am not abusing the privilege. This witness has testified again and again that he was forced to do this and to do that, and I am showing by his own statement that he, in order to get this order, had to accept these other things

on the order, and he accepted them and makes no complaint about them, but he claims that he is "forced" simply because he did not like these particular terms.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. With regard to Commission's Exhibits Nos. 318 and 319, also No. 320, did the order which purchased the goods, which is the subject matter of these exhibits, have the Guild stamp on it? A. No, sir. 1808

Q. Have you got that here? A. There is my own order.

Q. This is the order for the merchandise referred to in here; in these Exhibits 318, 319, and 320. A. Yes.

Mr. Weisman: I offer it in evidence as Respondents' next exhibit.

Examiner Bennett: Do you simply want to put it in for what it shows?

Mr. Weisman: Yes, your Honor.

Mr. Haycraft: May the record show that I have an objection to it.

Examiner Bennett: Yes.

(Invoice of Noxall Waist & Dress Company, sold to Luries, Baltimore, Md., was marked "Respondents' Exhibit 7," and received in evidence.) 1809

By Mr. Weisman.

Q. Do you remember the reason that you refused to accept the return of these goods referred to in Commission's Exhibit No. 318? A. I object——

Q. Do you understand the question? I just asked you, do you remember the reason that you refused to accept

the return of the goods referred to in Commission's Exhibit No. 318? A. Oh, I remember that they were returned on account of the instructions from the Guild——

Q. (Interposing) I did not ask you why they were returned. You understand English, do you? A. What?

Q. Do you? A. I think I do.

Q. If you think you understand English, do you understand my question when I say to you when these garments were tendered to you for return and you refused to accept the return, do you recall the reasons that you refused to accept the return? A. Well——

Q. Do you understand that? A. I understand the rea-
1811 son I refused—that they wrote us a letter, and that they have refused to accept our merchandise is what I can remember of this matter.

Q. No. Evidently you still do not understand or I cannot make myself plain.

Mr. Haycraft: I must object. The answer is all right.

Mr. Weisman: The answer does not mean anything at all. It is certainly not an answer to my question.

Mr. Haycraft: I think it is a proper answer to such a question.

Mr. Weisman: Obviously he did not answer my question.

1812 Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Read the question so that we can see what it is.

(Question read.)

Examiner Bennett: Read the answer

(Answer read.)

Mr. Weisman: That answer is perfectly unintelligible. I will ask that it be stricken out, and I will ask it again.

Examiner Bennett: I think it would be better if you would ask it in several parts. I think you would have better success. It may be stricken. Proceed.

By Mr. Weisman.

Q. Do you remember the return of this merchandise referred to on Commission's Exhibit No. 318? A. Yes.

Q. Do you remember that you did not want to accept the return? A. I do remember that.

Q. Do you remember that you had certain reasons that you gave the purchaser why you would not accept the return? A. The reasons—— 1814

Q. (Interposing) Do you remember that you gave those reasons? A. Yes.

Q. I want to know from you what were the reasons that you gave to the purchaser for your refusal to accept the return of this merchandise?

Mr. Haycraft: I object to that. The letter is in evidence and speaks for itself. I demand that the witness be allowed to refresh his recollection from the letter before answering the question.

Examiner Bennett: Let him refresh his recollection on the letter if you want him to answer that question in that form.

Mr. Weisman: You asked him on direct his own reason for that and I think I have a right to interrogate him about it to see what his recollection as to the reasons is. 1815

Examiner Bennett: I think it would save time to do it otherwise.

By Mr. Weisman.

Q. Very well. Do you want to refresh your recollection as to what reasons you gave, or have you a present recol-

lection of the reasons you gave for your refusal to accept the return of this merchandise? A. I can refresh my mind and answer it the best I can remember, either way.

Q. Look at Commission's Exhibit No. 320. After looking at it see if you do not remember that you did not give these people the following reasons for your refusal to accept the return of this merchandise, and——

Mr. Haycraft: I object to the form of the question.

Mr. Weisman: May I finish the question? I object to being interrupted in this manner.

Mr. Haycraft: I object to the form of the question so far as you have gone. It is obviously incompetent, and I do not see any reason to continue with it.

1817

Examiner Bennett: I will let you complete the question.

By Mr. Weisman.

"Firstly: The dresses in question were sold to you at a special concession in price and job merchandise is not returnable." "Secondly: The merchandise in question was shipped to you under date of September 24 and is now too old to warrant our accepting the same." Were those the first and second reasons that you gave to this purchaser?

1818

Mr. Haycraft: I object. The letter is in evidence and speaks for itself. Why cross-examine this witness as to what is in a letter that is already in evidence? It can serve no possible purpose.

Mr. Weisman: It is very important because of the testimony this witness gave on direct.

Mr. Haycraft: That was merely to identify the letter.

Mr. Weisman: It was that he refused to accept the merchandise because of the Guild.

Examiner Bennett: Overruled. He may answer.

By Mr. Weisman.

Q. The Court has said that you may answer. A. This merchandise, as I recollect from that letter, was refused for the purposes stated in that letter, and also—or also refused in regard that the Guild has ordered them to return the merchandise. There are three reasons why it was refused on that letter and not only two.

Mr. Haycraft: As a matter of fact, I have no recollection of asking this witness with respect to this specific instance as to why they were returned except to put in the letter. I do not think this is proper on cross-examination to take each part of the letter and cross-examine the witness on it. 1820

Mr. Weisman: This letter says "Firstly," and it says, "Secondly," and I certainly can ask him about it.

Mr. Haycraft: That is something which is simply a matter of argument. That is for you to argue before the Commission. You are simply trying to split this up into one or two parts, and trying to throw a cloud on the matter.

Mr. Weisman: He is trying to explain this thing away the best he can, and you are doing your best to help him. The truth will prevail in the end anyhow. Why not permit the examination to go ahead in orderly fashion. 1821

Mr. Haycraft: I object to that, your Honor. It is entirely uncalled for.

By Mr. Weisman.

Q. When these dresses were returned to you, did you make any effort to ascertain—withdraw that. Did you care whether they were copies of Guild merchandise or not?

Mr. Haycraft: That is entirely irrelevant and immaterial, your Honor.

Mr. Weisman: It goes to the value of all of his testimony, and to the value to be placed upon these exhibits. It goes to the probative value which may be given to the witness' statements here on the witness stand, the weight and credit that may be attached to any statement that he may make.

1823

Mr. Haycraft: What that has to do with the issues in this case is more than I can see.

Mr. Weisman: It is very important.

Mr. Haycraft: Suppose that this witness did breach the contract. Suppose he breached the contract in every way, manner, and form which he could. What has that to do with this case? Has that anything to do with the issues in this case? If the contract was gotten under force or duress, what difference does it make? It does not make any difference why he breached his contract, or why he did not live up to it, even supposing that he did.

Mr. Weisman: I am under the impression that your Honor does not enjoy these extended colloquies.

1824

I do not want to be under the disadvantage here one way or the other because I am not engaged in that kind of a matter when it comes up because I do not desire to weary the Court, but when I am shouted at in this fashion, I feel I should be entitled, without any such a show, to show that this witness took these orders and absolutely no regard as to whether or not the terms of the order were fulfilled.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I do not see what probative value that has. I will let him answer the question, however, if he cares to. Read the question.

Q. (Question read.) A. I did not know even whether they were copies of the Guild or not; it makes no difference to me one way or the other.

By Mr. Weisman.

Q. It did not make any difference to you one way or the other; is that so; is that what you said? A. I made the statement that these merchandise—I do not know what I 1826
said.

Q. Well, let us look into that. That is a new one. Do you mean to say that you do not know what you said a second ago? Do you not forget things once in a while? Yes, you do. I do, too. I am no different from you.

Q. Wait a minute. This is something very strange. Do you mean to state that you do not remember that the immediate question before this was asked and that you said that you were indifferent, in words or substance, that you were indifferent as to whether or not the dresses you shipped out on these orders were copies of Guild merchandise or not?

Mr. Haycraft: Mr. Examiner, obviously Mr. Weisman has no better memory than the witness, to say the least, as he has shown that himself because 1827
he cannot even remember his own question. That is not what he asked the witness.

Mr. Weisman: I am not under oath, and I am not testifying. I am simply the examiner.

Mr. Haycraft: It is a question of memory. I think you have shown up far worse than the witness. The comparison does not do you very much good.

Mr. Weisman: Perhaps not. I do not want to enter into an argument and shout. I certainly do not want to go into a shouting festival with my friend, if he will just let me alone and let me question this witness, if he will be quiet for a moment maybe I can refresh this witness' recollection.

Examiner Bennett: We will take a 10-minute recess.

(There was a short recess taken.)

Examiner Bennett: Come to order.

Mr. Weisman: May I have the last question?

(Last question and answer read.)

1829 *By Mr. Weisman.*

Q. So that, I take it, that you told the customers who placed these orders with you, when they attempted to return the merchandise as being copies of Guild merchandise, that you did not care whether or not they were copies of Guild merchandise; is that correct?

Mr. Haycraft: I object to the question; improper in form. I do not think the Commission is interested in how counsel takes it.

Mr. Weisman: Well, is it a fact? Do you want to waste a lot of time? My "I take it" does not mean I personally take it. I mean, is it a fact.

Mr. Haycraft: That is irrelevant and immaterial.

1830 What is the difference?

Examiner Bennett: Well, I am going to let him answer. I doubt about its relevancy, but we will give him the benefit of the doubt.

A. It made no difference to me when I showed my line, that is what I showed, and that is what the customer has bought and nothing else. I showed my line, and that is what they bought.

By Mr. Weisman.

Q. And it made no difference to you whether those dresses that you sent out on these orders, which contained these stamps, were copies of Guild merchandise or not?

Mr. Haycraft: I object to that, Mr. Examiner. It seems to me that we are now getting into a field that is entirely foreign to the direct examination. There was no question asked of this witness with respect to whether or not the dresses he sold were copies of other manufacturers' merchandise, and that apparently is where this question is leading,—not being an issue in this case——

1832

Mr. Weisman: We are trying——

Mr. Haycraft: —it seems to me we should stop it now before we get into it.

Mr. Weisman: Now, isn't that nice? You are making a guess, based upon your effort to read my mind, as to what I am going to do next, when you could have saved yourself all of that trouble if you had only read your own exhibits and prepared your case. Now, I say to the Commissioner that the basis of these exhibits is statements contained in the very exhibits that you offered into evidence on your direct examination. You do not have to go as far as you did and have to guess. I ask that the witness be directed to answer.

1833

Mr. Haycraft: Mr. Examiner, it doesn't make any difference to the issues in this case whether the dresses were or were not copies of Guild merchandise.

Mr. Weisman: I did not hear that.

Mr. Haycraft: I say, it does not make any difference to the issues in this case whether the dresses involved in the transactions were or were not copies of Guild merchandise.

Mr. Weisman: Well, before you——

Mr. Haycraft: The sole issue is that they were returned, as far as this manufacturer is concerned, on the alleged—on the statement, or claim, that they were, and we certainly are not going into the question of issue, whether they were or were not——

Mr. Weisman: Well, if you are willing, and if I get your statement correctly, to stipulate to the facts that whether or not the dresses were copies or were not copies is immaterial, and no claim is urged by you with regard thereto, I will refrain from further examination on this query. Do I so
1835 understand? Do I understand you are willing to let your statement made a moment ago in order to induce the Court to make a ruling,—do I understand you are willing to let it have the effect of a stipulation in this proceeding? Are you willing to do that?

Mr. Haycraft: My statement stands for whatever use you wish to make of it.

Mr. Weisman: No, I want to know what you do want to make of it? You urged upon the Court as a reason for curtailing my examination. I submit my examination may be curtailed, thereupon, but not upon a statement, unless you are willing that the statement be deemed a stipulation in these proceedings. Then I say I will not pursue this inquiry any further.

1836 Mr. Haycraft: You may make what use of it you may see fit.

Mr. Weisman: Then I ask that the witness be permitted to answer. A lawyer who will urge on the Court on one thing, and then say that is the reason but I refuse to let it be a stipulation and a binding reason, why, I cannot rely on it.

Mr. Haycraft: Refuse nothing.

Mr. Weisman: Then do you grant me it shall be a stipulation, if you don't refuse? Do you?

Mr. Haycraft: I do not know what you mean by stipulation. By that, do you mean, will you stipulate that you will not interrogate witnesses on this question?

Mr. Weisman: If you will stipulate, yes, I mean just that. I always know what a stipulation means. I mean, that I have understood you to say that whether or not the dresses were returned, were copies, is immaterial.

Mr. Haycraft: Absolutely.

Mr. Weisman: And that that is not an issue in 1838
this case.

Mr. Haycraft: Absolutely.

Mr. Weisman: And there is no need for us to query, or to prove that they were, in fact, copies of Guild merchandise; that the vice of this case is in the contention, something of that sort——

Mr. Haycraft: Exactly.

Mr. Weisman: If you are willing to make that stipulation, I drop this line of inquiry from this witness; that is all.

Mr. Haycraft: Well, that——.

Mr. Weisman: If that is your stipulation?

Mr. Haycraft: I am saying that is the contention of the Commission.

Mr. Weisman: All right. 1839

Mr. Haycraft: Use it or treat it as you please.

Mr. Weisman: I accept it as a stipulation.

Mr. Haycraft: I do not make stipulations of that type. I do not have authority to make stipulations, if you call them stipulations, but I am making this statement, it is the Commission's contention.

Mr. Weisman: Do I understand it is the Commission's contention that if the garments were in truth

and in fact copies of members' merchandise, that has no bearing on this case?

Mr. Haycraft: Absolutely.

Mr. Weisman: All right, then, I will not ask him any further. I will rest on that. That is fine. When I say that is fine, I mean I do not want to pursue any inquiry to prove something that is conceded.

Examiner Bennett: All right, all right.

By Mr. Weisman.

Q. With regard to Commission's Exhibits 321 and 322,
1841 have you got the order, which ordered the merchandise which was the subject matter of that return? A. I have not. What is the name on that? Pardon.

Q. Oh, excuse me, Schunemans and Mannheimers. A. I have not.

Q. Do you know whether or not that order, calling for those goods, contained the warranty stamp? A. I do not.

Q. Can you look up that order between now and tomorrow morning? A. That is a question, if I can find it.

Q. Well, will you look for it? A. Yes, sir, I will.

Q. And if you can find it will you bring it to Court? A. Yes, sir.

Q. Thank you.

Mr. Haycraft: Mr. Examiner, I object to the wit-
1842 ness being requested to do that, for the simple reason that when the last witness we had on the stand was requested to bring certain documents to court he did bring them to court, and then counsel did not interrogate him about them.

Mr. Weisman: Oh, you are mistaken. The Court ruled I could not. We had all of these things here, and I want you to know that I am going to try and get an order for those documents. You are not finished with that request.

Mr. Haycraft: I am talking about correspondence; here it is right here (indicating).

Mr. Weisman: Let me ask you something. What right have you got to object to asking the witness for anything that I want personally, if he is gentlemanly enough to give it to me?

Mr. Haycraft: I have a right to object for any reason I see fit.

Mr. Weisman: I thought it was your duty to investigate, not to prosecute. Do you not want all the facts that can be brought out to be brought out?

Mr. Haycraft: I do not take my instructions from you, that is a cinch.

1844

Mr. Weisman: I am not instructing, I am querying.

By Mr. Weisman.

Q. Did you testify this morning that about 50 per cent. of your business is done with co-operating retailers who request that your orders containing the warranty that the merchandise shall not be copies of Guild merchandise? A. About 50 per cent., yes.

Q. Can you give us any information which will give light on the fact that although 50 per cent. of the merchants whom you do business with demand that you make such warranty to them yet, in connection with the orders referred to in Commission's Exhibits 307 to 309, inclusive, which you have produced, only one of them has this warranty stamp? A. Yes, I can explain that. You take during the month of September, I believe it was the middle part of September, it seemed to me that the Guild began to press the retailers to use that stamp. Prior to that we very seldom got an order from any of these concerns that we are getting orders with stamps today, while we never got it—we got their business, but we never received any orders

1845

with any stamps from these people here. Then later on it seemed to me they have been forced by the heads of the concerns to use a stamp on every order that they have issued, from that time on, around September, on.

Q. On the order from Schunemans & Mannheimers, do you remember when that was taken? A. I said I do not remember when that was taken. That was taken, offhand, I believe in January, and I haven't got the record, but just, if I remember correctly, I think that was taken in January, 1936.

Q. And you do not remember whether that had the stamp? A. I said I do not remember; no, sir.

1847 Q. Now, the order from Luries, do you remember when that was taken? A. Well, the date is right on the order there; you have got the order right there in front of you.

Q. Well, they took the order out. A. Well, it is there, presented to you, some time in September, I believe. I don't know for sure. Some time in September.

Q. Well, let us see. Luries was in September. Horne's was in September. Are you an officer of the Popular Priced Dress Manufacturers——

Mr. Haycraft: I object.

Examiner Bennett: What is the purpose of it?

Mr. Weisman: Popular Priced Dress Manufacturers is an organization which Mr. Hirsch was president of, which is committed to the fact, from the testimony, as he testified, that they are against

1848 all protection of design, and so forth.

Examiner Bennett: All right, you may answer.

A. Vice president.

Q. How long have you been vice president? A. Vice president since 1934, the latter part of 1934.

Q. When was that organization organized? A. In the fall of 1934.

Q. So you have been vice president of it ever since it was organized? A. Yes, sir; I have been president; I have been reelected.

Q. President or vice president? A. Vice president.

Q. Were you one of the members of that organization that went to Washington at the time that there was under discussion the inclusion in the Code of Fair Competition for the Dress Industry a provision which would have made copying of original designs an unfair trade practice?

Mr. Haycraft: Now, Mr. Examiner, I object to that question. Yesterday, or day before yesterday, when Mr. Hirsch was asked the same question some foundation had been laid by direct examination, or 1850
he was asked whether he was an officer of the organization on direct examination. You allowed the answer on the same ground. Now, we are going into the same thing without any foundation whatever on direct examination. It is not proper cross-examination.

Mr. Weisman: You do not want to hide the fact that this witness has certain tendencies?

Mr. Haycraft: I have other witnesses here who will testify on this situation.

Examiner Bennett: Overruled. You may answer that question.

By Mr. Weisman. 1851

Q. The Court says you should answer it.

The Witness: May I have the question?

Q. (Last question read.) A. Yes, sir.

By Mr. Weisman.

Q. And your purpose in going to Washington was to lend aid and assistance to defeating of such a provision being written into the code; is that correct?

Mr. Haycraft: May I have an objection to all of this line of cross-examination?

Examiner Bennett: Yes, you may have the objection; it is overruled. The witness may answer.

A. Since I believe there are no——

By Mr. Weisman.

Q. No, not since you believe, what was the purpose of you going there?

Mr. Haycraft: It is irrelevant and immaterial, too, Mr. Examiner.

1853

A. I would like to answer it in such a way, the reason why I went there——

By Mr. Weisman.

Q. I merely asked you the purpose—I merely asked you this question: Was your purpose in going there to lend your aid and assistance to those who sought to prevent the writing into the Code of Fair Competition for the Dress Industry of a provision which would have made the copying of original designs an unfair trade practice?

Mr. Haycraft: I object to that, irrelevant, and immaterial.

Mr. Haycraft: The Court has already ruled.

1854

Examiner Bennett: Yes. Well, I have ruled practically on that.

By Mr. Weisman.

Q. Now, will you answer that? A. I believe that there is no such a thing.

Q. No, no, I did not ask you what you believed. I asked you what was your purpose in going there? Do you not

want to answer my questions? Will you answer the last question for me? Are you willing to answer my questions? A. To the best of my knowledge.

Q. Now, did you not, when I asked you about your purpose in going there, did you not understand my question? A. Do you mind reading that question again, please? Q. No, I am asking you now, did you understand the question then? A. Well, I am ready to give you my reason why but you won't let me give you my reason why.

Q. Listen to my question and please try to answer it, we will both save time. I will repeat the question again so there can be no question about the question: Was the purpose of your going to Washington at the time referred 1856
in the previous questions so that you could aid and assist in preventing the writing into the Code of Fair Competition for the Dress Industry of a provision which would have made the copying of original designs an unfair trade practice? Was that your purpose in going there? A. No, my purpose of going——

Q. All right; that is the answer. A. ——of going there—

Q. That is your answer. A. All right.

Q. And you testify now that you did not go there for the purpose of having this copying of original designs denominated an unfair trade practice; is that correct? A. We went to——

Q. No, is that correct, what I have stated?

Mr. Haycraft: He just answered you. 1857

By Mr. Weisman.

Q. Do you want the question read again to you? Will it help you? A. Yes.

Q. Will it help you to have it read? A. Would you mind reading it?

Mr. Weisman: Read it again. If that will help him, and see if he can answer it.

Q. (Last question read as follows:) "Q. You testify now that you did not go there for the purpose of having this copying of original designs denominated an unfair trade practice; is that correct?" A. That I testified? No, I didn't go for that reason. The reason that I went there was——

Q. I did not ask you that. I asked you what you testify to now. You testify that that was not your reason. A. That was not the reason.

Q. No. A. No.

Q. In any event, you went there? A. Yes, sir.

Q. And you went there at a time when the matter of the
1859 inclusion in the code of fair competition of such a provision was under discussion? A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Now, as a matter of fact, you went there with Mr. Hirsch, did you not? A. Not only with Mr. Hirsch——

Q. No, but he— A. —I did not go with Mr. Hirsch alone. I went to the hearing.

Q. No, I did not say Mr. Hirsch alone, but he was in the party that went with you or that you went with? A. There were others besides Mr. Hirsch there.

Q. Yes, I grant you that. I do not want to clutter up the record with everybody that went there, but in addition to all of those that went there besides Mr. Hirsch, you and Mr. Hirsch went there? A. Yes, sir.

Q. And at this hearing did you give testimony? A. I
1860 did not.

Q. You did not testify? A. No, sir.

Q. Did you have a lawyer appear to urge that such a provision should not be included in the Code of Fair Competition? A. We did.

Q. And that lawyer was a Mr. Sheridan, of Hartman, Sheridan & Tekulsky? Was that the name of the firm, Hartman, Sheridan & Tekulsky? It used to be a lot more. A. Yes, sir.

Q. And he went there as your representative? A. Yes, sir.

Mr. Weisman: I think that is all on that line.

Mr. Haycraft: I move to strike it, Mr. Examiner, it has no probative value on the issues in this case.

Examiner Bennett: Granted.

Mr. Weisman: I may have an exception, your Honor?

Examiner Bennett: Yes, surely.

Mr. Weisman: Thank you.

Examiner Bennett: It is in the record.

Mr. Weisman: Where is Commission's Exhibit 93-A? Oh, here it is. 1862.

By Mr. Weisman.

Q. This morning, under direct examination by Mr. Haycraft, I understood you to state that you did business at some time or other with all of the resident buyers appearing on Commission's Exhibit 93-A. A. It is pretty hard to say, there may be some, I don't, and maybe——

Q. No. Did not you say this morning— A. I don't remember.

Q. —that you did business with all of them? A. There may be a few. I have not gone through this very thoroughly to see every one of them, and I cannot remember every one of them on and off; we do business with a certain amount of people, the majority of people we do business— 1863

Q. Mr. Haycraft did not ask you whether you did business with a lot of people or with a majority of people. Mr. Haycraft showed you this list and he asked you to look at it. You understood what he meant, did you not? A. Yes.

Q. And after you looked at it he asked you whether you did business with those people and you first said that you did business with a goodly percentage, or a good percent-

age, I do not know which term you used; subsequently when he asked you what percentage, you looked at it again and you said "With all of them," did you not?

Mr. Haycraft: Practically all.

Mr. Weisman: Practically all?

By Mr. Weisman.

Q. Did you say practically all, or all?

Mr. Haycraft: He said practically all.

Mr. Weisman: Look, that is not nice of you to interject that way, Mr. Haycraft. If you want to
1865 testify, I will put you under oath.

Mr. Haycraft: I think it is time that you quoted the witness correctly.

Mr. Weisman: I am.

Mr. Haycraft: From time to time he put words in the witness' mouth, that the witness did not say. If he pays any attention to the testimony going in here he will know better. I do not know whether he does not hear, or is trying to mislead the witness. Anyway, it is my province to object and see that he quotes correctly from the record, so that it is right.

Mr. Weisman: I object to that. I think I would have more pleasure out of the trial if I could not hear some of this, but unfortunately I do hear.
1866

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Read the last question.

Q. (Last question read.) A. I do not remember the answer that I have given.

By Mr. Weisman.

Q. Well, look at it now and tell me whether you will say on more careful deliberation that you do business with all of them? A. I do business with part of these here firms, part of the offices mentioned.

Q. Well, what part, that is what we are very anxious to find out. A. I can't just say what part, what percentage; I can't remember every office I do business with; it is impossible for me to remember.

Q. How is it you could remember this morning when Mr. Haycraft asked you, and you cannot remember now? What has happened between this morning and this afternoon that has impaired your memory to so great a degree? 1868
A. Nothing has happened, some names, some names I know we do business with, but I do not know of every one of them. You asked me a question whether I do business with every one. I cannot remember whether I do business with every one. I do business with part.

Q. With what part, would you say, you do business with? A. It is hard for me at this moment to judge what percentage.

Q. Well, what percentage would you say?

Mr. Haycraft: I object to that. He said it is hard for him to do it.

Mr. Weisman: It was not so hard for him when you were inquiring of him.

Mr. Haycraft: I tried my best to find out from 1869
him whether there was anyone named there that he did not do business with, and he said——

Mr. Weisman (interposing): You cannot state that. The record will speak for itself what he said. You know what he said.

Mr. Haycraft: Apparently you know, or don't know.

Mr. Weisman: Oh, I must not answer you at all.

The Witness: I still cannot decide and tell you what percentage of these here concerns we do business with, certain concerns we do business with.

By Mr. Weisman.

Q. Well, "certain concerns" might mean three out of this list. A. I don't know what percentage—I don't know definitely what percentage; I cannot tell you at the present time.

Q. Would you give me any definite number? Look it over carefully and tell me how many, put a check there——

1871 Mr. Weisman: May we put a check against the number he does business with?

Mr. Seidman: Well, I think——

Examiner Bennett: Well, in doing this—I suppose it is a test for the witness' memory.

Mr. Weisman: Not only that, but this morning I will show that when——

Examiner Bennett: I understand. I remember all about this morning.

Mr. Weisman: Yes.

Examiner Bennett: And I cannot see any very great importance in this line of examination.

A. I still can say it is pretty hard for me to point out every name that is on there that I do business with.

1872 *By Mr. Weisman.*

Q. Would you be willing to say that you do business with more than 50 per cent. of them? A. On and off during the year maybe I do business with 50 per cent., but still and all——

Q. It is questionable? A. I do not know whether I can be definite on that.

Q. That is open to doubt? A. Yes, sir; because, whether I do business with 50 or 60 or 40 per cent., or what——

Q. Did you from time to time receive telegrams from the Guild inviting you to come over there? A. I did.

Q. When you got these returns? A. I did.

Q. Or prior thereto?

Mr. Haycraft: I will ask the witness not to answer until I get an objection in. I object to that question.

Mr. Weisman: The witness cannot read your mind.

Mr. Haycraft: Mr. Examiner, I object to that question on the same ground.

Examiner Bennett: What question?

Mr. Haycraft: It goes into the question of copying and I understood counsel to say he was not going into that. 1874

Examiner Bennett: Read the questions.

(Questions referred to were read.)

Examiner Bennett: You are objecting to that?

Mr. Haycraft: Yes.

Examiner Bennett: Sustained. I don't know that it makes any difference. Off the record.

(There was a discussion off the record.)

Mr. Weisman: Thank you, Mr. Lieber, that is all.

Examiner Bennett: Any redirect examination?

Mr. Haycraft: No redirect.

Examiner Bennett: All right. Thank you very much. 1875

The Witness: Thank you.

(Witness excused.)

Mr. Haycraft: I have another witness if he is here.

MURRAY LIFSHEY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Mr. Fallon: Mr. Examiner, may I have my appearance noted on the record on behalf of this witness, personally, please?

Examiner Bennett: Certainly; note the appearance.

Direct examination by Mr. Haycraft.

Q. Mr. Lifshey, have you been sworn? A. I have.

1877 Q. What is your name? A. Murray Lifshey.

Q. What is your occupation? A. My occupation is with the Trussel Dress Company, Inc. I have charge of everything in the business pertaining to the selling, shipping, everything with the exception of the direct production.

Q. In what business is that company engaged; that is, what type of dresses? A. At the present time the manufacturing of $4.75 dresses.

Mr. Weisman: What is the address?

The Witness: 501 Seventh Avenue, New York City.

By Mr. Haycraft.

Q. Where do you sell the dresses that you manufacture?

1878 A. In the City of New York for the resident buying offices, chain store offices, and in our showroom.

Q. Where are your customers located? A. All over the United States. We have some foreign trade, very few.

Q. How do you deliver your dresses to your customers? A. That is in accordance with the customer's written instructions on his order; some are delivered to a central shipping depot; some are delivered by local carrier, some by railway express. It is in accordance with their written instructions.

Q. Do you have customers in every State of the Union? A. I believe I have.

Q. What priced dress, wholesale priced dress, do you sell? A. At the present time we are manufacturing $4.75, $2.87½.

Q. How long has that been true? A. Well, of the $4.75. —the $2.87½ price retail has been in existence since May 1 of this year. The $4.75 started approximately when the N.R.A. came in, there was a short break in 1934 when the price was reduced to $3.75, and then $4.75 replaced them.

Q. Before the N.R.A., what priced dresses? A. $3.75.

Q. Now, the buying offices that you referred to a moment ago, whom do they represent? A. They represent the re- 1880
tailers, department stores, specialty shops.

Q. Located where? A. Throughout the United States.

Q. How are the orders placed with your firm by such buying organizations? A. In every instance they must be confirmed, confirmation from their buying office.

Q. Confirmation, you say? A. Confirmation. Orders are sometimes placed on our order heads, and then eventually we receive a confirmation on their own order head. Orders are quite often placed on their own order head.

Q. Do you have salesmen calling on these buying offices? A. We have.

Q. Do they call at your place of business? A. Who? The salesmen?

Q. No, the buying offices. A. Yes.

Q. In the sales? A. They do. 1881

Q. Do you have showing of garments? A. Pardon me?

Q. Do you have showings of garments for them to see? A. What do you mean by showings?

Q. Do you have samples that they can see? A. We have samples displayed, yes.

Q. I show you Commission's Exhibits 93-A and B, and ask you if you will look at them and see whether or not you recognize in that exhibit the names of any of the buying organizations to whom you sell?

Mr. Weisman: If it will help you any I will concede that he sells to some of them. I hope he does.

A: This list seems to be quite—covering all the resident buyers.

By Mr. Haycraft.

Q. Do you see any names of any resident buyer on there? A. Yes, quite a few.

Q. With whom you have had some business during the past few years? A. A few.

1883 Q. Will you testify those with whom you have not had business relations during the past three years?

Mr. Weisman: I object to that as immaterial; if it is going to be necessary to prove a lot of negatives here. He is now asking him for those whom he did not have business with.

Mr. Haycraft: The purpose, of course, is to determine from a long list those that he did business with.

Mr. Weisman: I have offered to stipulate with you that he did business with some of them. I assume that is a fact, isn't it?

The Witness: Yes.

Examiner Bennett: Proceed.

1884 Mr. Weisman: I do not think he should be permitted to state anything like that. This is the negative testimony of the type that should not be permitted in any court in my opinion. This witness is now trying to testify to something that he did not do. What possible value can that have? I do not see how you can possibly get along without my stipulation and get your case in at all.

Examiner Bennett: This is not getting us anywhere. Let us have the testimony.

(Question read.)

Mr. Weisman: I object to the form of this question unless it be limited to the period specified in the complaint.

By Mr. Haycraft.

Q. From January, 1932, to April, 1936.

By Mr. Weisman.

Q. If you know as between those particular dates.

Mr. Haycraft: Wait, I am not going to ask him to state any particular dates. I am not limiting him 1886
to any particular dates.

Mr. Weisman: I insist that he be limited to those particular dates. Now, you will be sorry that you did not take my stipulation. You cannot prove your case without it.

Mr. Haycraft: Mr. Examiner, I wish you would make counsel remain quiet so that I can conduct an orderly examination of this witness, and not keep on interrupting me every time I ask a question.

Mr. Weisman: If you would ask a proper question you would save yourself a lot of time.

Examiner Bennett: Ask your question.

(Question read.)

Mr. Weisman: I object to the form of the question as not being proper for the witness to testify as 1887
to those particular firms without limiting the dates.

Mr. Haycraft: I am asking him to testify to any of these firms beginning with April, 1932, and ending with 1936.

The Witness: Juliet Alexander, L. Browning, Sarah F. Bryan, Bert Cahn, Betty Cohn, Helen Dousseau, Dudley Feit, Gonzalez & Co., Max F. Hexter, Ray Klein, Mabel Max, National Modes, Inc.,

Edith Newelt, Hazel Oppenheimer, Annie D. Ferling, Regent Shoe Corporation, C. H. Schroth, Michael Senft, Marguerite Swentzel, A. J. Unna, Marguerite Weber, Myrtle Welch.

By Mr. Haycraft.

Q. Those are the names of the concerns whom you did not sell, or to whom you did not sell dresses before or during this period of time? A. What is that?

Q. Those are the names of concerns that you did not sell dresses to during this period of time? A. I have been in this business for 17 years, quite a lot of those names that
1889 are there are familiar to me, and I have picked the names that are absolutely unfamiliar to me to be on the safe side.

Mr. Weisman: I ask that the answer be stricken out. Obviously, instead of answering it, he has given those that he is unfamiliar with over 17 years of dealing when the question addresses itself as to who he did not do business with during this specific period of time.

Examiner Bennett: I will ask him a question or two.

By Examiner Bennett.

Q. To the best of your recollection, are they the persons
1890 on that list with whom you did not do any business? A. They are.

Q. To the best of your recollection you did business with the others? A. The great percentage of them.

Q. The great percentage of them? A. Yes, sir.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. What chain stores have you sold to? A. Grayson's, Lerners, Zukors, Robinsons, Adair Shops, Rubensteins, Morrisons, Miller-Wohl.

Mr. Weisman: Wait a minute. I want to object. You say, have you sold—I assume that the witness is testifying—your Honor will recall that this witness testified that he has been in business for 17 years. I assume that when you said "Have you sold?" you meant during the same period of time, from January, 1932, to April, 1936. I want to make sure on the record.

1892

The Witness: They are those that I have sold.

Mr. Haycraft: I am perfectly willing to incorporate that in that question.

Mr. Weisman: It is perfectly apparent that it would be useless to outline those that he has sold in the last 17 years.

Mr. Haycraft: Your Honor, I ask that I be allowed to conduct my examination of this witness, without delay. It seems to me that all that counsel for the respondent is trying to do, or that he is seeking to do is to interrupt and to obstruct counsel.

Mr. Weisman: That is highly improper and incorrect. I object to that statement and ask that that be stricken from the record.

Examiner Bennett: It may be stricken. 1893

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Have you finished your answer that you were interrupted in? A. Which ones have I given before?

(Answer read.)

A. Also Lords, J. & N. Also J. & M. H. Samuelson. There may be a few more which do not come to my mind.

Q. Where are these stores located of these various organizations? A. Throughout the United States.

Q. How long have you been selling them? A. Some of these accounts I have been selling for the past 10 years right up to the present time.

Q. Have you had any business with the Associated Merchandising Corporation? A. Yes, sir.

Q. The stores that they represent? A. Yes, sir.

Q. For how long a period of time? A. Ever since they have been in business. They were at one time the Retail Research Corporation.

Q. Have you ever heard of the Fashion Originators
1895 Guild of America, Inc.? A. I have.

Q. When did you first hear of this organization? A. The latter part of 1935.

Q. How did they come to your attention? A. In the form of a stamp on orders I received. Also, through news items in "Women's Wear" and by word of mouth.

Q. Do you have with you a sample of the order that has that stamp on it? A. I have.

Q. I show you Commission's Exhibit No. 306 and ask you if you can identify the stamp on that order, the one that you have in mind? A. Yes, sir.

Q. Is it? A. It is.

Q. To what extent did you observe that that stamp was placed on orders that you received from customers in the fall of 1935? A. The orders that were placed with the
1896 large buying offices had that stamp.

Q. Can you name some of the principal buying offices that had that stamp on it? A. Associated Merchandising Corporation, the A. M. C. that you spoke of. Kirby, Block & Fische, Lilienthal—may I look at this list and refresh my mind?

Q. Yes. A. Cavendish Trading Company, Associated Dry Goods Company, Frohman & Altman, and may be others.

Q. Did you have any discussion with any of these buying offices, or any of your customers with respect to the purpose of that stamp and why it was placed on there? A. Well, in the start quite a bit of discussion. I agreed not to accept——

Mr. Weisman (interposing): I object.

By Mr. Weisman.

Q. With whom did you have that discussion? A. With the buyers who placed the order.

Q. When? A. At the time that they placed the order.

Q. Can you give us, at the present time, the approximate date when these discussions took place? A. The latter part of 1935.

Q. Can you give us the month? A. Some time in September or October, I believe.

Q. What was the substance of the discussion that you had with these buyers?

Mr. Weisman: I object to the "substance of the discussions."

Examiner Bennett: Do you have much further examination for this witness?

Mr. Haycraft: I should say about half an hour further on direct.

Examiner Bennett: And will you have some cross for this witness; I suppose you will.

Mr. Weisman: Yes, sir.

Examiner Bennett: It is now 4.40. We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 4.40 o'clock P. M., July 22, 1936, the hearing in the above-entitled matter was adjourned.)

1900 *Murray Laushey—For Commission—Direct.*

Room 901, 45 Broadway, New York, N. Y.
July 23, 1936.

(Met pursuant to adjournment, 9 A. M.)

Before: JOHN W. BENNETT, *Examiner.*

(Same appearances.)

By Mr. Haycraft.

1901 Q. Do you recall any particular conversation with any particular buyer on this question of the Guild stamp? A. I do.

Q. And with what buyer? A. With Miss Dean of the A. M. C.

Q. When did you have conversations with Miss Dean with respect to the Guild warranty stamp? A. In November, 1935.

Q. Where was the conversation held? A. In the show room of the Trussel Dress Company.

Q. What was the occasion? A. The buyer in question was desirous of placing a group order for distribution to the different stores connected with the A. M. C. At that time I definitely told Miss Dean due to the fact that all orders must contain a warranty stamp I wanted to make
1902 it plain and clear that any number that I was cutting on that distribution, because of the quantity involved, I would not take that due to the warranty stamp.

Q. What did Miss Dean say to that? A. Well, several numbers were eliminated from the selection and finally the order was written with that understanding.

Q. Do you recall having a conversation on this same subject with any other buyer? A. I recall having a conversation with quite a number of buyers, too.

Mr. Weisman: I ask the answer be stricken out.

Mr. Hayeraft: Just a moment.

Examiner Bennett: He is trying to relate.

Mr. Weisman: He was asked as to any particular buyer.

Examiner Bennett: As to the conversation. I think the character of the conversation, however, would have to be sustained unless he qualifies it.

Mr. Weisman: Thank you.

By Mr. Hayeraft.

Q. Do you recall the names of any one now you had conversation with? A. I would not definitely on this stand 1904
here give any definite names because I am not positive, could not prove it.

Q. I will ask you whether or not——

Examiner Bennett: Go ahead.

Q. I will ask you whether or not as a result of the conversations you had with other buyers you eliminated numbers from your orders?

Mr. Weisman: I object to that general appellation. Of course we cannot meet that type of testimony addressed to the world. How could a respondent meet such testimony, your Honor, in all fairness?

Examiner Bennett: I think that still it is com- 1905
petent testimony. I will overrule your objection.

Mr. Weisman: Exception.

A. As explained in the instance just a short time ago with reference to this order from Miss Dean, I know definitely——

Mr. Weisman: I object to reiteration, your Honor.

Mr. Haycraft: He is not reiterating.

Mr. Weisman: He told us once about Miss Dean, now he is telling us again.

Mr. Haycraft: Let us not interrupt the witness. Give him a chance to testify.

Mr. Weisman: Will your Honor hear the first part of the answer? The way he started? Will you read the answer.

(Answer read.)

Mr. Haycraft: You see, you cannot tell. Let him tell.

Examiner Bennett: Yes. All right. That seems
1907 to be a specific instance. Go ahead.

A. I know definitely that a certain amount of business was lost in that particular instance. I also know that we always refused to take orders that involved the cutting ticket. That means dresses running into the hundreds, where the other would contain a warranty stamp because we feel we were taking a risk of having the merchandise thrown back at us, and in view of the loss that could be involved, rather than antagonize our buyer we refuse to take orders, in large quantities, with the warrant stamp on them.

By Mr. Haycraft.

1908 Q. Now, then, as a matter of fact, did you have garments returned on account of the Guild warranty on orders of the Guild? A. We did.

Q. Can you testify as to when such returns took place? A. The very last one took place on June 24, 1936. That is only a few weeks ago. They have taken place quite a lot the latter part of 1935. I cannot give you exact dates there.

Q. Well, can you get close enough to the exact dates to state the months the returns took place? A. Somewhere the last few months in 1935.

1909

Q. Do you keep any record of the returns from customers on the ground, or because the garments were alleged to be copies of Guild dresses? A. We don't.

Q. Have you taken from your files some correspondence from customers relating to this subject matter? A. I have.

(A paper was marked for identification Commission's Exhibit 331 for Identification.)

Mr. Weisman: Mr. Haycraft, I do not think you know it, but some of your witnesses are in the room.

Mr. Haycraft: Not of this group.

Mr. Weisman: I do not care what the group is, they are going to testify as to the same thing, Mr. Examiner. Mr. Examiner, I have called the attention of Mr. Haycraft to the fact contrary to your Honor's ruling that a lot of these witnesses are present in the room.

1910

Examiner Bennett: If you are going to call them, I think you should find a place for them outside of the room.

Mr. Haycraft: I thought the rule referred to the members of the $4.75 Group Association.

Examiner Bennett: If you are not going to call them——

Mr. Haycraft: I do not know whether I will call them. I want to get through with this witness.

Examiner Bennett: You are going to call some of these witnesses tomorrow, are you not?

1911

Mr. Haycraft: This same Association.

Mr. Weisman: This testimony is as to all the same matter, the Association——

Examiner Bennett: If they testify on this general line, I think we should exclude them if you intend to call them.

Mr. Haycraft: Do you want me to do that, or will you do that?

Examiner Bennett: You better do it; I don't know who they are.

Mr. Haycraft: I do not know myself.

Mr. Weisman: Well, make the general observation.

Examiner Bennett: You can ask them.

Mr. Haycraft: The Examiner has instructed that any manufacturers who are in the courtroom under subpoena and expect to testify will please retire to the anteroom outside and wait outside for further instructions.

(Thereupon, a group of witnesses left the room.)

1913 Mr. Weisman: It looks like we had quite a few, Judge.

Examiner Bennett: Yes, I think it is a fair request where there are facilities to make them comfortable.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 331, for Identification, which purports to be an original letter from the Kaufmann's Department Store, Pittsburgh, Pa., dated October 9, 1935, and ask you if you received that letter in the ordinary course of business? A. We did.

Examiner Bennett: 331?

Mr. Haycraft: 331.

1914 Examiner Bennett: All right.

Mr. Haycraft: I offer that in evidence, Mr. Examiner.

Examiner Bennett: Received.

(Letter referred to was marked Commission's Exhibit 331, and received in evidence.)

Mr. Weisman: Well, I have not seen it, yet.

Examiner Bennett: Just a moment. Go ahead and examine it.

Mr. Weisman: This is the same kind of exhibit as your Honor has heretofore admitted in evidence over my objection commencing with Commission's Exhibit 307, and I object upon the same grounds, to wit, that the letter may not be received in evidence unless it is properly authenticated; furthermore, that there is no proof of the statements therein contained, and is incompetent for that reason, being clearly hearsay.

Examiner Bennett: You have interrogated the witness on this?

Mr. Haycraft: I will further on, on some points, if you wish me to. I have interrogated him that he 1916
received it in the ordinary course of business. I will ask him further, then,—before you rule.

By Mr. Haycraft.

Q. I will ask you further whether or not the dresses described in this letter were actually returned to you? A. They were.

Mr. Haycraft: I can ask him further, but I did not want to ask him further about the exhibit until it is in evidence, Mr. Examiner.

Examiner Bennett: Yes. Well, I will overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: And it may be received; you 1917
may have your exception.

By Mr. Haycraft.

Q. Do you have any recollection as to what transpired further with respect to this return of garments as described in Commission's Exhibit 331?

Mr. Weisman: I object to the form of that question, what transpired further with regard to the

return. It opens up the door for this witness to ramble all over the lot and say anything he pleases. It is wholly incompetent, irrelevant, and immaterial, unless some specific avenue is approached.

Examiner Bennett: Ask him if anything further occurred.

Mr. Haycraft: I am asking him for a recollection, first.

Examiner Bennett: How?

Mr. Haycraft: I am asking him for a recollection, Mr. Examiner; purely a foundation question.

Examiner Bennett: What is the question?

1919 (Question read.)

Examiner Bennett: All right. You may answer that question.

A. We took the dresses——

Mr. Weisman (interposing): No, no.

Mr. Haycraft: No. That question can be answered "yes" or "no."

Examiner Bennett: I ask you whether or not you did.

The Witness: Yes.

By Mr. Haycraft.

Q. What did you do with the garments that were re-
1920 turned? A. Credited the account in question with the return, put the garments back in stock.

Q. Did you sell any more of that number to that customer? A. To that particular customer?

Q. Yes.

Mr. Weisman: Objected to.

A. No.

1921

Mr. Weisman: Objected to as incompetent, irrelevant, and immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Do you have any independent recollection of that number, whether it was a popular number or not?

Mr. Weisman: Objected to as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

1922

A. I have not.

Mr. Weisman: Ha, ha.

Mr. Haycraft: Be sure you get the laugh. You got mine the other day.

Mr. Weisman: Did you get that laugh?

The Reporter: Yes, I think I did.

Mr. Weisman: Is that part of this examination? I ask that that remark be stricken from the record.

Examiner Bennett: It may be.

Mr. Weisman: And I want to ask of the Reporter that it not appear in the record at all.

Examiner Bennett: Well, I cannot do that.

1923

By Mr. Haycraft.

Q. Did you get in touch with Mr. Jack Goldstein of the Fashion Originators Guild of America with respect to these dresses? A. I did not.

(Two papers were thereupon marked for identification Commission's Exhibits 332 and 333.)

Examiner Bennett: Is that 332 and 333?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. Will you state why you accepted, the return of the garments from the Kaufmann Department Store, as described in Commission's Exhibit 331? A. The return in question of seven dresses?

Q. Yes. A. Amounting to about $33?

Q. Why did you? A. I felt that it was not well to antagonize the buyer, and, anyway, rather than do that, I took them back.

Q. Why did you think that that would antagonize the buyer?

1925

Mr. Weisman: I object to the question as immaterial, incompetent, no proof here.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: He may answer.

A. I know because of my relationship to the business and the setup, and the relationship of buyers and their merchandise managers where they have instructions to return a garment, it is their business, their job, to see that they are returned. If they do not receive my cooperation, or any communication with reference to them coming to the office, any trouble with the same comes back directly to the buyer, and as a result on the next trip to New York City they shy away from you.

1926

By Mr. Haycraft.

Q. Was this Kaufmann Department Store a substantial customer or otherwise?

Mr. Weisman: I object to the form of that question.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. As far as my particular business is concerned, although they are a big store, we do a nominal amount of business with them.

Q. Do you know who their business is? Are they a member of the A. M. C.? A. No, they are not.

Q. Who is it?

Mr. Weisman: I ask that the question be answered.

(Last answer read.)

The Witness: I said no.

Mr. Weisman: I thought you said no, as to whether they were a member of the A. M. C.

The Witness: I said no, they are not. 1928

By Mr. Haycraft.

Q. I show you Commission's Exhibits 332 and 333, 332 being a letter from the Jones Store, Kansas City, Mo., to your firm, dated October 26, 1935, and ask you if you received that original letter in the usual course of business from the Jones Store? A. We did.

Q. Directing your attention to Commission's Exhibit 333, being a carbon copy of a letter from you to the Jones Store, I will ask you if that is not a carbon copy of a letter mailed by you to the Jones Store on October 30, 1935, in answer to a letter, just identified as Commission's Exhibit 332? A. It is. I dictated it.

Q. I will ask you now whether you received the goods 1929
described in Commission's Exhibit 332?

Mr. Weisman: I object to the witness testifying to anything concerning a document that is not yet in evidence.

Mr. Haycraft: That is rather novel, when I am trying to further identify it.

Mr. Weisman: It may be novel to you—

Mr. Haycraft: Mr. Examiner——

Mr. Weisman: But it is not novel to anybody that understands the rules of evidence. I submit showing him a paper and saying, "Did you receive the goods described in this paper," and the paper is not before the Court, and nobody knows what it is —I am sorry for you if that is novel, Mr. Haycraft.

Mr. Haycraft: Mr. Examiner, do I have to be interrupted before I make my statement? It is a constantly recurring practice in this proceeding.

Mr. Weisman: Well, you know—

Mr. Haycraft: There it goes again.

Examiner Bennett: No, no.

1931 Mr. Haycraft: Let me finish my statement.

Examiner Bennett: Please keep that gentleman's agreement you were so religious about keeping.

Mr. Haycraft: The point is this, Mr. Examiner, as you well know, and as Counsel for respondent well knows, as a foundation question before this Examiner wishes to rule on this letter, I want to find out whether or not there is an actual transaction. This refers to an actual return of goods.

Examiner Bennett: All right.

Mr. Weisman (interposing): I——

Mr. Haycraft: The Examiner himself prompted the question, on previous occasions.

Examiner Bennett: Yes.

1932 Mr. Haycraft: I am merely doing it now to pave the way for the admission of the exhibit.

Examiner Bennett: I am going to overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: I think it is entirely within the witness' knowledge.

1933

By Mr. Haycraft.

Q. You may answer. A. We did.

Q. My question is whether the goods were returned. A. They were returned; yes, sir.

Mr. Weisman: I object to the reference to this in relation——

Examiner Bennett: Documentary evidence is not the best evidence of that sort of thing.

Mr. Haycraft: I offer the two letters in evidence, Commission's Exhibits 332 and 333.

Mr. Weisman: Same objection as to Commission's Exhibit 331.

1934

Examiner Bennett: Overruled. Received in evidence, that is Commission's Exhibits 332 and 333.

(The documents referred to, heretofore marked for identification Commission's Exhibits 332 and 333, were marked as exhibits and received in evidence.)

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I will ask you whether or not you accepted the return of dresses as indicated on this Commission's Exhibits 332 and 333? A. We did not.

Q. What was the reason for not accepting them? A. The reasons are outlined in the letter offered as an exhibit.

1935

Mr. Weisman: I ask that the answer be stricken out.

Q. That is Commission's Exhibit 333? A. That is Commission's Exhibit 333.

Mr. Weisman: —and that the witness be directed to answer——

Mr. Haycraft: The witness has answered, Mr. Examiner.

Mr. Weisman: Oh, he has not answered.

Examiner Bennett: I will let him answer specifically. If you want to refresh your recollection from the letter you may do so.

Mr. Haycraft: Very well. (Handing to the witness Exhibits 332 and 333.)

By Mr. Haycraft.

1937 Q Refreshing your recollection from the letter, will you testify as to the reasons for not accepting the return? A. The merchandise in question had been shipped ten weeks prior to the receipt of the original letter from the Jones Company advising us of the return. We felt that it was rubbing it in a bit too heavy.

Q. I show you Commission's Exhibit 334 for Identification, an original letter from John Wanamaker, Philadelphia, under date of November 8, 1935, and ask you if you received that original letter? A. I did.

(Letter from John Wanamaker, Philadelphia, under date of November 8, 1935, was marked for identification Commission's Exhibit 334.)

1938 Q. In the ordinary course of business? A. Yes.

Q. Were the eight dresses described therein returned? A. They were.

Q By the John Wanamaker Company? A. They were.

Mr. Haycraft: I offer that in evidence, Commission's Exhibit 334.

Mr. Weisman: Same objection as was made to Commission's Exhibit 333, no proof of the truth of any statement therein contained.

Examiner Bennett: Overruled. Received as Commission's Exhibit 334.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 334, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Did you accept this return? A. We did.

Q. For what reason? A. Wanamaker Company is an excellent account on our books. The return in question amounted to $38. There was no need of throwing any sand, or any friction, in our business relationship. We accepted the return and credited the account with the amount.

Q. Did you continue to sell that number to Wanamaker? A. No, sir.

Q. Do you have any recollection as to whether or not it was a popular number? A. 215 is——

Mr. Weisman: I object.

A. 252——

Mr. Weisman: Calls for a conclusion of the witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Granted. He may answer.

A. 252 was a running number.

Mr. Weisman: I ask that the answer be stricken out as not responsive.

Mr. Haycraft: We will find out.

Examiner Bennett: Is that the number referred to?

Mr. Haycraft: 252, he said, was a running number.

By Mr. Haycraft.

Q. What do you mean by—

Mr. Haycraft: Pardon me. I will wait for a ruling.

Examiner Bennett: Well, I don't know that it is answered or not. I do not understand that.

Mr. Haycraft: I am going to ask him for an explanation, Mr. Examiner.

1943 Examiner Bennett: I do not know what a running number is.

By Mr. Haycraft.

Q. What do you mean by "running number"? A. "Running number" is a term we apply to a dress that is re-cut and re-orders from different sources come in, different retailers.

Examiner Bennett: Well, then, was it a popular number, or was it not?

The Witness: It was a popular number.

Examiner Bennett: Yes.

The Witness: With us.

Examiner Bennett: All right. That is English.

1944 *By Mr. Haycraft.*

Q. Do you have any independent recollection of what would be the normal re-order on that dress?

Mr. Weisman: I object to that question. Calling for a conclusion of the witness. There is no such thing. The Court will take judicial notice there is no such thing in this business as normal re-orders. It is a style business. It is affected by what——

Mr. Haycraft (interposing): Are you testifying? 1945

Mr. Weisman: It is affected by annual——

No, the Court has, I think, a knowledge of what this business is, and to say what is "normal reorder" on a dress is just calling for a conclusion of this witness and a guess.

Examiner Bennett: Well, I will sustain the objection to further questioning along the lines suggested.

By Mr. Haycraft.

Q. Do you know how many dresses of that number you sold? A. To Wanamaker, twelve. 1946

Q. Do you know how many you sold to your other customers?

Mr. Weisman: Objected to as immaterial and incompetent, piling speculation upon speculation. The fact he sold it to some other customers in Vermont or some other city would be no proof of what customers in New York or Philadelphia might require, the type of stores, and so forth.

This is a company that is a large company, has an infinite number of customers, and some buy a lot, some buy a little, some buy a lot of some number, and some buy a little of some number.

I assume that the Court will take judicial notice of the fact that such a question is highly improper. 1947

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Well, that is very specific. Do you know it?

Objection overruled.

Mr. Weisman: Exception.

(Question again read.)

A. I know that this particular number as cut in large quantity. When I say "large quantities" I mean in figures running above 500 and over. To say exactly how many were cut and sold I could not.

Mr. Weisman: I ask that the answer be stricken out, except that he does not know, in the latter part; how many were sold. "I don't know" is the answer to the question.

Mr. Haycraft: I object to that.

Examiner Bennett: Well, I will let it stand.

Mr. Weisman: Exception.

1949 Examiner Bennett: He has given a number, 500.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 335 for Identification, an original letter from the respondent, Fashion Originators Guild of America, Inc., dated June 24, 1936, and ask you if you received that letter? A. I did.

(Letter from Fashion Originators Guild of America, Inc., under date of June 24, 1936, was marked for identification Commission's Exhibit 335.)

Q. Were the garments described therein returned to you? A. They were.

1950 Q. How many were there, do you remember? A. I believe there were seven.

Mr. Haycraft: I offer the letter in evidence as Commission's Exhibit 335.

Mr. Weisman: May I see it? No objection to that, Judge.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 335, was marked as an exhibit and received in evidence.)

1951

By Mr. Haycraft.

Q. Do you recall how many stores you were selling that garment to in Pittsburgh, that style of garment? A. No, I don't.

Q. Do you recall any of the stores that you were selling that garment to in Pittsburgh? A. I don't, with the exception of the fact that certain chain stores may have had branches in the town, the City of Pittsburgh. I would not know because of the distributing from the New York shipping point. I don't at this particular moment recall a particular account that had that particular style.

Q. Is it possible for you to determine that by consulting your records? A. It is.

1952

Q. I would like to have you do that. Could that be done over the telephone or would you have to go to your own office to do that? A. Well, I think I can get it between the hours of twelve and two.

Q. All right. Are these all of the instances where you have had returns of garments pursuant to the direction of the Guild? A. They are not——

Mr. Weisman: I ask that that question be limited. He does not know whether they were returned pursuant to the direction of this Guild, and this is no evidence of that type of transaction. It is purely hearsay. He has not testified in a single instance that he had any personal knowledge of any return of any garment by the direction of the Guild.

1953

Mr. Haycraft: I will amend the question.

By Mr. Haycraft.

Q. As you understood, they were returned by the direction of the Guild?

Mr. Weisman: I object to that question as incompetent, irrelevant and immaterial, what he under-

stood. We are here to present the facts of this fact, I believe, not to have this witness' understanding.

Examiner Bennett: Well, I will sustain the objection in that form. It is indefinite.

The Witness: May I answer?

Mr. Weisman: No, the Court has ruled you may not.

Examiner Bennett: Sustained in that form, Mr. Haycraft.

By Mr. Haycraft.

1955 Q. Mr. Lifshey, are these all the instances where garments have been returned by retail dealers for the alleged reasons that they were copies of dresses designed or styled by the members of the Fashion Originators Guild of America? A. Those are not the only instances; there are others.

Q. Can you testify at the present time as to the number of other instances? A. In figures, I cannot. All I can state, that there were quite a large number of instances of returns.

Q. And when? A. During the months of October and November, 1935, especially, and right up to the present date.

Q. Now, what effect has this practice of returning of
1956 dresses for the alleged reason that they were copies of dresses manufactured and designed by members of the Fashion Originators Guild of America had upon that business?

Mr. Weisman: I object to the question as incompetent, irrelevant and immaterial, no statement as to any fact, but as to a conclusion of this witness, no opportunity thereby given to cross-examine or elicit the truth or falsity of the conclusion as al-

leged. We should have some facts in this case, your Honor, I respectfully submit.

Mr. Haycraft: Plenty of opportunity.

Mr. Weisman: No, no, not in a question like that, like opening up the window and shooting out of the window and trying to hit a bird. You have got to have something to hit at.

Mr. Haycraft: This witness, Mr. Examiner, is an official of this concern and he is in position to testify. He has had practice——

Mr. Weisman (interposing): That is not proper testimony in that form.

Mr. Haycraft: I submit it is on that point. 1958

Examiner Bennett: You can lay a little further foundation, if you will.

By Examiner Bennett.

Q. Did it have any effect upon your business? A. It did to the extent that we could not—rather, we would not accept any order in a quantity lot with the Guild stamp on.

Examiner Bennett: Yes. Well, of course, the answer given is not responsive to the Examiner's question and may be stricken out. Go ahead with your examination, Mr. Haycraft. I just simply wanted to ask that preliminary question.

Mr. Haycraft: Did you sustain the objection to 1959
my last question when I asked what the effect was?

Examiner Bennett: Yes. You asked what effect, did you not?

Mr. Haycraft: Yes.

Examiner Bennett: All right. Go ahead and answer that question. Overruled.

By Mr. Haycraft.

Q. Now will you testify as to what effect it had upon your business?

Mr. Weisman: Exception.

A. The effect of losing orders in a large quantity had on certain particular numbers that we as a matter of business felt was not desirable, with the probability of a lot being returned because of the Guild reason. At that time a large lot would involve a large loss. The profit end of these transactions usually is small and we did not
1961 care to take the risk of perhaps losing an account for the small amount involved. We would pass up that order and let it go by the board.

Q. What was the effect of the returns themselves upon future business with the customers who made the returns on those particular numbers that were returned? A. Well, Guild reasons became a popular reason for return.

Mr. Weisman: I object to that and ask to have the answer stricken out, and I object to the form of the question. He asked what was the effect. As I recall the question—I may be in error—the question was what was the effect with regard to the particular number when a return was received. It is perfectly obvious that if the customer returned
1962 it once they were not going to ship it again to them. It is merely a reiteration or an attempt to emphasize the testimony already given, your Honor.

Examiner Bennett: Well, I will sustain the objection and ask you to make that more specific, if you will.

Mr. Haycraft: Well——

Examiner Bennett: If you are asking about—if you want to know how it affected the good will.

why, ask about the good will. If you want to know how it affected other things, ask about them specifically, if you will.

By Mr. Haycraft.

Q. Mr. Lifshey, you have testified that with respect to No. 252, that you were selling to the Wanamaker Company, that you were unable to sell more of that number to them? A. Yes, sir.

Q. You also testified with respect to No. 217, which you were selling to the Kaufman Stores. Do you recall that testimony? A. I do.

Q. Now, with respect to the other returns, other than 1964
those which have been identified here in this proceeding, I will ask you whether or not your testimony would be the same as to the sale of the return numbers, further sale of the return numbers to those particular stores? A. Well, naturally, I would not ship the same number to that particular store after they had made a return on a dress, regardless if they wanted it or not. There have been instances where numbers were returned by particular stores due to Guild reasons that were considered our best running numbers. The buyer was reluctant to return them, but she was instructed to do so and had to do so——

Mr. Weisman (interposing): Just a moment. I ask that be stricken out, "the buyer was reluctant to return them, but she was instructed to do so." 1965
The witness does not know.

Mr. Haycraft: I will agree that may be stricken out, what she was instructed to do, but he can certainly observe the reluctance.

Mr. Weisman: He did not observe it or see it.

Mr. Haycraft: I do not agree with that.

Mr. Weisman: Reluctancy is something you might observe and someone else might not observe; it calls for a conclusion of the witness.

Mr. Haycraft: It is still evidence.

Mr. Weisman: I submit it is not evidence, your Honor.

Examiner Bennett: Denied. You may go ahead and finish your answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Have you finished your statement? A. I have.

Q. Finish your statement.

(Last answer read.)

1967 A. But I know——

Mr. Weisman (interposing): Did your Honor rule that that might stand?

Examiner Bennett: Yes.

Mr. Weisman: Exception.

Examiner Bennett: Deny your motion to strike.

Mr. Weisman: Exception.

A. But I know several particular instances where return of this number resulted in an reorder business—loss of reorder business to me on that particular number to that particular account.

By Mr. Haycraft.

1968 Q. I believe I forgot to ask you, Mr. Lifshey, as to the percentage of your customers who insisted on placing the Guild warranty stamps on their orders.

Mr. Weisman: I object to that unless a foundation will be laid to show that this witness knows about it.

Examiner Bennett: All right. You may lay a foundation. Find out whether he knows whether he has or not.

By Mr. Haycraft.

Q. Do you know, have you any knowledge, as to the number of customers, retail dealers, who insisted on putting the Guild warranty stamp— A. (Interposing) I have.

Q. —on their orders? A. I have.

Q. What percentage of your total number of customers have done so? A. As I understand, you want percentage of customers not in relation to volume of business, but customers—am I right?

Q. That was my first question, yes. A. At least 60 per cent. of my business insisted upon placing orders with the Guild stamp on.

Q. What percentage of your volume would that be? A. 1970
That would be approximately 40 per cent. of my volume.

Mr. Haycraft: That is all.

Cross-examination by Mr. Weisman.

Q. Mr. Lifshey—is that the way you pronounce your name? A. Correct.

Q. In your testimony you have used, from time to time, the word "buyer"— A. The word——

Q. "Buyer." A. "Buyer," yes.

Q. Now, when you used the word "buyer," did you mean the person who was employed by the store itself to actually do the buying? Is that whom you meant? A. No, I mean the person who comes in my showroom and places the 1971
order.

Q. That is right. A. He may be employed by the store; he may be employed by the New York office.

Q. Yes. A. Resident buyer or the store buyer.

Q. Yes, that is what I want to find out. In other words, these buyers are a definite sort of professional class known in the retail industry? A. Right.

Q. A store would have a great number of buyers. A. For the various departments?

Q. Departments. A. Yes.

Q. And these buyers are in turn responsible to the so-called merchandising heads of the departments in which they work? A. Right.

Q. And the merchandising heads of the stores are in turn answerable to the executives? A. Right.

Q. When you use the word "buyer," as, for example, you say a buyer may be reluctant, you mean the person who is employed to do the buying, whether it be a representative of a resident buying office or whether it be one operating under the direction of the merchandising head? A. In that particular instance that you refer to there I

1973 meant the buyer of that particular—of a particular store who was directly responsible for her particular department.

Q. Yes. And she was in charge of buying for that particular department? A. Right.

Q. But she was not an executive of the store?

Mr. Haycraft: I object unless he knows.

By Mr. Weisman.

Q. Was she? A. Well, I would not label them, because some stores may feel that their buyers are executives inasmuch as they have charge of their departments. Some stores may not. To put a label on them, I would not dare do it.

1974 Q. Do you not know that it is a fact that there is a definite class of people who have a particular sense of style values and merchandise values who are known as buyers in the industry? A. Plus those values that you state, the essential value is the ability to merchandise—merchandise, to buy.

Q. Yes, these buyers frequently are employed one season in one store, or two seasons, then go from store to store, as they get better positions and bigger positions? A. It

has been my experience that good buyers remain with their stores a very long time. I know some that have been connected with the same store for the past sixteen years.

Q. Well, if a buyer is a good buyer, do not other stores seek to obtain the services of that good buyer frequently? A. Something I know nothing about.

Q. Nothing at all? A. No, sir.

Q. Never discussed that with buyers? A. I never did.

Q. Never had buyers tell you of offers that had been made to them? A. In the course of conversation we may have had talk about offers being made to them. I would not say definitely that was a practice, or—no more than it is in any other business or any other field of endeavor. 1976

Q. Well, would you deny that these buyers are a class of people in the retail business usually separate and distinct from the management of the retail business, as, for example, a salesman for a manufacturing business is separate and distinct from the people who own and control the business?

Mr. Haycraft: I object to that question; not proper cross-examination. It is irrelevant and immaterial and no foundation laid to show he had any knowledge. He said he had not, your Honor.

Mr. Weisman: I think that is not correct. He comes in contact with these people. Twenty-eight years, he ought to know.

The Witness: Seventeen years. 1977

Mr. Weisman: Seventeen years?

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: It also assumes a fact, Mr. Examiner, that is not important, as I understand it.

Examiner Bennett: I do not just get——

Mr. Haycraft: Whether buyers are executives.

Examiner Bennett: I do not know just what you expect to bring out by that sort of inquiry.

Mr. Weisman: I will tell your Honor. There has been much testimony by this witness of this talk with buyers and so forth. I think it will illuminate the record to show what these buyers are. I mean, I think that is part of my job. I do not think it particularly helps or hurts me, but one should know and the record should disclose what these buyers are. We all know what buyers are, but the word standing alone in the record might be confused or synonymous with the legal term "a buyer," as a seller and so forth.

Examiner Bennett: Well, I will let him answer.

1979 I do not believe it will do any harm.

By Mr. Weisman.

Q. Will you answer the question? A. It is hard to mark a definite line of distinction as to the relationship between a buyer and a store, the particular store they work in. It has been my experience that buyers are given figures to meet, or usually have figures to meet, based on previous years' sales. Their job is to go out and buy the merchandise, run their department, make an effort to meet these figures, exceed them if possible, keep their mark-downs below a certain minimum, see to their merchandise, display their merchandise, fight for space on the advertising page, and it is rather hard to state where their executive au-

1980 thority stops and where the stores start, and so on.

Q. You say they are given figures. Who gives them these figures? A. Usually come down from the store office, I believe.

Examiner Bennett: I am going to interpose a question there.

To what extent do you find that heads of departments in retail stores are the buyers for their department, or do you find that to exist?

The Witness: Well, the buyer is usually the head of her particular department; it may be the budget shop, where they sell a certain priced dress. Another buyer may have another department; say, the house dress department in a certain price range. All these buyers in a group answer to a merchandise manager of that group of departments.

Examiner Bennett: I see. All right.

By Mr. Weisman.

Q. Who does the merchandise manager answer to? A. General merchandise manager, perhaps, of the store.

Q. General? A. I mean it all depends upon the setup 1982
of that particular store.

Q. Well, in a setup such as you have just given us. A. In a big department store, where there are a number of departments, it has been my observation you have the buyer; the buyer, in turn, answers to the merchandise manager of her department, who may also merchandise or be manager of several other departments. He, in turn, answers to the general merchandise manager of the store, who, in turn, answers to the executives or board or whoever may be in charge.

Q. Let us take, for example, John Wanamaker of Philadelphia. A. Yes.

Mr. Haycraft: Your Honor, I have an objection to all of this line of cross-examination. 1983

By Mr. Weisman.

Q. By Commission's Exhibit 334. Who is the buyer for that store? A. Miss Cosgrove.

Q. Miss Cosgrove? A. That is department 509, that particular department in the store.

Q. You mean that that store has 509—more than 509 departments? A. Oh, I don't know. That is, that may start with a hundred, they may start with 300.

Q. How many departments would you think they have in a store like John Wanamaker's? A. I would not even try to guess.

Mr. Haycraft: May I object?

Examiner Bennett: Sustained. I think we are going farther than we——

By Mr. Weisman.

Q. Was this buyer an executive of John Wanamaker?

Mr. Haycraft: If you know.

1985 A. In a sense of the word she managed her particular department, yes.

Q. Do you know whether or not she in anywise had anything to do with the policy—whether she directed the policy of John Wanamaker of Philadelphia? A. I cannot state.

Q. You would be very much surprised if that were a fact, would you not? A. I would not.

Q. You would not? A. No.

Q. You think that Miss Cosgrove is one of those who fixes the policy, the merchandising policy, of John Wanamaker of Philadelphia? A. No, I don't say that she is one of those that fixes the merchandising policy of John Wanamaker, but I do say that when a certain buyer has been connected with a particular store for a great number of

1986 years her opinion on a merchandising policy of that particular store and pertaining to her department has some weight.

Q. I agree with you. Who is that opinion submitted to? Her superior? A. I would estimate to the superintendent or at a conference.

Q. Don't you know from your experience who decides whether or not that opinion is a good or bad one? A. No, I don't.

Q. You don't know that that is put up to the merchandise manager of the store? A. You mean her opinion?

Q. Yes. A. It may be passed on to the merchandise manager of the store; it may be passed on to the general merchandise manager of the store. It is a hypothetical question. I cannot jus say "yes" to something that I do not definitely know.

Mr. Haycraft: Your Honor, I move to strike out all this testimony on this point, that I objected to, in order to keep the record straight.

Examiner Bennett: Well, I will sustain the objection because I do not see that it is getting us anywhere. 1988

Mr. Haycraft: I move to strike the testimony.

Examiner Bennett: Well, I will let it stand as far as it has gone.

Mr. Haycraft: I understood, Mr. Examiner, you were granting—allowing the witness to testify. I have been repeating my objections right along. I did not know you had sustained them.

Mr. Weisman: He has not before.

Examiner Bennett: I sustained the objection to going any further.

Mr. Haycraft: Oh, I see.

Examiner Bennett: On the setup of department stores. The knowledge is more or less secondary and I do not see that it has any bearing on the issues. 1989

Mr. Weisman: In view of your Honor's ruling, I will not pursue the inquiry any further.

Examiner Bennett: All right.

By Mr. Weisman.

Q. How many customers would you say the Trussel Dress Company has? A. Before I answer that I prefer a definition, or what you mean by the word "customers."

As I stated in my previous testimony, we have been in business seventeen years. Any account in our books would be called a customer of the Trussel Dress Company. In that respect it runs quite up to 10,000, but I would say that active accounts on our ledgers of about 2,000.

Q. Why did not you give Mr. Haycraft such an explanation when he asked you—used the same word, "customers," and you answered him right away?

Mr. Haycraft: Objected to.

A. When Mr. Haycraft——

1991 Mr. Haycraft: Mr. Examiner, just a moment. This answer was certainly fair——

Mr. Weisman: Certainly.

Mr. Haycraft: Warranted to be full, and I do not think it should be subject to the type of question that has just been propounded, because this witness certainly has been attempting to answer all these questions in a fair and full manner, and I certainly object to the form of that last question.

Mr. Weisman: I object to my friend's speeches and characterizations, which he must know are highly improper, and ask that he be requested to refrain therefrom.

You won't add anything to the weight of your witness' testimony by trying to build him up by
1992 your speeches, and I object to it, your Honor. It is not nice, to say the least.

Mr. Haycraft: I am willing for the Examiner to rule on my objection.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Read the objection and read the answer.

(The objection of Mr. Haycraft was read.)

Mr. Weisman: I also object——

Examiner Bennett: Well, go ahead and answer. You can give the reason.

A. When Mr. Haycraft asked me that question, in my mind he definitely fixed the period involved there, at the time when the Guild's activities—or the latter part of 1935. In view of the fact that you are cross-examining me, I do not care to leave any doubt as to what I mean when I make my answers. When you asked me customers, I would like to know what customers you refer to. I understood what customers Mr. Haycraft referred to; I did not when you asked me the question. 1994

By Mr. Weisman.

Q. Well, now, you know what customers I am now referring to? A. I don't.

Q. I am referring to the number of customers you have on your books during the period commencing August, 1935, and down to date. A. I would say active accounts, around 2,000.

Q. What do you mean by active accounts? A. Well, I eliminate certain types of accounts that every dress house gets at certain spells. It may be that as a particular cloth that is desirable in dresses, because of their popularity of that cloth, delivery of the dresses in that cloth is rather hard to secure for the retailer; we then have a tendency of getting an influx of accounts that come in to buy that particular dress, and out when they receive it. They are not a regular account; sort of a transient trade, you may call it. 1995

Q. In other words, when you used the words "active account," that is synonymous with the words "regular account"? A. Well, it means an account that we do business with at least once over a period of every two months, I would call an active account; some more, some every day—at least once every sixty days.

Q. So during the period before stated you have accounts on your books to the number of about 2,000? A. Right.

Q. To whom you have shipped merchandise at least once during this period? A. Right.

Mr. Haycraft: He nodded his head.

By Mr. Weisman.

Q. You said "Yes"? A. Right.

Q. Now, how many accounts of such nature would you say that you had on your books for the period August, 1934, to August, 1935?

1997 Mr. Haycraft: That is objected to as not proper cross-examination.

Examiner Bennett: If he remembers, he may answer.

A. Approximately the same.

By Mr. Weisman.

Q. Did you, before you came to court, go over this list of 2,000 accounts? A. No.

Q. Did you before you came to court go over the orders that you have received during the past, during that period, August, 1935, to date, to determine how many of them had the Guild stamp? A. No.

1998 Q. How many salesmen have you in your business? A. Four.

Q. And these people all take orders? A. Salesmen?

Q. Yes. A. Yes.

Q. And they all receive orders? A. Yes, sometimes.

Q. And you said the volume of your business, you estimated that 60 per cent. of the customers used the Guild stamp? A. Correct.

Q. That was an estimate? A. It was.

Q. And in fixing that estimate you did not go over the list of customers and you did not go over the orders? A. No.

Q. And you said that this amounted to about 40 per cent. of the volume? A. Yes.

Q. What was your annual volume for this period, August, 1935? A. Approximately $1,300,000.

Q. What was your volume for the year before? A. About the same, slight drop.

Q. What would you say for a period August, 1935, to July, 1936—in other words, taking a twelve-months' period— A. August, 1935, to July, 1936?

Q. Yes. A. Right. 2000

Q. That your volume would be about one million three— A. I can't—no, I think it would go over that. From last July, 1935, to the present time I think it would be more like one million and a half.

Q. In 1934 to 1935, for the same period, what would you say the volume was? A. About a million three hundred.

Q. A million three hundred? A. Yes.

Q. Now, during the year 1936, and for certain months in that year, the dress business suffered from a serious handicap that it had not suffered from in the prior year; is that not so, Mr. Lifshey? A. Correct; for one month.

Q. What was that handicap or injury that the dress business suffered from during one month? A. That was the termination of our labor agreements with the union 2001 and the contractors' association, and there seemed—there were not any definite signs of signing of new agreements, and as a result threatened strike in view, and, considering the fact that we are quantity producers, we could not take the risk of putting merchandise into work knowing that it may be held up due to strike condition, with an evident loss. As a result, we laid low during the month of February, until things cleared up.

Q. And you, in common with a lot of other manufacturers similarly situated, lost a lot of business during that period? A. Well, we did cut rather heavy the month of January. Our average shipment a month runs around one hundred thirty to one forty thousand. The month of February it was sixty-four thousand, so you can draw your own conclusion.

Q. So your month of February dropped? A. About 50 per cent.

Q. Approximately eighty to ninety thousand dollars? A. No, approximately 60,000; $70,000 would be 50 or 52 per cent. drop.

2003 Q. The dress business is a seasonal business, is it not? A. It is.

Q. When you lose the benefit of a month like that it is just lost to you? A. Well, you can't get it back.

Q. That is what I mean. If you have not got a dress to sell to a woman in February, she—in March you cannot sell her the dress you could have sold her in February? A. Naturally.

Q. And that is just a dead loss to the business? A. Well, it reflects it in the coming months.

Q. In your volume? A. Because stocks were getting low in stores——

Q. Yes. A. Naturally, there was an influx of buyers and a greater percentage of buying than there would have been ordinarily in March.

2004

Examiner Bennett: In a case of that sort, where you have labor troubles, what is the effect? Does it just delay deliveries?

The Witness: Well, if the labor trouble in question is temporary and we have quite a lot of that, it is just effective in delaying deliveries. In this particular instance new agreements between the labor—organized labor, the unions, and our par-

ticular association and other particular associations in our industry, kindred associations, had not been signed and——

Examiner Bennett: Well, does it affect ultimately the volume of business for six months or a year's period?

The Witness: It has the effect of affecting business that particular time. There usually is a reaction over a difficulty or stoppage of that kind, inasmuch as stocks have been getting low at the retailers and they must keep a certain percentage of dresses in accordance with their volume on their racks. The result is there is an influx of buyers 2006
and a sudden increase of business directly after settlements are made.

Examiner Bennett: Then would you say it does not affect the volume that is sold over a longer period, such as a year?

The Witness: Over a year the effect of one month is not quite important.

Examiner Bennett: I see. All right. It is your witness, Mr. Weisman. I wanted to get that information.

By Mr. Weisman.

Q. Mr. Lifshey, let us see if we understand each other. You are a member of the industry? A. I am. 2007

Q. And you have been a member of it for seventeen years? A. I have.

Q. And you know it is subject to much hardship and travail? A. I do.

Q. Was not that handicap which the dress industry suffered in January of this year looked upon by all of the members of the industry generally as a great evil and that due thereto they had sustained a serious loss? I do not

mean that it put them out of business. A. Well, the general opinion——

Mr. Haycraft: I object to that, Mr. Examiner, as to what——

Examiner Bennett: I will let him answer.

A. The general opinion, when you are sitting in your place doing nothing, is the fact that you are losing money and going out of business; but as it happened in this particular case the month of February was a very poor dress month. The demand for dresses that particular month was not, considering the fact that certain people were
2009 working, taking a chance of the union calling for a strike, other people more conservative were not—understand me, there was not a direct stoppage throughout the market—

Q. I understand. A. It was in accordance with the particular policies of the manufacturer. Where they were conservative, they would not cut. Other manufacturers who were willing to take a chance continued to cut and continued to make—because the union did not stop their labor from operating and making dresses, they only intimated that if there were not direct steps taken to sign an agreement a stoppage and a strike would be called. It was a sword hanging over the manufacturers' neck. Certain manufacturers took it to ignore it; others laid low and did not want to take a chance; but the demand in
2010 the market at that particular time was not what was expected of the month of February. Our last February was an exceedingly poor dress month, so I would say that to some manufacturers, and in our instance in particular, the fact that we stopped the month of February gave us a chance to clean out our bins and really was more helpful, I think, than an hindrance.

Q. Well, that is looking at your business generally, but do you not believe that if you had continued during the

month of February to operate and work as theretofore your total volume for the year would have been larger? A. Well, we did work the month of February, as I told you. We shipped——

Q. I mean working as you work every other month. A. The total for the year, volume, would have been larger, but that was not——

Q. No, that is enough now. So that by reason of this unsettled situation your volume for this year is less than it would have been if there was not this condition then existing? A. As compared to the total volume, a very small percentage.

Q. I did not ask you that. I said, it would have been 2012
larger? A. Yes, the total volume, had we worked throughout the month of February——

Q. Yes. A. The total volume would have been larger.

Q. That of necessity must be so in view of your previous testimony that the dress business is a seasonal business; is that not so? A. Right.

Q. In other words, if you are not there with the merchandise in this business when the purchaser wants it, you have lost the sale? A. That particular sale, yes.

Q. There is no question about that, and if you have not got, if you do not show—I will withdraw that. If you ship, during the month of February, seventy or sixty thousand, instead of 140,000, that difference, it is unfortunate and just lost to the manufacturer; is it not? A. I 2013
am taking it for granted that we would have shipped one hundred forty——

Q. Yes. A. One hundred forty is a high month.

Q. Yes. A. I mean as an average.

Q. Yes. A. February usually runs around 110.

Q. Whatever it is. A. It would have been.

Q. That is one of the evils of your business? A. Yes.

Q. You have got to have the merchandise when the people want it? A. Right.

Q. If you have not got it you cannot sell it, and when you do have it later, you have to sell it at off prices? A. Yes.

Q. Is that not right? A. That is the evil of return.

Q. That is why you did not operate fully, you were afraid if there were actually a strike and the merchandise was held up, incompleted, then if it were later completed it would be off-season merchandise and you would have to take a loss thereon? A. Correct.

Q. What total percentage of your shipments, do you say, are tendered for return, to you, a year, do you know? A. My average return percentage——

2015 Q. No, listen carefully to what I say. Read the last question.

(Question read.)

Q. I want to call your attention in this question, so that you may not be mistaken, that I have used the words "tendered for return" as differentiated from the one you accepted the return of, see? You were about to answer what you accepted, I think. A. Well, the percentage tendered for return and the percentage accepted in return are about even.

Q. Well, you don't accept every return that is tendered to you, do you? A. You don't—but those instances are so few and far between that to put a direct figure on it, I

2016 cannot.

Q. Well, what percentage of your total volume would you say is returned to you during the year? A. As an average throughout the year?

Q. Yes. A. I am not taking any particular years. It ranges anywhere from six—in fact, our lowest percentage was five at one time, to about eight, eight and a half per cent.

Q. Now, in 1934 to 1935, that is, from August to August, what would you say was the percentage of your returns, as contrasted with your total sales?

Mr. Haycraft: I object, not proper cross-examination.

Examiner Bennett: Is there anything in the direct examination on that?

Mr. Weisman: Well——

Examiner Bennett: Oh, I think regardless of that I will overrule the objection. You may go ahead.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. The Court says you may answer, if you know. A. I am giving it estimated, not from actual records. 2018

Q. Now— A. I would estimate somewhere in the neighborhood from 7 to 8 per cent.

Q. Then, what would you say were the causes for these returns? A. The causes for the returns are various. There are evident returns, causes, such as poor—flaws in material, poor workmanship, not as sample, and substitutions. Those are the evident causes. There is one cause that as a dress man I give as being a very good one, where it is not fair to the dress man, is the evil on the part of stores and buyers of their departments to return merchandise that they have left and cannot sell.

Examiner Bennett: We are going to take a recess of ten minutes.

Mr. Weisman: Thank you. 2019

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. Mr. Lifshey, you were telling us about stores seeking to clean up their merchandise because they could not sell it by taking it back? A. Yes.

Q. Those are four reasons that you have given us for returns. A. The other reason I have given in my previous testimony. During that time we have had returns due to Guild——

Q. No, I am quite sure you are not mistaken about that. I asked you for the period 1934. A. Right.

Q. To August, 1935. A. Oh, I beg your pardon.

Q. And I know that that was an inadvertent error on your part. I believe, however, you have left out some rather important reasons for returns, have you not, such as late delivery? A. Very seldom do we have a late delivery reason for return. If I may state myself, we have
2021 been considered right throughout the past number of years as a hot house.

Q. As a what? A. As a hot house. In other words, we seem to hit it right on our shelves, merchandise value, and, as a result, we are extremely careful in the taking of orders to check against cutting tickets, and merchandising work, and not to make promises unless we can fulfill them. The late delivery excuse is used quite often as a reason for return, but you will find that reason very seldom used in a popular-priced—and I talk relative to my price range, as compared to the higher price range, where delays are caused by importation of trimmings, or whatever it may be.

Q. Does your house use an outside sketching service? A. We have at different times had service rendered to us by outside sources.

2022 Q. Are you having such service rendered to you right now?

Mr. Haycraft: That is objected to as not proper cross-examination; irrelevant and immaterial.

Examiner Bennett: Are you objecting?

Mr. Haycraft: Yes.

Examiner Bennett: Well, you are trying to get a statement as to to-day, or are you within the period?

Mr. Weisman: Within the period.

Examiner Bennett: Off the complaint?

Mr. Weisman: Yes, I will amend that as to within the period of the complaint.

Examiner Bennett: All right.

Mr. Haycraft: Well——

The Witness: The period is what, sir?

Mr. Haycraft: I object to the question as incompetent, irrelevant and immaterial.

By Mr. Weisman:

Q. The period is——

Examiner Bennett: Just a moment. That does not seem to be the basis—he has not stated the basis of his objection. 2024

Mr. Haycraft: The basis of my objection, your Honor, is that this is not proper cross-examination. We are going into a field here of price, designs; that has nothing to do with the direct examination.

Mr. Weisman: Well, let us see. There is nothing terribly secret about this. This witness and I can understand each other. He said that his house is a "hot" house. Quote the word "hot," please. He explained that by that he meant he gets styles, that are good styles. I think one of the other witnesses has told you what—defined "hot styles," meaning public acceptation. Now, I want to find out whether his styles are so hot. It is well known that the sketching services do aid manufacturers in getting hot styles, and contribute thereto, and I submit it would have taken much less time to have the witness answer this question than to have all the argument. 2025

I have sought, your Honor——

Examiner Bennett: Well, is this the only question you are asking on that particular line?

Mr. Weisman: Well, that is the first question that I have asked on that particular line.

Examiner Bennett: Oh, I understand that, but that may not be—but will there be twenty-five questions?

Mr. Weisman: That will depend upon the answer, Judge.

Examiner Bennett: Yes. Well, I will sustain the objection, then.

Mr. Weisman: Exception.

Examiner Bennett: All right.

2027 *By Mr. Weisman.*

Q. Do you know——

Examiner Bennett: That is, in view of the statement made yesterday for the record by counsel for the Commission, I could not see how it could have any bearing on the issues.

Mr. Weisman: I understand, then, that this objection is sustained in view of the stipulation heretofore made by counsel for the Commission that whether or not these returns were due to the fact that the merchandise was not accepted, and, in fact, copies of Guild merchandise, is immaterial?

Examiner Bennett: Yes.

Mr. Weisman: Well, on that basis I will not
2028 continue that inquiry any further.

And I might say, in explanation, to the Court, that I had forgotten the stipulation. I mean, I want to keep as closely to the confines as possible.

Examiner Bennett: Yes. All right.

By Mr. Weisman.

Q. Now, during the period, August, 1934, to August, 1935, do you know what was the price per unit of your dresses? A. $4.75.

Q. And have you maintained the same general unit price during the year following, that is— A. There is one break where we went into the $3.75, that was the summer of 1935.

Q. That is, during the summer of 1935 there was this promotional— A. Well, we manufactured and sold $3.75 dresses.

Q. $3.75, and how many units, would you say, that you manufactured and sold during the period, August, 1934, to August, 1935? A. For a full year?

Q. Yes. You do not have to be exact. I imagine it would be 260,000 pieces, is that a fair estimate? A. No, it would not. 2030

Q. More? A. It would be about that, yes.

Q. Yes. Trying to be fair. That is about fair? A. Yes, about that.

Q. I mean about 260,000 pieces, and, if I understood you correctly, you said that you got about 7 or 8 per cent. returns? A. Approximately.

Q. So your total number of units returned would be approximately 12,500; is that correct? I have taken 7½ per cent. of 260,000. A. About that.

Q. During the year 1935 to 1936 you have done a volume of approximately $1,600,000? A. A little less, about $1,400,000, closer to a million and a half than a million six hundred.

Q. All right, about a million and a half. Now, what was your percentage of return during that period? A. As I remember, there was a slight increase in that particular period, about half per cent. increase. 2031

Q. Now, do you keep a record of your returns—book—do you have a return book? A. Yes.

Q. Showing the total number of returns? A. Right.

Q. And you keep such a record for 1934 to 1935, that period? A. We did.

Q. You have a like record for 1935 to 1936? A. Yes, we have.

Q. Those records are intact? A. They are.

Q. And you knew, did you not, by reason of conversations with Mr. Ballon, your personal counsel in this matter, and with Mr. Haycraft and Mr. Seidman, that percentage of returns was an important—might be an important matter in this case?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Did you know that?

2033

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, did you know, irrespective of any conversation you might have had, without regard to any conversation that you might have had with Mr. Ballon or Mr. Haycraft, that your returns during the period of August, 1935, to 1936, was important? Did you believe that to be important?

Mr. Haycraft: That is objected to.

2034

Examiner Bennett: An objection?

Mr. Haycraft: Yes.

Mr. Weisman: May it please your Honor, I have already asked him whether or not there are records about this thing. He has testified generally that this is his guess, and now I submit I am entitled to show on cross-examination that there were adequate records of this thing, and I went to find out whether or not he consulted them. I think it is a very fair question on cross-examination, and I submit——

Examiner Bennett: Ask him——

Mr. Haycraft: That is not the question.

Examiner Bennett: You ask him—have you consulted him?

Mr. Weisman: I first wanted to ask him that he knew it was important, and that if he did, why, he did not consult them. Perfectly obvious, and I submit——

Examiner Bennett: I doubt if a witness is expected to know.

Mr. Weisman: I do not say that he knows.

Examiner Bennett: Well——

Mr. Weisman: I said—— 2036

Examiner Bennett: —even——

Mr. Weisman: I asked him whether he believed——

Examiner Bennett: Well, whether he believes—

Mr. Weisman: —it is important as showing the operation of the witness' mind and what he would do under such circumstances.

Examiner Bennett: Well——

Mr. Weisman: If I am restricted to this type of examination, it is perfectly obvious that my cross-examination becomes a nullity, because if I say to him, "Why didn't you go to these records?" He will say, "I did not know it was important." That would be no cross-examination at all. The validity of my cross-examination is now being objected to, 2037 and the force of it completely disposed of and rendered worthless and nugatory, and I submit that was the purpose of the objection.

Examiner Bennett: All right. Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, you knew the matter of these returns was important, did you not? A. I did.

Q. And with that knowledge, did you go to your records so that your testimony might be accurate? A. Yes, I did.

Q. Did you take off the exact number of returns during the period 1934 to 1935? A. I did.

Q. What is the exact number of returns? A. I haven't got the figures available. I did state that the period covered in 1935—there was a slight increase——

Q. No, I did not ask you that. You want to get out of here? A. Right.

Q. You will get out of here by answering questions.

Mr. Haycraft: I submit, Mr. Examiner, the in-
2039 struction should be given to the witness by the Examiner and not counsel.

Mr. Weisman: Will you read the last question? (Question read.)

By Mr. Weisman.

Q. You said you took them off? A. I did.

Q. And you took them off because you knew that it was important to this case? A. I did.

Q. Now, since you knew it was important, and since you went to the trouble of taking them off, why did not you bring those records here showing the exact number of returns? A. Because, as I stated before, I took the figures off as a matter of information. I felt that there would be
2040 questions on the figures. These figures in question have shown only a slight increase for that period, approximately of half a per cent. The exact figures I have not with me now, but can get them during the afternoon recess, the afternoon period, if necessary.

Q. Will you bring down, for the afternoon period the figures that you made showing the total number of returns during the period August, 1934 to 1935? A. August, 1934, right.

Q. Will you? A. To 1935 or 1936?

Mr. Haycraft: Make it clear.

Mr. Weisman: I am asking him—everybody knows you are sitting there and supposed to be quiet. Of course you are not helping him. I am asking the witness a question. I object to this constant interruption. When you have a witness you can ask him what you want.

Mr. Haycraft: I am asking the Examiner to instruct the witness that it is not necessary for him to comply with request of counsel.

Mr. Weisman: And I say this is a deliberate attempt by Mr. Haycraft to suppress evidence that 2042
I am entitled to get from the witness that he tenders——

Examiner Bennett: You have your privilege of objecting, Mr. Haycraft, and if you want to make an objection——

Mr. Haycraft: I object to that request, and ask—

Examiner Bennett: Read the request.

(Record read.)

Mr. Weisman: I say there is no legal objection offered to that question.

Examiner Bennett: Why, I think that it is not matter for a legal objection.

Mr. Weisman: I agree with your Honor.

Examiner Bennett: I will say this to the witness, 2043
that that is a matter of discretion on your part. You come here and give testimony, and to bring certain things, and they are all that are in the jurisdiction of this hearing. Now, the Examiner is not going to compel you to bring anything else into the hearing room, but if you wish to do it, for this Examiner, or for these respondents, why, I have no objection whatever to your doing it.

The Witness: Thank you.

Examiner Bennett: That is a discretion that is entirely yours.

Mr. Haycraft: I wish to point out, Mr. Examiner, the question on my interrogation. I wish to renew it for the reason it is not proper cross-examination. The witness did not testify on the direct examination with respect to this matter, with respect to the percentage.

Examiner Bennett: Yes, there is so many angles to that, we cannot——

Mr. Haycraft: In other words, Mr. Examiner, it seems to me that in a case of this kind where the
2045 witness has been tendered and offered his testimony, that he should be cross-examined with respect to his testimony, and not to testimony he did not testify about.

Examiner Bennett: I know, but, Mr. Haycraft, you did open the matter of returns.

Mr. Haycraft: Yes.

Examiner Bennett: Now, opening the matter of returns, you opened the matter of returns?

Mr. Weisman: Yes.

Mr. Haycraft: I opened the matter of returns on one particular——

Examiner Bennett: That is all there is to it.

Mr. Haycraft: —matter.

Examiner Bennett: You opened the general
2046 question.

Mr. Haycraft: If this witness can testify——

Examiner Bennett: You asked him if there were others?

Mr. Haycraft: Yes.

Examiner Bennett: And if there were others considered——

Mr. Haycraft: Yes, if the witness can testify as to the number of returns on account of the Guild

stamp of warranty, I have no objection, I want him to produce them, but he informed me on the witness stand, and off the witness stand, that he did not have such records and could not testify as to the exact numbers.

Examiner Bennett: That is true.

Mr. Haycraft: How are we going to get anywhere, and where is going to be probative value or weight to testimony that does not relate to that?

Examiner Bennett: Yes, but opening the matter up, as he did, we are going to hear—get all the information we can.

Mr. Haycraft: Of course you understand——— 2048

Examiner Bennett: —on this matter.

Mr. Haycraft: May it be understood——

Examiner Bennett: If he wants to bring in that matter I have no objection.

Mr. Haycraft: May it be understood—I wish to get before the Examiner, if I may, the full meaning or objection to that point or contention on that point.

Examiner Bennett: All right.

Mr. Haycraft: That is this: That so far as the Commission's side of the case is concerned, we are attempting to prove that there were returns, that the returns were substantial. Now, whether there were returns—that these returns are on account of 2049
the requirement of the Guild, that is, the co-operation of the retail dealer with the Guild.

Now, it is our contention, and I certainly urge it, that when and where the retail dealers make return guarantees for reasons other than the requirements as stamped, or the requirements of the Guild, it is irrelevant and immaterial to the issues in this case.

Mr. Weisman: Excepting——

Mr. Haycraft: Just please, a moment.

Mr. Weisman: Excuse me, because——

Mr. Haycraft: I am stating my position now.

Examiner Bennett: Are you through?

Mr. Haycraft: No, sir; I am not.

Examiner Bennett: All right.

Mr. Haycraft: And that it follows that when questions are put to the witness which will develop, as far as we can develop, the number of such instances, that it is not material and not relevant to the issues to develop the total number of reasons other than the warranty stamp——

Mr. Weisman: May I interpose?

2051 Mr. Haycraft: —the Commission is not interested in this matter of how many returns were made for reasons other than the warranty stamp.

Mr. Weisman: Well, if that is a fact, will you kindly explain to me what was the purpose of your saying to this witness, "What is the effect of these returns on your business?" if you were limiting it to these particular returns?

Now, it will become tremendously important in this case if that question is material to show that these returns were infinitesimal in comparison to the total number of returns.

Examiner Bennett: Well, Mr. Weisman——

Mr. Weisman: Excuse me.

Examiner Bennett: It is not necessary to argue
2052 the matter.

Mr. Weisman: Oh.

Examiner Bennett: I have made a decision.

Mr. Weisman: Oh, thank you, I thought you——

Examiner Bennett: I am going to strike it out.

Mr. Weisman: All right, thank you, Judge. I had misunderstood.

Examiner Bennett: All right.

Mr. Weisman: Will you read the last question?

(Last question read as follows: "Q. Will you bring down for the afternoon period the figures that you made showing the total number of returns during the August, 1934, to 1935?")

By Mr. Weisman,

Q. I believe you answered my question. A. Right.

Q. Now, have you got your original sheets showing how you made those calculations? A. Well, calculations were made out of the general ledger book, and an adding machine tape was taken off, adding up the twelve months. I personally did not add them up, between August 1, 1934, and July 31, 1935. I went by the year 1934 and 1935. 2054

Q. I see. A. This man put the figures at a different relationship to each other.

Q. I see. A. I took off of an adding machine the amount shipped, took off an adding machine the amount of the returns from my general ledger, and then struck a percentage basis.

Q. I see. Now, will you also bring the figures for the period August, 1935, right down to date? A. To date, yes.

Q. And I understand you to say "Yes"? A. Yes.

Q. I understand that you are an officer of the Trussel Dress Company? A. No.

Q. Are you interested in it? A. Yes.

Q. In what capacity? A. In the capacity—the Trussel Dress Company is a corporation. I am interested in the capacity of being a contract employee. I work under a contract. 2055

Q. You have a contract? A. With the Trussel Dress Co., Inc.

Q. Who are the officers of the Trussel Dress Co., Inc.? A. Henry A. Trussel.

Q. Do you know his address? A. Woodmere, Long Island. I do not know his local address.

Q. Who are the other officers? A. I believe his wife is an officer.

Q. Will you also bring with you this afternoon the return records from which this tape and transcript totals were made up? A. General ledger?

Q. Yes. A. Yes.

Q. Not the general ledger. A. That is what they are made up from.

Q. Have you not got a loose-leaf book in your business wherein is entered all returns from day to day? A. You want the individual return books?

Q. Yes. A. And the individual charges?

2057 Q. Yes. A. If the Court please, and Mr. Weisman, I would need a double truck, and you are asking something that would be impossible for me to secure during an intermission of a couple of hours. As you testified—as you figured out for me before—shipping 260,000 dresses and receiving in return 11,000 returns, charges running and return slips running anywhere from one, there are quite a number of charges, and quite a number of return slips.

Q. Maybe I have not made myself plain. I see I have not. I believe it to be the practice in most concerns that when they accept a return they send out a credit memorandum? A. Right.

Q. That credit memorandum, a duplicate of it, is put in a loose-leaf book? A. Right.

2058 Q. Now, that book is the book that I want for this period. A. Yes, but you want the book for a year period, that is the book I am referring to.

Examiner Bennett: I think that request is unreasonable.

The Witness: I would not hazard a guess how many——

Examiner Bennett: I would not so advise the witness.

The Witness: —how many books there are. Quarter of a million dresses.

Mr. Weisman: I do not want them for a quarter of a million——

Examiner Bennett: We will not go into a whole lot of books.

The Witness: You want it for a whole year?

Mr. Weisman: I want it for the returns.

The Witness: Returns would be about 12,000 dresses.

Mr. Weisman: That would make it 12,000 pieces.

The Witness: Yes, but I have not got them available, for I haven't touched them from 1933 on. 2060

Mr. Ballon: May I say that if counsel will wait until the noon recess and tell me what documents he wants, if the request is reasonable and counsel is entitled to those documents, I will gladly cooperate with him and see that they are brought down.

Mr. Weisman: All right, that is fine.

This is Mr. Ballon who makes that statement—he has already appeared as counsel to the witness.

Examiner Bennett: Well, of course, there will be—if there is objection to going into any long examination with those documents, of course, that is a matter for the Examiner. The Examiner is not likely to permit any extensive searching of books on cross-examination—— 2061

Mr. Ballon: When I made that statement——

Examiner Bennett: —or going into the hearing on that sort of request.

Mr. Ballon: Your Honor, I make that statement without intending in any way to bind the Commission. I simply made that offer for the purpose of showing the good faith of this witness so that his integrity cannot be impeached about the state-

ments he has made on direct examination. Whatever the witness has testified to, he will stand upon by his figures and records.

Examiner Bennett: If he is going to bring his summary, I haven't any objection to him bringing his summary, and that being made a basis for questions, but I have objection to our wasting our time with going through lengthy examination of original documents. If you want to do that, you can do it for your own case when you present it.

Mr. Weisman: Just please do not take this on the record.

2063 Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We are not going into any such inquiry.

Mr. Weisman: Then may I make this statement?

Examiner Bennett: I may as well serve notice on you right now that we are not going into that sort of an inquiry. If you want to bring in a memorandum and make a reasonably short inquiry based on that memorandum, why, I have no objection.

Mr. Weisman: I wish to take most respectful exception to the ruling announced. I wish to make a tender of proof to state that I believe that I would have proved by the introduction of these original 2064 documents into evidence, which are the documents from which this witness has such information as he has testified to concerning the returns, that he was mistaken with regard thereto.

Examiner Bennett: Yes. I will say as to that statement of proof that at the proper time the respondents are entitled to present these documents if they can secure them.

Mr. Weisman: Well, I am afraid later on I will not be able to get them, Judge.

Examiner Bennett: But this is not the proper time.

Mr. Weisman: All right, I except.

Your statement still stands, Mr. Ballon?

Mr. Ballon: By all means.

Mr. Weisman: Will you bring these down?

Mr. Ballon: I did not make that statement, Mr. Weisman.

By Mr. Weisman.

Q. Without regard to these records, it is your statement 2066
that your returns after August, 1935, for the year, were about a half a per cent. greater than during the prior year? A. They were.

Q. You are quite willing to answer me fairly to the best of your ability? A. I am.

Q. Now, you have testified that there was an effort, and there still is, for people to make returns because they could not sell the merchandise? A. I did.

Q. In other words, at the end of the season you find that a retailer finding himself with merchandise on hand will attempt to find an excuse for returning it which is not founded in fact? A. Not at the end of the season as you just stated——

Q. Well, at the end of— A. No, sir; during a season 2067
a buyer has to constantly make periodical trips to the market, keep replenishing her stock. Merchandise that hangs in her stock, and end stuff, for a period of ten days is considered slow-moving merchandise, and there is a desire to replace that merchandise with newer merchandise. Most buyers would on a budget system. Have so much to spend, in proportion to their stock. If by returns they can reduce their stock they can naturally re-

place that merchandise with newer merchandise in the market, so when you say at the end of the season, you are not correct.

Q. Well, I quite agree with you. Let us see whether this is not a fact: A buyer comes in to buy merchandise and she seeks to exercise her judgment that that merchandise is readily salable and will move quickly; is that not so? A. Right.

Q. As a matter of fact, that is the basis of her employment? A. Correct.

Q. And when she gets merchandise into her department, if the merchandise does not move sufficiently fast
2069 she feels that sooner or later, most assuredly, in order to move it, she will have to mark it down? A. Correct.

Q. That is, reduce the margin of profit? A. Yes.

Q. When this becomes apparent to the buyer, or to some of the buyers, there is then the effort to return the merchandise to the manufacturer? A. By some of the buyers.

Q. Yes, I did not say all of them; you could not stay in the dress business if it were true of all of them. This is generally regarded in the trade as an unjust thing, or unfair return? A. Right.

Q. In other words, the order having been placed and given, the buyer having made a mistake, she now wants to saddle the manufacturer with that mistake; is that not so? A. It is.

Q. Now, during the period 1934 to 1935, the dress in-
2070 dustry was operating under a code of fair competition; is that not so? A. They were.

Q. And one of the unfair trade practices of that code of fair competition was aimed at such unjustified or unfair returns; is that not so? A. It was.

Q. And that item of the code of fair competition for the dress industry to a great degree lessened such unfair and unjust returns, did it not? A. It did.

Q. Now, the period August, 1935, to 1936, there was no code of fair competition for the dress industry, is that not so? A. It is.

Q. And such unfair and unjustified returns were not longer unfair trade practices? A. Not exactly. Certain conditions due to their usage, during the N.R.A., had set up certain rulings by which we added ourselves, of discounts is one, where the N.R.A. ruled that a standard 8 per cent. discount should prevail throughout the industry —by which we guided ourselves; discount, is one, where the N.R.A. ruled that a standard 8 per cent. discount should prevail throughout the industry, why, that discount still prevails. The manufacturers have not gone 2072
back to the 10 per cent. when the N.R.A. went out.

Q. You mean some manufacturers? A. Most of them have not.

Q. You mean manufacturers— A. When I——

Q. How far——

Mr. Haycraft: Let the witness finish his answer.

A. When I specified the word "manufacturers," every industry has an outer fringe that really should not be classified with the manufacturers in that particular field.

By Mr. Weisman.

Q. You mean that they are chiselers? A. Call them that. 2073

Q. You mean, they seek to engage in unfair trade practices? A. Yes.

Q. As generally recognized——

Mr. Haycraft: Mr. Examiner, may the witness answer?

Mr. Weisman: I am asking him, and he is interrupting.

Mr. Haycraft: You keep interrupting; the witness started to answer.

Mr. Weisman: Oh, you are interrupting my examination. Please.

Examiner Bennett: Just a moment. Talk one at a time. I do not see how the stenographer can get your statements when you are both talking at once.

Mr. Weisman: Let us see——

Examiner Bennett: Go ahead and give your statement, Mr. Haycraft.

Mr. Haycraft: Mr. Examiner, the witness
2075 started to answer counsel's questions about these returns, he started and was interrupted three times in that answer. Now, I submit he should be allowed to complete his answer before he is interrupted.

Mr. Weisman: Let us see if he was interrupted. Will the Reporter go back and read?

(Record read.).

Mr. Haycraft: You have not got it all yet; the original question.

Mr. Weisman: Now you are quarreling with the stenographer.

Mr. Haycraft: The question propounded was back of that, and these are all interrupted questions that I am objecting to, that I am talking to. If you go back and read, you will find the underly-
2076 ing question that Mr. Weisman propounded. That is where the question was interrupted. I submit that the witness should be permitted to finish his answer.

Mr. Weisman: He will finish.

The Witness: I did not finish the particular question.

Mr. Weisman: We will come back to it then.

(Question read.)

Mr. Haycraft: I want the witness to answer that particular question.

Mr. Weisman: Now, tell me, or shall I address myself to the Court?

Examiner Bennett: Have you finished?

The Witness: I have not finished my particular trend of thought on that particular question.

Examiner Bennett: Go ahead and complete what you intended to say.

The Witness: I was trying to bring out that the N.R.A. had definitely impressed the manufacturers with certain provisions that were beneficial to their business, discount, as I outlined there, was one of 2078
them; the matter of unjust returns was another. When the N.R.A. was declared unconstitutional the matter of unjust returns was not taken advantage of to the extent that your query would lead one to believe.

Mr. Weisman: I ask that that answer be stricken out as to the extent that my question would lead anyone to believe—what my question would lead anyone to believe, that is on the record.

The Witness: Would lead me to believe.

Examiner Bennett: Well, we will let it stand as it is.

Now, go ahead.

The Witness: The buyers of stores had become 2079
accustomed to purchasing in a conservative manner. The N.R.A. had eliminated, to a great extent, memorandum purchases that was quite the thing for it, and there were not any influx of unjust returns due to the listing of the N.R.A.——

Examiner Bennett: All right.

The Witness: —as there were prior.

Examiner Bennett: Let us stop there.

By Mr. Weisman.

Q. But in answering that question, you said that there were not so many unjust returns. Now, there were no unjust returns to the extent that my question seemed to imply; is that so? A. Yes, sir.

Q. But there were returns that were unjust, to some extent? A. In proportion.

Q. Is that not so? A. In proportion to the amount of returns, they were unjust, during the N.R.A. period. We had unjust returns during the N.R.A. period.

Q. Is it your statement that the fact that the N.R.A., or the Code of Fair Competition for the Dress Industry
2081 came to an end, made no change in the conditions that you operated under? A. In my particular business?

Q. Yes. A. No.

Q. You were charged with being a frequent violator of the Code of Fair Competition for the Dress Industry, were you not?

Mr. Haycraft: I object to that.

A. We were not.

Mr. Haycraft: I object to that, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: All right, it has been answered and you can get that——
2082

Mr. Haycraft: I move to strike that out.

Examiner Bennett: It does not make any difference whether it was sustained, or otherwise.

By Mr. Weisman.

Q. Well, when you said "you were not," did you answer that you were not, because I used the word "frequently" in my question?

Mr. Haycraft: I object to that, Mr. Examiner. You sustained the last objection.

Mr. Weisman: I thought you——

Examiner Bennett: I sustained the objection to that line of questions.

Mr. Weisman: Well, I——

Examiner Bennett: They being violators of some code that was not legal at the time, and this is outdated now.

Mr. Weisman: Well, except that——

Mr. Haycraft: It has no relevancy to this proceeding.

Examiner Bennett: I have sustained the objec- 2084
tion to that, and I will not hear any more questions on that.

Mr. Weisman: Then I wish to make this tender of proof, then if I had been permitted to pursue this inquiry——

Mr. Haycraft: Just a moment.

Mr. Weisman: Well, now, just a moment.

Examiner Bennett: Wait a moment.

Mr. Weisman: I want to have this stopped, being interrupted in this——

Mr. Haycraft: I want to interrupt this right now, if I may.

Mr. Weisman: The Court has ruled you may not.

Mr. Haycraft: He has not made any such rule. 2085
That is your ruling, not hi..

Examiner Bennett: He can make a tender of proof.

Mr. Haycraft: Well——

Mr. Weisman: I wish to make the tender of proof, and I ask that you not interrupt me——

Mr. Haycraft (interposing): I want to get clear the Court's ruling, if I may. Is it your ruling, Mr. Examiner, that counsel can make a tender of proof on any subject he desires in this proceeding?

Examiner Bennett: Yes, he can make a tender of proof.

Mr. Haycraft: Regardless of its reflection?

Examiner Bennett: I do not care. If he makes an absurd tender of proof, it is too bad, that is all.

Mr. Haycraft: I just want to get the correct understanding.

Mr. Ballon: Before counsel proceeds, in view of my previous statement that I represent this witness personally, and in view of the fact that this tender of proof might be misunderstood, and certainly might result in damage to this witness personally,

2087 I request your Honor in this particular case to direct counsel not to make this particular tender of proof.

Examiner Bennett: Yes, I am going to cut out all proof on that matter. I am not going to cut out a tender. This man cannot be responsible for what Mr. Weisman offers to do——

Mr. Ballon (interposing): A tender of proof certainly——

Examiner Bennett: He certainly could not be responsible; your firm certainly could not be responsible for what Mr. Weisman offers to do in his record.

Mr. Ballon: As long as we understand it, your Honor, but if it appears in the newspapers upon

2088 the following morning, the fact that counsel has made an offer of proof——

Mr. Weisman: Do you want this Court to conduct this case with a view to the newspapers?

Examiner Bennett: Take your time, now.

Mr. Weisman: It is a new line.

Examiner Bennett: This gentleman is speaking.

Mr. Ballon: The mere fact that counsel has made a tender of proof, your Honor, leaves an in-

ference that perhaps there is some justification for that tender. I say, in this one instance, why, it may result in damage to the witness personally, that you request counsel to refrain from making this tender of proof, particularly since it has no relevancy to the issues in this case.

Mr. Weisman: It think it is very relevant.

Examiner Bennett: I am sorry, but I am not going to shut out tenders of proof. The matter is a matter of law, while I may consider it an absurd tender, but still that is my opinion.

Mr. Weisman: I say, with all due humility, I trust the Court is in error. 2090

I make this tender of proof, that if I had been permitted to pursue this inquiry further I would have been enabled to prove that the Trussel Dress Company was a frequent violator of the Code of Fair Competition for the Dress Industry, that it violated particularly those tenets of the dress industry relating to fair trade practices, that it made frequent complaints on its own account by reason of unjust returns; and that the statement of the witness that it was not a violator of the Code of Fair Competition was not, in fact, truthful, and this proof would, in addition to the facts therein contained, would have had direct bearing and weight upon the credibility of the witness.

Examiner Bennett: Now—— 2091

Mr. Ballon: Your Honor——

Examiner Bennett: I shall entertain a motion to strike that tender of proof as irrelevant and unfounded, without any foundation of fact, and a gratuitous reflection upon the witness in this form.

Mr. Ballon: Your Honor, may I move that the statement of counsel be stricken and expunged from the record?

Mr. Weisman: I object to being expunged. I wish to make it a basis——

Examiner Bennett: You may move that it be stricken and it will be stricken. That is sensible. We will not strike it out physically.

Mr. Weisman: May I have an exception to your Honor's ruling?

Examiner Bennett: Certainly, certainly.

Now, we are going to take a recess until 2 o'clock.

Mr. Weisman: All right.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock of the same day.)

2093

AFTERNOON SESSION—2 P. M.

Examiner Bennett: All right, you may proceed. Take the stand, Mr. Lifshey. Be in order, please. Mr. Weisman, you may proceed.

MURRAY LIFSHEY resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Before the adjournment your counsel made the state-
2094 ment that we would have produced here this afternoon certain documents. You heard that statement. A. I did.

Q. I think, among them, was your return books. A. No. It was understood that I was to produce a statement that I claimed would be drawn up by a certified public accountant, who happens to be down at our place at the present time, making a mid-year inventory, listing business and returns over the two periods in question, and the percentages of same.

I have just had a telephone communication with the accountant, who claims that a statement left the office there about twenty minutes after one, and it will be here.

However, from his copy, he did give me the following information: Percentage of returns from August, 1934, to the end of July, 1935, 7.54; percentage of returns from August 1, 1935, up to and including July 11, figures 8.31, an increase over the latter part of ..., or an increase of 10 per cent. on returns.

Q. Now, would you say, or would you deny, that since the abandonment of the Code of Fair Competition for the Dress Industry that, there are a great many more unjustified returns in the industry than there were while 2096
the code was in operation? A. Speaking for the industry, I am not in a position to speak, because I have no available figures.

Q. Well, wait a moment. Aside from your available figures, what do you think generally about that situation? A. Basing——

Q. From your general knowledge——

Mr. Haycraft: Wait——

Mr. Weisman: Let me finish.

A. My general knowledge can be only confined to my particular business—oh, pardon me (taking paper from bystander).

May I, your Honor? 2097

My general knowledge can be based only upon my particular business. It happens that the Trussel Dress Company was the only dress concern that I have ever worked for. My contacts with other concerns is very slight, inasmuch as I am inside most all the time, so any estimates, or any figures that I give must be based only upon my own particular business and not upon the industry.

By Mr. Weisman.

Q. So you haven't any knowledge of any general situation that may exist in the industry of which you are a part? A. No general knowledge.

Q. All right. I assume that this total increase, that is .77 of 1 per cent.—I withdraw that. This .77 of 1 per cent. of increase, is that due to these various causes, such as flaws of merchandise, poor workmanship, not as sample, and also because some of them were copies of Guild merchandise? A. Well, that 77—.77 per cent. increase—does not include any of those reasons, for the simple reason that those reasons for return are included in the bulk; but
2099 speaking of the increasing alone, in other words, speaking of the .77 increase, I can attribute that percentage of increase of returns, or part of that percentage, to the Guild activity.

Q. Well, how do you know that— A. I don't——

Q. You did not examine these papers yourself, did you? A. Which papers?

Q. From which these figures were made up. A. Are we talking of the figures, or are we talking from my opinion of the increase in returns?

Q. I am saying to you that the number of returns during the year included returns by reason of flaws in workmanship, of flaws in materials, poor workmanship, and not as samples, and perhaps to a very small degree because
2100 of late deliveries, and because some of the merchandise returned was copies of Guild merchandise. A. Yes. Correct.

Q. Is that not so? A. Correct.

Q. In other words, there are all these reasons for the total amount of these returns? A. Right.

Q. And these returns were not in total due to the fact that the merchandise returned was copy of Guild merchandise? A. The returns——

Q. "Yes" or "no." A. It is a question I cannot answer "yes" or "no."

Q. All right. I will read it again and see if you can answer it.

(Question read.)

Mr. Haycraft: It is too indefinite, Mr. Examiner, what he means.

The Witness: Are we speaking——

Mr. Haycraft: Wait a moment.

The Witness: At the present time, if the Court please——

Mr. Weisman: Wait a moment. When Mr. Haycraft makes an objection I want you to give him 2102
the same courtesy as I am expecting you to give me. Wait until he gets finished.

Mr. Haycraft: I object, Mr. Examiner. It is too indefinite.

Examiner Bennett: Yes. Well, I think that the question can be answered, unless the witness may experience, from his knowledge of the industry, some difficulty that I cannot see.

The Witness: As I understand it——

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: "These returns." I do not know what that means, Mr. Examiner.

2103

By Mr. Weisman.

Q. Well, the total of returns that you have testified to as having taken place during the period 1935 to 1936. A. The total returns were due to all of those reasons.

Q. Exactly. A. As enumerated by you.

Q. That is what I asked you. A. I thought you were——

Q. No. A. —speaking of the increase——

Q. No, I am asking you about the total.

Examiner Bennett: The answer was obvious, I think.

Mr. Weisman: It should not be difficult for the witness to answer, then.

By Mr. Weisman.

Q. Now, as to these returns, they would number, in units, approximately 300,000 garments; is that not correct? A. Which returns are you referring to?

Q. I do not mean—I will withdraw that question. A. About 30,000.

Q. Yes. In other words, during the year—August, 1935,
2105 to the date that you have testified to, your firm received the return of approximately 30,000 units of merchandise? A. Yes.

Q. And this 30,000 units of merchandise, the return thereof, is attributed by you to such causes as flaws in the merchandise itself, poor workmanship, that the merchandise was not as sample, in a few cases that it was late delivery, and in certain other cases by reason of the fact that there were copies of Guild dresses which were returned to you. A. Correct.

Q. Now, did you at any time make an examination of all of these 30,000 returns during that year? A. Now, how do you mean? I examined the dresses or examined the reason for their return?

Q. Examined the dresses. A. Examined the dresses?
2106 No.

Q. Do you know how many of those 30,000 returns where the customers claimed that they were being returned for flaws in the merchandise were that the merchandise was actually flawed? A. Well, a flawed merchandise, return of flawed merchandise, usually consists of a few dresses. A customer's habit in making a return is to send a letter to the manufacturer explaining that "We are returning so many dresses." He will explain the reason,

flawed merchandise is usually a minor—a small percentage of the returns. I mean, either one, two or—very small percentage of the original shipments—let me say—in other words, if I ship a man twelve dresses you would usually get back as a maximum, the most you could get back is two or three garments from that return being flawed.

Q. Well, adopting your own figures, if you sent back to a merchant twelve dresses, and he returned to you four flaws, why, that might be a small percentage in your mind, that would be 16 per cent. of the shipment returned for flawed merchandise, and as compared to your total returns it would be not alone a large percentage, but twice as your total percentage. A. Yes, but you are neglecting to take 2108
into consideration the fact that merchandise is examined before it goes out. The percentage of customers receiving 16⅔ of damaged merchandise, as compared to the total amount of merchandise shipped, will give you the difference in your figures of sixteen to eight.

Q. Now, I will have to come back to my first question and see if you can answer it. I asked you this question—if you do not understand it, tell me and I will reframe it and try to make it simple: Do you know, of your own knowledge, the percentage of the 30,000 units that were returned to you were returned to you by reason of the fact that the merchandise was flawed? A. I don't.

Q. I don't want you to guess. A. I cannot estimate.

Q. Then if you don't— A. I cannot estimate—I cannot 2109
definitely say no. I have not counted the 30,000 dresses you speak of, and—by the way, it is not 30,000, getting down to figures, that would be approximately $142,000, and returns amount to about $114,000, so we are quite a bit above our figures, but to say——

Q. Wait a moment. I do not think so. On what basis we are quite above our figures? A. Well, I am taking it from actual figures here.

Q. Well, what were your total shipments? A. For the year 1935 to July 11, $1,375,860.04.

Q. That is less than a full year's period? A. That is approximately two weeks less.

Q. Yes. A. And there was very little being done in the last few weeks, so it is pretty accurate.

Q. Now, how many units do you estimate made up that figure? A. You mean the shipments?

Q. Yes. A. Would be approximately 280,000 dresses.

Q. How do you arrive at the figure 280,000? A. Well, 28 times $4.75 is 13,375, putting a string of aughts up to it, to reach it up to the millions, $1,330,750, so I am pretty
2111 nearly right when I say 28,000 dresses.

Q. Are you not failing to take into consideration the fact that you testified that some of your units were sold for less? Do you know that some of them were sold for less than $4.75? A. Well, yes, there was merchandise sold below $4.75.

Q. Then, a fair estimate, taking into consideration that fact, would bring that figure up considerably? A. 300,000.

Q. Or, to some degree. A. 300,000 dress.

Q. How? A. 300,000 dresses.

Q. 300,000 dresses? A. Yes.

Q. Now, what is 8.54 or .13 of 300,000 dresses? A. Would be 24,000 and about 25,000.

Q. About 25,000 dresses? A. Yes.

Q. Now, of these 25,000 dresses I will once more ask
2112 you whether you know what percentage of them were returned for flaw? I do not ask you to guess. I ask you if you know. A. I could not, no.

Q. All right. Now, do you know, of these dresses, what percentage of them were returned because of poor workmanship—the claim of poor workmanship, not the fact of poor workmanship? A. Are you asking for actual figures?

Q. I asked you if you know, yes. A. Actual figures? No.

Q. You do not know? A. It would be only an estimate on my part.

Q. Exactly. A. Based on my experience.

Q. Do you know what percentage of these dresses were returned because of the fact that the customer claimed that they were not as the sample which were shown? A. No, same answer.

Q. Now, as to late delivery claim, do you know what portion of them were returned by reason of the fact, on the claim, rather, not the fact, the claim of late delivery? A. No actual figures, no.

Q. Do you know, of these 25,000 units, what proportion of them were returned by the purchaser by reason of the claim that the dresses returned were copies of Guild merchandise? A. To give you actual figures? 2114

Q. I want actual knowledge, whether you know. A. Actual knowledge, the only actual knowledge that I have——

Q. No, do you know? A. I do know.

Q. Yes. A. I do know from actual knowledge, from the fact that I open up the morning's mail at every return before it is accepted by my receiving department—every return is O.K'd by me, provided I have received a letter from the account in question telling us the reason for return. I do know, and can estimate, what the percentage was.

Q. In other words, you are now giving us, from your experience, what your present impression is; is that not so? A. What my reaction and impression is. 2115

Q. Yes. A. From the handling of my personal business.

Q. Yes. Did you ever keep a record of the dresses which were returned to you by reason of the claim that they were copies of Guild merchandise? A. I did not. They were treated in the same manner as all my other records of like—like records, returning records, were kept. That is, we kept the letter in question for a period of sixty to

ninety days, and, rather than to encumber our files with this constant flow of letters, orders, and everything else, they will be destroyed.

Q. I see. Have you frequently found that customers desiring to make returns would make—I will withdraw that question. Would you say that your concern, during the year, sent out to its customers approximately twenty to twenty-five thousand dresses, which were either flawed or which were either not as represented, or which had poor workmanship in them? A. Well, if the total returns were 25,000, you are asking me to agree, or to say, that all of these dresses were damaged dresses? Why, I would have

2117 to say no.

Q. Do you mean to say that frequently terms are made by customers which are not justified, or not founded in fact? A. No, I don't mean that. You asked me if I would agree with you in the statement that twenty-five—twenty to twenty-five——

Q. No, I said— A. Twenty to twenty-five thousand of the dresses we shipped during the year were damaged?

Q. No, I wanted to know—you testified that approximately 25,000 returns were made. A. Yes.

Q. Now, I, in framing my question, left out the reason, as one of the reasons for the return, copies of Guild merchandise. A. No, you asked me——

Q. Wait a moment. A. —if I am correct——

Q. Let me explain to you, I am not asking you a ques-

2118 tion, I am trying to make you understand my question, and I therefore, instead of using the definite figure of 25,000, as testified by you, I gave you a sufficient leeway and said from twenty to twenty-five thousand. In other words, what I am seeking to ascertain from you is whether or not of your total shipments during the year 1935 to 1936, approximately 20,000, bearing in mind you have gone back 25,000— A. Yes.

Q. Approximately 20,000 of the garments that you sent out were actually flawed, or not as represented, or not delivered in time. A. No.

Mr. Haycraft: I object to that.

Mr. Weisman: Well; he answered.

By Mr. Weisman.

Q. Why not?

Mr. Haycraft: I move to strike the answer.

Mr. Weisman: I think it is competent.

Mr. Haycraft: The attorney hasn't any business of going into the actual figures, whether they were 2120
or were not flawed——

Mr. Weisman: I think I have.

Mr. Haycraft: I claim that if the reason given for the return is comparable with the return that was made, he has no right to go into these other things as to whether that were actually true.

Mr. Weisman: Well, what happens in one case——

Mr. Haycraft: I move to strike that answer.

Examiner Bennett: Well, I will sustain the objection.

Mr. Weisman: I submit it is a very proper answer.

Examiner Bennett: I will sustain the objection 2121
as to the truth or falsity of the matter. Confine yourself to claims. I do not believe you may go into whether the merchandise was good or bad, or otherwise.

By Mr. Weisman.

Q. Is it not a fact that people frequently make claims with relation to the return of merchandise which, upon

examination, you find are not well founded? A. Quite a few claims are made——

Q. Now, answer— A. —it is——

Q. Wait a moment. Just a moment. Just answer the question. A. Quite a few claims are unfounded.

Q. And in these cases where quite a few claims are unfounded—withdraw that. Now, I understood you to say this morning in your direct testimony that when a buyer makes a claim for a return you take it back rather than antagonize the buyer? A. I——

Q. Did you so testify? A. I don't think you got the sense of it.

2123 Q. Wait a moment. A. Rather than antagonize the account——

Q. Wait a moment, Lifshey. It is getting warm.

Examiner Bennett: Let the witness answer.

Mr. Weisman: Your Honor, I only asked the witness one question.

By Mr. Weisman.

Q. I asked you, did you so testify? A. I did.

Q. All right, that is the answer.

Examiner Bennett: Well——

By Mr. Weisman.

2124 Q. Now, when these people who did not understand their business made these claims upon you, and ask you to accept the return of this merchandise, did you accept the return, notwithstanding the fact that the claim was not justified? A. The answer is "yes" and "no." I mean, a particular—particular conditions that have bearing upon this particular return, all go into the making of a correct answer.

Q. In other words, then, when you said this morning that you accepted certain of these returns from the customer, rather than antagonize the customer, you meant that that testimony should apply to that particular transaction— A. It did.

Q. Please, let me finish—and was not the general custom of yours; is that so? A. It applied to the particular transaction, that case or situation.

Q. And as to claim of return, irrespective of whether or not you would antagonize the customer, if your examination of the facts brought you to the conclusion that you should not accept this return, you woud not accept it? A. Correct.

2126

Q. And that is your general practice and policy in your business? A. General practice and policy with reference—

Q. No; is that your general practice and policy in your business, Mr. Lifshey, to judge each case by its— A. Own merits.

Q. On its merits, as you say? A. Judge the case by the conditions surrounding it.

Q. And if the conditions surrounding it justify the acceptance of the return, you will accept it? A. Correct.

Q. And if the conditions surrounding the attempted return do not justify the return, you will not accept it? A. Correct.

Q. As a matter of fact, does not your house rather pride itself on its claim that it does not accept unjustified returns? A. We do.

2127

Q. And has not your house from time to time made the statement that "Big customer or small customer," if an attempt to return is unjustified that you will not accept it? A. I don't remember making that statement.

Q. Well, is that the fact, whether or not you remember making the statement or not? A. No, our statement—

the statement we frequently make to the trade, and pride ourselves on, is that a customer who attempts unjustified returns to the Trussel Dress Company does not remain a customer on our books.

Q. What do you mean by "does not remain a customer on your books"? A. We refuse to sell them.

Q. You refuse to sell them? A. Yes.

Q. Have you refused to sell the Jones Store? A. The Jones Store?

Q. Yes. A. Have we refused to sell them?

Q. Yes. A. No.

Q. Have you refused to sell John Wanamaker of
2129 Philadelphia? A. No.

Q. Have you refused to sell the Kaufmann Department Store? A. No.

Q. Then, I take it, that as to those returns you deemed that they were justified? A. I deemed——

Q. Is that not so? A. I deemed it advisable to take it.

Q. Did you not just say— A. I mean, justified from a business viewpoint, from my particular viewpoint, they were justified.

Q. I see. A. Whether they were justified in returning it, I don't agree.

Q. I see. Well, let us see whether they were or not. I show you Commission's Exhibit 331, the same being a letter from Kaufmann's Department Store, to you, to Trussel Dress Company—have you got the order by which
2130 the merchandise, which is the subject-matter of that communication, was ordered? A. No.

Q. Do you know where it is? A. No.

Q. Do you keep your orders? A. For a period of sixty to ninety days, at the most, and then destroy it.

Q. And then they are destroyed? A. Yes.

Q. Do you know whether or not the order which calls for that merchandise had upon it the warranty stamp which reads as follows:——

Mr. Weisman: Will you give me your Commission's Exhibit 306?

A. I am acquainted with it.

Mr. Weisman: Well, I want to get the reading of it before me.

Examiner Bennett: It is in one of the records.

Mr. Weisman: Yes. I want to have the exhibit. You have it there, Mr. Seidman. I don't want to be accused of stating it incorrectly.

Mr. Seidman: I don't know where it is.

Mr. Weisman: 306, there it is right there.

May I have the question? 2132

(Question read.)

By Mr. Weisman.

Q. "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." A. Yes. That order had it on.

Q. And when you received that order you knew the meaning of those words, did you not? A. I did.

Q. You understood, did you not, that by those words the seller reserved the right to return to you the merchandise in the event that the merchandise you shipped in purported or attempted compliance with the order was copy of Guild merchandise? A. I was aware—— 2133

Q. No. Did you not know that? Do you want me to read the question again to you? Do you not understand the question? A. I don't.

(Question read.)

A. I knew that.

Q. Did you know that? A. That he took that right—

Q. Yes, you knew that. A. Yes, that he was not justified——

Mr. Weisman: Now, I ask that that be stricken out.

Mr. Haycraft: Oh, no.

Examiner Bennett: Well, if you want it——

Mr. Haycraft: I think, Mr. Examiner, he is entitled to explain.

Mr. Weisman: You know as well as I do that that is no answer. I asked him what he knew, not what somebody else was doing.

2135 Mr. Haycraft: Mr. Examiner——

Examiner Bennett: It may be stricken. You can bring it out on redirect, if you want.

Mr. Weisman: All right.

By Mr. Weisman.

Q. So, in other words, you knew when that order for merchandise was placed with you, that the purchaser of the merchandise would return the merchandise to you, if any of it was copies of Guild merchandise? A. Correct.

Mr. Haycraft: That is objected to, Mr. Examiner.

By Mr. Weisman.

2136 Q. Well, since you knew——

Mr. Haycraft: Mr. Examiner——

Examiner Bennett: Just a moment.

Mr. Haycraft: —I say that is objected to. In the first place, the question is whether or not——

Mr. Weisman: I think the Court overruled the objection.

Mr. Haycraft: Wait a moment.

Examiner Bennett: Just a moment.

Mr. Haycraft: He has not had time to overrule anything. I have not even finished my objection. I say that the question is faulty in that it puts in there the fact that they were copies, and not the claim of copies. You have to keep that distinction straight, Mr. Examiner, in this proceeding. As I say, it——

Mr. Weisman: Oh, no, I understand we have a stipulation—oh, I won't argue, I am sick of arguing with this gentleman on my right. The question was perfectly plain. 2138

(Question read.)

By Mr. Weisman.

Q. I will reframe the question: So you knew that when this order was placed with you that the purchaser, by the terms of the order, was reserving the right to return any merchandise that you send in attempted compliance with this order, if that merchandise was copies of styles originated by members of the Fashion Originators Guild of America, Inc.——

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. —is that not so? 2139

Mr. Haycraft: Wait a moment. That is objected to.

Mr. Weisman: All right.

Mr. Haycraft: There is a certain procedure that must be followed there, to wit, whether it was found to be or alleged to be, or something of that kind, copies of the merchandise——

Mr. Weisman: I do not know what my friend is talking about. I ask that my friend be confined to making an objection, visual in form, that I do not have to meet all of these extraneous speeches, which merely clutter up the record and serve no legal purpose.

Examiner Bennett: I will overrule the objection and let the witness answer if he can.

By Mr. Weisman.

Q. Will you answer that question, please? A. I knew that the buyer reserved the right to return merchandise
2141 which was supposed to be judged copies of Guild merchandise.

Q. I see. So, when you got this letter from Kaufmann's Department Store advising that they were returning dresses, you knew that they were writing you in accordance with the terms of their order? A. In accordance with the terms of their order, yes.

Q. Now, I notice that this letter says—and this came from your customer, "We would appreciate you communicating with Mr. Jack Goldstone of the Fashion Originators Guild, 512 Seventh Avenue, New York City"— A. Correct.

Q. Did you communicate with Mr. Goldstone? A. I did not.

Q. You knew where he was? A. It is given in the
2142 letter.

Q. You made no effort to communicate with him? A. None whatsoever.

Q. Well, did Mr. Goldstone talk with you about this? A. This particular return?

Q. Yes. A. I have no recollection.

Q. Did not you tell Mr. Goldstone that as to this particular return that the merchandise was a copy of Guild merchandise?

Mr. Haycraft: Objected to.

A. He did not——

Mr. Haycraft: Mr. Examiner, we are going into the same subject-matter. It is outside of the direct examination; it is irrelevant and immaterial, in view of the stipulation which I made.

Examiner Bennett: Yes. Objection sustained.

Mr. Weisman: Oh, I think that is so.

Examiner Bennett: Sustained.

By Mr. Weisman.

Q. Now, you also testified that with regard to that particular return you accepted the return; is that correct? A. Kaufmann's Department Store? 2144

Q. Yes. A. I did.

Q. And you stated that you accepted the return because you did not want to antagonize the customer? A. Correct.

Q. Now, if you took this order with this warranty that the merchandise was not to be copies of Guild merchandise, and then you refused to accept the return of merchandise which was a copy of Guild merchandise, do you not think the customer would be justified if he felt that you had not kept your word to him?

Mr. Haycraft: Just a moment. That is objected to, Mr. Examiner. Same ground as the previous question. 2145

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In view of your promise in this order, do you not believe that Kaufmann's store was justified in returning it, only in view of your promise? A. No.

Q. Without regard to the— A. There was no promise—

Mr. Haycraft: Same objection.

Mr. Weisman: Let us see.

Mr. Haycraft: Same objection. It refers to the same matter.

By Mr. Weisman.

Q. This order says——

Mr. Haycraft: May I object?

By Mr. Weisman.

2147 Q. The order says——

Examiner Bennett: I am going to let him finish his question.

By Mr. Weisman.

Q. This order says as follows, the order for this merchandise: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc." Do you not understand that the word "warranty" is in the nature, or synonymous with the word "promise"?

Mr. Haycraft: Same objection.

2148 A. Yes.

By Mr. Weisman.

Q. And did you not understand that by placing an order which contained such warranty that you were promising, in words or substance, not to send any merchandise which was a copy of Guild merchandise? A. I took the order——

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

By Mr. Weisman.

Q. Oh, I asked you whether or not——

Mr. Haycraft: I object.

Examiner Bennett: The objection is sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. What did you say about how substantial a customer Kaufmann's Department Store was? A. I estimate we did on an average of $6,000 a year with them. 2150

Q. Were they a substantial customer? A. I did not say they were substantial customers.

Q. How? A. I did not say they were substantial customers.

Q. Well, were they that type of customer who, if they made unjustified returns, returns which were not well founded, you would have accepted them in view of what you have told us a few moments ago about the policy of your house? A. According to the return—the amount of the return—the activity of the account at that particular time, how long the dresses were in their possession, what type dresses they were, whether they entail a terrific loss, or slight loss, all those factors come in. It is hard to give a definite answer on—— 2151

Q. After taking all of those factors into consideration, you decided with regard to Kaufmann's Department Store, the proper thing to do was to accept the return? A. Correct.

Q. Now, with regard to Commission's Exhibit No. 332, referring to a return by the Jones Store, of Kansas City, Mo., that order also had on it, when it was placed with you, the warranty stamp? A. It did.

Q. And as to that order, you knew that you were, by the acceptance thereof, agreeing, in words or substance, that if any of the merchandise shipped pursuant to the order was copies of Guild merchandise, the purchaser retained the right to return it to you; did you not? A. I did.

Q. And I remember that you testified on your direct examination that you refused to return that merchandise— A. (Interposing) Except——

Q. —except the return; is that not so? A. I did.

Q. As a matter of fact, by Commission's Exhibit No. 333, you gave the reasons for your refusal to accept the return of that merchandise? A. I did.

2153 Q. And, as a matter of fact, was not the reason that you gave, the fact that the claimed return was being made too late? A. One of them.

Q. Now, when you accepted these orders with this Guild stamp on them, did you not understand that by the acceptance thereof, you were agreeing to abide by the terms of the stamp? A. No, I did not.

Q. You did not? A. No.

Q. You are absolutely certain about that? A. Absolutely certain.

Q. So that when you wrote your customer the following, you were untruthful, "Although we concede the fact that you, as a member of the Guild, had the Guild stamp on your order, and that we, in turn, upon accepting the same, obligated ourselves to abide by the terms"—that was

2154 untruthful? A. No, it was not.

Q. Did you not just say that when you accepted the order, that you did not agree to abide by the terms— A. When I——

Q. Wait a moment. And does not this letter written to your customer on October 30, 1935, state that you understood by the acceptance of the order you were agreeing to abide by the terms? A. That letter that you are showing there, it was not my desire to tell a customer everything I knew. We had been advised——

Q. No, no, I am not talking about telling——

Examiner Bennett: He may explain, he may explain. You are trying to show he was untruthful, and the witness is permitted to——

A. We had been advis ——

Examiner Bennett: He can make a full explanation of his attitude upon this.

The Witness: We had been advised by counsel who were retained by our $4.75 Group with reference to this Guild question, that legally we were not obligated to accept returns made on that warranty stamp: To get into a legal communication and discussion with my account was not my intention or desire. I felt that it would be diplomatic in that particular letter to concede that although he had a right to return that he could not abuse that right by keeping my merchandise 10 weeks and figuring that the Guild warranty stamp gave him that privilege. 2156

By Mr. Weisman.

Q. When you wrote to the Jones Store the following, "Although we concede the fact that you as a member of the Guild had the Guild stamp on your order, and that we in turn upon accepting same obligated ourselves to abide by its terms, you must also consider the fact that our invoice states that all claims or returns must be made within a period of 5 days after the receipt of goods, and your acceptance of this invoice constitutes your agreement to abide by the terms as stated." You, in truth and in fact, did not, when you accepted the order with the Guild stamp on it, feel obligated to abide by its terms but had a mental reservation with regard thereto—— 2157

Mr. Haycraft: I object.

By Mr. Weisman.

Q. Is that so or is it not so? A. Are you referring to this——

Mr. Haycraft: I object to the question as irrelevant and immaterial.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

2159 *By Mr. Weisman.*

Q. Now, as a matter of fact, I understood you to say that although you accepted this order with this stamp on it, and told your customers, as evidenced by Commission's Exhibit 333, that where you accepted an order with a stamp on it you would abide by it, that you did not intend to abide by it; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. I understood you, in answer to a prior question, to say that prior to your acceptance of this order you had ob-
2160 tained legal advice with regard to this particular warranty: is that correct? A. Correct.

Q. Was that written advice that you got or oral? A. Oral.

Q. Where did you get that advice? A. From our attorney, retained by a group of $4.75 Dress Manufacturers.

Q. Well, where did the attorney deliver that opinion to you?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Weisman: I think I can probe this question. He has given it as a reason. I do not have to accept it, if I do not believe it.

Examiner Bennett: All right. Go ahead. Overruled.

A. At a meeting of this group, I believe—I personally did not attend this particular meeting, the meeting was attended by Mr. Trussel, who, in turn, relayed the message to me——

By Mr. Weisman. 2162

Q. Where was this meeting held? A. I think at the Popular Priced Dress Group.

Q. Oh, the Trussel Dress Company is also a member of this Popular Priced Dress Manufacturers Association, Inc.? A. We are.

Q. Are you any officer of that Association? A. I am sorry to say, no.

Q. Was this true, in Commission's Exhibit No. 333, you said, "It is our personal feeling that retailers are taking advantage of the Guild's regulation to clean up leftover stock and we do not intend to become a party to such practice." A. That was my feeling at that time.

Q. Well, suppose this customer had not wanted ten weeks, as it appears from the letter he did, but had 2163 promptly tendered the return, would you then have accepted the return? A. The return in question?

Q. Yes. A. Happens to be two dresses.

Q. Yes. A. $9.50. In all probability if the customer had returned it within a period of five days the return may have been accepted.

Q. In other words, you felt that this was an unjustifiable return? A. I felt that the reason was an unjustifiable reason.

Q. And he had waited too long, had he not? A. He would not have waited that long if he did not have that reason to fall back on.

Q. Do you remember the code of fair competition for the dress industry? A. I do.

Q. Under the code of fair competition for the dress industry was a return attempted to be made 10 weeks after the delivery considered an unfair trade practice? A. Absolutely.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Weisman: No, no, it is very material, on the
2165 question of whether or not the returns increased in number after the N. R. A. ceased to be the law of the land.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: I think we are not going into whether it was a fair trade practice for a body that is not now——

By Mr. Weisman.

Q. When you sent this letter, Commission's Exhibit No. 332, to the Jones Store, by giving them all of these reasons that you have set forth therein, did you not intend to convey to them the idea that if they had made seasonable
2166 and prompt return, you would have accepted it?

Mr. Haycraft: That is objected to.

A. I think the letter speaks for itself.

Mr. Haycraft: The letter speaks for itself.

Examiner Bennett: Sustained. I think we have been over this as much as necessary.

By Mr. Weisman.

Q. How often have you been a witness in court? A. I think——

Mr. Haycraft: Objected to.

A. This is my second time.

By Mr. Weisman.

Q. Where have you learned that exhibits speak for themselves? A. I have heard it here so often, I am an apt follower.

Q. Well, now, with regard to Commission's Exhibit No. 334, did the order of which these dresses was a part, contain the warranty stamp? A. It did. 2168

Q. So that when you accepted the order for the merchandise herein referred to, you clearly knew that according to the terms of the order you had promised not to send in fulfilment thereof any copies of Guild merchandise; is that not so? A. Yes.

Q. Did you intend to keep that, when you made it?

Mr. Haycraft: I object.

A. Well, I made it a practice——

Q. No, no, no——

Mr. Haycraft: I object.

Examiner Bennett: Go ahead. 2169

Mr. Weisman: It is a simple question.

Mr. Haycraft: It is objected to.

Examiner Bennett: Go ahead.

By Mr. Weisman.

Q. Did you intend to keep that promise when you made it? A. Yes, I did.

Q. Did you? Well, let us see.

Mr. Haycraft: I move to strike the answer, Mr. Examiner, in order to keep my record clear on this, because now we have the question in, the answer is in, and the question of whether or not it is a copy, whether he did carry out his promise, and all that, would bring in this other issue.

Examiner Bennett: Did he intend to carry out his promise.

Mr. Weisman: I asked him if he intended to keep his promise and he said he did.

Examiner Bennett: Yes.

2171 *By Mr. Weisman.*

Q. Let us see, did you intend to keep your promise that you made with regard to the order that you took from the Jones Store?

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I think that has been asked.

Mr. Weisman: Oh, I did not ask him that question at all.

Examiner Bennett: Go ahead and ask it.

By Mr. Weisman.

Q. Did you— A. I did with reservations.

2172 Q. Oh, you did with reservations. When you said in answer to the question of whether or not you intended to keep your promise in connection with the Wanamaker Stores, and you answered me yes, you meant yes with a reservation? A. Without reservation in that particular case.

Q. In this particular case, without reservation. Well, why were there reservations with regard to the Jones Company—I will withdraw that. Did you tell the Jones Store about these reservations?

Mr. Haycraft: I object.

A. No.

Q. Those were reservations you kept secret in your own mind as far as the Jones Store was concerned?

Mr. Haycraft: Same objection.

A. There were no reservations——

Mr. Haycraft: Just a moment, now—same objection.

Examiner Bennett: I am going to let it in for the purpose I spoke of; overruled.

2174

By Mr. Weisman.

Q. Now, with regard to the Wanamaker order, you had no reservations? A. Absolutely.

Q. Well, at the time that you received the Wanamaker order, did you have the legal advice you told us about in connection with the Jones Store order?

Mr. Haycraft: Same objection.

A. I did.

Q. And notwithstanding the fact that you had the same legal advice with regard to the Wanamaker order, you did not have any reservations but intended to keep your promise? A. I did.

2175

Mr. Haycraft: Same objection, your Honor.

Examiner Bennett: Same ruling.

By Mr. Weisman.

Q. Did you accept the return? A. From Wanamaker?

Q. Yes. A. I did.

Q. Did you accept the returns so that you might keep your promise? A. I accepted the return because it was John Wanamaker of Philadelphia.

Q. Oh, I see. What was there about John Wanamaker of Philadephia which made you accept the return from them? A. One of the cleanest——

Q. And not from the Jones Store of Kansas City, Mo. A. They happen to be one of the cleanest accounts we have on the books, and I knew for a fact that no intention or desire on the part of that store to return unjustified—to make unjustified returns, and that in this particular case he was forced to return the merchandise, and I took them back because of her standing on my particular records.

Q. And that is the sole reason? A. Absolutely.

Q. You did not regard the promise that you had made as
2177 any reason for the acceptance of the return, did you? A. I never placed too much worth in the whole stamp, on this order.

Q. You mean you never placed too much work upon your own promises made in the course of your million dollar business; is that it? A. It was a promise——

Q. No, no. A. —forced——

Q. No, is that it? A. —by duress.

Q. You heard that before?— A. I did not hear that.

Q. —by a lot of witnesses, and Mr. Ballon told you— A. Mr. Ballon did not tell me.

Q. —your lawyer, subject— A. —anything.

Q. What do you know about duress, if lawyers did not tell it to you? A. It is a common enough word.

Q. Is it? A. I happen to read the papers once in a
2178 while.

Q. Let us see.

Mr. Weisman: May we have the last question before the colloquy?

(Last question read.)

Mr. Weisman: I withdraw that.

By Mr. Weisman.

Q. Did not you feel a moral obligation to keep the promise that you made to John Wanamaker's? A. No, I take it you are referring to the Guild stamp?

Q. Yes. A. My answer is still no.

(There was a discussion off the record.)

Q. Did you not testify this morning in answer to Mr. Haycraft's question that the reason that you accepted the return of the copies from Wanamaker's was that Wanamaker's was an excellent account? A. Yes, I just explained that——

2130

Q. In other words, the fact of the excellency or lack of excellency, in the account, rather, than the fact of your promise, was the inducing reason as to whether or not you would comply with a promise? A. Correct.

Q. By the way, with regard to the John Wanamaker order, where did you receive that order? A. In my showroom.

Q. Where is your showroom? A. 501 Seventh Avenue.

Q. Who placed that order with you? A. Miss Cosgrove.

Q. Where did you get the Kaufmann order? A. I really don't recall.

Q. Would you say you got that in your showroom? A. I don't know.

Q. Who does the buying for the Kaufmann Store? A. Peggy O'Neil.

2181

Q. Peggy O'Neil comes to New York, does she not? A. Yes.

Q. And Peggy does her buying in New York? A. Right.

Q. And this order was placed by Miss Peggy O'Neil in your showroom? A. I don't know.

Q. Who does the Jones Store buying, who is that buying done through? A. William T. Knott.

Q. That is a New York buying office? A. Yes.

Q. Did you receive that order in New York City? A. Right.

Q. Now, with regard to Commission's Exhibit No. 335, I call your attention to the second paragraph thereof, wherein the Guild says: "Inasmuch as this decision was rendered out of town, the Guild office did not participate in the usual manner. We are, however, bound to accept this decision. Should you be dissatisfied with the judgment of this committee and desire a rehearing here in New York, kindly advise the writer at once." Signed, "Fashion Originators' Guild of America, Inc." Did you notify the writer at once? A. I did not.

2183 Q. Did you do anything about it? A. No, sir.

Q. Did you communicate with the Guild office on receipt of this letter? A. I did not.

Q. Did you know the purpose of this letter? A. The purpose of this letter?

Q. Yes. A. Telling me I was getting a return of seven dresses.

Q. And telling you that the Guild had not participated in the adjudication of the copy; is that not so? A. Well, it says there, out of town—I don't know their setup—but it comes from the Guild.

Q. Don't you understand that, what that means? A. The decision was rendered out of town.

Q. Yes. A. How do I know, the Guild out of town, or in New York.

2184 Q. And it says, "If you should be dissatisfied with the judgment of the committee and desire a rehearing kindly advise the writer at once." A. And if I did, so what?

Q. Not "so what," did you? A. I did not; it was useless.

Q. It was useless, because the dress— A. The merchandise was on its way back to me.

Q. How did you know that? A. Because I got—at the same time I got that I got a letter from Joseph Horne,

or a slip from Joseph Horne, telling me that seven dresses were being returned, so what am I going to do? Ask them to take it back and pay expressage and everything?

Q. Have you got that slip with you? A. I have not. This letter came after that slip.

Examiner Bennett: It is recess time. I will give you 5 minutes.

(There was a short recess taken.)

Examiner Bennett: Gentlemen, we will be in order, please. Will you come around?

The Witness: Yes, sir.

By Mr. Weisman. 2186

Q. Have you got that slip with you? A. I have not. This letter came after that slip, as I said before.

Q. In answer to Mr.—I withdraw that. Aside from that returns that you have testified to, as evidenced by or as referred to in Exhibits 331 to and including 335, inclusive, I understood you to say that you received some other returns? A. I did.

Q. Now, as to these other returns, were they on orders which had the Guild stamp on them when the order was placed with you? A. A great majority were.

Q. Well, now, let us first confine ourselves to the small minority, since you have divided them into a "great majority" and I assume the others were the "small minority"; is that right? A. Are you speaking about returns at- 2187
tributed to the Guild?

Q. Yes. A. Now, your question is what?

Q. My question is: As to the other returns that you got which were attributed to the fact that the merchandise was copies of Guild merchandise ordered, whether the orders which were originally placed for that merchandise; whether such orders had on them the Guild stamp? A. Every instance in which the return was made because of the Guild the original order had the Guild stamp on it.

Q. What did you mean before when you said only a small minority? A. I thought you referred to the percentage of returns on orders that consisted entirely of orders with the Guild stamp.

Q. I am afraid I do not understand that answer. As to these orders, when you got these returns you accepted them; did you not? A. Yes, sir.

Q. Now, you have testified that it is the policy of your house not to accept any unjustified returns; have you not? A. The policy of our house is to cut out accounts that make unjustified returns.

Q. You accepted these returns? A. Yes, sir.

2189 Q. Did you cut these houses out? A. Some, we did.

Q. Give me the name of one house that you cut out because of Guild stamp being on their order? A. Because of their returns I thought you referred to.

Q. All right, because of their return pursuant to the Guild stamp on their order. A. The Mirror.

Q. Where? A. Atlanta, Ga.

Q. The Mirror of Atlanta, Ga.? A. The Mirror of Atlanta, Ga.

Q. Give us the details of that? A. Their orders were placed with Guild stamps. Their returns were entirely out of proportion and unjustified, we felt, and we cut that account and refused to take orders from them.

Q. Now, let us see. A. Yes.

Q. Did you refuse to take orders from them because you
2190 felt their returns were beyond what the Guild stamp entitled them to do? A. We refused to take their orders because their returns were out of proportion to their shipments, and the Guild stamp was one of the many reasons that they have availed themselves of to make returns.

Q. What were the other reasons that were availed of plus the Guild stamp? A. I do not remember.

Q. You do not recall the other reasons that they availed themselves of? A. I do not remember.

Q. They made unjustified claims that the merchandise was faulty? A. I do not know. They may have had. They may have had some claims that were justified and some claims that were unjustified, but putting the both of them together we had a percentage above the proper amount of business that we did with them. It may be a part of the returns were justified, but we felt the greater part of them were unjustified.

Q. You refused to do business with them because they were making unjustified returns? A. Yes, sir.

Q. In other words, where a customer of yours makes a return to you which is justified, you do not refuse to do business with them; is that not so? A. If a customer— 2192
will you make that a little clearer?

Q. I mean, if the customer gives you an order and you do not fill it properly in accordance with the order, and he thereupon returns the merchandise, that is a perfectly proper thing for him to do? A. Absolutely justifiable, yes.

Q. You do not refuse to do business with him? A. No.

Q. No? A. No.

Q. With regard to the Mirror of Atlanta, Ga., you have testified that he had such a large percentage of unjustified returns that you preferred not to continue to do business with him? A. Yes.

Q. And you also said that the reasons he gave were reasons in addition to those that the merchandise was copies of Guild merchandise? A. Yes.

Q. Then for those reasons you refused to do business 2193
with him because he caused you—he made returns of copies of Guild merchandise, but he made a lot of other returns for other reasons which were unjustified; is that so? A. The reasons——

Q. (Interposing) Is that not so? Answer that question first, please. A. Just a moment. Allow me to answer the question——

Q. (Interposing) The answer is either one way or the other. It is either "yes" or "no."

Mr. Haycraft: I object. I insist that the witness be allowed to answer the question. It is not a question which may be answered "yes" or "no." He is entitled to give an answer that is proper to such a question.

Examiner Bennett: The witness may answer with such explanation as he desires, and we will hear what it is.

The Witness: You cannot answer "yes" or "no" on a statement covering as broad a subject as you
2195 were trying to cover here. The Guild reason was always the reason that he had as a last resort. There had to be some reason for the return.

By Mr. Weisman.

Q. Now, wait a minute. You said to me that, and only in less than 5 minutes ago—that the reason that you refused to do business with the Mirror of Atlanta, Ga., was that this company made returns to you for Guild reasons and for numerous other reasons; right? A. Correct.

Q. You also stated to me that these other reasons in the majority were unjustified; did you not? A. These other reasons in some majority were unjustified?

Q. Yes. A. No. I did not state that.

2196 Q. Do you now state that the reasons that he gave you were justifiable reasons for the return of the merchandise? A. I stated——

Q. (Interposing) One moment. One moment. What I want to know from you is this: You said—now listen to me very carefully, I will try to get finished with you so you can go on your vacation without any delay if you will just co-operate with me—that the Mirror Store of Atlanta, Ga., returned merchandise to you for the reason that the

merchandise was copies of Guild merchandise; and you, also, used the words "for numerous other reasons"; is that so? A. Right.

Q. You further said to me that among these numerous other reasons some of them were unjustified; do you remember that? A. Yes, sir.

Q. You also told me that if the merchant returned the merchandise to you for justifiable reasons that was perfectly all right. A. Yes.

Q. We have agreed on those things. Now, I say to you that if that is so, is it not a fact that the reason you have stated that you have ceased doing business with the Mirror of Atlanta, Ga., is that the Mirror made numerous unjus- 2198
tifiable returns? A. Correct.

Q. And that was an unethical practice? A. Correct.

Q. You felt that they were an unethical dealer? A. Yes.

Q. As such unethical dealer, you did not want to continue to do business with them? A. Yes.

Q. Do you remember the first question that I asked you when you gave me the answer of the Mirror of Atlanta, Ga.? A. You told me to name an account that we shut out and stopped doing business with because of unjustified returns.

Q. No. I think you must have been mistaken. I asked you to give me the name of one account that you had stopped doing business with because of the Guild stamp. That is what I asked you. That is why I had to ask you so many questions about the Mirror of Atlanta, Ga. A. In 2199
this particular instance because of the Guild stamp is not the direct cause—I see.

Q. You see.

Mr. Hayeraft: Do not interrupt the witness. Permit him to finish his answer.

By Mr. Weisman.

Q. Have you finished your answer? A. No.

Q. Please do so. A. Because of the Guild was not the direct cause of dropping that particular account. However, I will state that there may not have been any reason for me to drop that particular account if that man did not have the Guild stamp to fall back upon as reasons for his return.

Q. Did you not just testify that he was an unethical dealer? A. No, I did not—I said that some of his reasons may have been justified. Some of his reasons may not have been justified, and some of them may have, but putting
2201 them both together they got to be a certain proportion above the ratio that was proper for the amount of goods that we shipped to him.

Q. I think the record will show what the witness testified to and I will stand on that, and I will not spend any more time in regard to this matter. Aside from the Mirror—by the way, orders from the Mirror contained this stamp, did they? A. Oh, yes.

Q. Who does the Mirror buy through? A. Through a New York buying office.

Q. You received that order in New York? A. Yes, sir.

Q. There is no question about that? A. Absolutely. We have nobody on the road. We get all of our orders that way.

2202 Q. So that when you accepted this order, or the return of this order from the Guild—or, rather, from the Mirror, rather, you knew that you—when you got the order for—
A. I do not understand what you are trying to say.

Q. I will put it this way: When you accepted this order from the Mirror you knew that you were going to, and that you were then, in fact, giving them a promise not to ship any goods that were copies of Guild merchandise? A. I never did that at all.

Q. What is that? A. I did not make any promise.

Q. Did you not say before to me that you understood the words: "This order is placed upon the seller's warranty." That you understood the word "warranty" to be synonymous with promise or agreement. "That the above garments are not copies of styles originated by the Fashion Originators Guild, Inc."? You said with regard to John Wanamaker you understood that to be a promise, and you made the promise without any reservation. A. Yes, the latter part of——

Q. Without reservation? A. I took the order without reservations.

Q. And that with regard to the Jones Store, you understood it to be a promise, but you took it with reservations? 2204
A. Yes.

Q. As to the Mirror, did you have any reservations when you took that order with that promise? A. I took that——

Q. (Interposing) No. Did you have any reservation? A. I am trying to tell you this, how can I tell you how I took that particular order when I cannot even tell you whether I took that order or whether it was dropped in the order bin by one of the other salesmen—I just cannot do it. Orders were accepted by us as a firm, realizing that we are a business house with a selling force on the floor. We all accept orders, even the shipping boy accepts orders at times.

Q. Do you pass on all orders before they are shipped? 2205
A. I do the charging and the checking and pass on them at that time before they go out.

Q. You do not ship anybody who sends you an order, do you? A. No.

Q. The order has to be accepted and passed upon as to the terms, credit, and so forth? A. Yes, sir.

Q. The delivery date? A. Yes, sir.

Q. That is right. And so, before this order from the Mirror was accepted it had to be passed upon, and its terms had to be found acceptable to you, or you would not take it; is that so? A. Yes, sir.

Q. So, when you received that order, and when you saw that the terms were that you would not ship any copies of Guild originated merchandise, you had a reservation about that, did you? A. No, it got to the point where we accepted orders with the Guild stamp as just one of the evils of the industry that we have to contend with, and we had to take them, and that is all.

Q. Did you understand when you took that order that
2207 the purchaser expected you to live up to it? A. We understood that we took the order that way or we could not get it.

Q. No. Did you understand when the purchaser had that promise on the order, he expected you to, as a responsible, ethical merchant taking the order on those conditions to live up to it? A. I understood it was to his advantage to expect that.

Q. As a matter of fact, the same thing was true of all these other orders concerning which your direct testimony had reference to? A. Correct.

Q. You were asked this morning about discussions you had with buyers. Do you remember that? A. I do.

Q. Do you remember you were asked by the buyers—by Mr. Haycraft—you were asked what buyers you had
2208 these transactions and discussions with? A. I remember that.

Q. I believe you said that the only buyer you could remember was Miss Dean of Mr. A.M.A. A. I said the only buyer I am definite I spoke to about that particular matter was with Miss Dean of the A.M.A.

Q. With Miss Dean. Did she tell you that you could disregard that stamp? A. Miss Dean?

Q. No. Did she tell you that? A. That I could disregard the stamp?

Q. Yes. A. I never asked her.

Q. Did Miss Dean give you any orders that had placed on those orders that promise that we have just had reference to—you know what I refer to. A. Yes. There was that stamp on the orders that she gave to me.

Q. Did you ever tell Miss Dean that you did not intend to keep that promise? A. I did.

Q. Did Miss Dean ever say to you that you could not ship or that you could ship without regard to the promise? A. No, sir.

Q. Which was it? A. What do you mean? 2210

Q. Did Miss Dean ever say to you that you could ship without regard to the promise? A. No, sir.

Q. Did she tell you she expected you to keep the promise? A. Just a moment——

Q. Did she tell you that she expected you to keep the promise? A. She guided her buying accordingly.

Q. Did Miss Dean tell you that as to every order that she gave to you with the Guild stamp on it she expected you to live up to the Guild stamp? A. She did not.

Q. Did she tell you that you might disregard the Guild stamp? A. No.

Q. Did she tell you to—in any event, did she ever talk to you about the Guild stamp? A. On several occasions, yes.

Q. Tell us what Miss Dean did say to you about these stamps? A. Well, what do you want to know? 2211

Q. First, on just what occasions did she talk to you about the stamp more than once? A. On these occasions that I have reference to.

Q. On these occasions, tell us what the first one was, and what did you say and what did she say. First, what did she say to you? A. I can remember a definite occasion right after Thanksgiving Day, right after Thanksgiving

of 1935. Miss Dean was in my showroom and was working with me on a promotion for the A.M.C. Group of stores. Certain numbers had been collected as being a fit part of that particular promotion. The order was to be given in large quantities, anywhere from 200 to 500 of a number, and they were, in turn, to be distributed to the various stores of the A.M.C. Group. At that particular time I recall very distinctly telling Miss Dean with reference to the Guild stamp that I could in nowise consider that binding as a return on merchandise that was cut definitely and specifically for her orders; that I was not and would not take the order for 1,000 dresses or more feeling they were
2213 subject to return at the Guild's request.

Q. What did you state?

Mr. Haycraft: Just a moment. Let him complete his answer. I ask that he be allowed to complete his answer.

Mr. Weisman: Stop interrupting me.

Mr. Haycraft: Mr. Examiner, I insist upon a ruling upon my objection. I insist upon the witness being allowed to answer the question.

Mr. Weisman: I insist upon you stop interrupting me.

By Examiner Bennett.

Q. Had you completed your answer? A. No, sir. Miss
2214 Dean did not do certain——

Q. Go ahead and answer. A. Miss Dean did not do certain— To give the substance of my conversation to Miss Dean, I gave that. Her reply was to the effect that the Guild activities were pretty active in certain of her stores; that she would guide herself accordingly in ordering that number, and eliminate certain numbers from that particular store in estimating her quantity to be placed on the order, and that in certain other sections of the country

where Guild activities was not so great—well, I mean, where they were not coming around constantly checking stocks she would figure on certain numbers, and the order was written in accordance with that understanding between the two of us.

By Mr. Weisman.

Q. Did you understand by that that where Miss Dean placed the stamp on the order, she expected you to live up to it? A. No.

Q. Did you understand by that that Miss Dean expected you on those orders wherein the stamp was placed to live up to the promise contained in the stamp? A. No. I do 2216 not believe she did expect me to.

Mr. Haycraft: I move to strike out the question and the answer. How can this witness tell whether Miss Dean did or did not.

Mr. Weisman: She told him so. He can understand English, I think.

Mr. Haycraft: Try to yourself.

Examiner Bennett: That will be enough. I will let it stand. Proceed.

By Mr. Weisman.

Q. If Miss Dean permitted you to take orders with this stamp on them and then disregard the stamp, you would not be hurt by the stamp, would you? A. On that particu- 2217 lar order, no.

Q. So that as to this particular matter that you have discussed on direct examination, and now on cross-examination, where Miss Dean permitted you to have the stamp on it and disregard it, no injury was done to you, was it? A. Yes, there was. Injury was done in the respect that certain numbers were absolutely disregarded when it came to the allotting of them, because they were supposed to be alleged copies of Guild numbers.

Q. You mean that where Miss Dean knew that you were carrying copies of Guild numbers, she did not give you an order for them? A. No. Where garment—where Miss Dean had the slightest doubt that the number might be construed as an alleged copy of a Guild number she did not want me, in that position, to cut 250 or 300 of that number on her own discretion. She would rather let the number go by the board rather than have placed the order that would entail heavy returns.

Q. Where is Miss Dean's office? A. 1440 Broadway.

Q. This conversation took place in New York? A. Yes.

Q. This order was given you in New York? A. Yes, sir.

2219 Q. You testified on direct examination as to the chain stores that you did business with as follows: Graysons. A. Yes.

Q. The buyer is Mr. Hykuchi? A. Yes.

Q. Mr. Hykuchi lives in New York? A. I do not know where he lives. I think he does.

Q. Come on, where does he live? A. New York.

Q. You know that just as well as I do, do you not? A. Yes.

Q. And the buying office of Graysons is where? A. 260 West Thirty-seventh Street.

Q. New York? A. Yes.

Q. Do you know Mr. Jerry Konheim of Graysons? A. Yes.

2220 Q. Graysons does all of its buying right in New York City? A. Yes.

Q. Such orders as you get from Graysons were given in New York City? A. Correct.

Q. And were, by you, delivered to the Graysons receiving depot in New York City? A. Right.

Q. Right? A. Right.

Q. With regard to Lerners, where is the—first, who is the buyer for Lerners? A. Miss Armstrong.

Q. Miss Armstrong. Where does she make her office? A. New York.

Q. And you get your orders in New York from Lerners? A. We do.

Q. Lerners have a pretty little trick about receiving merchandise, do they not? A. I do not know. I would not know.

Q. Do they not pick up their own merchandise? A. No.

Q. Are you sure about that? A. Absolutely. I wish they would.

Q. Do you not get a charge from Lerners of 25 cents per garment for picking up their own? A. No. Twenty-five cents per garment? 2222

Q. Well, you are lucky. A. Six per cent. of $4.75.

Q. Robinsons. Where is Robinsons' office? A. Same place as Graysons.

Q. As a matter of fact, is Robinsons associated with Graysons? A. Well, it is a family connection there. I do not think that they are associated.

Q. They have their buying office in New York? A. Yes.

Q. You make your sales to them right in New York? A. Yes.

Q. You deliver your merchandise right in New York to them? A. Yes.

Q. Tell us about Zukors? A. Zukors have their office in New York.

Q. Where do you get your orders? A. The orders are placed in the show room, or at their buying office. Merchandise is put aside from their order made up in accordance with their buyer. They have three buyers, each buyer, when you have his particular order ready, you call him and you call him on the telephone and that particular buyer comes down and distributes the merchandise to each individual store. The merchandise is packed, boxed, and shipped through the National Packing Office, New York City. 2223

Q. Tell us what this National Packing Office, New York City, is. The Commission will be interested in knowing about that.

Mr. Haycraft: I object. That is not proper cross-examination of anything brought out on direct.

Mr. Weisman: No? It is, too. He brought out where he did business with them, and I have a right to show how he did business with them.

Mr. Haycraft: I object to that.

Examiner Bennett: What do you expect to show about the National Packing Office?

2225 Mr. Weisman: The National Packing Office is an office in New York wherein a number of the manufacturers deliver their merchandise to, and the National Packing Office then distributes them to various parts of the country. That is what he calls "common delivery." I want to show just how this is effected. I will get through with this in a question or two. I just want to show how the delivery is made in order to show how these operations are conducted, which goes to the weight and probative value of this witness' testimony.

By Mr. Weisman:

Q. In a nutshell, what is this National Packing Office
2226 and where is it?

Mr. Haycraft: I ask for a ruling.

Examiner Bennett: I will limit the relevance to that extent that Mr. Weisman has indicated he desires to indicate.

By Mr. Weisman.

Q. You make your delivery to them and they distribute the goods? A. They bulk it and ship it.

Q. Their place of business is where? A. I do not know.

Q. Twenty-eighth Street and Eighth Avenue? A. I do not know. We have never had occasion—at least I have never had occasion to look up their address.

Q. What about Adairs. Where is their office? A. Same place as Graysons and Robinsons.

Q. New York City? A. New York City.

Q. Who is the buyer for them? A. Artie Schwartz.

Q. He lives in New York? A. Yes.

Q. Yes? A. Yes.

Q. You know his home is here? A. I do.

Q. Does his buying here? A. Yes.

Q. Makes his home here? A. Yes.

2228

Q. His order is given in your New York office? A. Yes.

Q. It is taken there? A. Yes.

Q. From his New York office? A. Right.

Q. To his New York office? A. Right.

Q. Where do Rubensteins make their office? A. I do not have the correct address.

Q. Do you not know? A. Yes.

Q. And the buyer is in New York? A. Yes, sir.

Q. And the office is in New York? A. Yes, sir.

Q. And they come down into your showroom sometimes? A. Yes, sir.

Q. In New York? A. Yes, sir. The same thing is true of each of the chain stores.

Q. The same thing is true of all the chain stores that you testified about this morning? A. With the one exception of J. M. & M. H. Samuelson who distribute their merchandise into the manufacturers' places who in turn ship it direct to the stores through parcel post or express, as the case may be.

2229

Q. But J. M. & M. H. Samuelson are located in New York? A. Yes.

Q. Their buying office is in New York City? A. Yes.

Q. The order is given you in New York City? A. Yes, sir.

Q. Accepted by you in New York? A. Yes, sir.

Q. As part of your business do you consider it your duty to read the various trade publications?

Mr. Haycraft: I object as incompetent, immaterial, and irrelevant.

Examiner Bennett: What is the question?

(Question read.)

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2231

By Mr. Weisman.

Q. In connection with the exercise by you of your functions as a sort of general factotum for the Trussel Dress Company, do you make it a practice to read "Women's Wear Daily," the leading publication in this field?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Weisman.

Q. You stated on your direct examination that you first heard of the Guild, and I refer to the Fashion Originators Guild of America, Inc., one of the respondents in this proceeding, in the latter part of 1935? A. Yes.

2232

Q. Is that so? A. Right.

Q. Is that correct? Do you want this Court to believe that is the first time you heard of the Guild? A. I believe around September, 1935. That is about the first time I can place my knowledge of the Guild.

Q. Do you know the Guild was organized in 1932? A. No.

Q. Did it ever come to your attention before that that it was in existence? A. It may have, but it was not of enough importance to make any real impression upon me, so I could not definitely say "yes" or "no."

Q. Were you correct in your statement this morning that the first time you heard of the Guild was in 1935? Did you not really hear of the Guild before that?

Mr. Haycraft: He has answered that three times. I object.

Mr. Weisman: We can have less trouble by having him answer it "yes" or "no" than going through all this squabbling.

Examiner Bennett: If you make your objection 2234
I will sustain it. He has answered.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. That is all.

Mr. Haycraft: Let the record show that the redirect examination will take place at another time. I understand the witness is going out of town for three weeks. I am not going to call him tomorrow but I will ask him to kindly remain subject to subpoena and come in here later.

The Witness: Any time three weeks after tomorrow.

(Witness excused.)

Mr. Haycraft: I have no further witnesses to 2235
present this afternoon, your Honor.

Examiner Bennett: At the request of attorneys for respondent, we will adjourn. This hearing is adjourned to reconvene at 10 o'clock tomorrow morning. Please be here promptly, gentlemen, so we can get a prompt start. That is all.

(Whereupon, at 4 o'clock P. M., July 23, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway, New York, N. Y.,
July 24, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, *Examiner.*

(Same Appearances:)

PROCEEDINGS:

Examiner Bennett: Be in order, please. You
2237 may proceed.

Mr. Haycraft: I will ask Mr. Conze to take the stand at this time.

GODFREY H. CONZE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination.

Mr. Duryee: I wish to note my appearance as Mr. Conze's counsel.

By Mr. Haycraft.

2238

Q. You have stated your full name, Mr. Conze? A. Godfrey Henry Conze.

Q. Where do you live, Mr. Conze? A. Greenwich, Connecticut.

Q. What is your occupation? A. Vice-president of Susquehanna Silk Mills.

Q. How long have you been vice-president of the Susquehanna Silk Mills? A. Since 1927, but in the meantime the company was for four years in receivership, on 77-B.

Q. When did it come out of receivership? A. March 18.

Q. This year? A. Yes.

Q. What did you do with respect to the organization during the time of the receivership? A. The same duties which I had before the receivership, acting in a managerial, executive capacity.

Q. In what business was the Susquehanna Silk Mills? A. Manufacturing, converting, and distributing silk, rayon, piece goods, and mixtures of silk, rayon, wool, and other textiles.

Q. Does it have a factory? A. Including its subsidiary, approximately twelve factories.

Q. Located where? A. States of Pennsylvania, Ohio, 2240
Georgia, and New Jersey.

Q. To whom do they sell their products? A. To manufacturers, retailers, and jobbers.

Q. Do you sell any of the fabrics manufactured by the Susquehanna Silk Mills to manufacturers of ladies' and misses' dresses? A. Yes.

Q. Have you done that during the past five years? A. Yes.

Q. To what particular manufacturer do you sell—do you sell to all manufacturers, or do you have a restricted group of customers? A. No restriction.

Q. Where, generally, are your customers who are engaged in the manufacture of ladies' and misses' dresses located? A. New York.

Q. Anywhere else? A. Some Chicago, some Los Angeles, 2241
but by far the majority in New York.

Q. Any in Boston? A. Some in Boston, some in Philadelphia, some in St. Louis.

Q. What percentage of your customers that are engaged in the manufacturing of ladies' and misses' dresses would you say are located in the Metropolitan Area, that is, in and around New York City? A. I would not be able to answer in percentage or number, but in volume it is over 60 per cent.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. To some extent.

Q. You know that there is such an organization? A. That's it.

Q. Was the Susquehanna Silk Mills ever a member of the Textile Merchants Group of the Fashion Originators Guild of America, Inc.? A. The Susquehanna joined the Textile Affiliates in April, '35.

Q. In 1935? A. Yes, 1935.

Q. Is it still a member of that organization? A. No, resigned in April, '36.

Q. Did you have anything to do wth the joining of the
2243 Textile Merchants Group, the Guild? A. I personally did not—no, no.

Q. Did you represent your company on the Board of Governors of the Textile Merchants Group of the Fashion Originators Guild of America, Inc.?

Mr. Duryee: I objeet to that as calling for a conclusion.

A. In my opinion——

Examiner Bennett: Overruled.
Mr. Duryee: Just a moment.
Examiner Bennett: You may answer.

A. In my opinion there never was a Board of Governors;
2244 there was a steering committee.

By Mr. Haycraft.

Q. A steering committee. Did you represent your firm on that steering committee? A. I was asked personally to serve on the steering committee by the executive secretary, Mr. De Lisser, in October, '35.

Q. How long did you serve in that capacity? A. Approximately 4½ months.

Q. Then what happened? A. I resigned.

Q. Would you give the date of your resignation? A. I have not got the date ready, but it was the end of February, the end of February, '36.

Q. Well, can you tell us why the Susquehanna Silk Mills became a member of the Textile Merchants Group, the Guild?

Mr. Weisman: Just a moment. I object to that on the ground it is incompetent, irrelevant, and immaterial. What operated in their minds we are not concerned with that. You have got the fact that they did become a member. You have got the further fact that they are no longer a member. I submit that is the complete fact which could be the subject 2246 of any inquiry here.

Examiner Bennett: Read the question

(Last question read.)

Examiner Bennett: Why they became a member?

Mr. Haycraft: Yes.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: I call your Honor's attention further to the fact——

Examiner Bennett: Go ahead.

Mr. Weisman: ——that this witness has testified that he did not take part in the joining, and was not in any of the negotiations, etc. That was his earlier question. He was asked by Mr. Haycraft.

Examiner Bennett: Well, he can go ahead—but, 2247 of course, that is a matter of foundation, and I will ask the examining attorney to lay further foundation as to his knowledge.

Mr. Haycraft: I did not understand.

Examiner Bennett: I say, I will ask the examining attorney to make further foundation as to the knowledge of this man as to the matter inquired of.

Mr. Haycraft: All right.

Examiner Bennett: There is an objection as to whether he knows.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. I will ask you what official position you were holding with the Susquehanna Silk Mills in March and April, 1935?

Mr. Weisman: Just a moment. I object. That has already been answered. He has testified he was vice president, and he further testified that up to
2249 the period of March, 1936, the company was in receivership, and that the company joined in April, 1935. It has already been answered.

Examiner Bennett: Well, I will ask him some questions, if you object to them, as an attorney—In your position as vice president, did you have knowledge of the considerations which caused you to join, or your concern to join the Textile Division of the Fashion Originators Guild?

Mr. Weisman: May it please——

The Witness: Yes.

Mr. Weisman: May it please your Honor, I assume that you are asking that question on behalf of the Commission, not on my behalf?

2250 Examiner Bennett: I am asking it on behalf of the Commission.

Mr. Weisman: Then I——

Examiner Bennett: I certainly am.

Mr. Weisman: Yes.

Examiner Bennett: Then you are entitled to an objection.

Mr. Weisman: Yes.

Examiner Bennett: Which I overrule.

Mr. Weisman: Then if you are asking it on behalf of the Commission, I respectfully submit——

Examiner Bennett: Yes, that is all right. He has said he knows. Go ahead.

The Witness: I did.

By Mr. Haycraft.

Q. All right. What were the considerations? A. Most of my competitors——

Mr. Weisman: Just a moment. I object to the form of the question as being incompetent and immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: And calling for a conclusion of the witness. 2252

Examiner Bennett: Overruled. You may answer.

A. Most of my competitors were members.

By Mr. Haycraft.

Q. Was that the principal or only consideration. A. Yes.

Q. Who solicited your membership?

Mr. Weisman: I object to the question as immaterial.

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception. 2253

A. I don't know.

By Mr. Haycraft.

Q. Why did the Susquehanna Silk Mills withdraw its membership?

Mr. Weisman: I object to that as incompetent and immaterial why they withdrew; might have withdrawn for any——

Examiner Bennett: I am going to find out and see if it is competent or not.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Duryee: Same objection.

Examiner Bennett: Overruled.

A. On the advice of counsel we withdrew; it was done on advice of counsel.

2255

Examiner Bennett: I see. All right.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Do you have any objection to giving any further reason that was assigned by counsel for you withdrawing?

Mr. Weisman: I object to that as incompetent, irrelevant, and immaterial. Now we are going to have what some counsel advised, well advised or ill advised him, told him at some ex parte place. I submit that that is going beyond all realms of

2256

proper direct examination.

Examiner Bennett: Yes. I will sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. At the time that you became a member of the steering committee, that you referred to a moment ago, who invited you to join that committee? A. Mr. De Lisser.

Q. Were any representations made to you at that time as to the functions that you would be called upon to perform as a member of that committee? A. I was told that the committee was an advisory committee, and would not take much of my time.

Q. When did you seek advice of counsel with respect to the further membership in the Textile Division of the Fashion Originators Guild of America?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: When was that? When?

Mr. Haycraft: Yes.

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: Overruled. 2258

Mr. Weisman: It is part of the witness' defense, if anything, and not part of the Government's case.

Examiner Bennett: Overruled. He may answer.

A. I could not give an exact date, must have been in March.

By Mr. Haycraft.

Q. Had anything occurred——

Examiner Bennett: What year was that?

By Mr. Haycraft.

Q. —which led you to seek the advice of counsel? 2259

The Witness: 1936; March, 1936.

By Mr. Haycraft.

Q. Had anything occurred which led you to seek the advice of counsel; I mean occurred with respect to the Textile Division of the Guild?

Mr. Weisman: I object to that on the ground that it is incompetent, irrelevant, and immaterial, and not proper cross-examination.

Examiner Bennett: Sustained. I think you can argue your own law in this case. I do not see why you should bring in somebody else's opinion.

Mr. Haycraft: I beg your pardon?

Examiner Bennett: I say, I think you can argue your own law in this case. I do not see the object of this line.

Mr. Haycraft: I was not attempting to get any law. I would like to have the question read. Apparently the Examiner did not understand it.

(Question read.)

Examiner Bennett: Is that your question?

2261 Mr. Haycraft: That is my question.

Examiner Bennett: Yes. I did not get the question clearly. I will overrule the objection to that.

Mr. Weisman: Exception.

Q. (Question again read.) A. I heard of the intentions of several of my-——

Mr. Weisman: Just a moment.

By Mr. Haycraft.

Q. Just a moment. That can be answered "yes" or "no," Mr. Conze. A. Yes.

Q. What happened? A. I heard that several of my competitors intended to resign.

2262 Q. When did you hear that?

Mr. Weisman: Oh, I object to that as immaterial, your Honor; I mean, I did not want to clutter up the record, but it seems to me that it must be perfectly apparent to the Court besides that this is of no materiality.

Examiner Bennett: I sustain the objection. It was undoubtedly before he asked for the advice of counsel.

Mr. Haycraft: No further questions, and I ask the witness to step down, unless there is some cross-examination. I am taken by surprise.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: Counsel is taken by surprise, and I ask that the witness step down.

Mr. Weisman: I ask that this be stricken off the record. Counsel has said he is finished with the witness.

Mr. Haycraft: Yes, I said that.

Mr. Weisman: All right. That is all. Thank you.

(Witness leaves the witness stand.) 2264

Mr. Duryee: I would like to cross-examine.

Examiner Bennett: You would like to cross-examine?

Mr. Duryee: Yes.

Examiner Bennett: All right, you may return to the stand for cross-examination.

Cross-examination by Mr. Duryee.

Q. Mr. Conze, you testified that you were a member of the steering committee? A. Yes.

Q. Is that the only personal association which you had? A. Correct, it was.

Q. And you testified that you resigned from that in February? A. Latter part of February, '36. 2265

Q. 1936. A. Yes.

Mr. Duryee: That is all.

Mr. Weisman: That is all.

(Witness excused.)

Mr. Haycraft: Mr. Examiner, I have been told that Mr. Lifshey wants to make a correction in some of his testimony of yesterday, and I want to give him an opportunity of doing so.

Examiner Bennett: Is he here?

Mr. Haycraft: Yes.

Mr. Weisman: Mr. Examiner, Mr. Lifshey told me yesterday—rather, requested me to curtail my examination so that he might leave this morning at 5 o'clock to go on a vacation. Believing that to be a fact, and relying thereon, I did curtail my examination. Believing further that to be a fact, I urged, and consented, that Mr. Haycraft's redirect be put off until some other time. Now, it appears when it suits the convenience of the witness he is here quite ready and willing, and I am a bit taken aback at his presence, and under those circumstances 2267 I ask that the redirect examination proceed with this witness and that I have the proper opportunity to examine him in the orderly and regular course.

Mr. Ballon: Your Honor, may I say that Mr. Lifshey's appearance here this morning is prompted entirely at my request?

Mr. Weisman: I do not care at whose request it was prompted.

Mr. Ballon: Mr. Lifshey advised me yesterday afternoon that he had made a mistake in his testimony, a mistake that I thought was of sufficient importance to request that he come back here and make a correction. I, therefore, requested him to come down here this morning. It was entirely 2268 against his wishes, because, as he told Mr. Weisman, he had planned to leave on a three weeks' vacation at 5 o'clock this morning, which was true, and he has come back here solely at my request. Nothing he told Mr. Weisman is incorrect.

Mr. Weisman: All right. I have no desire to interfere with his plans, but I desire to complete my examination.

Examiner Bennett: All right. Have him make his corrections first.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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MURRAY LIFSHEY was thereupon called as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination by Mr. Haycraft.

Q. Mr. Lifshey, I understand you wish to make a correction in your testimony of yesterday? A. I do.

Q. Can you indicate by page reference? A. I have not seen the reference.

Q. Can you testify as to what the statement was that you wish to correct? A. Yes. Yesterday's examination, counsel Weisman asked me to name an account whom we did not desire to take any further orders from, due to the fact that according to our records that their returns were out of proportion to shipments at that time. 2270

The Witness: I was in error when I named the account of the Mirror at Atlanta, Ga., as one of the accounts that we had stopped doing business with, because of excessive returns. It was an honest error, noted when I returned to my office and checked the testimony I had given with available records at my office. I had found out that the Mirror of Atlanta, Ga., had been sold last in April of 1936, that the account at no time was turned down, because of excessive returns.

Examiner Bennett: I see. That is all you wish to state? 2271

By Mr. Haycraft.

Q. Do you make any explanation of how you came to make that mistake?

Mr. Weisman: I object.

A. There is an account.

Mr. Weisman: I object to that.

Examiner Bennett: All right. I will overrule your objection. You may answer.

Mr. Weisman: He says it is an honest mistake.

A. There is an account in Atlanta, Ga., that we did turn down in May of 1935. That happened—not to comment on the period under discussion—I don't think it works in here.

Examiner Bennett: Now, you want to go into your redirect?

Mr. Haycraft: I beg your pardon?

2273 Examiner Bennett: I say, do you want to clean up any further with this witness?

Mr. Haycraft: I would like to.

Examiner Bennett: If you have any redirect?

Mr. Haycraft: Yes, I do have some.

Examiner Bennett: Yes. Well, go ahead and have your redirect.

Mr. Ballon: May I state something on that subject?

Examiner Bennett: I beg your pardon?

Mr. Ballon: May I ask one question, your Honor?

Examiner Bennett: Yes.

2274 *Cross-examination by Mr. Ballon.*

Q. Mr. Lifshey, as far as you know, then, the Mirror Shop of Atlanta, Ga., is a perfectly fair dealing, ethical, and decent concern; is that correct? A. Naturally.

Q. And the last time you did business with them was in 1935? A. Was in——

Mr. Weisman: No.

The Witness: Was in April, 1936.

By Mr. Ballon.

Q. April, 1936? A. Yes.

Q. And at that time the transaction was a perfectly clean transaction; is that right? A. It was.

Q. No returns? A. No, sir.

Examiner Bennett: All right.

Mr. Haycraft: I would like to have a 5-minute recess until I can check some of the statements in the record.

Examiner Bennett: Yes, I will give you a recess. Five minutes or ten minutes?

Mr. Haycraft: Better make it ten minutes.

2276

Examiner Bennett: Ten minutes. All right. Mr. Lifshey, you will remain available.

The Witness: Yes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. Mr. Lifshey, will you come around and resume the stand, please?

Redirect examination by Mr. Haycraft.

Q. Do you have available your sales records for the months of January, February and March of 1936 and 1935, or do you have those figures in your mind as to the volume of sales? A. January, February and March?

Q. January, February and March. A. '35?

2277

Q. 1935. A. Yes.

Q. Compared with 1936? A. Well, I do not think——

Mr. Weisman: I submit the difficulty is there are two questions. He says, have you got the records or have you got them available, or have you got them in your mind, and I think it would be better if you would split that up.

Examiner Bennett: Very well.

By Mr. Haycraft.

Q. Do you have the records? A. I have a memorandum here. This is made up. This was sent down yesterday upon the request of Mr. Weisman. This gives these items.

Q. Does that show the monthly sales? A. Yes.

Q. What year? A. August, '34, to July, '35, and August, '35, to date.

Q. Can you testify from that memorandum as to your total volume of sales in January, 1935? A. January, 1935?

Q. Yes. A. $103,728.26.

Q. January, 1936? A. $127,039.74.

Q. February, 1935? A. $87,877.97.

2279 Q. February, 1936? A. $24,452.46.

Q. March, 1935? A. $134,750.70.

Q. March, 1936——

Mr. Weisman: May I have that last figure?

The Witness: $134,750.70.

By Mr. Haycraft.

Q. March, 1936? A. $138,134.21.

Q. As a general proposition is February recognized as a good month to sell your dresses, the price dresses that you sell? A. February is the turning point in the seasonal —February is not recognized as a good dress month.

Q. Did you turn back any orders that were received for

2280 dresses during the month of February, 1936?

Mr. Weisman: I object as not proper direct testimony. If we are going to start this all over again, we will be here forever.

(Question read.)

Examiner Bennett: I think that was covered in the cross-examination. I will overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: During February, 1936, as explained in previous testimony, we had a labor condition that was threatening. Our line, therefore, was not extensive but confined to a few numbers that go into production and come out quickly without any undue delays in the production and, as a result, because of the smallness of the line we had a small month for the month of February, but we did not turn down any orders on those particular dresses.

By Mr. Haycraft.

Q. Were you ever told to stop manufacturing on ac- 2282
count of the imminence of the strike? A. No, we were not told to stop manufacturing. It was left to our own discretion.

Q. As I understood your testimony yesterday, the strike never did occur? There was no strike? A. No, there was no strike.

Q. At the yesterday afternoon hearing—at the noon recess—you were testifying as to the percentages of return; that is, the number of garments returned compared to the total number of garments sold. A. Yes.

Q. On page 1021 you were quoted saying there were 300,000 dresses estimated, and returns—net estimated sales, 300,000 dresses, of which 24,000 or 25,000 were returned, or 8.54 per cent., or .13—what does that mean? 2283
A. I do not believe you have the percentage right. I believe you have the percentage wrong.

Q. What is the right percentage? A. I testified that the percentage of returns for the period August, 1935, to July 11, 1936, as compared with the period from 1934 to 1935, that there was an increase of .77 per cent. in returns.

Q. What were the two periods that you were comparing? A. For the year 1934-1935, and from August to July,

the percentage of returns was 7.54 per cent.; from August, 1935, to July 11, 1936, the percentage of returns was 8.31 (8.13?).

Q. You were asked also whether you could——

Mr. Weisman (interposing): Are you referring to——

Mr. Haycraft (interposing): The same one. The same one. Don't interrupt me.

By Mr. Haycraft.

2285 Q. As to whether you could testify as to what percentage of the returns were returned because of poor workmanship or because the dresses were returned on the claim that they were not as per sample submitted or shown, or late delivery, or that the dresses were returned because they were copies of Guild merchandise. Your testimony was that you could give the estimate, but you could not give the actual figures; is that correct? A. Yes.

Q. Now, I will ask you to give your estimate based upon your experience, the percentage of total returns which were returned because the dresses were alleged to be copies of Guild merchandise?

Mr. Weisman: Just a moment. Oh, no, no. No objection. Go ahead.

2286 *By Mr. Haycraft.*

Q. You may answer. A. I understood the question to be percentage of returns in the 1935-1936 that were directly due to the Guild activities?

Q. Yes. A. Our percentage of returns for that year is——

(The witness made certain calculations for a few moments.)

The Witness: The approximate estimate that I would give would be about one-half of 1 per cent.

By Mr. Haycraft.

Q. When you say one-half of 1 per cent., you mean one-half of 1 per cent. of the total dresses sold that year? A. One-half of 1 per cent. of the total dresses sold.

Q. Sold? A. Sold.

Q. Of the 8.31 per cent., .50 would be for the reasons that they were alleged to be copies of Guild merchandise? A. Of the 8.31 per cent., which was the percentage of returns over sales for the year 1935-1936, I would estimate one-half of 1 per cent. 2288

Q. Can you translate that into the number of dresses on the testimony that you gave yesterday that there was about 25,000 dresses in all that were returned; what would that be in number of garments with reference to the number of dresses returned because they were alleged copies of Guild merchandise?

Examiner Bennett: The testimony was there were about 300,000 dresses.

Mr. Haycraft: 25,000 of them were returned.

Examiner Bennett: He was giving the percentages of dresses as compared to the total number of dresses sold, was he not?

Mr. Haycraft: I see your Honor's point.

The Witness: Estimating that on the percentage of dresses sold at one-half of 1 per cent., I would estimate there would be somewhere between 1,200 and 1,500 dresses. 2289

By Mr. Haycraft.

Q. I take it, then, that the balance would be for the reasons you testified yesterday? A. Yes, sir.

Q. You were cross-examined quite extensively with respect to the so-called warranty stamp that was placed on orders that were given you by your customers? A. Yes.

Q. Particularly in the fall of 1935 you related a conversation you had had with buyers, and also referred to the correspondence with reference to such returns where sometimes they were accepted and sometimes they were not. I now want to ask you—strike that out. I call your attention to your testimony on pages 1055 and 1056, and also on 1057 of the record where you were questioned about the so-called promise that you made to Jones & Company, Stores Store, and Wanamaker's Store, as a result of the
2291 warranty stamp placed on that order by those companies. A. Yes.

Q. You testified that in the case of the Jones Store you intended to keep the promise with reservations with respect to Wanamaker, on the other hand, with respect to Wanamaker's order you had no such reservations. A. Yes.

Q. I want to ask you this question: Did you ever voluntarily promise either the Wanamaker's Store or the Jones Store or any other store that you would take the order with the stamp on it?

Mr. Weisman: Objected to as immaterial. The record speaks for itself.

Examiner Bennett: Read the question.

2292 (Question read.)

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

(The question was read as follows: "Q. On page 1052 you testified in the affirmative in answer to the following question: 'Q. So that when you accepted the order for the merchandise herein referred to, you clearly knew that according to the terms of the order you had promised not to send in fulfil-

ment thereof any copies of Guild merchandise; is that not so?' Now, I ask you whether or not the promise that you made, or you said you made in your answer yesterday, was a voluntary promise or otherwise?")

Mr. Weisman: Have you finished your question?

Mr. Haycraft: Yes.

Mr. Weisman: I object to that. That is a matter for the Court to determine, and not to be the subject of the conclusion of this witness. We have all of the facts. Now he is calling for the witness to pass upon a matter which is for the tribunal to pass upon. Certainly that is a conclusion for the 2294
Commission to draw from the facts and circumstances. Certainly the Commission should be permitted to draw that conclusion from the facts and circumstances as they appear here and not from what this witness considers it. We have got the facts.

Examiner Bennett: Are you through?

Mr. Weisman: Yes.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted. Proceed.

The Witness: It was not a voluntary promise.

By Mr. Haycraft.

2295

Q. Why did you make it? A. It was a question of taking the order with the stamp on it, or not accepting the order at all.

Mr. Weisman: Now, I submit that the first part of the answer be stricken out because it shows it was a voluntary promise. It definitely shows it was a voluntary promise.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. At that time were you a member of the Guild? A. What?

Q. At that time were you a member of the Guild? A. Was I a member of the Guild?

Q. Yes. A. No.

Q. Have you ever been a member of the Guild? A. No.

Q. Were you ever consulted by the Guild or by Gimbel's or the Jones Store or Wanamaker's, or any of your cus-
2297 tomers as to whether you wanted to make that sort of an arrangement with them? A. No, sir.

Q. Was it against the policy of your organization, or was it not, to include a promise of that sort? In other words, was it in conformance with the policy of your store at that time, or was it not in conformance with the policy of your organization at that time?

Mr. Weisman: I object to that question as vague, ambiguous, and immaterial, and irrelevant.

The Witness: I do not understand your question.

Mr. Weisman: Wait a minute. I hope you will not have to answer it.

Examiner Bennett: You might reframe it.

2298 *By Mr. Haycraft.*

Q. Was the giving of such warranty, or the making of such promises, a part of the business policy of your organization at that time? A. It was not.

Mr. Weisman: I object and move to strike the answer. I thought my objection would affect the second question also.

Examiner Bennett: We will have it apply to both questions. As to both they are overruled and exception noted.

Mr. Weisman: Exception to both.

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. You have testified as to the instances that you discussed; that is, the matter of Miss Dean and others. I will ask you this question: Whether on any other occasion you protested to buyers against the placing of such a stamp on orders——

2300

Mr. Weisman (interposing): I object to that as improper redirect.

Mr. Haycraft: Wait until I finish my question.

Mr. Weisman: I thought you had finished.

Mr. Haycraft: No. You knew I hadn't.

Mr. Weisman: Well, go ahead and finish it.

By Mr. Haycraft.

Q. —placed with your firm?

Mr. Weisman: Obviously, we are starting to try this case all over again.

Examiner Bennett: That was gone into at length.

Mr. Weisman: Only as to the instances developed. I think we had the complete situation. 2301

Examiner Bennett: You cannot direct the redirect examination by your cross-examination. You open up the subject and the other counsel can then take the witness, and if he wishes to develop this, he may develop the situation just as you did on cross-examination. I will deny your motion.

Mr. Weisman: Before your Honor rules on it, may I also call your Honor's attention to yester-

day's session wherein you ruled that this statement as to the other buyers, ad homonium, was not competent unless it was directed to specific buyers, otherwise I would not be allowed to develop the matter, because I, in turn, would be put in a position where I would not be able to cross-examine.

Your Honor ruled that I could not meet this type of testimony that you were referring to then if you took up these other buyers. Now I think we are having this same attempt all over again.

Examiner Bennett: Overruled. Go ahead.

(Question read.)

2303 A. I did. There are quite——

Mr. Weisman (interposing): Just a moment. He asked you a question and you have answered it.

By Mr. Haycraft.

Q. On more than one occasion? A. Yes, sir.

Q. Did you ever adopt the policy of refusing to place orders with dealers who insisted on putting that stamp on? A. You mean accept orders?

Q. Accepting orders with dealers who placed that stamp on their orders? A. We did for a short time.

Q. How long a period of time? A. I should think about a week or ten days.

2304 Q. And then what? A. In 1935, directly after that, a group of $4.75 dress manufacturers had gotten together and agreed among themselves not to accept orders with the Guild stamp on them.

Q. You say for about a week you did that? A. About a week or ten days.

Q. What was the reason for——

Mr. Weisman (interposing): I object.

Mr. Haycraft: Wait until I finish my question.

Mr. Weisman: I thought you had finished.

Mr. Haycraft: No.

By Mr. Haycraft.

Q. —discontinuing that policy?

Mr. Weisman: I object to it as incompetent, immaterial and irrelevant, the reasons for that.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. We found by refusing orders because of the warranty, Guild warranty stamp on same, that the buyers who were placing that order had definite instructions from her superior not to leave any orders unless that stamp was on the order. She had no other alternative, and it was a question if we refused the order we refused that amount of business. It proved useless to argue with the buyer, a buyer that had definite instructions as to that point, and rather than see the business out of the door we began to accept the orders regardless of whether the stamp—whether it had a stamp on it or not. 2306

Mr. Haycraft: That is all.

Examiner Bennett: Do you have any questions, Mr. Weisman?

Mr. Weisman: Oh, yes, I have a whole lot of questions for this witness, your Honor. 2307

Examiner Bennett: Proceed.

Recross-examination by Mr. Weisman.

Q. What was the name of the store in Atlanta, Georgia, that was unethical in making a large number of unjustified returns?

Mr. Ballon: May I object to that question, your Honor?

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Would you have us understand that you cut out more than one house?

Examiner Bennett: Let me call your attention to the fact that you have another incident that you have not stressed, and that is the Jones concern.

Mr. Weisman: He did not testify he refused to
2309 accept orders from them.

Examiner Bennett: What is the situation there?

By Mr. Weisman.

Q. The Court has indicated that it believes you testified that you refused to do business with the Jones concern because of unjustified returns; is that correct? A. No. I never refused to accept their orders.

Q. Did you refuse to accept that particular return? A. Yes.

Q. Did you refuse to accept the particular return, if I remember correctly, because it was ten weeks in coming in, or something of that sort? A. Yes.

2310 Examiner Bennett: I stand corrected.

Mr. Weisman: That was my recollection.

By Mr. Weisman.

Q. You, thereafter, did business with the Jones Store? A. Yes.

Q. You are doing business with them now? A. We have since that time.

Q. You have done business with them notwithstanding the fact that they are still using the Guild stamp? A. I really do not know. This distribution order comes in from William T. Motz and it has the stamp on it.

Q. The stamp is on it? A. I believe it is.

Q. You know it is, do you not? A. It has gotten so we do not look for the stamp any more, on orders. We do not pay any attention to it.

Q. I do not care whether you look for it or not, if you fail to look for it because you know it is there and you do not, for that reason, look for it because you know it to be there; is that it? A. We just do not look for it. It is out of my mind.

2312

Q. Do you not look at your orders at all? A. Yes.

Q. If it is there do you see it? A. It is not where you can see it always. The stamp is sometimes placed on the back of the order.

Q. Do you mean to say that you do not look on the back of the order to see what the terms of the merchandise purchased are? A. After handling thousands and thousands of orders, you look for the vital thing in the orders that concern you, which are: The name of the account, the city, the order number and department number, terms, style number of dresses, the quantity and numbers, and the other printed matter, except for the price; the other printed matter I do not believe I have ever read in my entire business experience.

2313

Q. When you say "vital," do you mean important? A. Important to the transaction of our particular business.

Q. You do not think that the Guild stamp is important or vital to the particular transaction? A. We do not.

Q. You do not read it, anyway? A. I do not pay any attention to it any more. I only look for the vital things.

Q. You deem that Guild stamp is a matter of rather indifference to you; is that so? A. We deem the warranty implied in this Guild stamp, yes.

Q. You are indifferent? A. Not indifferent to us, but——

Q. You have just testified you did not look at it because you did not look at it— A. What?

Q. Because—do not interrupt me, please. A. I am sorry.

Q. Wait until I finish the question. A. I will.

Q. You have also testified that when you say "vital," it is synonymous with the word "important," so that you say that the Guild stamp is of no importance to you? Is that so?

Mr. Haycraft: That is objected to, being not
2315 only a double question but a triple question?

Mr. Weisman: Nothing triple, or anything about it.

Mr. Haycraft: I object to the form of the question and ask the question be framed in a legal way.

Examiner Bennett: Yes. Read the question.

(Record read.)

Examiner Bennett: Yes, I wish you would designate which one of those questions you want him to answer.

Mr. Weisman: All right. I will ask him separately now.

By Mr. Weisman.

2316 Q. I understood you to say a moment ago, Mr. Lifshey, that you did not know whether your present orders had Guild stamps on them or not; is that correct? A. I did.

Q. And when I asked you how this condition of mind came about you said that when you looked at orders, you only looked at them for the vital parts thereof; is that correct? A. I did.

Q. Now, I ask you whether or not, by your use of the word "vital," you meant "important," and you said "yes"; is that not so? A. I did.

Q. So that when you said "vital part," that was the same as if you had said "important part"? A. Correct.

Q. So that your statement would be that you do not know whether or not the orders had the Guild stamp on them because that is not, to you, an important part of an order; is that correct? Is that correct? A. Yes.

Q. Now, we have that fixed. A. Yes.

Q. That you do not deem the Guild stamp a vital or important part of an order? A. To me, yes.

Q. Yes, I see. And that has continued— A. At the present time?

Q. For how long? A. We were referring to all orders placed at the present time?

2318

Q. Yes. A. You are referring to the Jones Store?

Q. Yes. Well, I want to know how long you have deemed the presence of the Guild stamp, or its absence from your orders, unimportant? A. Well, I would estimate—I would state about the time when the Trade publications came out with articles, discussions on different fashions.

Q. When was that—don't give us——

Mr. Haycraft: Let him finish his answer.

Mr. Weisman: I have asked him for a date, and he has given me something that does not illuminate——

Mr. Seidman: He is trying to fix the date.

Mr. Weisman: He should try in his own mind; not on the record.

2319

Mr. Haycraft: Let the Examiner decide that.

By Mr. Weisman.

Q. Try to give me the date when you came to that conclusion?

Mr. Haycraft: I ask that the witness be allowed to complete his answer now uninterrupted.

Mr. Weisman: I ask that that part of the answer already given be stricken out. I have asked for a date.

A. Early part of March, I should estimate.

By Mr. Weisman.

Q. That is, then, commencing with the early part of March down to date you have deemed the question of whether or not the Guild stamp was on your orders was unimportant? A. I have.

Q. And because you have deemed it unimportant, you
2321 have not observed your orders to ascertain whether or not they had the Guild stamp? A. I have not.

Q. You want us to believe that since that time you have not looked at your orders to see whether or not this customer or that customer put the Guild stamp on them? A. No, I have not.

Q. What did you mean by testifying, then, yesterday, that 50 per cent. of your customers put the Guild stamp on their order, if you did not know? A. I was speaking about the latter part of 1935 at that particular time.

Q. Oh.

Mr. Haycraft: That is when the question stated.

By Mr. Weisman.

2322 Q. The latter part, so that with the exception of the latter part of 1935, you do not know what percentage or what proportion of your customers put the Guild stamp on their order, do you? A. You mean at the present time?

Q. No, from March. A. From the 1936 period?

Q. Yes. In the 1936 period. A. In the 1936 period I could make an estimate similar to the estimate I made on the other question.

Q. You mean similar estimate based on no fact that you have any knowledge of; is that what you mean by an estimate? A. There are certain facts that I do have knowledge of.

Q. Wait a moment. When you say "estimate"—when you use the word "estimate," do you mean a guess? A. No, I base it on——

Q. Let me ask you this: I want to find out something from you. Do you mean, that notwithstanding the fact that you have not looked at the orders, and that you have testified since March of this year you don't know who put the stamp on and who does not put the stamp on, and that you have not deemed it important to examine them, 2324 and that in some cases the order stamp was on the back and you never see that, that notwithstanding that general state of your mind, and notwithstanding that that is the type of knowledge that you may or may not have, you are still willing to testify, under oath, that 50 per cent. of your customers have the stamp? A. I was——

Q. Are you willing to do that? A. Are we talking about 1935?

Q. 1936. A. When this Guild question——

Q. No, 1936. A. We are talking now of January to date, of 1936?

Q. No, March to date. A. Oh, March to date, of 1936?

Q. Yes. A. I can only base my estimate on the knowledge of those offices that I know are not continuing to put their Guild stamp on their orders. 2325

Q. Obviously you did not understand my question.

Mr. Haycraft: That is proper.

By Mr. Weisman.

Q. You have testified that you do not look at those orders. A. Correct.

Q. You also testified that you deem it unimportant whether or not the order contains the Guild stamp; is that not so? A. Yes, sir.

Q. And now I have said to you that notwithstanding the fact that you do not know how many of your orders actually have the Guild stamp, see—you have so testified—and notwithstanding the fact that you say it is unimportant, are you still willing to give it as a fair estimate that 50 per cent. of your orders contain this stamp, when you base it on such lack of knowledge as you have exhibited in your answer to your prior questions?

Mr. Haycraft: Wait a moment. That is objected
2327 to as argumentative.

Mr. Weisman: Oh, I have——

Mr. Haycraft: Can have no probative value.

Examiner Bennett: I will sustain the objection to that form of question.

Mr. Weisman: Exception.

Examiner Bennett: To that form. If you want to state it so as to represent what the witness did testify to I will be glad to permit it.

Mr. Weisman: I think the record is clear.

Examiner Bennett: I will be glad to hear it. As I understand it, he did not testify that during the entire period he paid no attention to the Guild stamp.

2328 Mr. Weisman: Oh, yes, that is so.

Examiner Bennett: He testified that after a certain time——

Mr. Weisman: Yes, March.

Examiner Bennett: The matter, of course, is not so important to us after March, or after April, anyway, as it was during 1935, and I think if you want to ask him about 1935, which, as I understand it, he did pay attention to the Guild stamp, during that

period, why, that is all right. If you want to ask him about 1936, when he did not, that is all right, but do not mix the two together so as to indicate that he testified as to one period upon his observation as to another period.

Mr. Weisman: Very well.

By Mr. Weisman.

Q. Well, in any event, there is no doubt that since the early part of March, 1936, you did not observe your orders as to whether or not they contained the Guild stamp or not? A. That is correct.

Q. So that you have no firsthand knowledge with regard thereto? A. With regard to that latter part? March to date I have not. 2330

Q. All right. Now, I believe that in answer to your attorney's query you gave the Mirror a fine recommendation.

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Weisman: Well, I will withdraw it.

By Mr. Weisman.

Q. You stated that the Mirror Shop of Atlanta, Ga., was a high class, ethical, fair dealing shop—were those not your words? A. No, sir.

Q. What?

2331

Mr. Haycraft: I object to that, Mr. Examiner. It is not proper——.

Mr. Weisman: That is something new, it was brought out here over my objection. Am I bound to accept this statement of this witness?

Mr. Haycraft: It all relates, Mr. Examiner, to subsequent matters not brought out on direct examination.

Examiner Bennett: The fact of the matter is that the testimony had no place in the record.

Mr. Weisman: Your Honor left it in.

Mr. Haycraft: I am asking, your Honor, to strike it out. I move to strike it at this time.

Mr. Weisman: I think you are rather late.

Examiner Bennett: Well, I think it is late.

Mr. Haycraft: I move to strike it out.

Examiner Bennett: But, as I understand, there were objections made at the time. I let the matter run on because I did not want to bother cross-examination if I could help it, but I guess we will
2333 have to draw the line close on you, and I sustain the objection to going into it further.

Mr. Weisman: Exception.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Don't you know that the Mirror still puts the Guild stamp on its orders that is sent to you?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

2334 Q. Now, in your testimony this morning at the hands of Mr. Haycraft, you testified that your business in January, 1935, was $103,728.26; is that correct? A. Yes, sir.

Q. And, notwithstanding the Guild activities in January, 1936, the same month, you had a better month by 20 per cent. or 25 per cent.; is that not so?

Mr. Haycraft: That is objected to, Mr. Examiner; not proper recross-examination.

Mr. Weisman: You brought that out. What do you mean? I objected to all of this.

Mr. Haycraft: May I be heard, Mr. Examiner?

Examiner Bennett: Just a moment, Mr. Weisman.

Mr. Weisman: Excuse me, your Honor; I am a little tired.

Examiner Bennett: Make your objection.

Mr. Haycraft: I further object to it as not proper recross-examination——

Examiner Bennett: Yes.

Mr. Haycraft: —that it is argumentative, and irrelevant to any issues in this case. 2336

Examiner Bennett: I overrule your objection. You brought out that matter.

A. There was an increase of approximately—well, exactly $24,400 some odd dollars.

By Mr. Weisman.

Q. That is approximately a 25 per cent. increase, is it not? A. Well, 25 per cent. over January of 1935.

Q. Yes, yes. A. Yes, correct.

Q. Now, Mr. Haycraft also developed that your business in February, 1934—no, 1935, was $87,877. A. Correct.

Q. But that for the following year, for the same month, it was $24,452. A. Correct. 2337

Q. What was that enormous drop due to? A. As I explained——

Mr. Haycraft: I object, Mr. Examiner. Not proper recross-examination. The witness has already testified on cross-examination about this. And all I did in the world was to put the exact figures in for those three months——

Mr. Weisman: Oh, no, you did not. Excuse me.

Mr. Haycraft: —there should be no further question as to what the figures were.

Mr. Weisman: You did much more before that.

Mr. Haycraft: The witness had testified from memory on the preceding day, and all I did was to put in the exact figures.

Mr. Weisman: You did much more than that. You asked him all about these figures.

Examiner Bennett: Let us not have any further argument. The objection is overruled.

By Mr. Weisman.

2339 Q. That was due to the imminence of this strike, was it not? A. Correct.

Q. And as a careful, prudent merchant, you did not want to be caught with a lot of goods out with the cutters that could not be sent in; is that not so? A. Yes.

Q. And finished in time? A. Yes.

Q. And that is the reason for that drop; is that not so? A. Well, that was the reason for the drop.

Q. You also testified that in March, 1935, your total sales were $134,750 odd dollars; is that not right? A. Correct.

Q. And in the following year for the same month there was a slight increase of $5,000? A. About five—or $4,000.

Q. Or 4 per cent. per month? A. Correct.

2340 Q. That is correct? A. Yes—about 3 per cent.

Q. Now, am I to understand that Wanamaker exacted from you an involuntary promise?— A. I don't quite understand.

Q. —that you would not send copies— A. Wanamaker exacted from me an involuntary promise not to—

Q. Yes. A. —in which form was this promise you are talking about?

Q. That is what I am trying to find out. You testified from Mr. Haycraft that when you made that promise to

Wanamaker's it was not voluntary; then when you promised Wanamaker you would not send them any copies, that it was an involuntary promise. Is that right? A. Are you referring to the warranty stamp?

Q. That is right. A. On Wanamaker's orders?

Q. Yes, yes. A. And that on my part the acceptance of that promise was not voluntary?

Q. I mean the— A. The making of that promise?

Q. Yes. A. Was not voluntary on my part?

Q. Yes; is that your statement? A. It is.

Q. Well, were you willing to keep that promise even though it was involuntary? A. With Wanamaker's account? 2342

Q. Yes. A. I would have; I did.

Q. Do you think that Wanamaker's knew that your promise was involuntary?

Mr. Haycraft: That is objected to.

A. I don't know what they knew.

By Mr. Weisman.

Q. What? A. I don't know what they knew. I——

Q. Did you ever give them any reason to believe so that they would know that they were forcing you into making a promise? A. As far as John Wanamaker Company itself is concerned, I don't know what they believed or what they thought. I believe I can—— 2343

Q. No, I am asking you about John Wanamaker.

Mr. Haycraft: Let him finish his answer; let him finish his answer.

A. I have——

By Mr. Weisman.

Q. Have you told us all— A. I don't know who John Wanamaker is, I mean.

Examiner Rennett: Do not interrupt the witness; let him answer.

A. It is a store; it is no person. I feel that I know the opinion as Miss Cosgrove on the matter of that particular warranty stamp, because we did have occasion to talk things over, about the warranty stamp, as concerning her sales of certain numbers in competition to chain store competition, and so on——

2345

By Mr. Weisman.

Q. Do you know who was in charge of merchandising at Wanamaker's? A. No.

Q. Did you ever hear of Mr. Knox? A. No.

Q. Did you ever hear of Mr. Appel? A. No, I don't believe I have.

Q. Now, let me ask you this: You were asked whether or not it was part of your policy to make such promises on redirect? A. I was.

Q. And I think that you said it was not part of the Trussel Dress Company's policy to make such promises? A. I did.

Q. But you made them? A. I did.

2346 Q. Now, let me ask you this: Is it part of the Trussel Dress Company's policies to make promises with private or secret reservations as to the fulfilment of those promises?

Mr. Haycraft: That is objected to, Mr. Examiner; not proper recross-examination.

Mr. Weisman: Oh, yes, you brought out what his policy was. Now, we will have a little inquiry on this.

Examiner Bennett: Overruled. All right, go ahead. A. I believe——

By Mr. Weisman.

Q. No; is that the policy? A. It was the policy of the Trussel Dress Company——

Q. No. Will you listen to my question, please?

Examiner Bennett: You do not have to answer "yes" or "no"; you may go ahead and answer.

Q. (Question read.) A. It is not their policy to make such—not their policy.

2348

By Mr. Weisman.

Q. But, notwithstanding that you say that you did that with regard to the Jones Company?

Mr. Haycraft: That is objected to. Not proper redirect examination. I did not inquire into the Jones' account.

Mr. Weisman: I have got an instance where it shows he had a different policy.

Mr. Haycraft: Yes, I know, but I did not inquire into that.

Examiner Bennett: I think I will sustain the objection.

Mr. Weisman: All right, exception.

2349

By Mr. Weisman.

Q. Now, on redirect examination this morning Mr. Haycraft asked you over my objection about other buyers; do you remember that? A. I do.

Q. And you testified, if I recall correctly, that other buyers also insisted on this warranty stamp? A. I did not say that other buyers insisted upon a warranty stamp.

Q. What did you say? A. I stated that other buyers had been instructed by their superiors in their New York office not to leave an order without the warranty stamp, and that it was found to be useless to argue with a man who was given instructions by his superior and who could not do otherwise, regardless of any argument.

Q. In other words, these buyers said, in words or substance, to you, that, "We are willing to give you this order with the stamp but we do not want copies of Guild merchandise"; is that not a fair statement? A. No.

Q. Well, is that not what the warranty stamp says?

Mr. Haycraft: I object.

2351

A. The warranty stamp——

Mr. Haycraft: The warranty stamp speaks for itself.

The Witness: It implies that——

Mr. Haycraft: Just a moment.

The Witness: But it does not——

Mr. Haycraft: I have an objection, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, who are some of these buyers?

2352

Mr. Ballon: May I instruct the witness, your Honor, with regard to his rights on this subject matter?

Examiner Bennett: You may instruct him as to his rights, but do it on the record.

Mr. Ballon: May I say, Mr. Lifshey, if you deem it inadvisable, for any reasons, to your own satisfaction, not to answer this question, with the deepest

respect to the Court, I say to you that the Court has no power to compel you to answer this question, because it lacks the power to hold any witness in contempt of Court. I say that so that you may know, if by reason of your voluntary appearance here in Court to-day you feel you are being asked questions which might tend to subject you to embarrassment in the future, you need not answer those questions if you do not want to.

Mr. Weisman: Now, I ask you to answer the question.

The Witness: May I have the question, please?

2354

Q. (Question read as follows:) "Q. Now, who are some of these buyers?" A. I don't remember.

Mr. Haycraft: Read the previous question.

Examiner Bennett: The question has been answered. He does not remember.

By Mr. Weisman.

Q. What is the answer? A. I don't remember any definite buyer.

Q. Is that an honest answer?

Mr. Haycraft: I object to that question, your Honor.

Examiner Bennett: Sustained.

2355

Mr. Weisman: Exception. I think, your Honor, that under these circumstances——

Examiner Bennett: Oh, I do not think—I do not think we are permitted to stand up and reflect upon the witness' rights in this case.

Mr. Weisman: I want, your Honor——

Examiner Bennett: It is very well known that a Tribunal has the right to protect witnesses when, in their judgment, there is needless reflection upon their integrity.

Mr. Weisman: Well, your Honor——

Examiner Bennett: We are not bringing witnesses in here to be insulted.

Mr. Weisman: After a speech like this——

Examiner Bennett: If you want to bring out the facts, or to show that there is no—that this witness is not trustworthy, why, that is one thing, and we will give you full scope. If you want to get up here, do that all right, but if you want to get up here and abuse him, just through your privilege of attorney, why, I am not going to permit that.

Mr. Weisman: Your Honor can see what tran-
2357 spired here.

Examiner Bennett: I have seen.

Mr. Weisman: After this long advice by his attorney that he need not answer, and that the Commission has no power to punish him, and then upon reflection, when I ask him the names of these buyers, he now says, "I don't remember."

Examiner Bennett: Well, if he——

Mr. Weisman: I submit I am entitled to ask him on cross-examination on so vital and important a question, and upon a question which you know——

Examiner Bennett: I have already ruled on this, Mr. Weisman.

Mr. Weisman: But——

Examiner Bennett: I have already ruled on this
2358 and I am not changing my rulings.

Mr. Weisman: All right.

Examiner Bennett: If you will just go ahead.

Mr. Weisman: All right; I have an exception. I further move at this time that all the testimony given by this witness be stricken out upon the ground that this statement that he does not remember is obviously a subterfuge resorted to avoid answering the question.

Mr. Ballon: I ask that counsel's remarks be stricken from the record.

Examiner Bennett: Go ahead.

Mr. Ballon: Very obviously——

Mr. Weisman: I want it in the record.

Mr. Ballon: It is very obviously a reflection on this witness.

Examiner Bennett: I am passing on that. That motion is denied.

Mr. Weisman: Exception.

Examiner Bennett: And I will terminate this cross-examination right here.

Mr. Weisman: You mean your Honor denies me 2360
the opportunity——

Examiner Bennett: Yes, I will terminate it right here.

Mr. Weisman: ——of further opportunity of examining this witness?

Examiner Bennett: It has gone on long enough.

Mr. Weisman: Oh.

Examiner Bennett: You have had more time than the attorney had on redirect.

Mr. Weisman: I respectfully——

Examiner Bennett: You are going over the same ground that you went over before; and I am going to terminate it right now.

Mr. Weisman: Exception. I wish to make this statement for the record. I respectfully except to 2361
the curtailment of my cross-examination at this time on the ground that the curtailment is injuring and destroying the rights of my clients in the premises; upon the further ground that if I were permitted to continue this examination I would be able to show that the witness has an independent recollection of who these buyers were whom he claims to have spoken with, and that by eliciting this infor-

mation I would be in position to show the Commission the falsity of the statements alleged to have been made by them.

Examiner Bennett: All right.

Mr. Weisman: Exception.

Mr. Ballon: May I have the remarks regarding the falsity of this witness be stricken from the record? If that is supposed to be a tender of proof, certainly it is the funniest tender I have ever heard, cannot serve any purpose at all; certainly it is not a legal objection and certainly not an offer of proof.

Mr. Weisman: Certainly it is a legal statement
2363 of my position.

Examiner Bennett: All right.

Mr. Weisman: Thank you.

Examiner Bennett: I am not striking out anything that reflects upon the Examiner.

Mr. Weisman: Oh, what did your Honor say?

Examiner Bennett: I say, I am not striking out anything that reflects upon the Examiner.

Mr. Weisman: Oh, no, nobody reflected—he did not say reflected upon the Examiner.

Examiner Bennett: That statement that you just made that you wanted stricken.

Mr. Weisman: No, he said it reflected on his client.

Examiner Bennett: Well, I do not think it was
2364 intended to reflect on his client especially.

Mr. Weisman: I want to say that there was no intention to reflect on the Examiner, your Honor.

Examiner Bennett: Well, I am not quarreling with you.

Mr. Weisman: All right.

Mr. Haycraft: I have no further examination of this witness.

2365

Mr. Weisman: And I am not permitted to examine you further; so you may go.

Examiner Bennett: Yes; you may go.

(Witness excused.)

Mr. Haycraft: I will ask, Mr. Examiner, that Mr. Ballon take the stand at this time.

Examiner Bennett: Well, we will take a recess for five minutes.

(There was a short recess taken.)

2366

Mr. Haycraft: I now desire to call Mr. Ballon for a few questions.

Mr. Weisman: I will waive the swearing of this witness. He is a member of the New York bar.

Examiner Bennett: He has been sworn already.

Mr. Ballon: I appreciate your courtesy.

CHARLES BALLON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

2367

Q. State your full name, your residence, and occupation, Mr. Ballon. A. Charles Ballon, 240 West 75th Street, New York City, N. Y. I am an attorney.

Q. Have you been employed by a group of manufacturers of ladies' and misses' dresses?

Mr. Weisman: I object to that as immaterial.

Mr. Haycraft: It is a foundation question.

Examiner Bennett: I will allow it as a foundation question and I will see what you are developing.

A. I, personally, was not, but the firm that I am associated with was.

By Mr. Haycraft.

Q. Pursuant to that employment have you been engaged in representing a group of dress manufacturers known as the Popular Priced Dress Manufacturers Association in connection with the practice of returning dresses to them
2369 by retail dealers because of the dresses being registered by members of the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object as incompetent, immaterial, and irrelevant, as leading, and not based upon anything that the witness has heretofore stated; it is a clear cut violation of the hearsay rule, and of no interest in this case whatsoever. It does not correctly set forth the facts furthermore.

Mr. Haycraft: Let the witness testify.

Examiner Bennett: I wish you would chop that question up.

By Mr. Haycraft.

2370 Q. Have you been engaged by the Popular Priced Dress Manufacturers Dress Association to represent them in the matter of the returning of dresses from retail dealers because they were alleged to be copies of dresses designed by the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant.

Mr. Haycraft: It is purely foundation.

Mr. Weisman: You cannot bring in all of this type of matters by representing it as foundation.

Examiner Bennett: There has not been anything beyond that yet. Go ahead and I will see what you bring out and if it is improper I will strike it out.

A. We were requested to render legal advice and initiate legal proceedings to bring about some correction or stoppage of any policies which were improper by reason of the return for the reason that you cited.

Mr. Weisman: I ask that the answer be stricken out as irresponsive, stating a conclusion; incompetent, immaterial and irrelevant. Unless Mr. Haycraft intends to substitute Mr. Ballon for the Commission I am at a loss to see the advisability of this testimony. I am somewhat at a loss to know just where we are going here. 2372

Examiner Bennett: I think I will ask you, Mr. Haycraft, at this point what you expect to bring out?

Mr. Haycraft: I merely expect to qualify this witness, and then through this witness to identify certain documents. That is all in the world I want to do.

Examiner Bennett: The documents relate to what?

Mr. Weisman: What documents?

Mr. Haycraft: Orders, returns, things of that kind. I expect to introduce them in evidence later in this proceeding. 2373

Mr. Weisman: He did not get them.

Mr. Haycraft: How do you know he did not?

Mr. Weisman: He is not in the dress business.

Mr. Haycraft: We will find out.

Examiner Bennett: I will let him go ahead.

Mr. Weisman: May I have the last answer stricken out?

Examiner Bennett: I will strike out the latter part of the answer after the words "We were requested to render legal advice."

Mr. Haycraft: I ask that these documents be marked for identification.

Mr. Weisman: All through this case, Mr. Examiner, your Honor would not permit me to mark documents for identification. I have noticed that my adversary does not even ask the Court whether he should mark them for identification or not, but just hands them to the reporter. I object at this time to anything being marked unless some foundation is being laid for it, and unless I am given an

2375 opportunity to inspect those documents. Certainly, it seems to me, your Honor, I have a right to inspect those documents and see what is being tendered for identification. I am not permitted to do so, and in not being permitted to inspect those documents I think I am being deprived of a very material right.

Examiner Bennett: I do not desire to deprive you of any right which you are properly entitled to. I think it is perfectly proper to have the Trial Examiner control the marking of exhibits as far as that is concerned. This is a very loose practice and probably should be discontinued. I will instruct the reporter now to mark certain documents with the next numbers for identification.

2376

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 336-A and B, 337-A and B, 338-A and B, 339-A and B, 340-A, B, C, D and E, 341-A and B, 342-A and B, 343-A and B, 344-A, B and C, 345-A, B and C, 346-A and B, 347, 348, 349, 350 and 351, and ask you whether or not those papers were furnished you by one I. Feinberg, president of Excellent

Dresses, Inc., of New York, a New York corporation doing business at 501 Seventh Avenue, New York City?

Mr. Weisman: I object to that as immaterial. I do not care who they were that furnished them to him. Obviously these papers cannot be put in evidence this way.

Mr. Haycraft: I am not putting them in evidence but I am simply showing the exhibits to him and asking him to identify them at this time.

By Examiner Bennett.

Q. Proceed. A. Yes, sir; they were. 2378

By Mr. Haycraft.

Q. They were? A. Yes, sir.

Mr. Haycraft: Now, at this time, for the purpose of identification, Mr. Examiner, and only for the purpose of identification, the following documents.

Examiner Bennett: They may be so marked.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 352-A to and including 352-L, purporting to be correspondence between the Mabley & Carew Company, Cincinnati, Ohio, A. E. Stern, and the various parties therein referred to, and ask you whether or not that correspondence was furnished to 2379 you by Sidney Blauner, of Lombardy Frocks, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Objection overruled at this time.

A. Yes, sir.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 353, and ask you whether or not this correspondence between Jomax Frocks and certain retail dealers described therein, and whether that correspondence was furnished to you by Dave H. Jahrmarkt of Jomax Frocks, Inc.?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

2381 *By Mr. Haycraft.*

Q. I show you Commission's Exhibits Nos. 354-A to J, purporting to be correspondence between Solo Dresses, Inc., and the retail dealers named therein, and ask you whether or not this correspondence was furnished to you by Sidney Zucker, Treasurer of Solo Frocks, Inc.?

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 355, an original
2382 letter from Frank & Seder Company, signed Janet Levin, and addressed to Tebo Frocks, 1375 Broadway, New York, under date of November 5, 1935, and ask you whether or not that was furnished you by Mr. Robert Caine, president of Tebo Frocks, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

2383

By Mr. Haycraft.

Q. I now show you Commission's Exhibit 356-A to 356-E, parporting to be correspondence between Eclipse Dress and certain retailers named therein, and ask you whether or not this correspondence was furnished to you by Mr. Jacob Cohn, president of Eclipse Dress Company, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. Yes, sir; it was.

2384

Mr. Haycraft: Those are all the questions I desire to ask this witness at this time.

Mr. Weisman: No cross-examination. I move that all his testimony be stricken out.

Examiner Bennett: I deny the motion at this time. It is Greek to me as far as that is concerned, but I can see some relevancy in trying to trace the custody of these documents. If there is proper identification later that will show where they came from, and that may be vital as an element in final identification. They are not being offered in evidence at this time. It certainly will not go in evidence without further testimony.

(Witness excused.)

2385

Mr. Haycraft: I desire to offer in evidence at the present time Commission's Exhibits Nos. 13-A, 13-B, 13-C, 13-D, 14-A, 14-B, 15, 16, 17, 18, 19-A, 19-B, 20, 21-A, 21-B, 22, 23, 24-A, 24-B, 25, 26-A, 26-B, 27, 28, 29, 30, 31-A, 31-B, 32, 33, 34-A, 34-B, 34-C, 35-A, 35-B, 36, 37-A, 37-B, 38-A, 38-B, 38-C, 38-D, 39, 40, 41-A, 41-B, 42, 43, 44, 45-A, 45-B, 46, 47, 48, 49, 50, 51-A, 51-B, 52, 53, 54, 55, 56, 57-A, 57-B, 57-C, 58,

59, 60-A, 60-B, 60-C, 61, 62, 63-A, 63-B, 64-A, 64-B, 65-A, 65-B, 65-C, 66-A, 66-B, 67-A, 67-B, 68-A, 68-B, 68-C, 69-A, 69-B, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80A, 80-B, 81-A, 81-B, 81-C 82-A, 82-B, 83-A, 83-B, 84, 85-A, 85-B, 86, 87-A, 87-B, heretofore marked for identification in this case, after having been identified by the Witness Post.

Mr. Weisman: I suppose you are going to indicate which each one of those is?

Mr. Haycraft: That will show in the record, yes.

Mr. Weisman: Very well. No objection.

Examiner Bennett: Without objection, they will

2387 be received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 13-A, 13-B, 13-C, 13-D, 14-A, 14-B, 15, 16, 17, 18, 19-A, 19-B, 20, 21-A, 21-B, 22, 23, 24-A, 24-B, 25, 26-A, 26-B, 27, 28, 29, 30, 31-A, 31-B, 32, 33, 34-A 34-B 34-C, 35-A, 35-B, 36, 37-A, 37-B, 38-A, 38-B, 38-C, 38D, 39, 40, 41A, 41-B, 42, 43, 44, 45-A, 45-B, 46, 47, 48, 49, 50, 51-A, 51-B, 52, 53, 54, 55, 56, 57-A, 57-B, 57-C, 58, 59, 60-A, 60-B, 60-C, 61, 62, 63-A, 63-B, 64-A, 64-B, 65-A, 65-B, 65-C, 66-A, 66-B, 67-A, 67-B, 68-A, 68-B, 68-C, 69-A, 69-B, 70, 71, 72, 73, 74, 75, 76, 77 78 79, 80-A, 80-B, 81-A, 81-B, 81-C, 82-A, 82-B, 83-A, 83-B, 84, 85-A, 85-B, 86, 87-A, 87-B, were marked as exhibits and

2388 received in evidence.)

Mr. Haycraft: Mr. Examiner, at this time I will ask for an adjournment until 9 o'clock Eastern Standard Time, 10 o'clock Daylight Savings Time, in Courtroom No. 5, Federal Building, Boston, Mass., on Monday of next week. I have nothing further to present to-day.

Examiner Bennett: It is now 12.40. Have you any witnesses to present this afternoon?

Mr. Haycraft: No, sir.

Examiner Bennett: Why are you wasting all of this time?

Mr. Haycraft: The witnesses on this particular part of the case have proceeded so rapidly that I have exhausted my panel. I have no further witnesses that I can present at this time.

Examiner Bennett: I will give you an adjournment if you do not have any witnesses to present, but I do not think we ought to waste time in this way.

Mr. Weisman: Where do we meet on Monday?

Mr. Martin: Court Room No. 5, Federal Building. 2390

Mr. Weisman: If your Honor please, I should like to request that you have that start at 10.30 o'clock A. M. Daylight Savings Time. I expect to fly to Boston and the plane leaves here so late that it will not get there before that time.

Examiner Bennett: We will adjourn to reconvene in Courtroom No. 5, Federal Building, Boston, Mass., at 9.30 o'clock A. M., Eastern Standard Time.

(Whereupon, at 12.45 o'clock P. M., July 24, 1936, the hearing in the above-entitled matter was adjourned.)

2391

Court Room No. 5, Federal Building, Boston, Mass.,
July 27, 1936.

Met, pursuant to adjournment, 9.30 A. M.

Before: JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

2393 MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: Be in order, please. This hearing is reconvened to Boston, Mass., from New York, N. Y. You may proceed, Mr. Haycraft.

Mr. Haycraft: Mr. Seegal, will you take the witness stand, please.

2394 S. M. SEEGAL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Give your full name, Mr. Seegal, please. A. Samuel M. Seegal.

Q. "M" like in Morris? A. Yes, "M" like in Morris.

Q. Where do you live, Mr. Seegal? A. 630 Dedham Street, Newton Center.

Q. Massachusetts? A. Massachusetts.

Q. Your occupation? A. Assistant to the merchandise manager and vice-president of Filenes—William Filene Sons Company.

Q. In what business is the William Filene Sons Company engaged? A. In the retail store business.

Q. Where does it have its place of business? A. 436 Washington Street, Boston.

Q. Does it have more than one store? A. It has a subsidiary corporation, R. H. White Company, also the Continental Clothing Company of Boston, and then it has 2396
branch stores in several cities and towns in New England, such as Portland, Maine, and so forth.

Q. Will you name those other cities? A. Portland, Maine; Worcester, Massachusetts; Hyannis, Massachusetts; Falmouth, Massachusetts; Providence, Rhode Island; Northampton, Massachusetts; Wellesley, Massachusetts. I may have missed one or two more, small shops.

Q. These branch stores, such stores as you refer to, in these other cities, what type of merchandise do they sell? A. They sell primarily garments and, in a small way, accessories. They do not carry all the lines carried in the major store, but they do carry the outstanding lines.

Q. That is, what, ladies' or men's garments? A. With the exception of the Worcester store, they only carry 2397
ladies'. By "ladies'," I mean women's, misses', and girls', and so forth. The Worcester store is the only store that carries the men's garments.

Q. Now, your main store, of course, carries a full line? A. The main store carries a full line of women's, misses', children's and men's clothing, outer garments, intimate wear, and accessories, and so forth. Primarily, it is a large specialty store as contrasted with the department store which would carry piece goods, and so forth.

Q. The R. H. White Company you mentioned a few moments ago, that is a department store? A. That is a department store, and that carries a full line.

Q. What are your duties with respect to the stores you have named? A. My duties are as staff assistant to the merchandise manager and to the vice president.

Mr. Weisman: Would your Honor ask the witness to be good enough to mention this man by name? He says "merchandise manager and vice president." He has repeated it twice, and the name of the man to whom he is the assistant and who is the merchandise manager and vice president, we
2399 would like to have that name.

Mr. Haycraft: Mr. Examiner, I think proper opportunity will be given to counsel for the respondent on cross-examination if he does not have the full details in my direct examination. I do not like to be interrupted.

Examiner Bennett: All right. There isn't any secret about the name, I suppose?

Mr. Weisman: No——

Examiner Bennett: There isn't any secret about the name, is there?

The Witness: As far as I am concerned, there is no secret.

Examiner Bennett: Now, go ahead and give it,
2400 then.

The Witness: The merchandise manager is Mr. Arthur W. Wright.

Examiner Bennett: All right.

The Witness: The vice president is Mr. Louis E. Kirstein.

By Mr. Haycraft.

Q. Will you continue to give the statement of your duties? A. My duties are to assist both those gentleman in the general merchandising of the store and about the store.

Q. Do you have anything to do with the buying of ladies' dresses? By "ladies'," I take the same definition you gave a moment ago. A. Yes, we oversee the buying, because the divisional merchandise managers under whom the buyers function report to Mr. Wright who, in turn, reports to Mr. Kirstein.

Q. Who are the merchandise managers for the ladies' dresses? A. There are three divisional merchandise man- 2402
agers for the dresses—one is Mr. Drew——

Q. What department is he in? A. Mr. Drew has charge, in a general way, of the women's dresses, as well as women's coats and misses' coats.

Q. Any particular price range? A. He has all price ranges in women's merchandise.

Q. All right. A. Mr. Gross has charge of the corresponding misses' departments, generally speaking. The sportswear departments, women's and misses' sportswear, are under Mr. Zerkowsky.

Q. Now, in what ways, if any, do you contact these three individuals you have mentioned as merchandise managers? A. These men are seen on an average of several times a day in connection with the performance of their duties. All 2403
merchandise which they buy must be approved. The orders for such merchandise must be approved and confirmed by the merchandise office, and any other of the mechanics of buying, such as that, come directly under the merchandise office.

Q. Just what is your relation to the— A. To approve such orders, disapprove such orders, to aprove returns of merchandise, cancellations, or any other of the mechanics of keeping—of getting the supply of merchandise into our

business. We also naturally see them about the conduct of the business, the course of the business, and anything else that would have to do with the operation of their department.

Q. Now, what, if anything, did these buyers have to do with the sales end of the business in their departments? A. The buyers are responsible for the getting of the business, getting the sales. That is their prime responsibility, of course, because, naturally, without the sales there cannot be any profits, and that is what they are hired for. The divisional merchandise managers, naturally, have responsibilities, see that the buyers under them get the sales and
2405 profits and they, in turn, are responsible to Mr. Wright whose job it is to see that the main store gets the sales and profits.

Q. In your supervision of the activities of Mr. Drew, Mr. Gross, and Mr. Zerkowsky, do you exercise any supervision over the sales end as well as the buying end? A. Oh, yes.

Q. Do you check up from time to time to see the trend of sales? A. We check daily to see how the individual departments under their supervision are doing, through the daily sales sheets.

Q. Now, are you familiar with the Fashion Originators Guild of America, Inc., the respondent in this case? A. Yes.

Mr. Weisman: Just a moment. I object to the
2406 form of the question. "Are you familiar with?" I do not know how one is familiar with a corporation, or what it is. Does he mean has he heard of it, or does he know of it? If that is so I have no objection. I certainly——

Examiner Bennett: I presume that will develop as the witness is further questioned; overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. When did you first learn of the Fashion Originators Guild of America, Inc.? A. I first learned of the Fashion Originators Guild, that is some three or four years ago when we received a communication——

Q. Two or three years ago. Can you make it any more definite than that? A. I think I would have to consult my records.

Q. All right, consult them, you may do so. A. (Witness refers to papers.) I could not make it any more definite. I believe it was probably around 1932 or 1933.

Q. During that period of time that you first learned of the National—of the Fashion Originators Guild of America, Inc., until April, 1936, did you cooperate in any way with the Guild in its activities? A. We cooperated with the Guild in its activities up to the time that we were red-carded, which was in February, 1936. 2408

Q. First, I will ask you what form the cooperation took that you referred to with the Guild; and by "you" I refer to the Filene Store? A. The Guild explained to us their program of eliminating style piracy in its form as it existed in the dress business primarily. We were in sympathy with eliminating style piracy in the dress business. However, we had certain reservations in joining with them in eliminating style piracy, the chief reason, or, rather, the chief reservation being that we could not agree to anything which would leave us in a bad competitive position. We joined with the Guild, or signed—we submitted a letter of cooperation to the Guild in which we—— 2409

Q. After you submitted this letter, then what, if any, cooperation did you give to the Guild? A. I should like to make that clear, the letter contained——

Mr. Weisman (interposing): Leave the letter out. The letter is the best evidence of what was in it.

By Mr. Haycraft.

Q. Just tell us what you did. A. We cooperated with the Guild through the mechanics of their organization as far as—we put a stamp on our orders of merchandise——

Q. (Interposing) You put a stamp on your orders for merchandise? A. Yes. That stamp that we put on our orders for merchandise saying that, in effect, if this merchandise were found to be, or was copies——

Mr. Weisman: I object to that. Why not show him the stamp? Do you have the stamp here? That would be the best evidence of what it contained.

2411 Mr. Haycraft: What exhibit number is that?

Mr. Weisman: That is Exhibit 306 for the Commission, as I recall.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 306, and particularly the green ink stamp thereon. I will ask you if that is the stamp that you refer to? A. I believe we had our own stamp which was slightly different in wording from this stamp, but that is exactly—rather, it is substantially the subject matter of the stamp, but those words—I believe it is not in the exact form as our stamp.

Q. Would you mind repeating that answer? I did not hear you. A. I believe we had our own stamp which was slightly different in form from this stamp, but this was
2412 substantially the subject matter of the stamp; that is, I believe it is in approximately the same form, but it is not exactly the same stamp.

Q. All right. You placed that stamp, whatever it was, on the order. We will get the stamp later. What happened after that? A. When merchandise came into our store, if it developed or happened that that merchandise was copies of Fashion Originators Guild numbers of

dresses, and it was called to our attention, we would return that merchandise to the Fashion Originators Guild as requested to do so by their shopper——

(There was a discussion off the record.)

A. Thank you for calling my attention to that error—we would return it to the manufacturer of that merchandise.

By Mr. Haycraft.

Q. What about the balance of the testimony about the shopper?

2414

Mr. Haycraft: Read the latter part of the answer before the discussion.

(Latter part of the answer read.)

By Mr. Haycraft.

Q. Who was their shopper? A. The name of the shopper was Miss Katherine Brady, who worked for the Fashion Originators Guild, Inc., and covered Boston; I do not know where else.

Q. Did you ever meet Miss Brady? A. Yes.

Q. Have you ever met Miss Brady in the store in the course of her duties? A. I have seen her since and before.

Q. What was her activity in your store in the course of her duties—what was she doing? A. She was shopping these departments to see whether we had any copies of Fashion Originators Guild of America, Inc., merchandise. 2415

Q. What departments did she shop? Did she shop those to which you have referred a while ago? A. She shopped the garment, all garment departments.

Q. How many did you have, the three that you named here? A. The departments supervised by the three divisional merchandise men.

Q. When did Miss Brady—I withdraw that. When did you first observe Miss Brady carrying on her duties in that respect? A. In the—the first time that I observed her was in the fall of 1935.

Q. Can you give us the month? A. I believe it was somewhere around September or October that I observed her.

Q. Are you now in a position to testify as to the instances, or the number of instances, or the number of garments that were returned to manufacturers in the manner that you have described? A. Yes.

Mr. Weisman: I object to that. That is an obviously unfair question, and I ask that it be stricken
2417 out. I submit that this witness should be permitted to testify to such facts as he knows and not as to what he thinks might have been the fact. I ask that he be allowed to testify only as to such facts as he has in his own possession and is, therefore, properly equipped to testify thereto. It is for the Court to determine whether he is in a position to testify to those facts. If this witness is permitted to give a conclusion as to what he thinks he is permitted to testify to then the position of the Examiner is usurped and the Tribunal is taken over by the witness, himself. I believe that your Honor made that that same observation, himself, in connection with objections made by Mr. Ballon while we were re-
2418 ceiving testimony in New York last week.

Examiner Bennett: This is different. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Will you do so?

Mr. Weisman: I object. No proper foundation has been laid for any such opinion of this witness. It is clearly the result of hearsay, does not afford us

2419

an opportunity for cross-examination, is entirely and fundamentally prejudicial to the essential rights of the respondents herein; is incompetent, immaterial, irrelevant, illegal, and has no proper bearing upon the issues in this case; is obviously a collateral matter, and hearsay in its worst form. It combines not only hearsay but a conclusion of the witness.

Examiner Bennett: I have passed upon that before.

Mr. Weisman: If your Honor please, I am objecting now, and addressing my objection to the second question which contains all of the vice of the former question, with many additional and aggravated attendant vices all its own.

2420

Examiner Bennett: I thought I passed upon that before.

Mr. Weisman: No, your Honor, that is an additional question itself springing from the vice of the former.

(The previous question, answer, and pending question were thereupon read.)

Examiner Bennett: You may have your same objection to that.

Mr. Weisman: And the ruling?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2421

By Mr. Haycraft.

Q. Answer the question. A. We returned 220 dresses to manufacturers after being requested to do so by the Fashion Originators Guild of America, Inc., up to the time that we were red-carded. That figure is somewhat approximate. I am sure of the 220. There may have been as many as 230.

Q. You are positive as to the 220? A. Right.

Q. Can you testify as to the time that those returns were made; as to the dates and the occasions thereof? A. Yes.

Q. Can you also testify as to the name of the manufacturer to whom they were returned? A. Yes.

Q. Will you please do so?

Mr. Weisman: Same objection.

Examiner Bennett: Same ruling.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

2423 Q. Answer the question. A. On November 23 we returned to the Silver Palm twelve dresses. On November 25 we returned to the New Emporium twelve dresses. On November 4 we returned to Lombardys twenty dresses.

Q. May I interrupt? A. Yes.

Q. Can you, as you go along, connect these up with the sources and where they are located? A. These sources, I believe, were all located in New York.

Q. City? A. Yes.

Q. Proceed. A. On January 20, this year, we returned to Lok Dress Company fourteen pieces.

Q. Pieces? A. Yes. On December 16 we returned to Classic Company two pieces. On December 10 we returned to the Classic Company three pieces. This is the same company. On January 30 we returned to Laura Lane ten

2424 pieces.

Q. Ten? A. Yes.

Q. On your next date? A. On January 18 we also returned to Laura Lane eight pieces. On February 7 we returned to Laura Lane six pieces. On November 12 we returned to Wil-Mac two pieces. On November 14 we returned to Wil-Mac thirty dresses.

Q. To Wil-Mac? A. No. I beg your pardon. On November 14 we returned to Excellent Dresses thirty pieces. On November 19 we returned to Calmec——

Q. How do you spell that? A. C-a-l-m-e-e—I do not think it is spelled correctly, though, and I will check that later—eight dresses. On November 19 we returned to Al Hartmann five dresses. On November 19 we returned to Better Modes five dresses. On November 25 we returned to Jomax fifteen dresses. On November 25 we returned to Jomax fifteen—twenty-five dresses. This was a separate return to that same company although it was made on the same day. In other words, on one day, November 25, we returned fifteen dresses, and on the same day, some time later in the day or earlier in the day, as the case may be, we returned twenty-five dresses. On December 6 we returned to Feinberg & Weisen seven dresses. On December 27 we returned, also, to Feinberg & Weisen, twenty-two dresses. On November 15—November 5—we returned to Constantines seventeen dresses. I believe that will total up 220 dresses. 2426

Q. Do you recall the occasion when the red carding took place that you spoke of? A. Yes.

Q. You do? A. Yes.

Q. Will you, briefly, testify how you came to first know that you had become red carded and by "you" I mean the Filene Store? A. We received a telegram, I believe a night letter, from Mr. Post, I am not sure of the exact date, that will appear in the night letter; I believe we received in the office on Monday morning—I am not even sure about that—saying in substance—— 2427

Mr. Weisman (Interposing): I object to this witness stating the substance of the document. The document will speak of itself.

By Mr. Haycraft.

Q. You need not mention the contents of the document. What month was it? A. February.

Q. February? A. Right.

Q. Can you give us the date? A. No. I cannot give you the date.

Q. No? A. No.

Q. Can you give the approximate date, whether it was early part or the latter part of February? A. Early—early part of February, we had the second—yes, I should say the first—the early part of February. Do you want me to tell what it said?

Q. No. You cannot tell what the telegram said or Mr. Weisman will object to it.

Mr. Weisman: I certainly will.

2429 *By Mr. Haycraft.*

Q. The telegram is the best evidence of what it said. I will ask you upon receipt of the telegram what, if anything, you did? A. Upon receipt of the telegram it was considered by the management of our business as being——

Mr. Weisman (interposing): I object. I move that that be stricken out, "It was considered by the management of our business"; it is irresponsive, incompetent, immaterial, irrelevant, illegal, and prejudicial to the rights of respondent. He was asked what he did and not what somebody considered. We cannot be the subject of conclusions here.

Examiner Bennett: I will let him answer.

2430 *By Examiner Bennett.*

Q. Can you answer what you did and then if you want to bring out why you did it we will consider that later. A. Upon receipt of the telegram I took this up with the management of our business.

By Mr. Haycraft.

Q. Then, what did you do? A. We did nothing about it. Q. No? A. No. We did nothing with it. That is, I mean

to say, we did not make a reply, and considered the telegram. We did not reply to the telegram. We were notified through our New York office that they believed that we were red carded.

Mr. Weisman: I object as stating a conclusion and hearsay.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Did you make any attempt to—strike that out—what was the next occurrence, either serially or chronologically? A. The next occurrence was that all buyers of ours notified 2432
us that they were denied access to these various manufacturers.

Q. Just stop right there for a moment. Who were your buyers at that time? A. I cannot give you the names of the buyers who were denied access except by saying that they were practically all denied access as they went to the manufacturers to purchase goods.

Q. Can you testify as to the names of Guild members from whom you have been purchasing ladies', women's, children's dresses—ladies', women's, misses' dresses prior to the time you were red carded? A. Yes.

Q. Will you do so— A. Yes.

Q. Have you a list there that you can use for that purpose? A. I have a list here. 2433

Q. You have? A. Yes.

Q. Was that prepared pursuant to your direction? A. That was prepared that way; yes, sir.

Q. Are you satisfied it is correct? A. Yes.

Mr. Haycraft: I offer this in evidence and ask that it be given the Commission's next exhibit number, which I think will be Commission's Exhibit No. 357.

Mr. Weisman: I have no objection to the admission of this list in evidence if it were not for the fact that the form of the question which I believe is in a form inadvertently made, which renders it, in my opinion, ineligible for admission. The question has been propounded "Have you a list of members of the Guild with whom you did business?" Quite frankly this witness does not know first hand that all of these members are members of the Guild. It is obviously impossible, and, of course, I knew in looking over the list that some of them are not. If it is offered as a list of people with whom he did
2435 business and then for that purpose we can independently show from the record which of them are members of the Guild, I have no objection, but in the form of the question which would seek to conclude that all of these people are members of the Guild, I object because this witness can only believe that these men are members of our Guild. I object to that when it is offered under a question in that form unless it is limited to show some of the people they were doing business with at that time, and as as to perhaps he had certain beliefs.

Examiner Bennett: Have you checked it with the Guild management and know that your statement is correct as to that?

2436 Mr. Weisman: Yes, sir. I called them over and we checked over this list and they observed certain ones immediately, so they tell me.

Mr. Haycraft: Of course, the question is "at the time," Mr. Examiner. As I understood the testimony, it was at the time the exhibit was prepared, or at the time I inquired about it. There may have been some changes in the Guild membership since that time.

By Mr. Haycraft.

Q. What date was this list prepared upon, or as of? A. This was prepared around April, some time around April of this year. At that time—do you want me to go any further?

Q. Well——

Mr. Weisman: I object. He has answered the question.

Examiner Bennett: Go to something else.

By Mr. Haycraft.

Q. Were they, to the best of your knowledge and beliefs, 2438
members of the Guild? A. To the best of my knowedge and belief at that time, why, they were members of the Guild, yes.

Examiner Bennett: Very well.

Mr. Haycraft: With that understanding of it, I offer it in evidence.

Examiner Bennett: It is not vital as to that now?

Mr. Weisman: It is only his understanding, and in that event I have no objection because I think it is clear, now, as to what the situation is.

The Witness: I would like to change that answer. May I change that answer; to the best of my knowledge and belief these were members of the Guild at 2439
that time, or had been members of the Guild prior to that date.

Examiner Bennett: You may make that statement for the Guild. The exhibit is received in evidence.

(List of Guild Houses with whom the William Filene Sons Company did business during 1935-1936 was marked Commission's Exhibit 357, and received in evidence.)

By Mr. Haycraft.

Q. You were testifying previously as to the fact that certain of your buyers, I believe you said all of your buyers, were denied access to certain of the manufacturers after you were red carded. Do you recall any of the firms to which they were ever denied access, and which buyers were denied such access?

Mr. Weisman: I object. This witness could not possibly know except by what the buyers told him as to what happened when they called upon anybody, and upon whom they called. I submit to your Honor that I do not want to unduly delay this matter by objecting, but this seems to me to be wholly improper. Such testimony as this denies to us a fundamental and vital right in the way of cross-examination or in presenting evidence upon our part. Furthermore, the witness has just testified in his own direct testimony that he does not even remember the names of the buyers nor upon whom they called. Now, he is going to testify as to what the buyers said to him about something which is alleged to have taken place without his presence and without his knowledge.

2441

Examiner Bennett: Of course, I will ask you to bring out in that sort of a question the time when this is supposed to have taken place, and who was present.

2442

Mr. Weisman: If the question was read I am sure you would see the vice of it.

Examiner Bennett: Read the question.

(Question read as follows: "Q. You were testifying previously as to the fact that certain of your buyers, I believe you said all of your buyers, were denied access to certain of the manufacturers after

you were red carded. Do you recall any of the firms to which they were ever denied access, and which buyers were denied such access?")

The Witness: Yes, I do.

Mr. Haycraft: Your Honor, after the reading of the question just now the witness has stated that he does know that. Inasmuch as he has stated that he has the knowledge with which to answer it, I submit the objection is ill taken.

By Mr. Haycraft.

Q. Tell what buyers there were, and so forth; give the names of the buyers and then name the manufacturers if you can. 2444

Examiner Bennett: I overrule the objection.

Mr. Weisman: May I have an exception to all of this line of testimony?

Examiner Bennett: Exception granted.

A. Miss Morrissey was denied access to the firm of Marcus in Boston.

By Examiner Bennett.

Q. That is, she so stated to you? A. She so stated to me, and Mr. Marcus, himself, so stated to me.

By Mr. Haycraft. 2445

Q. Next? A. Miss Peddington and Miss O'Brien were denied access to the firm of Bernard Appel in Boston. Miss Kolensky was denied access to the firm of Weinstein-Entin, Boston, Mass. Those are the cases I know of from both sides, both from the buyer side, the buyer telling me, and from the manufacturer's side, the manufacturers telling me. The other cases from New York, the buyers have

told me, I do not recall the names of the manufacturers that each buyer told me in New York. They were, however, their regular sources of supply.

Q. How many buyers do you have in New York? A. What is the question?

Q. How many buyers do you have in New York? A. I would like to make that clear. These are our buyers in Boston who went to New York.

Q. Those were your buyers in Boston who went to New York to buy? A. Yes, and information—pardon me. We have no buyers, as such, in New York.

Mr. Weisman: What was the original question?

2447

Q. (Question read.) A. We have no buyers, as such, in New York. We have shopping scouts, resident people in our New York office, who function for the Boston organization, however.

By Mr. Haycraft.

Q. Well, I will ask you whether or not you had any orders outstanding at the time that you were red carded? A. We did.

Q. You did? A. We did.

Q. Were they filled? A. What?

Q. Were they filled? A. They were filled under a——

Mr. Weisman: I object. I submit that the answer "They were filled" is sufficient.

2448

A. (Given concurrently with the objection) —under a court order or agreement.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Was there any delay in the filling of the orders? A. Yes, sir.

Q. How long was the delay? 2449

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant; prejudicial to the rights of the respondents herein, and a conclusion of the witness. Let him state what happened and then the Court can determine whether or not they were delayed. Again, counsel is asking the witness to usurp the position of the Federal Trade Commission and of your Honor, the Examiner.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2450

By Mr. Haycraft.

Q. Answer the question. A. What was the question?

Mr. Haycraft: Read the question.

Q. (Question read.) A. There was a delay in the filling —I am not sure what you mean by that question—if might explain——

Mr. Weisman (interposing): I submit that the witness should be advised if he does not understand the question he does not have to answer the question. He does not have to do anything unreasonable. If he does not understand the question I would ask that he be asked another question.

2451

Examiner Bennett: If you do not understand the question just do not answer it. Let counsel ask you another question. Give him time to revise his question.

The Witness: Yes, sir.

By Mr. Haycraft.

Q. How long does it usually take; and, what is the customary thing as to the length of time after the order is placed until it is delivered or filled?

Mr. Weisman: I object as incompetent, immat
rial, and irrelevant; no proper foundation has be
laid for this question; this is an improper questio
It does not lay the basis for a proper cross-examin
tion by the respondents, and is inimical to the su
stantial rights of the respondents herein. To deli
eate this matter further, different types of dress
take different times to fill I think the Court w
take judicial notice of the fact that it depends up
the manufacturer's condition; it depends upon t
value of the account; it depends upon the type
dress; it depends upon the price of the dress;
2453 depends upon the time of the year; it depends up
the condition of the market as to supplies; it d
pends upon the condition of the market as
deliveries and demand; also, on all of these thin
and other things. To have this man testify as
somebody else's business, for another thing,
manifestly improper. He cannot know as to t
multifarious conditions that obtain in another ma
business, and it is improper as a question; and, fu
thermore, it has no relevancy or probative weight
value if the question were answered.

The Witness: I believe I can answer the que
tion.

Mr. Haycraft: Mr. Examiner, the witness sa
he can answer the question.

2454 Examiner Bennett: Overruled. You may answ
it if there is any such time as that.

The Witness: The time of filling orders in o
type of business varies anywhere from three da
perhaps, or immediately, if there is stock on han
upto about four to six weeks.

Mr. Weisman: I object and move to strike. T
answer is clearly too vague to be of any value, a

as it stays in the record it constitutes an unanswerable menace to the substantial rights of the respondents.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. When were these orders filled? A. These orders were filled about two to three weeks, because it took two to three weeks after we were red carded for the agreement, the court agreement on that subject to be effectuated.

Q. Did you attempt to place any reorders? A. We attempted to place reorders—after we were red carded? 2456

Q. Yes. After you were red carded, did you attempt to place any reorders? A. We attempted to place special orders. We attempted, originally, of course, to find out whether the manufacturer would ship us merchandise on reorder, and we were quickly told they would not. We then attempted to place special orders, because we had size No. 36, or No. 38, or No. 40 in dresses in stock, and a customer would come in for size No. 42, who was the size No. 42, and she saw a dress and as a regular procedure in our business she asked us if we would get her that size——

Mr. Weisman (interposing): I ask that all of this evidence be stricken out. I also, at this time, wish to call the Court's attention to the inherent vice of all this testimony; that is, that we have all 2457 of this being put in and it is not what this witness knows but it is what somebody else has said or what somebody else has done, or what somebody else knows, and then this witness is just testifying generally concerning something that he did not have first-hand knowledge of. It is his conclusion from what somebody else told him. Somebody went to New York. Somebody talked to a customer. He

did not place these reorders. Somebody placed them. He has said those somebodies are here in Boston and would certainly be available to testify. We are denied the right of cross-examination.

Therefore, I ask that all of this sort of testimony by this witness be stricken out, and I ask that the examining attorney be requested to confine himself—the man who is conducting the examination for the Commission in chief—to confine himself to matters of which this witness has direct knowledge. I submit this type of examination is entirely unfair, and highly prejudicial to the substantial rights and

2459 interests of our client. We are absolutely blocked out from any reply to such generalizations, speculations, conclusions and interpretations of the speculations, conclusions and opinions of others who are not even here.

We are here to meet evidence, but not the thoughts of this gentleman or his speculations or his beliefs or interpretations or conclusions or opinions or prejudices, if you will, or other colorings which he may have placed upon what somebody else told him, which, in turn, may be subject, and undoubtedly is subject to the same objections.

Mr. Haycraft: Is it necessary for me to answer that, if your Honor please?

Examiner Bennett: No.

2460 Mr. Haycraft: I think, Mr. Examiner, you are sufficiently familiar with the rules of our practice before the Commission to make a ruling upon that without my saying anything.

Examiner Bennett: As a general objection to this line of testimony, the Examiner overrules it. I think that this witness being vice-president and an executive of this concern is entitled to state what was told him by his employees in the regular course of his business.

Mr. Weisman: He is not the vice-president of this company.

Examiner Bennett: —dealing with practices and styles and all of that sort of thing, things that he is testifying about. In this Court it is not necessary to call all of these people in order to get that type of information; it is not necessary for him to have, personally, been there—to have had a personal transaction. He is testifying from things received in the regular course of business, information secured in the regular course of business which is perfectly good testimony.

I will overrule objections on the hearsay basis to 2462
testimony of this sort.

Mr. Weisman: Is it overruled upon the other bases I raised?

Examiner Bennett: Yes.

Mr. Weisman: May I have an exception?

Examiner Bennett: Granted.

By Mr. Haycraft.

Q. Answer the question. A. Where was I——

Mr. Haycraft: Read the answer so far as given.

(Answer read as far as given.)

A. —we would ask the manufacturer to ship or order the dress and he would ship us that dress. We ordered 2463
these dresses on special order and the answer would be "no." We, therefore, disappointed the customer.

We had a similar experience with a wedding dress which caused great hardship.

By Mr. Weisman.

Q. What do you mean; the girl could not be married unless she could buy a dress from Filenes? A. We had half of the dress and the other half we did not have.

Q. You do not mean the girl had to have two wedding dresses? A. We had half of the bridesmaids' dresses. We did not have the other half which was very serious to the person getting married.

Q. Did she, as a matter of fact, get married? A. I think she did.

By Mr. Haycraft.

Q. Since February, 1936, have you been able to purchase any more garments from manufacturers from whom you had been buying who were members of the Guild? A. We have not.

2465 Q. When was the last time you made an attempt to do so? A. We ceased attempting to buy dresses——

Mr. Weisman (interposing): May we have an exception to that? The examining attorney asked him the last time he tried to buy. Now, he is telling us when he ceased attempting to do so.

Examiner Bennett: He is telling you what was asked, I believe.

By Mr. Haycraft.

Q. Can you answer my question directly? A. What was the question?

Mr. Haycraft: Read the question.

2466 (Question read.)

A. We attempted time after time—I am just trying to tell you—if I am answering it wrong let me know.

Examiner Bennett: The objection is overruled. You may answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

Mr. Haycraft.

Q. Answer the question. A. May I have the question ain?

Q. Yes.

(Question read.)

A. We attempted to buy dresses for a short time, about week or two, from members of the Guild in order to find t whether or not each and every member that we did siness with would do business with us or not in spite of e Guild red carding. I should say that that lasted maybe out two weeks just to find out how earnest they were.

2468

Q. What did you—what effect did that have, the inility to get dresses or garments from these Guild manucturers, upon the business of William Filene Sons Comny as you observed it?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, calling for a conclusion of the witness' mind, for an operation of his mind, for his opinion, and his interpretation upon certain acts, things and so forth which this Court is here to decide. He is usurping the very function of the Commission. He can tell us what happened, but after all the effect is something that is to be attributed, or might be attributed to any number of things. If this witness is going to state the effect of certain things, then there is no use of the Commission hearing this case.

2469

Examiner Bennett: I will ask you to lay the proper foundation.

Mr. Haycraft.

Q. First, I will ask you this question: What range of iced dresses did you buy from the members of the Guild?

We bought dresses retailing as high as——

Q. (Interposing) No, I do not want the retail prices. Give us the wholesale prices. A. Wholesale?

Q. Yes. A. From the lowest price that we have in their membership, it was around—by various stages, we have some at $3.75, some of them.

Q. When did you have that? A. When?

Q. Yes. A. Towards the end we had that price. Up to when the Guild—well, just answering the question, up to, in our field, about $30 or so, in a very small way.

Q. What was the bulk of the dresses—at what price were the bulk of the dresses? A. The bulk of the dresses we bought were around a wholesale price of $6 through
2471 $10, the largest part of the business is $10.75; substantial business being done at $16.75, but not as much, naturally, as $10.75. The lowest big price that we do a substantial business at is $16.75.

Q. Now, to your knowledge, how long a period of time did the Guild include in its membership the lower brackets; that is, the $4.75 to, well, let us say, to below $10.75?

Mr. Weisman: Objected to as immaterial, it is not in this witness' knowledge, the facts will be elicited in this trial.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: I object to that as being wholly immaterial. The facts will be developed. I mean,
2472 as a matter of fact, I call your Honor's attention to the facts as already developed, in that all of the by-laws and memberships and everything is now in evidence.

Examiner Bennett: I will overrule the objection and let the witness answer.

Mr. Weisman: Exception.

The Witness: What is the question?

(Question read.)

A. We were—only in the late fall of 1935 did the Guild bring in to their membership low-priced—those low-priced manufacturers.

By Mr. Haycraft.

Q. But prior to that was the $10.75 the lowest-priced dress, wholesale price, that you paid to your Guild manufacturers? Or were there some $8.75? A. Well, some were around that range.

Q. Now, were these dresses that you bought from Guild members sold in all three departments that you have referred to in your testimony, women's, misses' and sportswear? A. Yes. 2474

Q. Have you made any study of the business of Filenes in these three departments of the dress business to determine the effect that the inability of Filenes to buy dresses from members of the Guild had had upon the business of these departments?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant, and no proper foundation laid; calling for a conclusion of the witness, and based upon an hypothesis of which there is no proof of the truth in this record.

Examiner Bennett: Overruled; he may answer.

Mr. Weisman: Exception.

By Mr. Haycraft. 2475

Q. What investigations, or what study, did you make? A. We—I participated in the study which was made——

Mr. Weisman: May we have the extent of the participation in the record so it may appear clearly what this witness knows about this thing?

Examiner Bennett: Yes.

Mr. Weisman: He says, "I participated." That might mean he walked across the room when someone was thinking about it.

Examiner Bennett: Yes, go ahead.

A. My immediate superior, Mr. Wright, and I, on April 11 decided we wanted to find out just how seriously our business was being affected by the red carding, by our being denied access to our regular sources of supply——

Mr. Weisman: May it please your Honor, I certainly deprecate interfering or interrupting the witness, but I submit to your Honor when he starts out
2477 and says, "Mr. Somebody and myself decided that we wanted to do this, that, or the other thing," we have an improper piling up in the record of something which is entirely incompetent.

Examiner Bennett: I think that is what you asked for, Mr. Weisman.

Go ahead. Objection overruled.

Mr. Weisman: Exception.

(Answer read.)

A. (Resumed) We took the various departments and made a study of how those departments had been doing prior to the red carding, how those departments had been doing subsequent to red carding, in conjunction with the figures
2478 of the store as a whole, so that we would have a proper guide to whether or not business was bad in those departments, because, say, the weather was bad or something else, and the many reasons that may affect business, and we proceeded on that basis.

The study which we made convinced us that we had a loss of business up to that time, April—that is through April—convinced us we had loss of business of approximately $100,000. In order to check the accuracy of our

estimates we asked the three merchandise managers whom I have already referred to, to make an independent study, with no knowledge whatsoever of our study, as we did not tell them our conclusions.

We further asked them in making their study to list the actual items of merchandise which they found they could not buy in the new sources of supply that they had to go to, so as just not to deal with the figures but to deal actually with items of merchandise. They worked this out with their buyers, and their study checked so closely with ours that we felt that the $100,000 figure was a good and conservative estimate.

In addition, of course, to the effect on the sales volume, 2480
we felt that there were other serious effects on our business, for example, being used to dealing with certain definite sources of supply we knew how they made their merchandise, we knew what types of merchandise they made, would fit, and so forth, and sell in our store.

In experimenting with new sources of supply we had the problem of mark-downs, because not being used to these manufacturers, new ones, most of whom were not anywhere near as good sources of supply as the Guild manufacturers, we had evidence that our mark-downs were being increased through this experimentation.

The only other effect that we felt on our business which we could not prove the figures, was loss of good will. For example, we had people—we have a series of shops in our 2481
store. One shop, for example, the French shop, where we have the highest-priced merchandise, primarily dresses, and, to a smaller extent coats and suits, women's and misses'. We found that people who used to come and buy most of their wants in that line of merchandise in our French shop could not find the sort of merchandise that they were accustomed to getting, certain so-called high-style merchandise. These people would leave us and go to our competitors for merchandise. Not only did we lose

their business, but obviously we felt, at least, that if a woman would not buy, or could not buy a high-priced dress in our store, missing the trip to the store she would probably avoid buying a high-priced pair of gloves, or any of the other types of merchandise she might buy on a trip to our store. So we felt that that good will was costing us a great deal in reputation and money, but we could not prove that, of course, mathematically, the good will aspect, and we had some other incidents that hurt our good will, which we quickly controlled, however, we believed, and that is not being able to keep secrets in our business, and most businesses are unable to, and we found that our
2483 sales people were excusing our stocks to the customers by saying, "Well, the Fashion Originators Guild has stopped us from getting merchandise; but we have hopes that will soon be corrected," and so forth, and so forth. They apologized for our stock, which was quite serious.

We had one case that I know of where we had a sales person from another store comment, "You cannot get that kind of merchandise at Filenes on account of this Guild thing." Because, you know, those things were deliberate, we felt sure, on the part of our competitors, but that will happen in a big business when you have a lot of people.

Q. Now, Mr. Seegal, one other matter I wish to ask you about. Prior to the early fall of 1935 had you been buying any merchandise from manufacturers who were not mem-
2484 bers of the Guild; that is, lower-priced merchandise: did you? A. Oh, yes.

Q. Was it at that time that you started to put in this stamp that you refer to in your earlier testimony, the warranty stamp? A. We put the stamp on right after we joined up with the Guild, became a co-operating retailer, I believe, is the expression.

Q. When was that? A. I haven't the correspondence here, so I could not give you the exact date.

Mr. Weisman: The early part of 1933, was it not?

The Witness: I believe it was some time in 1933.

By Mr. Haycraft.

Q. I believe in your recital of the instances where you have returned garments to manufacturers, they were at the request of the Guild shopper, back in the fall of 1935, were they not? A. The intensive shopping, personally witnessed, it was called frequently to my attention in the fall of 1935. I do not know when that Guild shopper started to shop, probably some time before that.

Q. Was that the first time that you had been called 2486
upon to make returns under the plan of co-operation? A. Under our plan of co-operation, the only returns which were made were after this shopper called it to our attention, because we did not know—in most cases we did not know about merchandise being copies until she called it to our attention; otherwise, of course, we would not bother.

Q. Now, I will ask you, in that respect, whether or not you did restrict your buying policy after you joined the Guild? A. Yes, sir; we did restrict the buying policy.

Mr. Weisman: I submit that that question is not plain and should be—you mean, you restricted it, in that you sought not to buy copies of Guild merchandise?

The Witness: Yes, sir. 2487

Mr. Weisman: Well, that is all right; that was not plain.

By Mr. Haycraft.

Q. What effect, if any, did that change in policy have upon your business, the business of Filenes? A. At the beginning when we would—the first effect that we noticed was that certain so-called very good styles or "hot num-

bers," which is the technical expression used in the trade, we found that we could not buy those numbers because they were copies of Fashion Originators Guild merchandise, registered dresses of the Fashion Originators Guild, and many a dress, our lower-priced buyers wanted to buy, they could not buy because those manufacturers would not accept the stamp, which would have to accompany the order, knowing already that that dress had been registered with the Fashion Originators Guild, so that they passed up some of these very good styles because they could not buy them in accordance with our agreement with the Guild. They had to buy other styles which, in many cases, to those buyers, appeared less desirable.

2489 Q. Can you, at this time, testify as to the manufacturers that you refrained, or requested to refrain, from buying from, that you had been buying from prior to the Guild agreement?

Mr. Weisman: I object to the form of that question. I think the witness sees the vice, the same vice in it that I did. He has not testified that he refrained from buying from any manufacturers, but he testified he refrained from buying certain numbers from certain manufacturers because the numbers were copies of Guild merchandise.

Mr. Haycraft: I think that is correct. I withdraw the question.

2490 *By Mr. Haycraft.*

Q. Do you have in mind any particular manufacturers that you had the experience with that you refer to in your last answer? A. Yes, sir.

Q. What manufacturers? A. Lombardy is one of them. There are two others. I cannot remember their names right now—where we did not buy merchandise, certain styles that we were particularly interested in, because of that agreement.

Q. Now, I take it that your testimony refers to the tivities of the Boston store only of Filenes, or does it fer to the branches? A. My testimony refers to the ston store, and the branches, but not the subsidiary rporations.

Q. It does not include the White Company? A. It does t include the R. H. White.

Q. And what is the other, the clothing company? A. e Continental, which is the men's store.

Mr. Haycraft: That is all, Mr. Seegal.

Examiner Bennett: We will have a recess of a few minutes.

Mr. Weisman: Thank you. 2492

(There was a short recess taken.)

oss-examination by Mr. Weisman.

Q. Mr. Seegal, in connection with this study that you ve made, or that you made in collaboration with Mr. right, did you have occasion to take the sales volume your department, or departments, handling ladies' esses during 1935 and 1936? A. Yes, sir.

Q. And you compared them one with the other? A. s, sir.

Q. And you found that the volume you did in February, 36, was in excess of the volume that you did in Feb- ary, 1935? A. I couldn't answer that question without udying the records. 2493

Q. Well, is that a vital and important matter in your tempt to ascertain the importance of this thing, or as the effect upon your business? A. I——

Q. "Yes" or "no," isn't that important, as an executive this great big store, that you wanted to come to a con- sion as to the effect upon your business? Don't you nk that the volume compared in 1936 with 1935 is of ight? "Yes" or "no," I want to see what kind of expert u are. A. Do I have to answer "yes" or "no"?

Q. Yes, I want to know your opinion.

Mr. Haycraft: I think, Mr. Examiner, the w
ness may be allowed to answer "yes" or "no," a
then explain his answer.

Examiner Bennett: Let him answer.

Mr. Weisman: I will withdraw the question.

By Mr. Weisman.

Q. Did not you deem it of very great importance
ascertain the comparative volume of the various depa
ments doing a dress business during the years 1935 a
1936? A. Yes, I did.

2495 Q. And since you thought it so important, do you r
remember that the volume for February, 1936, exceed
the volume for February, 1935? A. The volume of wha

Q. The volume of sales of dresses in these department
No, do you remember that or don't you? A. I rememb
that some departments were less and some were more.

Q. Well, what do you remember about the sum total
all the dress departments? What do you remember abo
the sum total? A. The sum total of all our dress depa
ments?

Q. Yes. A. Including the ones that were not affect
by the Guild?

Q. Including all dress departments. A. I recall th
had an increase——

2496 Q. In your volume? A. In the volume.

Q. Now——

Mr. Haycraft: Just what time?

The Witness: The month of February.

By Mr. Weisman.

Q. February, 1936, or February, 1935? A. Yes, sir.

Q. Now, you just said to me, in answer to my questi
including those departments that are unaffected by t
Guild. A. Yes.

Q. Now, didn't you say to Mr. Haycraft on your direct examination that all your departments are affected by the Guild? "Yes" or "no"? Did you say that to him? A. I would like to have the question. Some were affected a great deal more than others.

Q. But tell me, a moment ago you said some were not affected at all, did you not? A. If I made that statement, I made that statement. The record will show that.

Q. If you made that statement was that statement correct? A. I should say that all dresses were affected outside—I would say that all dresses were affected, some so slightly as to be insignificant, and some so great as to be major.

2498

Q. Well, let us see. In your direct examination you divided your departments into three classes; you said women's, misses' and sportswear. A. As only for the illustration of the three men who are divisional merchandise managers; but there are many other classifications that could be made of dresses which would be perhaps as intelligent.

Q. I do not want to get something that is as intelligent as something else. I want to know whether when you told Mr. Haycraft on your direct examination that your dress business could divide itself into three classes, to wit, women's, misses' and sportswear, whether that was correct? A. That is correct.

Q. And I also want to know whether or not those three departments do come within the Guild program? A. They 2499 do, I believe.

Q. Well, do you know, or do you believe, now, which is it? A. Well, you say "come within the Guild program." I think you will have to elaborate a bit on that.

Q. Well, I want you to elaborate. You said further to Mr. Haycraft that these three departments were affected—was the word you used, "by the Guild program"? A. Those groups of departments are not departments as such.

Q. Well, let us see, then. All your departments can be made into three major groups, and these three are the three major groups, and in each of these departments of the major group that may be subdivided into smaller subdivisions? A. Correct.

Q. Now, where would you place the misses' sports under your own definition? A. I do not know what you mean, where I place them?

Q. Well, you say that—I will withdraw that question. Would you say that one of the subdivisions is misses' sports department? A. One of the departments.

Q. Yes. A. Within—yes.

2501 Q. Where would you place that? A. You mean under divisions?

Q. Under what grand division? You have given us three grand or large divisions, to wit, women's, misses' and sportswear. Now, you have testified that one of the subdivisions is misses' sports. Now, where would you place misses' sports, under what division? A. I would place that in the division of merchandise where Mr. Zerkowsky, one of the three divisional merchandise managers, has charge.

Q. That is sportswear? A. Correct.

Q. Now, where would you place junior dresses? A. Junior dresses is merchandise where Mr. Gross is.

Q. So you would place that in misses'— A. That is now; it was formerly merchandised by Mr. Zerkowsky and

2502 was merchandised by him at the time that we were red-carded.

Q. I do not care who it is merchandised by. A. I am talking about——

Q. I am trying to get into what divisions these departments fall. Do you not understand that? A. I understand.

Q. Did I ask you anything about under whose direction they are merchandised? A. You did not ask me, no.

Q. All right. Will your try to confine your answers to
questions? A. Yes, sir.
Q. Good. Now, you have a department known as
lisses' Better Dresses," is that correct? A. Yes, sir.
Q. Under which subdivision would you say that falls,
under which division? A. That falls under the misses'
vision, merchandised by Mr. Gross.
Q. Now, you also have a department known as "Misses'
edium Priced"? A. Yes, sir.
Q. Where does that fall? A. Misses' Division, merchan-
ed by Mr. Gross.
Q. Then you have a French shop? A. Yes, sir.
Q. Where would you say that that falls? A. Under the 2504
omen's Division.
Q. Then you have a Women's Gown, where would you
y that falls? A. Women's Division.
Q. And Women's Better Dresses? A. Women's Divi-
on.
Q. And Extra Sizes? A. Women's.
Q. And Medium Priced Dresses? A. Women's Medium
iced Dresses?
Q. No. A. We have Medium Priced Misses', and we
ve Medium Priced Women's.
Q. Well, let us see, taking the figures that one of your
tnesses—the nomenclature that one of your witnesses.
ve——

Mr. Haycraft: I move to strike that. 2505
Mr. Weisman: Well, it might help us.
Mr. Haycraft: I move to strike that.
Examiner Bennett: Read the remark.
(Remark of Mr. Weisman was read.)
The Witness: What witnesses? And where?

By Mr. Weisman.

Q. In the Filene's suit.

Examiner Bennett: Yes, it may be stricken out.

Mr. Weisman: I will withdraw it. I was trying to help him.

Mr. Haycraft: And all the following.

Examiner Bennett: Let us confine it to this man's testimony in this case.

Mr. Weisman: All right.

By Mr. Weisman.

2507 Q. Now, this Guild program, would you say that there were any members of the Guild who were engaged, or from whom you purchased extra sized dresses? A. I couldn't answer that question offhand.

Q. You could not answer that? A. No.

Q. From your Guild experience and knowledge of the business, would you say that the Guild program was likely to affect you with your extra sized business? Never mind what the fact is. A. Yes, I would.

Q. Why? A. Because the style might be brought out, in the regular size, and according to the extra size manufacturers that style might be—and might receive public approval, and so forth, and he might decide that the lines on that particular style were all right with extra sized

2508 women, and having had a lot of public acceptance in the regular sizes, it is natural that the women who are extra size would like to wear that particular dress so he might cater to their particular demands and make that style for them.

Q. I am not asking what he might or might not do. A. I am trying to answer your question.

Q. What I am trying to find out from you as compared to this high style— A. Yes.

2509

Q. —or to the better style, see. I want to know whether or not as compared to the effect it would have on your business in that class— A. Oh, I see.

Q. The Guild program in the extra sizes would have as large an effect, or a smaller effect, or a lesser effect? A. It would have more effect on high style than it would on extra sized ones.

Q. Yes. Would you say that high style is your Women's Gown Shop? A. The French Shop would be the highest style.

Q. The French Shop. In other words, that is the place where the Guild program would be most likely to affect you? A. Yes, sir.

2510

Q. And an extra size department would be the place where it is least likely to affect you as compared to the other departments in your store? A. Between those two there would be more effect in the high, in the French Shop, than on the extra size.

Q. Yes. Do you know what the volume in February, 1935, was in the Women's Gown Department? A. I know, with the assistance of my desk.

Q. Well, take a look and see. A. (Witness refers to papers.) What month is that, February?

Q. February, 1935, what you did in that department. A. (Witness consults record.) What was the question?

(Question read.)

2511

A. This is distinguished from the French Shop when you say "Women's Gowns."

Q. Yes, Women's Gowns. A. In 1935, February, the volume was $7,530.

Q. That is, during the month of February in this department, which was most likely to be affected by the Guild program, of all your departments? A. I do not say that; I do not say that.

Q. All right. I will withdraw that. Which of your departments would most likely be affected—without looking at that—you do not have to look at that. I want to know from your general knowledge. A. Yes, sir. Well, from my general knowledge——

Q. Yes. A. —I should say our French Shop, as I previously stated.

Q. Yes. A. As the department that would be most likely affected.

Q. And next to that? A. And next to that would be the—you are talking just about women's classifications?

Q. Yes, sir; next to that. A. Next to that it would
2513 go in accordance with price, other things being equal——

Q. Well, Women's Gown Department is your most expensive department in the shop, is it not? A. French Shop. I think I said that several times, the French Shop.

Q. I mean, after the French Shop. A. French Shop.

Q. Yes, we have given the French Shop position No. 1. A. All right.

Q. As likely to be affected? A. Yes.

Q. If we give the French Shop your position No. 1, Women's Gowns would get position No. 2? A. Yes.

Q. All right. So that we may not get too involved, let us stop there. Now, you have told us, I believe, that the total volume done—we are taking the total volume done in February, 1935, in the French Shop. A. (Witness refers to figures.) $5,922.

2514 Q. $5,922. Now, in February you were affected by the Guild policy you have testified to, were you not? A. Yes, sir; towards the—well, now, we were affected after we were red carded, and we were red carded——

Q. You were red carded on February 10.

Mr. Haycraft: Mr. Examiner, let the witness testify now on that point.

Mr. Weisman: All right. I will ask him if he knows.

Mr. Haycraft: It is a rather important point.

Mr. Weisman: He is an executive.

Mr. Haycraft: It is a rather important point, Mr. Examiner, when this effect first made itself felt, and I think the witness ought to be allowed to state that.

Mr. Weisman: All right, we will ask him.

Mr. Haycraft: All right, let him state that, now.

Examiner Bennett: All right.

A. The effect was not pronounced at first when we were red carded obviously, because we had a substantial amount of stock in those departments. The effect was 2516
made more pronounced as time went on, as stocks became depleted, as we could not re-order merchandise, so that the effect during the month of February would certainly be much less important than the effect in March, April, to date.

By Mr. Weisman.

Q. Well, do you say that because you know that your volume in every department that was primarily affected by the Guild policy went up in February; is that why you give that answer? A. Well, to my——

Q. "Yes" or "no," please; is that why you gave that answer? A. No.

Q. No. But you do know that in February, 1936, as 2517
against February, 1937, your French Shop showed a substantial gain in volume; do you not know that? A. Yes, sir.

Q. And you know, do you not, that gain in volume for that month was over 10 per cent. of the total business done in 1935 in that department? A. I believe it was, at least that.

Q. At least that. Now, do you not know also that February, 1936, as against February, 1935, a like advance was

made in the volume of business that you did in the Women's Gowns? A. I believe so. Do I understand you do not want me to look at this (referring to papers)?

Q. I want to get your belief first and then if you have not got that belief— A. Well, I don't want to be——

Q. It is all right, I know you won't, if you say you won't. A. All right.

Q. Now, then, you gave us first and second departments in that order of importance as likely to be affected by the Guild policy? A. (No response.)

Q. Would you say that the next department is the Misses' Better Dresses? A. Either the Misses' Better-

2519 Dresses or Misses' Better Sportswear, but that is a subdivision of the department.

Q. Well, now, let us see; take a look at that little piece of paper that you have in front of you and see whether or not in February, 1935, without looking at anything in 1936— A. I cannot do that; I am sorry.

Q. Put a piece of paper over it. You can take one column and cover 1935. A. And not look at 1936, you say?

Q. Yes.

By Mr. Weisman.

Q. Now, in February, 1935, your Misses' Better Dresses, your volume there was $6,892; is that it? A. You have

2520 given me a very difficult task. You have asked me to look at one column and not the next, but the next column is near the department member, and you will have to ask——

Q. All right, I will withdraw the task. A. If you will rely on my integrity——

Q. I certainly would rely upon your integrity. While I may think you may be mistaken in some of your conclusions I will make no effort to impugn your integrity. A. Thank you.

Q. I mean that frankly, Mr. Seegal. A. Well, now, what is the question, please?

Q. I want to know whether or not your volume for February, 1935, in the Better Misses' Dresses was not $6,892? A. That is correct.

Q. And for the same month in 1936 it jumped up about 20 per cent.; is that correct? A. Substantially.

Q. And showed a volume during February of $8,129? A. Correct.

Q. Now, without looking any further at that paper, your next department most likely to be affected by this Guild program, would you say that might be the Junior Dress Department? A. Well, I think the Women's Medium Priced Dresses might be affected on about as much as the Juniors. 2522

Q. Well, would you place them on a parity? A. Except for Junior High Priced Dresses; you see, it is pretty hard to answer some of these questions.

Q. When I asked you about Juniors, I meant from up to $25 wholesale. A. That is high priced.

Q. Well, now, in that department, since that is high priced, that is very—would you say that that was—the next in line that was likely to be affected by this Guild program? A. Well, that is up to—that has low and high.

Q. Yes. A. And the high priced end would be more affected by the Guild program?

Q. Yes. A. Than would Misses' Better Dresses.

Q. That is right. A. By reason of the strength of the F.O.G.A., but we have that in separate figures there. I don't think you have—— 2523

Q. Well, maybe I am going to surprise you. A. Well, in our business? I think you will.

Q. Well, I have only got what we elicited on cross-examination from other manufacturers of your store——

Mr. Haycraft: Then we want it for the record.

Mr. Weisman: I am going to put it in after a while; you are wasting time. I am going to put the Filene record in.

Mr. Haycraft: Don't be so sure about that.

Mr. Weisman: The record, the figures.

Mr. Haycraft: Maybe.

Mr. Weisman: Well, I am going to offer them.

Mr. Haycraft: Maybe.

Mr. Weisman: And offer them for identification.

Mr. Haycraft: Maybe you think you are.

2525 *By Mr. Weisman.*

Q. In your Junior Dress Department, what was your total volume, this department we have just been talking about, during February, 1935? A. (Witness refers to papers.)

Mr. Weisman: Here is the Filene record in front of us.

Mr. Haycraft: Put it in evidence.

Mr. Weisman: I am going to put it in evidence.

Mr. Haycraft: No, I am checking up with you.

A. The Junior, for 1935, $12,073.

By Mr. Weisman.

2526 Q. For 1935, $12,073. Now, in February, 1936, when this Guild program was in operation, tell me what was the volume for that month that Filenes did? A. In Junior dresses?

Q. Yes. A. $14,877.

Q. That is a pretty big jump, is it not? A. You have asked that question—that jump corresponds, roughly, with the jump in the store.

Q. Well, but it is a pretty big jump. A. You asked the question.

Q. Wait a moment. I withdraw that. You say that jump corresponds with the jump of the store. A. The store had a very good month in February, 1936.

Q. Did your store in February, 1936, advance its sales over February, 1935, approximately 20 per cent.? A. I would have to look up the record.

Q. Well— A. It had a very substantial—whether it was 17, 18, or 20, or 17, I cannot answer, but we did not advance that much.

Q. If you won't answer that, then, why—I will withdraw that. You want to be fair in your testimony, do you not? A. I want to be fair and accurate.

Q. Well, if you want to be both fair and accurate, when 2528
I asked you whether or not that is a pretty good jump, why, if you did not know what the rest of the store advanced, did you answer me and say, "Well, it advanced about the way the rest of the store advanced"? A. Well——

Q. Is that your opinion of being fair and accurate? A. It is my opinion of being fair——

Q. That is all I want to know. That is your opinion of being fair and accurate. A. I have not finished my answer——

Q. You finished it as far as I am concerned. Now, your Misses' Medium Priced Dresses, those start at $10.75 wholesale and go to $12.75 wholesale? A. Yes, sir.

Q. Now, that is a field where the Guild always was very effective; is that not so? A. Well——

Q. I will withdraw that. That is a field wherein the 2529
major portion of your dress business is done? A. The major?

Q. Yes; is that not so? A. The major portion of our dress business is done below those prices.

Q. Below. Well, did you not testify on your direct examination that the bulk of your business at wholesale price was done in the neighborhood of $10.75?

By Mr. Weisman.

Q. Well, in your department, handling $10.75 to $12.75 wholesale, would you say that that department would be the next one to be affected by the Guild program, excluding all those we have already had testimony on? A. Very likely.

Q. Very likely. That means to the best of your knowledge. In other words, bringing to bear all of the experience you have had as an assistant to the vice-president and to the merchandise manager, it is your honest opinion that that is the next one that is likely to be affected? A. As the next major department.

2531 Q. Yes. A. I want to make that clear, that is the major department.

Q. Just take a look at that little piece of paper you have so kindly brought into court and see what is the volume that you did there in February, 1935. A. $9,437. Oh——

Q. Take another look over there. A. I looked at the retail prices; I am sorry.

Q. Wait a moment. Do you mean to say that without that paper you would not, with all your expert knowledge, be able to tell what you are talking about? A. What is that?

(Last question read.)

2532 A. With all my experience and retail knowledge, looking at that set of figures I cannot tell what department is there unless I happen to look at——

Q. Don't you know——

Mr. Haycraft: Wait until he finishes his answer.

The Witness: No one in the world could know—no one in the world could, by looking at that set of figures, tell what the departments are unless they saw the names of the departments on the paper.

By Mr. Weisman.

Q. I thought you might know the volume of your departments. A. There is no one connected with our store, outside of the individual buyer, who would know the exact, to dollar, figure for February last year.

Q. You do not know, anyhow. A. There is no one.

Q. I do not care whether there is no one. A. That is correct.

Q. I want to be sure you do not. A. That is correct.

Q. Taking a little look at the little paper, or a big look at the little paper, tell us what the volume was for February, 1935. A. $6,581.

Q. Now, continuing your examination of the paper, tell 2534
us what it was in February, 1936. A. $7,150.

Q. In other words, an advance in excess of 10 per cent.? A. I judge—somewhere around there, yes.

Q. Yes. Now, you said to me before that that department would run pretty close in position, as to effect upon it of the Guild policy, with the Women's Better Dresses; is that not so? A. Somewhere around there, yes.

Q. In other words—now, Women's Better Dresses, what price do those dresses run at wholesale? A. (Witness refers to paper.)

Q. Now, you do not know without looking at the paper? A. The Women's——

Q. Yes. A. —Gown Shop or Better Dresses?

Q. Did you hear me say Gown Shop? A. No, I wish 2535
you would repeat.

Q. Now, listen. A. Repeat the question.

Q. Now, I will repeat the question; I want to find out from you your best opinion as to what was the wholesale cost of the dresses which are handled in the subdivision of the department which you denominate "Women's Better Dresses"? A. Around $10.75——

Q. To what? A. To $12.75.

Q. Now, that department, will you tell us in February, 1935, what was your volume in that department? A. $7,530, Women's Better Dresses last year, February.

Q. Have you not made a mistake? A. Oh, that was the Gown Shop.

Q. Ah, ha. A. You have used the words "Gown Shop."

Q. No— A. I have used the words "Gown Shop."

Q. I don't care what you have used. You listen to what I am using. A. All right. $8,048.

Q. Now, take a little look and tell me what they did in February, 1936. A. $10,519.

Q. Can you tell what percentage of increase in volume
2537 that was? A. About 30 per cent.

Examiner Bennett: We will take a recess until 2 o'clock for lunch.

Mr. Weisman: May we have until 2.10 so I can put in my long-distance messages?

Examiner Bennett: You have certain messages to send out?

Mr. Weisman: Yes.

Examiner Bennett: We will make the adjournment to 2.10.

Mr. Weisman: Thank you.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2.10 o'clock P. M. of the same day.)

2538

AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: We will be in order, please. You may proceed. Is the witness here?

Mr. Haycraft: Yes, sir; he is.

Examiner Bennett: Will he come around and resume the stand, please.

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (continued). 2540

Mr. Weisman: I would like to have the two or three questions and answers read so I can get the connection.

Examiner Bennett: They may be read if the witness does not remember them.

By Examiner Bennett.

Q. Do you remember them? A. No, sir.

Examiner Bennett: They may be read.

(Last three questions and answers were read as follows: "Q. I don't care what you have used. You listen to what I am using. A. All right. $8,048. Q. Now, take a little look and tell me what they did in February, 1936. A. $10,519. Q. Can you tell what percentage of increase in volume that was? A. About 30 per cent.") 2541

By Mr. Weisman.

Q. Then you have as a further subdivision of these main divisions of the Misses' Sportswear Shop—have you, or

Misses' Sport? A. Misses' Sportswear is the full department such as you have referred to right along.

Q. The price of merchandise therein is $6.75 wholesale, and up? A. Yes, sir.

Q. Before we go to the next question and so that the Court may have some information of what we are talking about in retail figures, will you tell us from your experience and knowledge the average retail price as compared to the wholesale price? A. Generally speaking, $6.75 merchandise would retail for about $10.75. $10.75 merchandise would retail for about $16.75 at retail, generally. $16.75 merchandise at wholesale would retail at around
2543 $25.75 to $29.75, as a general rule. There may be some variations.

Q. Now, this Misses' Sports Department in February, 1935. I believe your volume was $3,701; is that correct? A. What figure?

Q. $3,701. A. What was the figure again? I was just looking at this paper.

Q. $3,701, misses' sports, $6.75 and up. A. That is correct.

Q. For the month of February, 1936, what was the total volume? A. $4,454.

Q. $4,454; is that correct? A. Yes.

Q. Taking all of the figures of your various dress departments, all of which together go to make up these three major departments, or divisions, that you have told us,
2544 that is, women's, misses'-and sportswear, in and for February, 1935, your total volume was $76,809; is that correct? A. I do not know. I would have to figure it up.

Q. Will you add it up, then, so we may have it in the record?

Mr. Weisman: Maybe I can get at it easier this way. I will ask this question:

By Mr. Weisman.

Q. You were present at all times in Boston throughout Mr. or Miss Wright's testimony at the suit instituted by William Filenes Sons against the Fashion Originators Guild of America, Inc., were you not?

Mr. Haycraft: Do not answer that. That is objected to. I move to strike out the question.

Examiner Bennett: I will sustain the objection. I think we had better keep this case within its own limitations and not bring in this other suit.

Mr. Weisman: I want to make this statement for the record.

2546

Mr. Haycraft: I object to it going in the record, Mr. Examiner.

Mr. Weisman: You mean you are going to object to my making a statement? I think that is most unconscionable. Certainly I have a right to make a statement for the record. You would not stop me from doing that, would you?

Mr. Haycraft: I certainly would. This is improper and you know it. It is simply filling up this record with a lot of material which has no place in it. The Examiner has ruled and, in my opinion, that settles the matter. And, furthermore——

Mr. Weisman (interposing): Mr. Examiner, I must protest.

2547

Mr. Haycraft: Now, I will have to say this. Let me finish and do not interrupt me.

Mr. Weisman: Now, you are finishing your statement but you will not let me finish mine.

Mr. Haycraft: I object to this going in the record, Mr. Examiner, and I stand upon my objection.

Mr. Weisman: Have you finished?

Mr. Haycraft: Yes.

Mr. Weisman: Will you sit down so that I know that you are?

Mr. Haycraft: Well, very well, Mr. Examiner, I insist.

Mr. Weisman: Now, let me finish my statement. May I make my statement now, Mr. Examiner?

Examiner Bennett: Proceed.

Mr. Weisman: I think that in order for me to make my statement properly, it will be better to start at the beginning and carry it right through to the end. I shall, therefore, first state to your Honor those things that I desire to obtain and how I desire to obtain them.

2549

I believe it is competent for me to show, among other things:

A. That this witness was present at all times throughout the testimony that was rendered by his superiors, and by those associated with him.

Examiner Bennett: That does not interest me, Mr. Weisman. I will sustain an objection to that going into the record. There is no—I will tell you now so it may save you a lot of time—of course you make any offers you may choose to make, but you were kind enough to permit me to have a paper giving the decision in this particular suit to which you seem to refer; I think that is correct?

Mr. Weisman: It is.

2550

Mr. Haycraft: That has absolutely nothing to do with this matter. I object to it.

Examiner Bennett: It was in the District Court of the United States. It was an action brought by William Filene Sons Company against Fashion Originators Guild of America, Inc. It was between different parties, and it was under a different statute, and it shows that not only no part of same was other than clearly inadmissible, or any part of that

testimony is inadmissible in this particular proceeding, and while you can offer anything you choose that is going to be the ruling of the Examiner.

He has convinced himself that they are entirely different proceedings and that the testimony in that case is not relevant and not competent testimony in this proceeding, or for this proceeding.

Mr. Weisman: May it please your Honor, at the proper time I would like to offer into evidence the pleadings in that suit so that the Court may contrast them, or compare them, with the pleadings in this suit. I believe under such an examination of the pleadings your Honor will see that the issues 2552
in a large majority of cases are identical with the same allegations made here. As to those identical issues, it is my belief that the pleadings are germane and should be before this Court for this Court's aid to the extent that the Court wishes to take it therefrom. I have not yet come to that phase of the case, and I merely say that in passing.

Examiner Bennett: I think it would save you some time if you were acquainted with the Examiner's attitude, and it is for that reason I have given it to you.

Mr. Weisman: As to the purposes of this testimony, let me say that it was merely to refresh this witness' recollection; in other words, since he was present at the examination and heard the testi- 2553
mony, it is a quick way of refreshing his recollection as to what took place at that time, and refresh his recollection of the matters thereby.

Examiner Bennett: This witness has these figures, as I understand it, before him, and has had them before him to-day, and has checked them up. If you desire to ask him about them you may do so. If you have them in your notes you may inquire from that standpoint.

Mr. Weisman: I do not want to take up too much time by discussing this matter, but I do feel that it is quite important.

Examiner Bennett: If you think it will aid to put them in the record that is all right.

Mr. Weisman: I except to your Honor's ruling in not permitting me to ask him about this other matter to which we have discussed the details at some length.

Examiner Bennett: You may have your exception. Proceed.

2555 *By Mr. Weisman.*

Q. Do you remember the question? A. No, I am afraid I do not, now.

Examiner Bennett: Will you have the question read?

(Question read as follows: "Q. Will you add it up, then, so we may have it in the record?")

By Mr. Weisman.

Q. Will you please do so? A. I am sorry. What is the question now?

(Question again read.)

2556 A. Correct.

Q. Now, for the following year; that is, for the same month, namely, February, 1936, your total volume for that month in these departments was $85,463; is that correct? A. Yes.

Q. Correct? A. Yes.

Q. Can you tell us whether or not your total volume for these departments for the month of March, 1936, exceeded the total volume for the month of March, 1935? A. I could not tell you without consulting my records.

Q. Take a look at your records and see whether or not what I have said is not the fact. A. Those departments did more business in 1936 than they did for the year 1935 for the same month.

Mr. Weisman: Did your Honor hear that?

Examiner Bennett: Yes.

Mr. Weisman: I did not know whether your Honor indicated you want it repeated or not.

Examiner Bennett: I am listening to it. Go right ahead.

By Mr. Weisman.

Q. You also had prepared—I will withdraw that question. I believe that you testified that one of the most important departments wherein the effect of the Guild's program was likely to be felt was the Junior Dresses; is that correct? A. Junior Higher Priced Dresses. 2558

Q. Junior Higher Priced Dresses? A. Yes.

Q. Now, I believe that at our request in another lawsuit, which has been before referred to, you prepared figures showing what had been done in that Junior Dresses Department for the first ten days in April, 1935, as contrasted for the first ten days in April, 1936; do you know——

Mr. Haycraft: Objected to and move to strike.

Mr. Weisman: I had not finished the question.

Examiner Bennett: Sustained. 2559

Mr. Weisman: May I ask the basis upon which it is sustained so I may know whether it is as to the form, or what?

Examiner Bennett: I do not know the object of your trying to drag in this other lawsuit. You should cross-examine on what he said this morning. You cannot contradict him by that sort of thing unless he testified himself at that time.

Mr. Weisman: He did not, but his immediate superior did.

By Mr. Weisman.

Q. I will ask you this question: Have you before you a compilation of figures showing business that had been done by Filenes in its Junior Misses' Department in the first ten days of April, 1936?

Mr. Haycraft: I object to that as not proper cross-examination.

Examiner Bennett: I think it is proper. Go ahead.

2561

A. I have the record for the total Junior Misses' Department.

By Mr. Weisman.

Q. Will you look at that total—I withdraw that. Have you also the figures for the first ten days in April, 1935? A. Yes, sir.

Q. Will you contrast those figures for the period April 1935, with the period April, 1936, and ascertain whether or not in that period in 1936 there was an increase of $4,055, or approximately 88 per cent. increase? A. There was that large increase in total in the Junior Department yes.

2562

Q. That large increase is approximately an increase of 88 per cent. over the year 1935; is it not? A. Yes. I said so.

Q. You also testified that the Women's Gowns Department was an important—I withdraw that—was greater—I withdraw that—was greatly affected by the Guild program: did you not, on your direct testimony? A. Yes.

Q. For the same period as you testified with regard to the previous question, I want you to look at your records and see whether in April—in that period of April, 1936, in that department there was not an increase in volume of business of approximately 33 per cent.? A. That is correct.

Q. I understood you to further testify that the other department in which this Guild policy was most effective, or which most—which was most affected by policy, was the Misses' Better Dresses; that is the fact, is it? A. I believe I testified it would be more apt to be affected—it would be more apt to affect that department than the less expensive.

Q. That is true? A. Yes. 2564

Q. You not only testified to it— A. Anything I testify to is true.

Q. You believe it to be true? A. To the best of my knowledge and belief it is true.

Q. As to the Misses' Better Dresses, I want you to examine your records once more and see whether or not in that department during that same period—namely, April, 1936, as contrasted with April, 1935—there was not an increase of approximately 18 per cent.? A. That is correct.

Q. Correct? A. Yes.

Q. Have you the figures with you for May, 1936, as contrasted with—and for May, 1935? A. No, sir.

Q. Can you get them for us? A. Yes, sir.

Q. Will you get them for us? 2565

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: I will have to advise the witness, as I have the other witnesses, that he is not under an obligation to do so so far as being in here is concerned, but it is perfectly proper if he wishes to do so for the accommodation of this attorney, for him to do so.

Mr. Weisman: May I also advise the witness, if he does not know it, because I think it is well for him to know this, if he does not do it, because I think it is a nice thing to do, and because he agrees with that, I shall apply to the Federal Trade Commission for a subpoena duces tecum and attempt to have all of those records brought in here.

Examiner Bennett: I do not believe you can get it for that purpose.

Mr. Weisman: I think it is a proper part of our case.

Examiner Bennett: I think you would make
2567 quite a ludicrous application, certainly you would put yourself in a rather ludicrous situation if you were to make an application of that character in a situation of this kind.

Mr. Weisman: I think that is very germane to our case. It is either a question of now or later.

Examiner Bennett: If you want to bring him in later on as a part of your own case you may do so.

Mr. Weisman: That is what I meant, that I would subpoena him on my own case. I meant if he will not do it now I will get him later. If he will not accede to my request now, why, when I come back to Boston when we put in our case we will have a subpoena duces tecum issued for the production of
2568 these records.

The Witness: Am I supposed to answer any of these questions?

Mr. Weisman: No. I am simply discussing this with his Honor.

Examiner Bennett: I will just merely advise you what you may do in the matter and you can accede to his wish if you want to.

Now, we will have a short discussion off the record and you may make any bargain with him that you wish if you desire to do so.

(There was a discussion off the record.)

Mr. Weisman: I should like to have this on the record.

The Witness: I shall be guided by the advice of Mr. Haycraft since Mr. Weisman is the representative of people who have seen fit to blacklist us.

Mr. Haycraft: I object to that going in the record.

Mr. Weisman: I insist on it being in the record.

Examiner Bennett: Proceed, gentlemen.

The Witness: Do I have to answer the question?

Examiner Bennett: You need not answer that question. 2570

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Weisman: I should like to know what the last question was now.

(Question read as follows: "Q. Would you get them for us?")

Examiner Bennett: That is the one the witness need not answer.

By Mr. Weisman.

Q. Have such records been prepared? A. For the month of May?

Q. Yes. A. I have never thought of the month of May in this particular connection. In order to make clear to 2571 you and Mr. Weisman, these figures were made up to April 11 in response to the Federal Trade Commission's questionnaire. We have to answer so we—we were asked to answer certain questions, and we did not want to answer those questions without being sure of the facts. So, we obtained those facts and that is why we did not do it for April 15 or April 14, but a day or two after we received the questionnaire we prepared it for the period in question and sent it to the Federal Trade Commission.

We have not had any occasion since that time to go int
that aspect of the situation. I am not refusing to furnish th
information that you request because it may be good an
may be bad because I do not have any idea what it is.

By Mr. Weisman.

Q. Notwithstanding the fact that you have heretofo
testified that you were the assistant to the merchandis
manager, and that you are the assistant to the vice-pres
dent, and that you know all about the business and that a
merchandise orders must be approved by you, or unde
you, or confirmed by or under you, and notwithstandin
2573 the balance of your testimony, you now tell us that yo
have no idea whether or not your volume of business i
these dress departments was greater or less in May, 193
than it was in May, 1935? A. I made no such stat
ment.

Q. Did you not just a moment ago say that you ha
no idea what these figures were? A. I have never sai
whether they would be favorable or unfavorable. I ca
tell you off the record—no, I can tell you without figurin
it up right here that most of these departments—this i
just from memory—that all in May and April—all of thes
shops in May and April are still bad, and are still ba
to-day. In other words, for the French Shop; for exampl
which is the most affected department in the store, it wa
2574 bad in May and it was bad in June and it was bad all o
this month.

Now, if you ask me whether the misses' sportswear, o
other departments were or were not, I cannot remembe
the detailed figures. It is physically impossible for me, an
it is physically impossible for anyone else as far as that i
concerned, as it is for me, to carry those figures in m
mind. That is the reason that I am unable to answer yo
as to those detailed figures.

Q. I have not asked you about any detailed figures. I asked you to take the volume as a whole in all dress departments for May, 1936, as contrasted with May, 1935, and tell me was your volume lesser or greater? A. The volume in those departments for May?

Q. What were you looking at? A. I thought I might have the main store, I might have it on this card. You see, I usually carry in my pockets this card which shows how the main is doing in various aspects of its operations. I think I can for the month of May—may I just look at my documents here for a moment——

Q. (Interposing) What I am trying to do is just test your general knowledge of this business. A. In your 2576
statement to me a moment ago, your question, rather—you said that I was supposed to know everything in the business. I have never said that I knew everything in the business and I never would say it.

Q. I have never attributed omnipotence to you, and if you were to claim it I would never concede it. A. I would not claim it.

Q. I want to know this question from you; it is a very simple question; if you cannot answer it I want to know, and if you can I want to know that too. My question is——

Mr. Haycraft: I want to object to the question; the period of time is subsequent to the period of time covered by the complaint. 2577

By Mr. Weisman.

Q. I will reframe my question; I want to know whether or not you know if the total volume of your dress business in all departments was greater or lesser in May, 1936, as against May, 1935? A. My recollection is that the total volume of those departments that we have been discussing in May, 1936, was slightly greater than in May, 1935.

By Mr. Weisman.

Q. Now, what about June, 1935, as contrasted June, 1936? I want all departments. A. You are tal about the men's?

Q. No. A. The same group?

Q. The same group, all of those departments. A. (Referring to paper) Those departments, I believe, sh a small increase in June, 1936, over June, 1935.

Q. Now— A. I want it clear I am not testifying my records.

Q. I understand that. We will get the records. as to July, which is nearly pretty near elapsed, you
2579 received in your business daily sheets showing the trast of this year with last year. Now, can you giv your opinion as to how the first twenty-five days of 1936, contrasted with the first twenty-five days of 1935, with regard to those same departments? A. T same departments showed either a slight increase slight decrease.

Q. But, in any event, the best of your recollecti that there is not very much difference? A. Either that is correct.

Q. Do you personally do any buying? A. No, sir.

Q. Do you personally go into the market, New City market, to purchase any dresses for your conc A Well, I personally don't do any buying; I perso
2580 don't go into New York City to do any purchasing.

Q. Do you go in with your buyers? A. I have in past.

Q. When was the last time you went into New York a manufacturer's showroom? A. The last time I we New York in a manufacturer's showroom was prob about two years ago when I actually went with a b into a showroom.

Q. Now, as a matter of fact, your position is mo less an office position, is it not? A. You will hav define that.

Q. Well, I mean, your duties are rendered in the office of Filenes in Boston? A. Most of my time is spent in Boston.

Q. Well, you say "most of your time." Where is the balance of your time spent? A. Why, I go around to these various shops, the Continental Clothing Company—I make trips to R. H. White Company, I spend some time in our New York City where the manufacturers bring their lines in, sometimes look at those lines; spend some time in the Associated Merchandising Corporation offices in New York and go to some of the meetings of the Associated Stores, of which we are a member. I think, in general, that is how I spend my time when I am working. 2582

Q. Now, that is, you said you spent some time in the office of the Associated Merchandising Corporation? A. Yes, sir.

Q. Now, what is the Associated Merchandising Corporation? Is that part of Filenes? A. The Associated Merchandising Corporation is an organization to which Filenes belongs. It has a dual purpose. One purpose of—one of its purposes is to obtain figures on operation of the business that might be helpful to the individual stores, and the other—that is commonly called the Retail Research Association, or R.R.A., and the other aspect of which is connected with buying of merchandise. We buy substantial amounts of merchandise together, such as hosiery and various lines like that.

Q. Do you usually pool your purchases with other members of A.M.C.? A. I say, like group buying, like in hosiery, we will get together and buy substantial amounts of merchandise for all of the stores. 2583

Q. When you say "all the stores," what do you mean? A. Of the Association.

Q. Are these other stores owned by Filenes? A. Oh, no, no, no. When I say "we all get together," we, the stores which belong to the Associated Merchandising Corporation.

Q. Well, how many stores belong to that? A. The Associated Merchandising Corporation has about nineteen stores.

Q. Where are they located? A. Various cities in the country.

Q. Throughout the country? A. From——

Q. You mean that the Associated Merchandising Corporation buys for all of those stores? A. No, the individual buyers—the mechanics of a group buying—which I assume is what you have reference to?

Q. Yes, I want that. A. That consists of having a meeting in New York at the Associated Merchandising Corpo-
2585 ration's offices, where, for example, all the hosiery buyers of these stores will assemble, look at the various lines of merchandise, compare various prices, and so forth, and then decide that such and such a line, or such and such a resource represents the—the firm that we want to do business with, and we pool our purchasing so as to have the advantages of large sale buying.

Q. You mean you get it cheaper that way? A. We effect economies for the manufacturer which, in turn, permit him to sell us merchandise——

Q. Sell you cheaper? A. —at a lower price.

Q. Have you ever done that with regard to dresses? A. Yes, but on a very small scale, because our experience generally is that the more stable lines of merchandise, such as sheets and linens and pillow cases and so forth, lend them-
2586 selves better to group buying, because there is not the problem of one style being suitable in Los Angeles that is not suitable in Pittsburgh, and so forth, as in the dress situation, the result being that it works out far more effectively in the more staple lines.

Q. You mean, with better results— A. With fewer——

Q. —when you say more effectively? A. With better results, yes.

Q. But, notwithstanding that, don't you know that in some instances the A.M.C. acting for and on behalf of your store, or others, will engage in group buying of dresses, in group fixing of discounts, and — A. Getting back to your first question——

Q. Yes. A. —group buying of dresses, I did not say we did not. I said that we do more of the more staple lines than we do—but we do buy some dresses in a group way.

Q. In that fashion. A. I did not mean to say we did not.

Q. That is what I wanted to make plain. I evidently misunderstood you. Your answer was that you do not buy your dresses through group buying to such a degree as you buy socks and hosiery? A. That is correct. 2588

Q. And such things. A. That is the statement I want to make.

Q. O.K. Now, I understood you on direct examination to say that in 1933 your store indicated to the Guild that it was its policy to aid in the elimination of style piracy in the dress business? A. I said, 1933; it might have been 1932, fall or spring; it was around that period.

Q. I do not want to trap you. A. No, I do not suspect you.

Q. It was in the letter 1933. A. I just want to be sure that any answer I give is correct.

Q. Have you got the letter here? A. If you say 1933, it is doubtful——

Q. I might make a mistake. A. My mistake won't be deliberate, an' I don't think yours will be. 2589

Q. It was in June, 1933. Now, you stated that you were sympathetic—I think were the words that you need— A. If you say those are the words, those are the words.

Q. Well, did those words fairly express your attitude? A. Correct.

Q. Well, you were a little more than sympathetic, were you not? A. I should say we were enthusiastically in favor of the original program of the F.O.G.A. as we understood it.

Q. I understood you to say that William Filenes Sons were enthusiastically in favor of the Guild program as they understood it to be for the elimination of style piracy; is that correct? A. As they understood it at that time.

Q. That is right. A. That is correct.

Examiner Bennett: Well, are you still enthusiastic about it, as you understand it now?

The Witness: No.

By Mr. Weisman.

Q. All right. If the program were the same now as it was then, would you say Filenes is still enthusiastic?

2591

Mr. Haycraft: I object.

Mr. Weisman: It is up to this Court to determine whether our program has changed.

Examiner Bennett: I will let him answer that. If you can answer it, if you think you can.

The Witness: I can answer it, but I would like the question repeated, I would like to have it read so I may be sure I get it right.

(Question read.)

By Mr. Weisman.

Q. In support of the program? A. If the program is still the same as it was then?

2592 Q. That is right. A. I would be in favor of the program if our attorneys would advise us that the program is legal, which they do not seem to think it is.

Q. Well, aside from the legality, and confining ourselves to the business policies, leaving the legal questions out of it, will you now answer my question?

Examiner Bennett: I think we will have to stop that, because I think that is really the issue before the Tribunal. I do not believe we will entertain opinions on it.

y Mr. Weisman.

Q. In 1933, Filenes Sons manifested their enthusiastic pport, as you have termed it, of the Guild program, did ey not, by writing a letter to the Guild stating that they ere in favor of that program?

Mr. Haycraft: I object to the question as irrelevant and immaterial, Mr. Examiner.

y Mr. Weisman.

Q. Is that not so?

Mr. Haycraft: I cannot see where it is going to be of any probative value whatever to the present proceedings, and particularly in line with the stipulation which has been made. 2594

Examiner Bennett: I think that is in the record already.

Mr. Weisman: How?

Examiner Bennett: I think that is already in the record.

Mr. Weisman: He brought it out on direct. Now, I am going to show what happened, if your Honor will remember——

Examiner Bennett: Go ahead.

Mr. Weisman: —first——

Examiner Bennett: If it is a foundation I will hear it. 2595

Mr. Weisman: Yes.

Mr. Weisman.

Q. In 1933 Filenes Sons manifested their enthusiastic pport, as you have termed it, of the Guild program, did y not, by writing a letter to the Guild stating that they re in favor of that program, and I show you this letter l ask you whether or not that letter was written by

Filenes to the Fashion Originators Guild as a visible evidence of their enthusiastic support of the Guild policy of elimination of style piracy?

Mr. Haycraft: I have an added objection to that already made, Mr. Examiner; there is nothing to show that this witness wrote the letter; no foundation laid.

Mr. Weisman: I do not have to show it. He might know the letter. Do you want me to qualify him, to see if he knows Mr. Wright's signature, and so forth?

Mr. Haycraft: No, but you are putting in the
2597 question knowledge on the part of this witness.

Mr. Weisman: He knows all about this business. He is the great expert that you brought here. He is the fellow that is the assistant to the vice president and to the merchandising manager, and through whose hands all these things pass, and who knows what goes on in the business, and all that.

Examiner Bennett: Let me save the record for you gentlemen: Do you know whether that is the letter?

The Witness: Go ahead.

Mr. Weisman: I now offer that letter in evidence.

Examiner Bennett: Go ahead and ask him. It is not going in evidence if there is any objection.

2598 Mr. Haycraft: There is an objection, Mr. Examiner.

Mr. Weisman: Wait a moment. May I mark that for identification?

Mr. Haycraft: It does not contradict the testimony of the witness.

Mr. Weisman: I submit that it does.

Examiner Bennett: It may be marked for identification Respondents' Exhibit 8.

(Letter from Arthur W. Wright, Merchandise Manager, Wm. Filenes Sons Company, Boston, under date of June 29, 1933, to Fashion Originators Guild of America, 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 8.)

By Mr. Weisman.

Q. I show you a letter of July 1, being a copy of a letter from the Fashion Originators Guild of America, to Arthur W. Wright, Wm. Filenes Sons Company, together with a copy of what purports to be a letter from Wm. Filenes Sons of July 5 to the Fashion Originators Guild of America, 2600
together with a letter to Wm. Filenes Sons from Fashion Originators Guild of America, together with letter of August 9, from Wm. Filenes Sons to Fashion Originators Guild, and ask you whether or not those letters are all part of the same——

Examiner Bennett: I object to bringing all that correspondence in here and having it go into the record.

Mr. Weisman: May I call your Honor's attention to this: I believe your Honor would see from a reading of this correspondence that the policy of the Guild was the same in 1933 as it is now. I want to show that.

Examiner Bennett: That is an affirmative de- 2601
fense. I will sustain the motion against going into that.

Mr. Weisman: May I mark them for identification?

Examiner Bennett: You can mark them for identification.

Mr. Weisman: So we can save the record.

Examiner Bennett: There will be no trouble about that.

Mr. Weisman: All right, thank you.

Examiner Bennett: They will not be identified at this time. Go ahead and mark them if you want to have them marked.

Mr. Weisman: Part of the same transaction referred to in Respondents' Exhibit 8 for Identification.

Examiner Bennett: Yes. Well, all right, mark them—no, no, they are not to be identified at this time. You can mark them so you will know what you are offering.

2603 (Copy of letter from executive secretary, Fashion Originators Guild of America, Inc., under date of July 1, 1933, to Mr. Arthur W. Wright, Wm. Filenes Sons Company, Washington, Summer, Hawley, Franklin Streets, Boston, Mass., was marked for identification Respondents' Exhibit 9.)

(Letter from Arthur W. Wright, Merchandise Manager, Wm. Filenes Sons Company, Boston Under date of July 5, 1933, to Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 10.)

2604 (Copy of letter from executive secretary, Fashion Originators Guild of America, Inc., under date of July 7, 1933, to Mr. Arthur W. Wright, Wm. Filenes Sons Company, Boston, Mass., was marked for identification Respondents' Exhibit 11.)

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, Mass., under date of August 9, 1933, to Mr. J. M. Golby, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 12-A.)

(Memorandum from A. W. Wright, under date of August 8, 1933, to "All Dress Buyers," was marked for identification Respondents' Exhibit 12-B.)

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, under date of August 8, 1933, to Mr. J. M. Golby, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 12-C.)

(Circular letter from executive secretary, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of August 3, 1933, was marked for identification Respondents' Exhibits 12-D and 12-E.) 2606

Mr. Weisman: May I have an exception to your Honor's refusing to allow this witness to identify these?

Examiner Bennett: Certainly you may. I do not want to take up the time with that sort of thing—to your putting in your case in chief at this time.

Mr. Weisman: I now wish to make this offer of proof, to wit, if I had been permitted to exhibit these documents to this witness he would have identified the same as being part of the transaction, would have laid the proper foundation, that the letters written purporting to be written by Wm. Filenes Sons Company to the Guild were, in fact, written 2607 by Wm. Filenes Sons Company to the Guild, and the copies of letters purported to be written by the Fashion Originators Guild of America, Inc., to Filenes Sons Company were, in fact, written by the Guild to Filenes Sons Company and received by them, and that the examination of these documents would have disclosed that the Guild program as it was in 1933, so was it in April, 1936.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Now, in 1933——

Examiner Bennett: Just a moment. I think the Examiner will make a comment upon that offer of proof.

Mr. Weisman: What do you say?

Examiner Bennett: I think the Examiner will make a comment for the record on that offer of proof. The Examiner merely wishes to say that at the proper time the Respondent can call its witness, properly, and with its own witness it can identify
2609 these papers and present them in the regular course of its case in chief, where the papers belong.

By Mr. Weisman.

Q. This morning on your direct testimony, I understood you to testify in 1933 Wm. Filenes Sons Company sent a letter to the Fashion Originators Guild of America to evidence their cooperation in the Guild's policy of attempting to curb or limit the copying of original styles; is that correct; did you so testify? A. Yes.

Q. I show you this letter and ask you whether this is the letter that you had reference to?

Examiner Bennett: Well, that—you have already done that.

2610 Mr. Weisman: Well, Mr. Haycraft said he didn't know that was the letter.

Mr. Haycraft: Why do you not read the question propounded in the first instance, and I did not understand it that way. If I had known this was the letter that the witness referred to in his direct examination I would not have objected to it being admitted.

Examiner Bennett: You would not have objected?

Mr. Haycraft: No.

Examiner Bennett: Well, of course, that would change the situation.

Mr. Weisman: I think your Honor is right about that. That would change it.

Examiner Bennett: I supposed you knew what you were objecting to.

Mr. Feldman: He is just objecting on general principles.

Mr. Haycraft: I have no objection to that, Repondents' Exhibit 8.

Examiner Bennett: All right.

Mr. Weisman: Respondents' Exhibit 8 is now in 2612
in evidence.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 8, was marked as an exhibit and received in evidence.)

Mr. Weisman: Where are the other exhibits?

Examiner Bennett: Show the Attorney the other letters and see if he has an objection to them.

Mr. Weisman: Well, I do urge now——

Examiner Bennett: Well, you can show them to him before you hand them to the witness.

Mr. Weisman: All right. In other words, maybe we will save some time; he won't object (handing papers to Mr. Haycraft).

Examiner Bennett: All right; they may be re- 2613
ceived, then.

Mr. Weisman: Received in evidence Respondents' Exhibits 9 to 12.

(Letters referred to, heretofore marked for identification Respondents' Exhibits 9, 10, 11, 12-A, 12-B, 12-C, 12-D and 12-E, were marked as exhibits and received in evidence.)

2614

Mr. Haycraft: The witness identifies them as being part of the correspondence, that is the better form, and so—and I don't see what it is.

Examiner Bennett: All right. I will cancel the ruling of the Examiner previously made.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. In connection with Respondents' Exhibit 8 in evidence, I now show you a batch of letters, I don't want to recite them again.

2615

Mr. Haycraft: Give the numbers.

By Mr. Weisman.

Q. Marked Respondents' Exhibits 9 to 12-E, for identification, and ask you whether or not they are all part of the same transaction, and were duly and regularly sent and/or received, as the case may be (indicating)? A What is the question?

(Last question read.)

Q. And part of the same transaction referred to in Respondents' Exhibit 8 in evidence; in other words, whether or not that was the continuity there? A. They were.

2616

Mr. Weisman: I now offer them in evidence, your Honor (referring to Respondents' Exhibits 9 to 12-E).

Examiner Bennett: All right, received, because of counsel for the Commission withdrawing the objection.

By Mr. Weisman.

Q. Now, referring to Respondents' Exhibit 8 in evidence, would you say that honestly expressed the policy of Filene's

at the time it was made and down to date? A. Exhibit 8 is the original letter. I take it?

Q. Yes, and in my question I have particular attention to this paragraph; "We do not and will not knowingly sell in our women's, misses', and junior departments any copies or pirated dresses of original garments created by any members of your Association." A. I don't think that that line properly expresses unless you read the rest of it.

Q. With all of it, it then goes on and says: "We reserve the right, however, to make exceptions in some cases where certain styles have been so widely copied that in our judgment we need to purchase such styles to meet competition or to satisfy customer demand, while we hope cases of this 2618 kind may not occur, if they do we are to decide our conduct and also decide whether garments have been copied. Furthermore, we propose to annex to all of our orders for women's, misses', and juniors' ready-to-wear merchandise, the following clause: 'This order is placed upon the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted.' Yours very truly." Now, with all of that in mind, I ask you whether or not, with the exceptions herein noted, it was the intention of your store at that time not to knowingly sell copies of pirated dresses—copies or pirated dresses? A. It was.

Q. And that was the policy that you were enthusiastically in favor of? A. Yes, sir. 2619

Q. Now, you said to me in answer to my previous question, at one part, that you agreed to this policy with reservations? A. Yes, sir.

Q. And those reservations were the reservations which you state are embodied in Respondents' Exhibit 8? A. Yes, sir.

2620 Q. In answer to that, or in reply to those reservations, you, Filenes received this letter of July 1 from the Guild, Respondents' Exhibit 9? A. Yes, sir.

Q. Did not Filenes then change the statement of its reservations? A. No, sir.

Q. Well, I call your attention to Respondents' Exhibit 10, in which the following is stated, and ask you whether or not this fairly stated Filenes position, or did they have some reservations beyond this—this letter states: "It is evident from your letter that you misinterpreted our reason for incorporating the qualifications in our letter of June 29"—that is Respondents' Exhibit 8—"Our purpose
2621 in qualifying your original 'contract letter' was that we objected to signing a contract we felt it would be impossible to fully carry out." "We are most heartily in sympathy with the purpose behind your endeavor to eliminate copying done on dresses and have emphasized our policy very strongly to our organization. We are most hopeful that your work will eliminate this evil to a marked degree, though we doubt it can eradicate copying 100 per cent, and it was with the idea of taking care of the few cases which may occur that we inserted the qualifying paragraph. We do not object to using your stamp, for as a matter of fact our suggested stamp was stricter than yours in that it called for all dresses being originals, except in cases of copies of foreign models." Now, with that in view, will you answer my question? A. As I recall your ques-
2622 tion, I believe the first part of that letter, I mean the second line says that you misinterpreted the purpose of incorporating that qualification.

Q. Yes. A. There is nothing in that letter that says that we withdraw that qualification. We say that "you misinterpreted the purpose of our incorporating that qualification." There is nothing in that letter, as I read it, or any correspondence that I have seen, and I believe I have seen

all the correspondence, that at any time says we withdraw that qualification; we never did.

Q. No, I didn't say you ever did. I say, I ask you whether or not in your opinion you do not believe that Respondents' Exhibit 10, being the letter of July 5 which I have just read to you, did that not limit the qualification contained in your letter of June 29? A. The qualification stated in—the fundamental is that we did have that reservation, we insisted on that reservation, we were sorry that the Guild misinterpreted the spirit back of it, whatever you want to call it, but the qualification stayed in—it was the intention of having it stay in, and it never came out.

Q. But its only purpose in staying in was because you 2624
did not think it could work, is that not so? A. The only purpose in keeping that qualification was that from the very beginning we wanted to be sure that nothing would endanger our competitive position.

Q. Well, look, let me read you this, what I stated as your purpose: "Our purpose in qualifying your original contract really was that we objected to signing a contract we felt it would be impossible to fully carry out. We are most heartily in sympathy with the purpose behind your endeavor to eliminate copying down of dresses, and have emphasized our policy very strongly to our organization." A. Yes.

Q. In other words, in view of that would you not say that this limited your original qualification? A. Not in 2625
the least bit.

Q. Not in the least bit. That is what I want to know.

Examiner Bennett: We will take a recess of ten minutes.

Mr. Weisman: Thank you. You may leave the stand.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may resume.

By Mr. Weisman.

Q. Before recess you were sitting a little closer to his Honor. I believe it would be better if you would sit back over there so that he can hear you.

Mr. Haycraft: I object to that. The witness has a right to sit where he usually sits.

Mr. Weisman: I simply wanted him to sit where he did before. If you sit over there you can put your papers on that desk and that will be all right.

The Witness: I believe I would prefer to put them over here.

2627 *By Mr. Weisman.*

Q. Very well. As an executive of Wm. Filenes Sons Company, you are familiar with their policy, were you not? A. Yes, sir.

Q. After Respondents' Exhibit 10 was received by the Fashion Originators Guild—Wm. Filenes Sons Company received a reply thereto, Respondents' Exhibit 11; is that so? A. Yes, sir.

Q. And this letter of July 7 sets forth after having thanked you for the letter of July 5, and says: "Your explanation certainly clarifies the position you have taken and I wish to commend you on it." Did you not understand by that language that the Fashion Originators Guild believed that your letter of July 5 limited the reservation 2628 contained in your letter of June 29?

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant whether they believed it or not.

Mr. Weisman: I think it is very material what they believed. Here are the documents which indicate that very definitely and form an interesting contrast to the witness' testimony.

Mr. Haycraft: The documents speak for themselves, and they are in evidence. I object to any further cross-examination upon them.

By Mr. Weisman.

Q. Did you, when you were enthusiastically in favor of the policy of the Guild think it was the intention of the Guild to ultimately so minimize copying that legitimate manufacturers would then be able to get along?

Mr. Haycraft: Same objection.

Mr. Weisman: I think that is a perfectly proper question to show what the policy of the Guild was.

2630

Examiner Bennett: Same ruling. The objection is sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you, at the time that you were so enthusiastically in favor of the policy of the Guild, believe that this unfair copying of original styles was a means of unfair competition between retailers?

Mr. Haycraft: Same objection.

Mr. Weisman: Would you be kind enough to let me complete my question?

Mr. Haycraft: I thought you had completed it.

Mr. Weisman: No.

2631

Examiner Bennett: Complete your question.

By Mr. Weisman.

Q. —was that one of the reasons why you were enthusiastically in support of its elimination?

Mr. Haycraft: I object on the grounds stated, and I wish to add the further objection that counsel

for the respondent has not correctly quoted this witness in his question to the witness because the witness was very careful in his answer to say that he was enthusiastically in support of this policy, with reservations, but that is something which has never been included in the questions as they are being propounded by counsel for the Respondent. I think it is unfair for your questions to be framed in that way without referring to this reservation which was specifically and definitely set up by the witness.

Examiner Bennett: I sustain the objection. It is an interpretation of the law, a conclusion of the

2633 witness, and it is objectionable from other standpoints also.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. I show you Respondents' Exhibit No. 11, which is a copy of a letter sent out by Fashion Originators Guild to Filenes, on July 7, 1933, and ask you whether or not your firm was in accord with the expressions therein contained?

Mr. Haycraft: Same objection. The letter speaks for itself.

Mr. Weisman: This was the letter from us to them. I want to know whether they were in accord with those things.

2634 Mr. Haycraft: That is indicated by a reply to the letter.

Examiner Bennett: If that is so I sustain the objection.

Mr. Weisman: Why do you say that? Have you no sense of obligation to the Court? There is no reply to this letter. That is why I am asking the question.

Mr. Haycraft: What is the date of the letter?

Mr. Weisman: You can tell the Court that when you do not even know the date of the letter? How do you hope to get along on that basis? The date of the letter is July 7. Where is there a reply to this letter?

Mr. Haycraft (after examining several documents): There does not seem to be a reply to this letter. I do not object to it on the ground that there is a reply to the letter. However, I do object to it on the ground that this witness is not in a position to testify as to whether or not the firm of Wm. Filenes Sons Company was in accord with the policy 2636 of the Guild as stated in that letter.

Mr. Weisman: This is a rather unusual situation here, Mr. Examiner. After counsel for the Commission has presented this witness here as the grand factotum of the firm of Wm. Filenes Sons Company now he says that he does not know anything about it. First he was a lion and now he is a lamb.

Mr. Haycraft: I did not bring him here as the grand factotum of anything. I did not bring him here with a knowledge of what the firm of Filene had as to their accordance with the policy of the Guild as stated in that letter.

By Examiner Bennett.

2637

Q. Have you read that letter? A. I am about two thirds through. Now, I have finished it. What is the question?

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will overrule the objection and allow the witness to answer.

A. As the grand factotum I suppose this description is——

By Mr. Weisman.

Q. I withdraw that "grand factotum." That was for Mr. Haycraft and not for you. Can you tell us just as a witness here the proper answer to the question? A. Well, as a lesser light, we were in favor of the principles enunciated by the Guild but questioned the practicability of carrying out their programs as they originally stated it, which was the reason for our original reservation. And we never at any time considered that that reservation had been withdrawn.

Q. That is not what I asked you? A. No?

Q. No. I asked you whether or not, after reading this
2639 letter, you would say that at the time that you received it you were generally in accord with the expressions therein contained.

Mr. Haycraft: The witness has already answered the question. I think this is an improper question to ask him now.

Mr. Weisman: He knows. He can get along all right. He can quite readily take care of himself. Why not leave him alone.

Mr. Haycraft: I object on the ground that the question has been answered, and the witness has made an answer to the question which is a correct answer to the question, and therefore I object to
2640 any further interrogation as cumulative, repetitious and highly improper. It is simply wasting time here. We will never get through if we pursue this type of tactics all the way through.

By Examiner Bennett.

Q. Can you make any further answer to that question? A. I believe I have answered the question. I hope I have answered it. I have intended to.

By Mr. Weisman.

Q. Well, do you think that you have answered me, when I stated to you when I showed you this letter and asked you as a proper representative of Filenes whether at that time generally Filenes were in accord with the statements therein made? A. I believe I answered that.

Q. Were they or were they not, "yes" or "no"? A. Filenes was not in accord with the principles enunciated in this letter except and only as far as practicable.

Q. What was that? A. Filenes were in accord with the principles enunciated in this letter as far as practicable.

Q. Now, that is all I want. A. As far as practicable.

Q. Yes. With regard to the matter of how far they were 2642
practicable, I show you Respondents' Exhibit 12-D. A. Yes.

Q. I call your attention to the fourth paragraph therein which sets out the mechanics or practical way in which the matter was to be handled; does it not do so? A. We did not think this letter, which we thought at that time, and I still think, was more or less of a form letter in any way, shape, or manner changed that what we considered to be an important reservation.

Q. I did not ask you that. A. What is the question?

Q. Did you not understand the question? A. I thought I did.

Q. That is not an answer to the question. I did not ask you about that. A. Well, what is the question? 2643

Mr. Weisman: I will ask that the question be read.

Mr. Haycraft: He has already answered the question.

Examiner Bennett: Let the question be read.

(Question read.)

By Mr. Weisman.

Q. What about it? A. The fourth paragraph does set out the mechanics, yes.

Q. It shows a practical way under which it was to be handled; does it not? A. It shows the practical way in which the Guild advised it was to be handled.

Q. Was your firm greatly in favor of so handling it? A. We were in favor of handling it as far as it would permit us to say in a competitive position.

Q. Did you ever tell that to the Guild? A. Why, yes.

Q. Did you or did you not answer that letter, or in answer to that letter did you ever tell it to the Guild? A.
2645 I do not know whether we ever answered this letter, and if we did I do not even know today whether or not we kept reiterating every time we received a letter from the Guild that we had a reservation.

Q. Listen to this: "With reference to your letter of August 3, I am writing you because I thought you would be interested to know we consider your statement of policy so good, especially the paragraph at the bottom of the first page, and continuing on the second page, we have sent a copy of your letter to all of our dress buyers, together with a memorandum stating we shall expect their cooperation in carrying it out." A. I now recall that letter.

Q. Notwithstanding that, you still say that you kept your reservation? A. Yes, sir.

2646 Q. And you say in no place in such letter—I will put it this way: Can you show me any place in that letter where you mention your reservation? A. Having made our reservation originally, and never having withdrawn it, to my knowledge, I feel that the reservation still existed.

Q. Notwithstanding the terms of this letter? A. Notwithstanding the terms of this letter.

Q. You also sent out to your buyers, did you not, a copy of that letter? A. Yes, sir.

Q. Your instructions to your buyers, were, among other things, as follows: "We heartily agree with the policy outlined in this letter and call your attention specifically to the fourth paragraph. We shall expect everyone to adhere exactly to this declaration of policy." The fourth paragraph you read. You sent a copy of those instructions which you gave to your buyers to the Fashion Originators Guild of America, Inc., did you not? A. Yes, sir.

Q. And the purpose of your sending that copy of your instructions which you gave to your buyers to the Fashion Originators Guild was to show them how heartily you were in favor of the Guild policy, and how you were supporting it; is that so? A. That is correct. 2648

Q. That was sent, those instructions were sent to buyers for every single shop in these departments that you had? A. Yes, sir.

Examiner Bennett: Is that August, 1935, or August, 1933?

Mr. Weisman: August 8, 1933. That was the time that all of this happened, this file.

Mr. Haycraft: What do you mean, that is all?

Mr. Weisman: All of this correspondence passed back and forth.

Mr. Haycraft: And that was from the beginning of the relationship?

Mr. Weisman: That is right.

Mr. Haycraft: Lots of things happened since that time. 2649

Mr. Weisman: You may adhere to the idea that the world stands still, but if anything does it is yourself. I do not. I know the world goes on. Of course, there were further letters exchanged after that.

The Witness: Mr. Weisman, if I may interrupt, upon the advice of Mr. Haycraft, I have obtained the

sales sheets for the months of May and June, and through July 24, which you requested this morning. If you still desire them, here they are (witness hands counsel several documents).

By Mr. Weisman.

Q. Have you examined them? A. Well, they arrived while I was being cross-examined and you have kept me reasonably busy.

Q. In other words, you have not examined them? A. Well, you see me. I did glance through them in order to make sure that they were the right months.

2651 Q. Do they substantiate the testimony you gave this morning? A. I did not have time to check each department. The reason why it is so hard to answer this as to each account, or each department, is that each of these departments is not totaled and naturally I would have to check through each of them in order to find out, I have to check each department and even in some cases I would have to check the subdivision and add all of them up this year and last year, and check up my testimony this morning.

Q. I will go over them to-night and examine you with regard to them in the morning. I will do that rather than ask you to make the check. Inasmuch as I asked you for it I will do the checking myself and save you the difficulty of doing so. A. Thank you.

2652 Q. That will save you some trouble to-night. A. I only want to ask you one thing and that is this: When you do question me to-morrow, I would like to have the sales sheets in front of me so that I may observe them.

Q. I will bring them in. It may take an hour or so to go over this matter, and I would like for you to have them here at that time. A. That is just because I do not profess to know every figure of every department every month of every year.

Q. I should not expect you to. A. Thank you.

2653

Q. In 1933 were the reservations that you have expressed in effect? A. They were.

Q. Also, for the month of 1933, with those reservations that you have made reference to and expressed, there is no doubt that you were heartily in favor of the Guild program? A. As we understood it.

Q. Yes. Now, your reservations were not alone to the Guild program, but you say as "we understood it"; you mean as you understood the Guild program? Let us clear that up now. A. As we understood the purposes of the Guild; what they represented their method of working would be, and—that is all. That is the whole answer. I cannot think of anything else.

2654

Q. And your enthusiastic support, would such reservations as you may have manifested—namely, such reservations as manifested itself in writing in response to Respondents' Exhibit No. 8 in evidence and from there right on down through Respondents' Exhibit No. 12-D; those are the papers I showed you? A. What is that question again? I did not quite get it.

Q. And your enthusiastic support, with such reservations as you may have had, manifested itself in writings in response to Respondents' Exhibit No. 8, in evidence, right on down through Respondents' Exhibit No. 12-D. A. Yes, sir.

Q. That is the enthusiastic support which found expression in these letters continued right down through 1933; did it? A. Oh, yes.

2655

Q. It continued through 1934? A. Oh, yes.

Q. It continued through 1935? A. No.

Q. Let us see. A. Yes.

Q. In 1935 you were cooperating with the Guild, were you not? A. Yes.

Q. And you took advantage of the Guild offices for the elimination of copies? A. Yes, sir.

Q. You did? A. Yes.

Mr. Weisman: Let me have those papers, please.

Mr. Feldman: I will get them in a minute.

Mr. Weisman: While they are looking for them may I pursue another line of interrogation in order to save time?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. If you found a competitor of yours was carrying a copy of what you believed was an original creation, you would notify the Guild? A. Yes, sir.

Q. You did that because you thought, I take it, that the
2657 carrying of copies by those competitors of yours, or original merchandise that you had, was not a fair means of his competing with you on that original?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant to any issue in this case.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In any event, you notified the Guild, is that so?

Mr. Haycraft: I object.

Examiner Bennett: That has already been answered. I think I will let him answer.

2658 *By Mr. Weisman.*

Q. Is that not so? A. Yes, sir.

Q. The purposes of your notification to the Guild was to obtain, if possible, the aid of the Guild in having that copy removed from sale; is that so?

Mr. Haycraft: Same objection and also the further objection that it is not proper cross-examination.

Mr. Weisman: I think it is proof of his enthusiastic cooperation.

Mr. Haycraft: It is not proper cross-examination on the the direct examination.

Examiner Bennett: I will allow the witness to answer the question.

Q. (Question read.) A. The purpose of calling attention of the Guild was to remove us from a competitive disadvantage.

By Mr. Weisman.

Q. When would you say was the last time you wrote the 2660
Guild advising them that a competitor of yours had a copy which ought to be removed? A. I should say that it was some time in the winter time.

By Examiner Bennett.

Q. What winter? A. The winter or the end of 1935, and the beginning of 1936, some time towards the end of 1935, about that.

Q. When you say "towards the end," do you not mean in the last month of the year? A. I mean, I said the winter, and that would have to be, winter around this part of the country is around December and January and February.

By Mr. Weisman. 2661

Q. Did you not in November and December complain that your competitors were carrying copies of Guild merchandise to the Guild? A. Somewhere around that time, what was it; November? I think it was December. Sometime around the winter time.

Q. I will show you some photostatic copies of letters of this complaint, dated—here is a complaint dated November 21. A. Yes.

Q. January 22. A. Yes.

Q. January 25. A. Yes.

Q. December 11. A. Yes.

Q. December 13. A. Yes.

Q. December 14. A. Yes.

Q. Do you recognize those as complaints that you sent in to the Guild? A. I do.

Q. As of those dates? A. Yes.

Q. So that in any event, even up to the end of the year, you still cooperated with the—in the year 1935—you were still enthusiastically cooperating with the Guild? A. I cannot answer that question.

2663 Q. Why, because you do not know how great your enthusiasm was? A. As you will recall your original statement, we were just as enthusiastic in 1933, 1934, 1935—well, we were not as enthusiastic at the end of 1935 as in the honeymoon days of 1933.

Q. You mean the "honeymoon" was all over? A. Well, we began to find out certain things. That did not mean we still could not use the offices of the Guild. We did. But, we were not as enthusiastic in the end of 1935 as we were in the beginning of 1933 or even the beginning of 1935.

Q. You still thought it was a good thing to notify the Guild of your competitors who had improper copies? A. One of the primary things——

Q. (Interposing) No. Did you still think it was a good
2664 thing to notify the Guild of those of your competitors who had copies of Guild merchandise? A. It was necessary.

Q. Necessary to your business? A. For our competitive position.

Q. And necessary that this copying of the Guild originations should, when you found such a copy, if possible be removed from competition with the original? A. If we were not going to buy the copy ourselves.

Q. Yes. You had expressed it as your policy that you would not buy copies yourself? A. Yes.

Q. Yes? A. Except for that reservation.

Q. Now, in or about the early part of 1936 you came—your store came to the conclusion that no longer you wished to cooperate with the Guild in its efforts to curb style piracy; is that so? A. What date did you name in your question?

Q. I said in the early part of 1936. A. Yes.

Q. And that policy manifested itself by the sending of a letter on February 14 by Mr. Riley, chief executive of the A.M.C. to the Guild; is that so? A. That was the culmination.

Q. Yes. In other words, on February 14, 1936, your accredited representative notified the Guild that he, speaking on your behalf, advised the Guild that you were no longer willing to cooperate; is that it; or words to that effect? A. Well—— 2666

Q. The fact is unimportant but the date is what I am trying to find out. A. You say that is the date; it is around that time. I do not agree with the statement of fact that you made.

Q. Then, shortly after that, after that letter was sent by Mr.—there is no doubt, is there, that Mr. Riley of the A.M.C. was acting, however, in and on your behalf and with your knowledge and consent? A. Mr. Riley acted for us and with our knowledge and our consent, we gave consent to what he was doing and we had knowledge of his acts.

Q. Mr. Riley was the chief executive officer of the A.M.C.; that is the concern about which you have testified before. A. Yes, to which you belong. 2667

Q. After you got that—after that letter on February 14 was sent out, you received a telegram from the Fashion Originators Guild of America, Inc., did you not? A. Yes, sir.

Q. Have you got that telegram here? A. No, sir.

Q. Did you ever show that telegram to Mr. Haycraft? A. No, sir.

Q. Will you not have it here to-morrow? A. If I can get it. If I can find it. As a matter of fact, I looked for it.

Q. You looked for it and could not find it? A. I know it is in existence.

Q. It may be lost; is that it? A. Well, it may be. The original telegram, I do not know whether I can get my hands on it or not in this other lawsuit you referred to; it may be an exhibit in that case.

Q. In any event, that telegram in words or substance requested you to say to the Guild whether or not Mr. Riley
2669 and the A.M.C. were authorized to speak on your behalf; is that so? A. We thought it was a little stronger than that.

Q. And may I say that I will read this and see if this will refresh your recollection— A. I think it said if we did not hear from you by some time to-morrow, or something like that.

Q. I ask you whether or not this will refresh your recollection as to whether or not with your recollection so refreshed you will say that this is the substance of the telegram that you received:

"February 6, 1936.

"William Filenes Sons Company

"Boston, Mass.

2670 "Referring following letter from A.M.C. signed by Riley."

Following then the quotation of the letter of Riley and then the telegram goes on:

"Please advise by wire Monday afternoon if your store is among the eighteen mentioned above. Full Guild membership meeting to-night to announce returns and declara-

tion of non-cooperating stores STOP If we do not hear from you we will assume Riley's letter applies to your store STOP Fashion Originators Guild Inc."

Is that the substance of the telegram except that in addition, for your information, there was quoted verbatim Mr. Riley's letter? A. Yes.

Q. Now, that telegram was sent to you on the 16th. A. You say it is the 16th?

Q. Yes. It said therein that we are—in words and substance that we are anxious to know whether or not Mr. Riley was authorized to speak for and on your behalf? A. Yes. 2672

Q. When you got that telegram did you reply to it? A. No.

Q. You did not? A. No.

Q. There never was a reply to it? A. There never was a reply.

Q. Notwithstanding the fact that you knew the telegram said that if you did not—if we did not hear from you we will assume that Mr. Riley is authorized to speak for and on your behalf? A. If we do not hear from you.

Q. If we do not hear from you the Guild might assume that Riley's letter applied to your store. A. It was rather short notice we felt. That is what I am trying to say. It called for pretty quick conclusions.

Q. As a matter of fact, so far as you were concerned, the telegram was unnecessary because Mr. Riley was authorized to speak for and on your behalf of Filenes Sons Company before he sent that letter out; is that so? A. The Riley letter did not necessarily convince us necessarily that we would be red carded. 2673

Q. I will ask you whether or not the Riley letter was authorized by you before it was sent out? A. Yes.

Q. There is no doubt about that? A. Yes.

Q. There is not the slightest doubt about that in your mind? A. No.

Q. There would be no difference in so far as you were concerned if you were to take ten months to reply, you could not have altered the fact? A. What?

Q. That Mr. Riley had been authorized to speak for and on behalf of Wm. Filenes Sons Company? A. Yes.

Q. And his action in sending that letter was in truth and in fact an action of Filenes Sons Company in so far as the letter was concerned? A. He did something that we approved of.

Q. And you approved it before it went out? A. Yes.

2675 (There was a discussion off the record.)

Examiner Bennett: We will stand adjourned now, gentlemen.

(Whereupon, at 4.45 o'clock P. M., July 27, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 5, Federal Building, Boston, Mass.

July 28, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, *Examiner.*

2676 (Same Appearances:)

PROCEEDINGS.

Examiner Bennett: We will be in order, please. You may proceed, Mr. Weisman.

Mr. Weisman: Thank you. I just want to see what the last question was.

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman.

Q. At the adjournment yesterday you had testified that the letter of Mr. Riley of the A.M.C. was sent out for and on behalf of your store, and that thereafter, irrespective of the time that might have been given you by the telegram to reply, there would have been no reply; do you recall that?

Mr. Haycraft: That is objected to, Mr. Examiner. That was Mr. Weisman's testimony; not the wit- 2678
ness'.

Mr. Weisman: Well, let us see.

Mr. Haycraft: It is not in accordance with the witness' testimony.

Mr. Weisman: Well, we have the testimony here. Well, rather than start arguing I will ask it, then. I thought we could save some time, but if you prefer it that way——

Examiner Bennett: Very well.

By Mr. Weisman.

Q. Mr. Riley was authorized to send that letter out on your behalf, was he not? A. That is correct.

Q. And the telegram which you received was asking you 2679
whether or not he was so authorized, was it not, among other things? A. Among other things.

Q. Yes. Among other things the telegram said: "Unless you notify us to the contrary we will understand that Mr. Riley is authorized to act on your behalf." Is that not what it said, in words or substance?

Mr. Haycraft: I object to the question, the telegram will speak for itself. This has all been gone over.

2680

By Mr. Weisman.

Q. Well, did you bring the telegram? You said you thought you would look for it. A. I thought you brought it yesterday.

Q. No, we read you a telegram. A. No, I would not—I do not know where the telegram is now. I did not understand I was to actually try to get it.

Examiner Bennett: It has been read into the record, I understand?

Mr. Weisman: Yes.

The Witness: I sent a copy.

2681

By Mr. Weisman.

Q. The telegram says: "If we do not hear from you we will assume Riley's letter applies to your store"; did it not? A. That, among other things.

Q. Now, since it did apply to your store, since this telegram was sent for the purpose of ascertaining whether or not Mr. Riley was acting on your behalf, and since he was, it was immaterial whether or not the telegram said "Advise by Monday afternoon if your store is among the eighteen mentioned," because it was; is that not so? No quarrel— A. It was not immaterial as reflecting the attitude of the Guild.

Q. No, I mean was it immaterial in so far as you were concerned, in so far as your reply was concerned?

2682

Mr. Haycraft: Objected to as irrelevant, immaterial. I do not see what it has to do with this case.

Examiner Bennett: Well, I will sustain the objection.

2683

By Mr. Weisman.

Q. Well, this telegram said——

Examiner Bennett: Well, if you want to find out whether Filenes regarded that as concluding your relations, why do you not ask him directly?

By Mr. Weisman.

Q. This telegram said: "Please advise by wire Monday afternoon if your store is among the eighteen mentioned above." Do you remember that? A. Yes.

Q. Now, as a matter of fact, your store was among the eighteen mentioned above; was it not? A. That is correct.

2684

Q. And the eighteen mentioned above were eighteen stores on whose behalf Mr. Riley had notified the Guild that those stores, acting together, would no longer cooperate with the Guild program looking towards the elimination of style piracy; is that not so? A. I cannot tell you about the other seventeen stores that acted, for instance—I mean, whether that was—I cannot tell whether Mr. Riley was acting for all the other seventeen, I believe he did, I can only answer that I believe he did.

Q. That is all I want to know. By the way, are you an officer of the A.M.C.? A. No, sir.

Q. Director? A. No, sir.

Q. You are assistant to Mr. Kirstein? A. Yes, sir.

Q. He is vice president of your company? A. Yes,

2685

Q. Is he an officer of the A.M.C.? A. Yes, sir.

Q. What office? A. Director.

Q. Director? A. Yes.

Q. Has he any other office? A. One of the offices not executive director.

Q. Does he hold any other office? A. In the A.M.C.?

Q. Yes. A. Why, he may be on the executive committee; he has been at times.

Q. Yes. Now, in your general knowledge of your business, and as assistant to Mr. Kirstein, do you not know whether or not Mr. Riley was acting on behalf of these other eighteen stores? A. Mr. Kirstein was out of town during that time, that this whole thing took place.

Q. I did not ask you that. I say, as his assistant, and with your general knowledge, do you know? A. I cannot answer that; he acted for the other stores, I believe.

Q. What is your best belief? A. I believe that he did.

Q. Whether these other eighteen stores for whom Mr. Riley acted at the same time he acted for you, if he did so act?

2687 Mr. Haycraft: I object, not proper cross-examination, and irrelevant, and immaterial.

Examiner Bennett: Well, I think I will sustain the objection. I think we are through with that.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. In any event, do you know whether or not these eighteen stores all took the same type of action with regard to the Guild program, tending towards the elimination of style piracy?

Mr. Haycraft: Same objection. Before this case is through, Mr. Examiner——

2688 Examiner Bennett: Sustained.

Mr. Haycraft: —We will have all this evidence in.

Examiner Bennett: You do not need to argue.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, on your direct testimony you gave us some story about some wedding dresses. Were you personally familiar

with that transaction, your own personal knowledge? A. I don't know what is meant by—I am saying this in all honesty, too—I do not know what you mean when you say "personally familiar." We have the buyers up in tears in my office—the division merchandise manager in tears. I was not in the manufacturer's—I did not see the bridesmaids and the girl to be married, if that is an answer, why, I will cease.

Q. I want to know whether or not your testimony with regard thereto was merely based upon what somebody else told you?

Mr. Haycraft: I object to that, Mr. Examiner, as to the form of that, "merely based upon what some- 2690
body else told you," in view of the ruling.

Mr. Weisman (interposing): He was asked——

Mr. Haycraft: Just a moment, now, until I get through with this objection. You are constantly interrupting; it is getting very obnoxious.

Examiner Bennett: Just let me ask the witness a question. You testified as to certain facts about dresses, receiving only part of the dresses.

The Witness: Yes, sir.

Examiner Bennett: Did that information, whatever it was, come to you in the regular course of business?

The Witness: Yes.

Examiner Bennett: From some of your assist- 2691
ants, from some of your employees working under you, and your associated vice-president?

The Witness: Yes, sir.

Examiner Bennett: All right, I think that that—I will sustain an objection.

Mr. Weisman: Exception.

Examiner Bennett: I do not believe that that is material.

By Mr. Weisman.

Q. Do you know whether or not you ultimately got the dresses? A. We ultimately received the dresses by buying at retail.

Q. Do you know Hutzler Brothers of Baltimore? A. Yes, sir.

Q. Are they a member of the A.M.C.? A. Yes, sir.

Q. Did Hutzler Brothers of Baltimore, with regard to those wedding dresses, go to a manufacturer and purchase them ostensibly for themselves——

Mr. Haycraft: Objected to.

2693 *By Mr. Weisman.*

Q. —if you know.

Mr. Haycraft: Objected to as irrelevant and immaterial to the issues in this case; not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I wish to make this offer of proof——

Examiner Bennett: All right.

Mr. Weisman: —in that regard, that if the witness had been permitted to answer that question I would have been able to show that these dresses ultimately came into these people—Filenes; that they

2694 were obtained by Filenes through fraud and deceit in that one of their other stores, Hutzler Brothers of Baltimore, who are federated together with them under this A.M.C. form of group purchasing and group buying, came into the manufacturer, fraudulently represented that since they were cooperating with the Guild in its style piracy program, that they wanted these dresses; that thereupon the dresses were sent to Hutzler Brothers and by Hutzler

Brothers reshipped to Filenes. I also say that this goes to the credibility of this witness.

Examiner Bennett: Yes. Well——

Mr. Haycraft: Mr. Examiner, I move to strike that statement made, the words "fraud and deceit" and "fraudulent."

Examiner Bennett: They may be stricken.

Mr. Weisman: Except.

Examiner Bennett: It is in the record for whatever proper use it should have. I think it is an abuse of the privilege of making an offer of proof.

Mr. Weisman: May it please your Honor——

Examiner Bennett: I do not think you have the 2696
slightest——

Mr. Weisman (interposing): That is the very thing——

Examiner Bennett: —ability to make the proof that you are offering.

Mr. Weisman: That is the very thing that I wanted to prove.

The Witness: May I address the Court?

Mr. Haycraft: Now——

Mr. Weisman: No; I object to the witness addressing the Court during my examination.

By Mr. Weisman.

Q. Mr. Seegal, at the present time do I understand that 2697
your store is handling copies of all kinds of merchandise?

Mr. Haycraft: I object to the question as irrelevant and immaterial, not proper cross-examination.

Mr. Weisman: I submit that it is very material.

Examiner Bennett: Well, I don't know that I heard that.

Mr. Weisman: Read the question.

(Last question read.)

By Mr. Weisman.

Q. Dress merchandise, I mean; I do not mean shoes or hosiery.

Examiner Bennett: I will let him answer. Overruled.

By Mr. Weisman.

Q. You may answer. A. I do not know whether or not we are handling copies of Fashion Originators Guild—is that included?

Q. Yes. A. Fashion Originators Guild dresses—we buy
2699 dresses without any part of my knowledge as to just exactly what the Fashion Originators Guild——

Q. So at the present time, whether or not you are handling copies of originations is a matter of complete indifference to you and to the management of your store; is that it?

Mr. Haycraft: That is objected to, if the Examiner please.

Mr. Weisman: I submit I am entitled to an answer on such a vital question.

Mr. Haycraft: Nothing to do with the issues in this case, Mr. Examiner.

Mr. Weisman: Yes, it has.

Mr. Haycraft: It has been reiterated and pointed
2700 out in the stipulation that was made here, whether or not these garments are copies has nothing to do with the issues in this case. The whole issue is the boycott, which does not make any difference whether this witness or his firm has any thought about it or whether or not they buy copies, or anything about it. The whole question as far as the issues in this case are concerned revolves around whether or not this firm was boycotted and the effect of that boycott.

Mr. Weisman: Well, in other words, in addition, as I understand it, it is in the Commission's presentation of this case, and the issues involved, it is totally immaterial whether or not the merchandise handled by this store and others are in fact copies of our style originations?

Mr. Haycraft: Exactly.

Mr. Weisman: Well, if that is so—I mean, I won't press that any further; I do not want to unnecessarily prolong this situation.

May I have a moment's time? My co-counsel——

Examiner Bennett: Yes.

(Mr. Feldman confers with Mr. Weisman.) 2702

By Mr. Weisman.

Q. On your direct testimony yesterday, Mr. Seegal, I understood you to say that there were returned 220 dresses which were copies of Guild merchandise?

Mr. Haycraft: Objected to, Mr. Examiner, as not correctly stating the witness' testimony.

Mr. Weisman: That is a foundation question.

Mr. Haycraft: I think it ought to be within the line of the record.

Mr. Weisman: I am coming to the next question.

Examiner Bennett: All right, I will hear it.

By Mr. Weisman. 2703

Q. That is the correct number, is it not? A. Yes, yes, at least that number, I believe I said.

Q. Well, I think you gave us that exact number. I think you were even kind enough to particularize that description, twelve to twenty. A. I meant to say it was at least that number; possibly more.

Q. You have in your employ a Mr. Shields? A. Yes.

Q. What are Mr. Shields' duties? A. He is a buyer of so-called machine-made dress department.

Q. And you also testified, I believe, that you passed on all returns? A. I pass on all—it is my—I pass on all returns either personally or through my assistants. I am responsible for them.

Q. And I assume that where a manufacturer objected to a return such objection would also come to your attention? A. I hope it does.

By Mr. Weisman.

Q. You know Miss Brady? A. Yes, sir.

2705 Q. She came into your store and saw you? A. Well, I—

Q. Or your assistants or your subordinates? A. Yes.

Q. She formerly worked for Filenes? A. Yes.

Q. And how long? A. Why, she was working there when I got there, which is 1924, and she worked—and she had worked, I believe, some time before that, and she worked there for several years—three, four or five years after that.

Q. And she was known to most of the people in the store, I take it? A. She was known to most of the people in the store who had—yes.

Q. Yes. A. And who dealt with her.

Q. And to most of the manufacturers? A. Yes.

Q. And these people also were informed that she was

2706 working with the Guild? A. Yes.

Q. And her work was openly done, was it not? A. Yes sir.

Q. I mean, there was nothing furtive about it, was there? A. I am not sure of the meaning of the word "furtive."

Q. Well, "secret," shall be say? A. Nothing secret about it at all.

Q. She came into your store openly and notoriously? A. I do not know what you mean by "notoriously."

Q. I mean, it was well known? A. Yes.

Q. I do not mean it in the colloquial sense; I mean it in the legal sense. A. I know colloquials, but legally I am not——

Q. Now that you know both, can you answer that, that she came in openly? A. Now that I know both, she came in legally and notoriously.

Q. And if you believed that a competitor of yours was carrying a copy of Guild merchandise, you would disclose that to Miss Brady? A. Yes, sir.

Q. And you would expect Miss Brady to go to the competitor, look at the garment, communicate with the New York office and generally ascertain the facts and then 2708
perhaps communicate, let us say, with the New York office? A. I would expect her to set the machinery in course.

Q. In operation? A. Whatever that method was.

Q. In other words, I take it, then, that Miss Brady was here to set in operation, to use your own phrase, the Guild machinery where a retailer sets forth that a competitor was having a copy? A. I don't think that was the primary purpose.

Q. Well, was that one of the purposes? A. Yes.

Q. That she acted upon? A. Yes, sir.

Q. Now, do you know whether or not Miss Brady was likewise known to all of your competitors generally in the same way that she was known to you?

Mr. Haycraft: I object; it is not proper cross- 2709
examination.

Mr. Weisman: If he knows.

Mr. Haycraft: No foundation laid.

Mr. Weisman: You brought out this Brady business. That is merely to tell the Commission——

Mr. Haycraft: I brought out this Brady business merely as to the witness' store, not others.

Mr. Weisman: Oh, let us see. You brought it out so an inference might be drawn from it.

Examiner Bennett: Well, I will let him answe the question.

Mr. Weisman: Yes.

A. I don't know how much my competitors knew, but I would have every reason to believe that they, at least were responsible,—officials in my competitors' stores were acquainted with that situation.

By Mr. Weisman.

Q. Yes. And before Miss Brady was employed by the Guild your store was notified, was it not? A. I believe so.

2711 Q. And do you not know that, as a matter of fact, as the result of your superior's suggestion, Mr. Kirstein, that Miss Brady was employed? A. I do not know that she was employed as a result of the suggestion. That I do not know.

Q. You do not know that? A. I don't know that she was and I don't know that she was not. I just don't know.

Q. I mean, you just have no knowledge upon it? A. No.

Q. Now, I remember that in one of the letters that you—that Filene sent to the Guild you stated—the letter stated that the stamp that you had proposed to use was even a more strict stamp than the Guild was asking you to use. Do you remember that letter? A. I do not remember whether we used the word "strict," but it was a different

2712 stamp.

Q. Well— A. —that we liked better.

Q. Well, let us see. Get me that letter. I will give you the exact wording. A. If you say it said "strict," I will accept——

Mr. Haycraft: It did say "strict."

By Mr. Weisman.

Q. It did say "strict." A. I will accept that.

Q. Then it is conceded that you in a letter stated that you were ready to use a more strict stamp than even the Guild wanted; is that not so? A. Yes, sir.

Q. Now, from August, 1933—I think that is about the time that this matter took place (handing letter to witness)—you see, we are correct; you say, "our suggested stamp was stricter than yours." A. That was three or four years ago.

Q. That is quite all right. A. If you say it is stricter, it is stricter.

Q. I just want to justify my question to you. You continued to use the stamp, did you not? A. Yes, sir.

Q. And you put it on all your orders? A. Yes, sir. 2714

Q. When you put that stamp on there you instructed your buyers that it should be on your orders? A. Yes, sir.

Q. And did you deem the terms of that stamp a part of the order?

Mr. Haycraft: I object to the question as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Yes, sir.

By Mr. Weisman.

Q. When you issued an order with that stamp on it, did you deem the terms of that stamp a promise by the merchant to whom the order was given that they would not send you any copies of Guild merchandise? 2715

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you ever at any time authorize any of your buyers to state, in words or substance, to any of the

manufacturers to whom orders were given with the stamp thereon, that the manufacturer could disregard the promise or warranty embodied in the stamp?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, yesterday you did testify that certain departments were affected by the Guild policies; do you remember that? A. Yes, sir.

2717 Q. Now, this Guild policy just applied to dresses, did it not? A. No.

Q. Well, what else did it apply to? A. It applied to coats, high-priced coats and high-priced suits.

Q. Well, did it apply to gloves? A. No, sir.

Q. Did it apply to hosiery? A. No, sir.

Q. Did it apply to hair nets? A. No, sir.

Q. Did it apply to ladies' jewelry? A. No, sir.

Q. Did it apply to yarn? A. No, sir.

Q. Did it apply to ladies' knit underwear? A. No, sir.

Q. Did it apply to ladies' union suits? A. No, sir.

Q. Would you say that it applied to boys' furnishings? A. No, sir.

Q. Would you say that it applied to men's furnishings at all?

2718 Mr. Haycraft: I am going to object.

A. No, sir.

Mr. Haycraft: The witness can testify as to what it did apply to without going into all this detail.

Mr. Weisman: Wait a moment. This is very material.

Examiner Bennett: All right, I will let him go ahead.

Mr. Haycraft: This is a big store, there are a lot of things in the store.

Mr. Weisman: Well, you brought it out on your case in New York and you brought it out here.

Mr. Haycraft: The case in New York is not here.

Mr. Weisman: Wait a moment. I do not want to argue any further. Make my friend keep still.

By Mr. Weisman.

Q. It did not apply to men's suits? A. No, sir.

Q. And it did not apply to men's bathrobes or trousers? A. No, sir.

Q. And it did not apply to the manicuring departments 2720
in your store? A. No, sir.

Q. Or permanent waving? A. No, sir.

Q. It certainly did not apply to the restaurant? A. No, sir.

Q. It did not apply to the infants' wear? A. No, sir.

Q. And it certainly did not apply——

Examiner Bennett: Do not try to make it absurd, Mr. Weisman.

Mr. Weisman: How?

Examiner Bennett: I say, do not try to make it absurd. We are making a record.

Mr. Weisman: No; if you will permit me, these are merely foundation questions and I am going to show that they are very material and not going to 2721
absurdities.

Examiner Bennett: All right.

By Mr. Weisman.

Q. And they did not apply to infants' dresses—did I ask you that? A. If you did, I will answer it twice: no.

Q. No. Nor coats? A. What kind of coats?

Q. Infants' coats? A. No.

Q. Or infants' knitwear? A. No.

Mr. Hayeraft: May I move to strike all this cross-examination.

Mr. Weisman: Wait a moment. I am not finished.

By Mr. Weisman.

Q. It did not apply to misses' skirts and dresses, did it? A. Misses' skirts and dresses? Misses' dresses it must have applied.

Q. No, just misses' skirts; I beg your pardon. A. Misses' skirts, it did not apply.

2723 Q. And you would not say that it applied to misses' knit dresses? A. Yes, it does apply to misses' knit dresses.

Q. Yes. A. In the high-priced range.

Q. Well, did it apply to women's skirts where the skirts were sold alone? A. It did not apply to women's skirts.

Q. Did it apply to women's blouses? A. No, sir.

Q. Did it apply to women's sweaters? A. No, sir.

Q. Did it apply to misses' inexpensive coats? A. No, sir—it might have in a very slight extent.

Q. Very slight. A. If this was a copy of a style origination, Fashion Originators Guild high-priced coat, but the effect would not be terribly great.

Q. Would you say this applied to little women's inexpensive coats? A. On the same basis that the other coat department——

2724 Q. Very slightly, if at all? A. Yes.

Q. Would you say that it applied to women's cotton underwear? A. No, sir.

Q. Would you say that it applied to women's extra-sized underwear? A. No, sir.

Q. Or misses' and girls' underwear? A. No, sir.

Q. Or would you say that it applied to girls' dresses, seven to fourteen? A. No, sir.

. Would you say that it applied to misses' hats? A. sir.

. Now, these items that I have enumerated to you, they generally regarded as accessories in the ladies' ready-ear stores? A. No, they——

. How do you regard them, the vast majority of them? Well, the gloves and hosiery, and departments like t, are commonly referred to as accessories.

. Yes, but any of those small departments are acces-ies, but some departments you spoke about, I believe, e misses' coats and departments like that, that are tinctly garment departments. A. Yes. The larger part the departments—— 2726

. Well, these are either accessory or garment depart-nts; is that correct? A. They are either one of those. ne are one and some are the other.

. Would these departments ordinarily follow the gen-l trend of your business? A. Not every individual partment, no, sir.

. No, I do not mean every individual department, but departments generally, as a whole, let us say. A. The partments in total that you would have mentioned——

. Yes. A. —might follow the trend, although there are es when they do not.

For example, it is well known to all retailers that some-es you may have a good garment business and an acces-y business little, a certain time of the year, or vice versa, 2727 ne times of the year—Easter, for example.

. What time of the year would you say that was true? We all know, for example, that just prior to Easter are apt to sell more accessories than garments: this man likes to buy a garment, maybe, a couple of weeks ore Easter and then pick up her accessories which finish a garment for Easter; so if you take an individual rt period of time you have that problem, and also, in

general, there are whole seasons when it is a bad dress season or a bad coat season or a bad accessory season. They do not always go together. Men's business, for example, during the early part of the depression, was notoriously worse than the women's business. There are some general statements like that. In order to avoid any future lack of credibility in my testimony, I want to be very accurate.

Q. Now, in other words, you are now seeking to justify your subsequent credibility? A. I would like to answer that if you would only give me an opportunity.

Q. Well, I have asked you. I say, you are now seeking
2729 to justify your credibility as to some future questions that I am about to ask you; is that so? A. No; the past, the past. I should like some opportunity to answer your statement about my lack of credibility which you——

Q. I have not said anything about your lack of credibility.

Mr. Haycraft: Yes, you did.

The Witness: Yes, you did, and I hope you will give me an opportunity, if I may address the Court——

Mr. Feldman: He had not even been sworn yet.

The Witness: I was sworn yesterday, I believe.

By Mr. Weisman.

2730 Q. Is it that you feel that these questions I have just asked you may make it apparent that something you said yesterday does not appear to be a fact? A. No, no. If you will let me speak freely——

Q. No, I want you to answer my question. That was not in your mind? A. The answer is "No."

Q. You do remember making the statement yesterday that the dress business in those departments that were affected by the Guild did not show the same in the trend

as the other departments in your store? Do you remember stating that, in words or in substance? A. I did not make that statement.

Q. You did not? A. I did not.

Q. Is that a fact? A. Is what a fact?

Q. Well, that since the Guild program, or since you have not been co-operating, is your business in those departments which are affected by the Guild program poorer than your other general business?

Mr. Haycraft: Objected to, Mr. Examiner, as not proper cross-examination or——

Mr. Weisman (interposing): Oh——

Mr. Haycraft: —and as irrelevant and immaterial, as to the form of the question. If you will get it there, there was no question propounded on direct examination and we are not interested, as far as this case is concerned, in the time that this store stopped co-operating. The whole thing revolves around the time it was red carded by the respondent. Unless the question includes that date or that time, I object to it. 2732

Mr. Weisman: Do you want me to argue that? Your Honor remembers very distinctly the question, "What was the effect upon your business?"

Examiner Bennett: Yes, I remember how distinct that question was.

(Last question read.) 2733

Examiner Bennett: I will overrule the objection.

A. Certainly in the dress departments, which we discussed yesterday, since March 1, which was when the Guild program started to affect us, the red carding started to affect us, was worse than main store business.

By Mr. Weisman.

Q. Well, now, let us see— A. Compared to the previous year.

Q. You also testified, did you not, that for the month of July, the existing month of July, your business in volume in the affected departments was about the same for this year as it was last year? A. I believe my statement was that it was either a little better or a little worse.

Q. That is about the same. A. Yes, but I wanted to use the exact words.

Q. Now, just take a look at your reports for July and answer these questions (handing papers to witness):

2735 What was your total volume for the month of July on gloves, for the twenty-four days of July, 1935?

Mr. Haycraft: I am objecting to the singling out of gloves.

Mr. Weisman: I am not going to single them out; I am going to take one at a time.

Mr. Haycraft: Just a moment. Let me finish my objection.

Examiner Bennett: Wait.

Mr. Weisman: I beg your pardon.

Mr. Haycraft: I object to the singling out of the gloves, or any of the other single departments that he has mentioned in his line of cross-examination as not proper cross-examination. As the witness

2736 has brought out just a moment ago, on the comparison which he made and which he is entitled to be cross-examined on, that is a comparison between the affected departments and the main store.

Now, I have no objection to a question of that kind being put here, and he can cross-examine to the fullest extent on that comparison, but to go and single out numerous single departments is just like setting up a lot of straw men and then knocking

them down. They have no probative value in this proceeding and it is not proper cross-examination.

Mr. Weisman: Of course, your Honor, it is perfectly apparent that the only way of cross-examining a witness when he makes a particularly direct statement like that is to take the particular items. I have particularized them to a degree where your Honor, not knowing where I was driving, asked me not to be ridiculous.

Examiner Bennett: If you particularize and summarize them, we will get through——

Mr. Weisman: I am.

Examiner Bennett: This is for July only. As 2738
I understand it, you have been over all the other months.

Mr. Weisman: No.

Mr. Haycraft: No, never even went into, Mr. Examiner.

Examiner Bennett: I beg your pardon.

Mr. Weisman: I expect I may at this time take the month of July because it came first to hand. I propose to show on the figures of this store that in every kindred department with——

Examiner Bennett: Yes, but you have figures from several of the months and have them summarized. Now we are not going to go over that again.

Mr. Weisman: No, no, of course not. I am not 2739
going to reiterate that. This is something that we have not touched yet.

Examiner Bennett: All right.

Mr. Weisman: You remember.

Examiner Bennett: Go ahead, I am not stopping you.

Mr. Weisman: Oh.

Mr. Haycraft: Just one more observation, Mr. Examiner, in an attempt to save time. I will agree that the exhibits to which the attention of the witness for the Commission has been drawn, the statements he has identified and any statements he brought in yesterday or turned over to counsel yesterday, may be received in evidence and made a part of this record so that the Commission and counsel for both sides may use them in any way they see fit.

Mr. Weisman: Well, I don't——

Mr. Haycraft: But going down the line and
2741 taking the various departments of the store singly and one by one and making comparison in this way is a thorough waste of time.

Mr. Weisman: I think the Commission has already ruled and I object to this reiteration of an argument.

Examiner Bennett: There is only one question as I understand it. There is an offer by counsel for the Commission. Do you want to accept the offer?

Mr. Weisman: No, your Honor. I do not think it is a proper offer.

Examiner Bennett: Go ahead with your cross examination.

Mr. Weisman: All right.

2742

By Mr. Weisman.

Q. Now, looking at that, will you tell me what business was done in July, 1935, for the twenty-four elapsed days? A. The glove department?

Q. Yes. A. $8,663.

Q. Oh, I mean first pick out your junior gloves. A. Junior gloves?

Q. Yes. A. That is one subdivision.

Q. Yes. A. $779——

Q. No, no, for 1935. A. $1,202.

Q. And for 1936? A. $779.

Q. A drop in 1936 of about how much per cent.? A. Those questions are hard to answer.

Q. About 40 per cent.? A. Thereabouts.

Q. Now, fabric and linen gloves, what did you do in July, 1935?

Mr. Haycraft: Now, Mr. Examiner, I wish to renew my objections and add this objection, that there is no foundation laid; the testimony of this or any other witness that there is any relation at all 2744
between gloves, for instance, and women's dresses, the things that are involved in this proceeding——

Mr. Weisman: Of course there are.

Examiner Bennett: All right, Mr. Weisman.

Mr. Weisman: Your Honor has ruled.

Examiner Bennett: I acept the responsibility.

Mr. Weisman: May my offer of proof also include the fact that I intend to make like and similar proof for the month of June, 1935, as against June, 1936, and that an examination of the business done in these particular departments before enumerated with regard to July would have shown a similar or like falling off of the business of this company, and that my proof would also have shown a similar 2745
situation with regard to these departments when May, 1936, would be contrasted with May, 1935?

Examiner Bennett: Yes.

Mr. Weisman: That is all.

Examiner Bennett: If you have precise proof, it would be immaterial and irrelevant in meeting the particular issue intended to be met.

By Mr. Weisman.

Q. Now, with regard to the particular departments affected by this Guild policy, I think you have testified yesterday that those departments were under Mr. Zerkowsky; is that correct? A. Well——

Q. One of them? A. Yes.

Q. And then another was under Mr. Gross? A. Yes.

Q. And then another was under Mr. Drew? A. Yes.

Q. And that later you had put in a Mr. Lacy in some departments; am I wrong about that? A. No, I made no such statement.

Q. What department is Mr. Lacy in? A. Primarily the
2747 so-called accessory departments; not all of them, but very large percentage. He has the street floor and some of the upstairs' departments; but primarily street floor accessory departments is Mr. Lacy's division.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may proceed.

Will you come around, please, Mr. Seegal?

By Mr. Weisman.

Q. Now, is it a fact that in these—have you got your summary of your report for the twenty-four elapsed days of July, 1936, before you? A. Yes.

2748 Q. Take a look at them. A. Yes.

Q. Yesterday you testified that the departments which were affected by the Guild policy either were a little behind or a little ahead. A. Yes.

Q. Can you tell us whether or not these departments in 1935 did $451,251 total volume? A. Yes—you have not used the total that I referred to yesterday. The total I had reference yesterday was the total of the upstairs stores, including—that also includes these shops in there.

That does not include any big places like Worcester or R. H. White & Company or others. Let me see. Last year was $569,397.

Q. What? A. $569,397.

Q. And the other year was? A. $618,166.

Q. That is a gain of— A. 8.6 per cent.

Q. 8.6 per cent.? A. Yes.

Q. Now, the same examination, if you please, for the month of July, 1936, as contrasted with July, 1935. What was the total for last year? A. That is what I just gave you.

Q. Oh, I made a mistake. Have you got it for June? I thought I was asking you for June, but I evidently said July. 2750

(Question read.)

Q. Maybe I can help you. A. Perhaps you can.

Q. Look at this here and see what this is. A. Oh, I see what you are referring to now.

Q. Can you give it to me now? A. Yes.

Q. Do so. A. $1,085,926.

Q. Was the figure for last year? A. Yes.

Q. What is it for this year? A. $1,208,453.

Q. A gain of how much? A. 11.3 per cent.

Q. 11.3 per cent.? A. 11.3 per cent.

Q. Contrasting May, 1935, with May, 1936, have you got that here? A. Yes. 2751

Q. Turn to May. A. Yes.

Q. Yes. A. $1,072,150 last year.

Q. And this year? A. $1,148,436.

Q. In other words, a gain this year of how much? A. 7.1 per cent., if my arithmetic or my mathematics are correct.

Q. 7.1 per cent.? A. Yes.

Q. If your mathematics are correct, what was the total gain of the store generally, including these departments, R. H. White, Filenes and everything?

Mr. Haycraft: I object to that as not proper cross-examination, as incompetent, immaterial and irrelevant. The witness in his direct testimony made his comparisons with the main store and I submit that he should be interrogated on that particular situation and not on something else.

Examiner Bennett: You can direct your question to the actual comparison made by the witness on his direct testimony.

By Mr. Weisman.

Q. Is your figure for the main store Boston? A. Total
2753 for above, because I eliminated the men's store in order to make the figures more comparative. I used this figure of "total above," which precedes the men's store.

I believe that the record is incorrect. There are two mistakes which I find in the record. I said "11.2." I believe you read it just now as 11.3.

By Mr. Weisman.

Q. You gave it to me as 11.3 per cent. A. I read it incorrectly, then.

Q. No, it is 11.3 per cent. Here it is. You said 11.3 per cent. and it is 11.3 per cent. A. So it is. So it is. The reason I read it that way was because there are two separate sheets. One is—well, excuse me. We will excuse
2754 that.

But the statement regarding the $451,000, I would like to have that read to me again. The question that I made my statement to of "yes."

(The following question and answer were read:

"Q. Can you tell us whether or not these departments in 1935 did $451,251 total volume? A. Yes—you have not used the total that I referred to yester

day. The total I had reference yesterday was the total of the upstairs stores, including—that also includes these shops in there. That does not include any big places like Worcester or R. H. White & Company or others. Let me see. Last year was $569,397.

"Q. What? A. $569,397.")

The Witness: I said—no, that does not refer to the departments which were affected by the Guild, by the red-carding. That merely represented the total figure for a part of the upstairs store which Mr. Weisman called my attention to. It has no significance here at all. 2756

By Mr. Weisman.

Q. The figures which have significance, I take it, are the $569,397? A. Those have significance for the total of the above store, but I have not given you the total for the other departments themselves because I presume you had not asked for them. That is the reason I do not think I got them up.

Q. You did not? A. No.

Mr. Weisman: Then I ask that all of this testimony be stricken out as something that I did not ask him for. It seems to me that he is a perfectly competent person and it seemed to me at the time that he was a perfectly competent witness to answer 2757 that question. I think he understood what I was saying.

The Witness: I answered every question you asked me.

Mr. Weisman: I am not talking to you. I move that it be stricken. I ask that all of this testimony be physically stricken from the record.

Examiner Bennett: It will not be physically stricken from the record. We will have a recess for five minutes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may proceed.

By Mr. Weisman.

Q. Yesterday you were kind enough to bring in for Mr. Haycraft Commission's Exhibit No. 357, which is a list of members of the Fashion Originators Guild, members—or rather firms which you believe were at one time or
2759 another members of the Fashion Originators Guild? A. Yes.

Q. You do not know whether or not these people were members of the Fashion Originators Guild in 19—in February, 1936, do you? A. No, sir, not that, but I would not want to guarantee the accuracy of it at any one time; but it is my belief that at some time or another they were members. I have a list of those from which we purchased that I would be positive absolutely of.

Q. What is that? A. I have a list of the Guild manufacturers from whom I purchase merchandise that I think would be authentic, but your list, I should think, would be the best.

Q. Would you let me see the list that you now refer
2760 to? A. What is that?

Q. Would you let me see the list that you now refer to? A. It is a part of my answer to the Federal Trade Commission and I would like to have you just look at that list, if you will, and not the rest of it.

Q. I will not look at the rest of it unless you want me to. A. I do not think it would help you or hurt you. That may have been drawn off at different times, different from the other list, so there again you may have one list probably longer than the other.

Q. This also is headed "Names of Manufacturers Affiliated with the F.O.G.A.," which is the Fashion Originators Guild of America, I take it? A. Yes, sir.

Q. "From Whom We Purchased Dresses"? A. Yes.

Q. The question I asked you is whether or not you have not or whether you have any list showing members of the Fashion Originators Guild at March, 1936, not a list of people that you may have purchased dresses from over a period of five years which may or may not have been at one time members of the Fashion Originators Guild of America, Inc. Have you such a list as that? A. I have no such list.

Q. So, in other words, this Commission's Exhibit No. 357 was not intended by you as being a list of people whom you claimed to be members of the Guild and who on or about the month of March, 1936, you were purchasing merchandise from; is that it? A. I should say that list was Guild people, Guild members, from whom we purchased merchandise somewhere around that time and the other list I gave you gives the exact people and this list here—well, this is something else. This is another list. We will just pass that. Here's the list you referred to. 2762

Q. Do you know whether or not Ann Goshen has been a member of the Guild for the last three years? A. I could not answer that question, nor could I answer any question like that, either.

Q. In other words, is it not a fact then that Commission's Exhibit No. 357 is merely a list of people with whom you had done business with over a period from 1933 to the early part of 1936 and who you believed to be members of the Guild? A. May I see that? 2763

Q. Yes (counsel shows the witness Commission's Exhibit 357). A. This list has at the head of it, sir, the following statement: "Guild Houses With Whom We Have Done Business During 1935-1936," up to around May or March, I should say.

Q. You do not know any members therein shown were members of the Guild in March, 1936? A. I could not answer that with accuracy, no, sir. I think probably most of them.

Q. Have you examined the Guild roster? A. Yes, sir, I have on occasion.

Q. Have your ever compared that with the Guild roster? A. No, sir. Not with that particular one, no, sir.

Q. Do you think you ought to ask us to give that a proper place in a solemn judicial hearing of this character, a list of that character? A. I——

2765 Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you a list of the dress manufacturers with whom you have done business since March, 1931? A. Is there anything on that? May I see that? I do not see it on it.

Q. No, I do not think so, but I have not read it. A. I do not think so. I do not see any on it. I have no list of manufacturers, non-Guild manufacturers, with whom we have done business since we were red-carded. Naturally, such a list could be obtained.

Q. Will you get it for me during the lunch period?

2766 Mr. Haycraft: I object to that.

Mr. Weisman: Object to what? Object to my asking the witness if he will get me something?

Mr. Haycraft: I object to producing this list requested by counsel for the respondent.

Examiner Bennett: I will give the witness such instructions as I thought necessary yesterday, and that will stand for to-day.

The Witness: I will go by the advice of Mr. Haycraft.

By Mr. Weisman.

Q. Well, Mr. Haycraft, he has not given you any advice on this matter. A. I will go by what I think his opinion is.

Q. What do you mean by that? A. He has made a statement to the Court that he objected to the production of that evidence in this hearing.

Q. You believe that if because Mr. Haycraft objects to you giving me any information in this case which might be of information to the Commission, that he can decide that matter for you, and that you therefore, should decide 2768
not to give this information to me? A. If the Commission wants that, I will give it to them.

Q. Suppose I ask you to bring the list in because I believe it will be informative for the Commission. You believe that Mr. Haycraft wishes that information to be suppressed from the Commission and yet you will not bring it in? A. Not by the Commission. I probably used the wrong term. I believe it is the Examiner. If the Examiner believes it will help him in his judgment, I will bring it in.

Examiner Bennett: I have instructed you the Examiner is not deciding that particular thing for you. As I understand it, he said he wanted to get this document from you, and I told you that you 2769
were not under any obligation to do so because of the fact that you appear as a witness for the Commission; but if you wish to do so, that is, if you wish to accommodate this attorney, the Examiner has no objection. That is the whole of his instructions.

Mr. Weisman: This attorney wishes to add that he wishes to be co-operative with you and we do

not want to subpoena all of these documents and records under a subpoena duces tecum on our case, but if you see fit not to comply with our reasonable request you will have under our subpoena duces tecum no other choice but to comply, because you will force us under that determination of yours to no other alternative but to apply to the Commission in due course in the presentation of our case to ask for a subpoena duces tecum to get these books and records of your business here.

Mr. Haycraft: My objection to the request was that it is immaterial, incompetent and irrelevant
2771 and not proper cross-examination. Any private arrangement, of course, that counsel for the respondent wishes to make with Filenes when he comes around to his defense in this case I have no objection to.

By Mr. Weisman.

Q. Look, Mr. Seegal, this is a very simple matter. You have a list of the manufacturers you are doing business with, have you not, handy? You know who they are? A. We have our books which show that.

Q. It would be a simple matter to get it up? A. Oh, a few hours.

Q. Will you, as a lawyer to a gentleman— A. Yes.

Q. —get me such a list so we can put it before the
2772 Commission? A. As a gentleman to a lawyer, I will give you that list if you will give me a chance to answer to your remarks this morning about——

Mr. Haycraft (interposing): I object to that. I do not think we should give the admissibility of evidence its test by any private arrangement between the witness and counsel for the respondent.

Mr. Weisman: You see, Mr. Haycraft does not want to do it. He will get it in when our case comes, but it seems to me much more simple to get it in now.

Mr. Haycraft: I will take care of that when the time comes. It seems to me that, in addition to the objection which I have already urged as to this particular thing, that the list of manufacturers with whom Filenes are doing business now is a highly confidential document and one which I think Filenes should be given opportunity to consult their own attorney before they divulge it. I do not want by my silence to put Filenes in that position at 2774
this time.

Mr. Weisman: You are dealing with it here all day and now you do not want to get the evidence in. I ask your Honor to take notice of this fraction of facts which will give a clear picture to the Commission. I think it is highly improper.

Mr. Haycraft: I object to such a statement as that.

By Mr. Weisman.

Q. Since 1936, in March—since March, 1936, you have been purchasing your dresses from non-Guild manufacturers? A. Yes, sir.

Q. Now will you or will you not give us, for the purpose 2775
of placing it before the Commission, the list of the manufacturers with whom you have been doing business? A. This list, if it would be kept confidential and no opportunity given for its publication among the trade, I would be willing to give it to you.

Q. I give you my promise, with the consent of Mr. Haycraft and with the consent of the Examiner, that such list will be kept confidential, that I shall on my part instruct

the reporter not to disclose it to anybody other than the Commission and counsel for the Commission and myself, and as for myself I will hold it secret.

Examiner Bennett: I shall instruct the witness that he is testifying for a public record which is open upon proper application to any party, any member of the public who can show that he has business in seeing it.

The Witness: On that basis, then, I will have to ask the advice of Filenes counsel and also the public relationship people or publicity manager, to see whether any great harm will ensue in disclosing
2777 the Filenes sources of supply.

We had a very hard time in building this up and now to disclose this might conceivably—I will not say definitely, but might conceivably work a hardship on us. In any case, I would want to be advised by counsel.

By Mr. Weisman.

Q. You mean by that that you are pretty solidly lined up wi h your sources of supply now, are you not; you are not afraid that you are going to lose them?. A. We have not been so very successful in building them up, as the July, May and June figures, and so forth, will show.

Q. What months do you refer to as "and so forth"?
2778 A. Well, July. As the July, May and June figures will show.

Q. But you have lined them up pretty solidly. You are not afraid that you are going to lose them now? A. We have not been very successful in building them up, as I said before.

Q. Do you know whether or not your company does business with Noxall Dress Company?

Mr. Haycraft: I object. Apparently there is going to be a long list read here and the witness asked about each one of them. I object to it.

Examiner Bennett: I shall sustain to bringing in by indirection that which you could not bring in by direction.

Mr. Weisman: The witness will not give me the information and I am simply taking this list and asking him if he has bought from any of these people. I think I am entitled to that information.

Examiner Bennett: You do not have any business with it as far as cross-examination is concerned. It is wholly irrelevant. 2780

Mr. Weisman: I respectfully except, if your Honor please.

Examiner Bennett: It may be all right in your direct case. I am not questioning that. You present your own case, but it has no part of the cross-examination.

Mr. Weisman: I respectfully except to your Honor's ruling. I shall make an offer of proof that if I had been permitted to go into this cross-examination I would have been able to show that the store in question is able to get from and has built up a complete and adequate source of supply and is receiving the merchandise that it requires and that the facts in and of being red carded by the Guild have had no detrimental effect upon its business or upon its purchasing power or ability to buy properly in the markets. 2781

Examiner Bennett: All right.

By Mr. Weisman.

Q. On your direct examination you stated that there was a delay of three weeks in your getting the dresses? A. I believe I stated that somewhere around three weeks.

Q. As a matter of fact, in the exercise of your function in passing on these orders do you not know that these orders were for three weeks' delivery? A. I should be very surprised if the records of the files show that the merchandise that we had on order at that time were, every item, exactly for three weeks' delivery.

Q. May I see what you know about it? One of these orders was placed with the Junior Frocks, Inc., was it not? A. I do not know. You have got to figure on the size of our business. If I can remember each order since that time, I would certainly be remarkable. We have done several million dollars worth of business, which means
2783 several thousand orders, and I cannot remember it.

Q. Do you know whether or not when all of those orders were placed—one of those orders was placed—with Keene, Wylie & Company? A. I do not know, but I expect I may be able to assist you. I think I am going to assist you. I have the names of the people with whom we had orders placed.

Q. Beware of Greeks who come bearing gifts. A. Well, we will just call this a trade.

I have a list of the names of people who owed us merchandise at the time that we were red carded, yes, so I think I can answer all of your questions on that.

Q. Will you give this to me without any strings tied to it? A. Yes, I will give it to you.

Q. Now let us see whether or not you know the facts.
2784 You know a good deal or you think you know a good deal of or about the dress business from manufacturing to retail, do you not? A. I believe I know something about it.

Q. You do not think you would be occupying the position that you do if you only knew something; we all know something. You are generally acquainted with the situation from manufacturer to retailer? A. The answer to that question, the second question, is "Yes."

Q. Well, I am trying to find out what you know; I am trying to qualify you. I want to show that you know what you are talking about.

Mr. Haycraft: We will admit the qualifications.

By Mr. Weisman.

Q. Can you answer that? A. I like the second question much better.

Q. You like the second question much better? A. Yes, sir.

Examiner Bennett: The objection by Mr. Haycraft is overruled. 2786

By Mr. Weisman.

Q. We will not spend much time on that. Now, generally, as you have told it to us, do you know in the dress business for the spring line that deliveries of merchandise are generally made and orders generally taken covering a period of about three weeks, that is, the general and the usual and the ordinary minimum requirement by the manufacturers, namely, that he have about three weeks to make up and ship or deliver your order? A. In lower-priced dresses the period is much shorter than that and in our higher-priced dresses it is much more than that.

Q. I am trying to get the average time. A. I should personally say two weeks for our business, for Filenes 2787
business. Two weeks would be more nearly what our actual delivery date is.

Q. Let us see that list with your orders on it, please. A. Here it is.

Q. I notice that one of the manufacturers was Milton Altmark? A. Yes.

Q. Do you know what priced merchandise wholesale they handle? A. I would have to look that up.

Q. Well, would you believe me if I were to tell you it is about $16.75 to $27.75 wholesale? A. I will.

Q. You will? A. Yes.

Mr. Weisman (addressing one of his colleagues): That is correct, is it?

The Witness: Well, if you are going to ask him be sure about it if you want me to be sure.

By Mr. Weisman.

Q. He is a client of mine. I think that is true. A. I will take your statement for it subject to correction.

2789 Q. How long will you say a manufacturer in the $16.75 to $27.75 or $22.75 wholesale price takes for the delivery of his merchandise in the ordinary course of business? A. Anywhere from four weeks to five weeks, and rarely, at the beginning of the season, six weeks.

Q. So that we have from four weeks to six weeks? A. Yes, sir.

Q. Now, referring to Adler & Adler——

Mr. Haycraft (interposing): I am going to object unless this exhibit goes in so that we can have something to work on.

Mr. Weisman: We do not have anything to work on now. I am not reading from an exhibit. I am asking the witness a definite question as to definite concerns and I am not making any reference to any

2790 document.

Mr. Haycraft: There is a paper in his hands which the witness gave him that he is referring to.

Mr. Weisman: I am not referring to any paper. I am asking him a direct question.

Mr. Haycraft: I object unless the paper is introduced in evidence.

Examiner Bennett: If you can ask the question without referring to the paper.

Mr. Weisman: You are surely not trying to restrict me in looking at the paper or notes which I have in my hand, are you, Mr. Examiner?

Mr. Haycraft: Let the witness have the paper back if you are not going to offer it in evidence.

By Mr. Weisman.

Q. Have you got a copy of this? A. No, sir.

Mr. Weisman: One of you boys copy this paper now.

(The document was handed to Mr. Weisman's associates, who began to copy same.)

2792

Mr. Haycraft: I do not object to the paper.

Mr. Weisman: I am going to show you that every one of these houses was a high-class house.

Mr. Haycraft: I asked that the paper be returned to the witness if it is not going to be introduced in evidence. I insist that it be given up right now.

Mr. Weisman: Look here, you are not going to usurp the position of the Commissioner or the Examiner in this court. Merely because you happen to be counsel for the Commission does not mean that you are going to direct the actions of counsel for the respondent with something which certainly is of no concern of yours.

2793

This is a personal matter between the witness and myself. The witness said he would give me something and he would give it to me unqualifiedly. I asked him particularly about that. He gave it to me as a favor to me. He said he was going to help me without any reservations. You ought not to try to make trouble that way when there is no necessity for any interruption of my examination of the witness. If the witness wants to give me something,

he has the right to give me something. He has given it to me and now it is mine. I do not see why I should offer something in evidence which is mine if I do not want to. I do not choose to do so now.

Mr. Haycraft: I will ask the Examiner to direct counsel for the respondent that this paper either be returned to the witness or offered in evidence so that we can determine what the basis of these questions is. It seems to me that this is entirely improper. If this document is going to be used as a basis for questions to this witness, then this document should be introduced in evidence. It has been
2795 referred to in questions by counsel and I insist that it either be offered in evidence or returned to the witness.

Mr. Weisman: I submit you are entirely wrong. The witness gave me this paper. I have in my hand documents which I am using as notes and I am making no reference to any paper in the questions which I am now asking the witness. Each question is a direct question, do you know so-and-so and what kind of dresses do they make. I make no reference in the question to the paper I have in my hand.

Examiner Bennett: Will you offer the document in evidence, or are you?

Mr. Haycraft: I offer it in evidence as Commis-
2796 sion's exhibit.

Examiner Bennett: It will be received in evidence as Commission's exhibit next number if it is properly identified.

Mr. Weisman: I respectfully state this to the Court: I object to this unseemly interruption of my cross-examination by counsel for the Commission not only now but at all times that it suits himself, and now, since it has continued throughout

my cross-examination of the witness, it has gone to the point where he insists on offering documents in evidence which are not properly offered in evidence at this time.

Specifically referring to this document, I object to this paper going into evidence because no proper foundation has been laid for the introduction of this document in evidence. I submit that the mere fact that this witness offered me this document is certainly without any proper foundation as a basis for marking it in evidence.

The only thing that the witness has done is simply hand this paper to me, he made me a present of the 2798
paper, and I have been looking at it, and it has given me some ideas as the basis for questions which I have propounded to the witness. Surely I do not see under any possible combination of circumstances how this document could be said to be properly offered in evidence.

Examiner Bennett: Mark it for identification.

Mr. Weisman: Before that document comes into the custody of the Court I want to make this statement: In the first place, I am making a copy of it for my own use.

Examiner Bennett: Mr. Weisman, you will suspend the cross-examination until the Commission's attorney qualifies this document. No further com- 2799
ment by way of interrogation to this witness will be permitted until counsel for the Commission has had an opportunity to qualify the document, if he can.

Mr. Weisman: I object to this.

Examiner Bennett: Hand over the paper now to the reporter so he may mark it for identification.

Mr. Weisman: Wait a minute. We are making a copy of it.

Examiner Bennett: No, give the paper to the reporter, Mr. Weisman, now.

Mr. Weisman: May I make a statement to the Court?

Examiner Bennett: You cannot. You cannot do anything or say anything until you give this document to the reporter so it may be marked for identification.

Mr. Weisman: I do not think that I should deliver up this paper from my custody which has been turned over to me by the witness for the purposes of Commission's counsel at this time. It does not

2801 seem to me that it is proper to do so.

Examiner Bennett: You cannot make any statement until you have given that document to the reporter. You are instructed to give it to the reporter so that he may mark it for identification.

Mr. Weisman: He is obstructing my cross-examination. I object to Mr. Haycraft making an offer at this time, in the middle of my cross-examination, simply and solely and wholly for the purpose of obstructing, interrupting and disturbing my cross-examination of this witness.

Examiner Bennett: Mr. Weisman, I insist that you hand this document to the reporter so that he may mark it for identification at this time.

2802 Mr. Weisman: I now hand the document to the reporter. I will hand it to your Honor, I believe.

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, Mass., under date of March 9, 1936, was marked for identification Commission's Exhibit 358.)

Mr. Weisman: I am turning this paper over to you personally as a personal mark of my respect for your Honor. I do say, and I want this to appear on

the record, however, that your Honor has no authority or warrant in law or in equity to compel me to turn that paper over to the Examiner, a paper which has been handed to me by the witness. Such an action on the part of the witness is no ground or foundation for counsel for the Commission interrupting my examination and offering the document in evidence.

Examiner Bennett: I am instructing the witness now not to give you any further papers. We will avoid any matter of this kind in the future thereby.

Mr. Feldman: I think this is an inquisition and not a trial. 2804

Examiner Bennett: If you are going to continue to obstruct our procedure by conduct of that sort, Mr. Weisman, I shall instruct the witness not to give you any further papers and I shall see to it that further actions of that kind are stopped promptly. There is no necessity for such conduct and I assure you it will not be permitted in the future.

Mr. Weisman: I now want to object and I want to object very seriously and as strenuously as I may. I think that such action on the part of the Examiner and upon the part of counsel for the Commission is entirely unwarranted and constitutes a substantial damage to the essential rights of the respondents herein and something which, if continued, will defeat even the shadow of justice, to say nothing of the substance. 2805

Examiner Bennett: That will be all. You will defer any further questions on cross-examination until counsel for the Commission has had an opportunity to qualify this document for introduction, if he can.

By Mr. Hayeraft.

Q. Mr. Seegal, I hand you Commission's Exhibit No. 358 for Identification and ask you what it is? This is the paper which you handed to counsel a few moments ago. A. The paper which I handed to counsel contains a list of names of people, manufacturers, who owed us merchandise at the time we were red carded.

They told us in most cases that they would not deliver us merchandise because they were ordered not to deliver it to us by the Fashion Originators Guild of America, Inc., through a regular system of blacklisting. And——

2807 Mr. Weisman (interposing): I object to this. I want to serve warning on the Examiner that this is the most un-American type of trial I have ever seen.

I object to this Star Chamber proceeding. There is not a single word that this witness has said that is of his own knowledge after he identified this paper in the first few words. I submit that this is just an effort to conduct a Star Chamber proceeding by the overriding efforts of this gentleman.

I am in the midst of my cross-examination and we are now having a stump speech by this gentleman concerning something that he does not know about. He is asked, "What is this paper?" It is perfectly obvious that any honest person—and now

2808 I am attacking his integrity—he has common intelligence and I insist that any person who was honest would say in answer to that question that he knows that this paper is a certain list of manufacturers who had orders outstanding from his firm at that time, and not make a long speech about what somebody told somebody in connection with somebody else's statement. I may say here that we apparently may accept this as a fair illustration of what

may be indicated to your Honor and to the Commission as the type of testimony and the type of witnesses that are being offered in the proceeding and I want to spread it wide and large on the record so that your Honor and the Commission will know what we have got to meet in this proceedings. This is a letter containing that list I just referred to and that is all there is to it, and any honest person who is testifying under oath and who understands the English language can state what it means, and that is all. I do not believe any honest person would try to interpret and characterize this document and go even far beyond it as this witness has 2810
done. I repeat that I do not believe any honest person would try to do what this person is now trying to do, go into a lot of hearsay and ideas and conclusions and statements of that character. Therefore I move to strike from the record all of the words stated by this witness in answer to this question beyond the words "The paper which I handed counsel contained a list of the names of people, manufacturers, who owed us merchandise at the time that we were red carded."

Mr. Haycraft: I move that the last statement made by counsel be stricken from the record as quite improper and not a fair statement of the facts in the case.

Examiner Bennett: Granted. 2811

Mr. Weisman: Exception. I move that everything be stricken after the words "The paper which I handed counsel contained a list of the names of people, manufacturers, who owed us merchandise at the time that we were red carded."

Examiner Bennett: Read the entire answer of the witness.

(The reporter read the answer of the witness, as follows: "A. The paper which I handed to counsel contains a list of names of people, manufacturers who owed us merchandise at the time we were re-carded.

"They told us in most cases that they would not deliver us merchandise because they were ordered not to deliver it to us by the Fashion Originators Guild of America, Inc., through a regular system of blacklisting. And——")

Mr. Weisman: I move that everything after that be stricken out.

2813 Examiner Bennett: Everything may be stricken out from that point on.

Mr. Haycraft: Mr. Examiner, may I ask another question?

Examiner Bennett: For what purpose?

Mr. Weisman: I object. It is not necessary, your Honor. That has been admitted in evidence.

Mr. Haycraft: No, it has not.

Examiner Bennett: It has been marked for identification.

Mr. Haycraft: It is necessary before we admit it in evidence that it be properly identified. I have not made any attempt yet to offer it in evidence, but merely had it marked for identification.

2814 Mr. Weisman: I object to any such thing of this kind. Let us go on with this proceedings. We will never get through if we have delays of this sort.

Examiner Bennett: Do you want to ask a further identification question?

Mr. Haycraft: I do.

Examiner Bennett: You may proceed.

2815

By Mr. Haycraft.

Q. Did you correspond with any of the concerns named on the list which is now marked Commission's Exhibit No. 358 for Identification?

Examiner Bennett: What is that?

Mr. Weisman: I object. That is not a proper foundation question.

Examiner Bennett: Well, I think I will sustain the objection.

Mr. Haycraft: There is a further identification which is necessary, or which at least I think is necessary, in order to have its admissibility established.

2816

Mr. Weisman: I do not think that will make it admissible. How can anything make a document admissible which in its beginning was simply handed to counsel for the respondent by the witness? Certainly it would have to come in on redirect examination in any event.

Mr. Haycraft: I do not think so.

Examiner Bennett: You may proceed.

By Mr. Haycraft.

Q. There is a statement at the top of the page in typewriting. I will ask you if that was placed on there by you?

2817

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant for any purpose whatsoever and it is simply delaying this case further.

Examiner Bennett: You are referring to the words on the top of this letter which states, "This letter sent to the following manufacturers"?

Mr. Haycraft: Yes, sir.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. Does that statement which the Examiner read refe to the written matter on the exhibit?

Mr. Weisman: I object to that as incompetent immaterial and irrelevant and obviously improper in form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception, and I ask an exception to the adverse rulings just made to my objections Mr. Examiner.

Examiner Bennett: Granted. Proceed.

2819 Mr. Weisman: I also object to this entire line of testimony on the grounds previously stated in connection with my motion and otherwise.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

The Witness: The answer is "Yes."

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Weisman: I object on the grounds previously stated.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: The document will be received in evidence.

(The letter referred to, heretofore marked Commission's Exhibit 358 for Identification was received 2820 in evidence.)

Examiner Bennett: I want to add—no, I think I will let the record stand as it is.

By Mr. Weisman.

Q. Referring to Commission's Exhibit No. 358, I notice these words on this exhibit, "At the hearing this morning on our application for a temporary injunction under the

bill of complaint filed by us against the Fashion Originators Guild of America, Inc., et al. it was stipulated by the attorney for the Fashion Originators Guild of America, Inc., that members of the Guild are permitted to fill all of our orders now outstanding with such member without being subjected to Guild discipline and that the Guild would instruct its members to fill all such outstanding orders as quickly as it is humanly possible. Will you kindly wire us when we may expect to receive delivery on our orders outstanding with you? Yours very truly, Wm. Filenes Sons Company. Arthur W. Wright, Merchandise Manager." That letter was sent to all of the names appearing hereon? A. Yes, sir. 2822

Q. Your attorney referred to a suit for a temporary injunction under a bill of complaint filed by you against the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. I show you this paper and ask you whether or not this is a copy of the bill of complaint referred to in Commission's Exhibit No. 358? A. Yes, sir.

Mr. Weisman: I now offer this copy of the bill of complaint as being a part of this same transaction referred to. Just a moment. I will identify it a little further.

By Mr. Weisman.

Q. This is the bill of complaint referred to in Commission's Exhibit No. 358 (showing the witness the document referred to)? A. Yes, sir. 2823

Mr. Weisman: I now offer this in evidence as respondents' next exhibit.

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant. This is not the proper place in this record so far as that exhibit is concerned. It refers to the stipulation and that is all that is referred to so far as this list is concerned.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

Mr. Weisman: May I have this marked for identification and have an exception also?

Examiner Bennett: Yes. It may be marked for identification.

(Whereupon the bill of complaint referred to was marked Respondents' Exhibit 13 for Identification.)

By Mr. Weisman.

2825 Q. Instead of going continuously along, I will try to save some time if I can in this manner. I have got to show him the other document in connection with that statement, but we will turn to the names that appear on here now while they are looking up the answer to it. Therefore, I will ask you in regard to Adler & Adler. Do you know what price merchandise they manufacture and sell? A. I know they make high-priced sportswear.

Q. What would you say would be a fair time of delivery for merchandise made by Adler & Adler? A. About four or five or six weeks.

Q. The next one is Milton Altmark? A. High-priced.

Q. The next one is Bernard Appel. A. Yes.

Q. Also high-priced? A. No, sir.

Q. How high is the price of their goods? A. Medium

2826 and low.

Q. William Bass. A. High-priced.

Q. Sydney Cann? A. Same.

Q. Casino Dress? A. Low and medium.

Q. Cecile Dance Frocks? A. Medium.

Q. Ciro? A. I do not know.

Q. Clifford Salkin? A. I do not know.

Q. If I told you they were high-priced, that I personally know they are and I represent them, will you adopt that?

A. If you tell me that I will take it, yes, subject to correction.

Q. Cohen-Tunick? A. Yes, they are high-priced.

Q. Del Monte Hickey? A. Well, very high-priced.

Q. Dolces? A. High.

Q. Dresden Dress? A. Medium—Dresden, did you say?

Q. Dresden. A. Medium, medium low and medium.

Q. Fashion Wear? A. I do not know.

Q. Harry Frank? A. Low, medium, if it is the Frank I am thinking of.

Q. Well, it is not. A. Then, it is high.

Q. This Harry Frank is rather fair with ruddy cheeks, and rather thick set. A. High. 2828

Q. Friedman Dress? A. Medium.

Q. Harry Gans, that ought to be Henry Gans. A. What is that?

Q. Harry Gans it says here, but it should be Henry Gans. I know him. A. I do not know.

Q. Goldstein Entin? A. Medium and medium-high.

Q. A Goodman? A. High.

Q. David Goodstein? A. High.

Q. Joe Greenberg-Bettina? A. Medium and high, and medium-high.

Q. Grossman Greenberg? A. Medium-high.

Q. Grossman Speigel? A. Medium.

Q. I have taken about 50 per cent. of them. I do not want to go all the way through if that will give you a fair cross section; does it, of all the type of manufacturers therein referred to? A. Yes. 2829

Q. I have not picked them out. I have taken them alphabetically as you have listed them. A. Yes.

Q. With that refreshment of your recollection would you say that three weeks was a fairly good time within which for these people to deliver their merchandise? A. Generally speaking the names that you have asked me, for that fair cross section, I would say three weeks would

be about the right time, unless they had something made up which happens once in awhile. They do have something made up and when they do we get it right away. That does happen.

Q. Do you not know that these people do not make up goods for stock, would only make up goods on order? A. In most cases we do not find they have the merchandise in stock. It does happen occasionally.

Q. Do you not know that these people do not make up any merchandise for stock? A. In most cases they do not; that is true; but in some cases they do.

Q. When that is the case, those are job lots? A. Yes,
2831 sir.

Q. Were these names that I have read to you right down the list without exception until we got finished with half of them; just look at them. Did I skip a single one all the way down? Did I not take them all along? A. I believe you took them as listed. If you say you did I will take that.

Q. Every single one. The first half of those just as they are arranged alphabetically, are they arranged alphabetically? A. Yes, sir; they are arranged alphabetically.

Q. There is no arrangement for any particular purpose other than listing them alphabetically? A. That is correct.

Q. Do you think the names I have already given you would, without taking up the time, and in order to shorten the proceeding, is that a fair cross section of the entire
2832 group? A. As I look over the second half, I recognize the names of some manufacturers who make lower-priced merchandise on the average.

Q. Let us go down the whole list to be sure because I think we can shorten it by taking the half really, but I will go through the whole list. I did not even look down at the balance of them. Do you know the firm of Grossman & Greenberg? A. Yes.

Q. Do you know they are a high-priced firm? Do you know Grossman Speigel? A. I have answered that, I believe, before.

Q. No, no. A. I am sorry.

Q. Are they not high-priced? A. Yes.

Q. High-priced? A. Well, come to think of it, not so high-priced.

Q. Where would you put them? A. Medium high.

Q. Max Heit. A. Yes, medium to medium high.

Q. International Dress. A. Low.

Q. Low? A. Low and very high.

Q. Yes. E. A. Jackson Bienard. A. I do not know them. 2834

Q. I do. Will you take my word that they are high, very high? Do you know Mr. Jackson, M. A. Jackson, that has been in the business for so many years? A. I do not know—yes, I think I do recall the name.

Q. Well, that is the one in this firm. A. I recall now.

Q. And also Madam Bienard. A. I recall her.

Q. Also Henry Green. A. I guess that statement is right.

Q. I want to show you that I know them pretty well and just what character of firm it is. A. I see.

Q. Joanne, Jr. A. Medium and low medium.

Q. Junior Town Frocks. A. Medium and low, I believe.

Q. Mary Lee. A. Medium.

Q. Lyla Modes—first, let us go back to Mary Lee. Are they not medium high? A. Medium high. 2835

Mr. Weisman: Off the record.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Now, Lyla Modes. A. Medium.

Q. Lipman Brothers. A. Low.

Q. Marie Lynn; that is not Shilow, but Marie. A. Medium.

Q. I think it is a fair statement. E. N. Marcus & Company? A. Medium and low.

Q. Monte Sano & Pruzan—first, let us take Matthews Kadetsky. A. Which one?

Q. Matthews Kadetsky. A. Medium high.

Q. Now, Monte Sano & Pruzan. A. I do not know.

Q. High. A. I would not be sure.

Q. Do you know Monte Sano? A. No.

Q. Do you know Charles W. Nudelman? A. Which one is that?

Q. The next one. Charles W. Nudelman. A. Yes. Medium high.

2837 Q. Pedes Gilbert. A. Medium.

Q. Robinson Brothers. A. Medium and low.

Q. Medium and low? A. Well, medium.

Q. And Radiant Dress? A. Medium and low.

Q. Now, let me see. I am not sure that I got these in here, and I want to get them all in. Charles W. Nudelman. A. Medium high.

Q. Pedes Gilbert. A. Medium.

Q. Radiant Dress. A. Medium and low.

Q. Robinson Brothers. A. Medium.

Q. Rose Barrack & Lahm. A. Medium.

Q. Would your believe they are not high? A. If you know the price range better than I do, I have no doubt if you say they are high that they are high.

2838 Q. Sheila Lynn, Inc. A. Medium high.

Q. Somay. A. Medium and low.

Q. Star Maid. A. Medium and low.

Q. Strauss Miller. A. I do not know.

Q. Mrs. Strauss is Mrs. Strechner's sister. A. Then they must be high.

Q. Virginia Hume & Gold. A. I do not know.

Q. Zuckerman Krauss. A. Medium and medium high.

Q. Capri Frocks? A. High and medium.

Q. Taking all of these as read, and with the refreshment of your recollection, do you believe that by and large the delivery by all of these people of their merchandise within three weeks is a fair and reasonable statement as the fair and reasonable time within which delivery should have been made? I mean, taking out the very high, which would be longer? A. I should say from two to three weeks, that would be a little nearer, two weeks is low and three weeks I would think would be a little high. It would be in between.

Q. Two and a half weeks to three and a half weeks? A. Well, I would accept it at two and a half weeks.

Q. You get your delivery in three weeks, do you? A. 2840
We usually get it in about two and a half.

Q. On this occasion you got your delivery in three weeks, did you? A. I do not recall now. I may have some records in the office that would give the information. I think we did get it in about that length of time.

Q. Yes. A. I do know there were many deliveries that were delayed because they just stopped work on our order, naturally when we were red carded and the merchandise came into our store finally and had no longer the value or, certainly, it did not have the same value because its value was greatly depreciated because it was too late, and we needed a week at that time very much over getting the goods the next week. In other words, a week at that time was very important because this was just before Easter, 2841
and a week there is tremendously important. Merchandise coming in one week later than it should have may have made the difference between a profit and a loss.

Q. With regard to the statement set forth in Respondents' Exhibit 13 for Identification, the same being a copy of the complaint referred to in Commission's Exhibit No. 358, I show you this paper and ask you whether or not this was the Fashion Originators Guild of America, Inc., answer filed in that case? A. Without reading all of the details, I would say yes.

Q. You did see it, did you not? A. It has a great resemblance at the beginning. If you say so I would take it.

Q. You have seen it? A. Oh, yes, I have read it thoroughly.

Mr. Weisman: I now ask that this be marked Respondents' Exhibit 14 for Identification.

(The answer of the Fashion Originators Guild of America, Inc., to the suit brought by Wm. Filene's Sons Company in the District Court of the United States for the District of Massachusetts, was marked Respondents' Exhibit 14 for Identification.)

2843

By Mr. Weisman.

Q. Now, this Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification together constitute the papers in the action referred to in Commission's Exhibit 358, do they not? A. What is the question again, please?

(Question read.)

A. I believe so.

Q. With regard to Respondents' Exhibit 13 for Identification, when you were, as you say, "red carded," and you felt an injury was being done to you, you thereupon consulted with counsel, I take it?

2844

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Weisman.

Q. As a result of—I withdraw that. Because of your action, or because of such action as was taken by the

Fashion Originators Guild, I have reference to this "red carding" of Filenes as you have denominated it, Filenes did commence an action in the District Court of the United States for the District of Massachusetts, did they?

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Such action as they commenced to bring—I withdraw that—no, I will not—and such action as they—I withdraw that. When Filenes was, you have stated, red carded, they did take legal action against the Fashion Originators Guild of America, Inc., did they not? 2846

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Such action as they did take was evidenced by the suit as is set forth in this bill of complaint, Respondents' Exhibit 13 for Identification?

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

2847

By Mr. Weisman.

Q. Well——

Mr. Weisman: One moment. I now offer in evidence Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification, respectively, which have been respectively so marked in accordance with the practice of the Commission for identification.

Mr. Haycraft: The same objection as heretofore urged to Commission's Exhibit 13 for Identification —I beg your pardon—Respondents' Exhibit 13 for Identification is alleged as to Respondents' Exhibit 14 for Identification.

Examiner Bennett: Sustained as to both.

Mr. Weisman: Exception as to both.

By Mr. Weisman.

Q. I show you this paper and ask you to look at it and state whether or not this is a copy of the opinion rendered by the Court on the application for a temporary injunc-
2849 tion referred to in Commission's Exhibit No. 358, being Respondents' Exhibit 15 for Identification.

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I take it your Honor will take judicial notice of this inasmuch as this is an opinion and is a court record.

Examiner Bennett: That is understood. This is a copy of Court's opinion, and we will take judicial notice of that under the Commission's rules. We will take judicial notice of it as far as that is concerned.

Mr. Weisman: I believe this has already been
2850 marked Respondents' Exhibit 15 for Identification.

Since your Honor takes judicial notice under the code of the United States Court of all opinions and papers in the case, I also call your Honor's attention to the fact that Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification are file papers in this action therein referred to, namely, William Filenes Sons Com-

pany against Fashion Originators Guild of America, Inc., In Equity No. 4293, in the United States District Court for this District.

I believe under the Revised Statutes this Court is likewise required to take judicial notice of all of these papers.

Examiner Bennett: I presume so, as information. You are through with your offer?

Mr. Weisman: Yes.

Examiner Bennett: There is a motion pending for the striking of the offer of proof, and the motion is granted for the reason the Examiner has been over that opinion and has considered it in connection with this case. 2852

The issues of law are totally different, under different proceedings, brought under a different statute.

The case that was before the Court was decided upon a technicality that has nothing to do with the merits of the case.

The opinion is devoted to dicta upon the merits of the case, and even as an opinion is unworthy of any attention; and the evidence, of course, would not be evidence in this proceeding because there were not the same parties of the same issues.

Mr. Weisman: I respectfully except to your Honor's ruling and respectfully call your Honor's attention to the very fact that even though we are— 2853 in other words, even though we were to grant what your Honor states, and yet in my position as attorney for the respondent I certainly do not grant it. It is both proper and advisable that the Federal Trade Commission and the United States Circuit Court of Appeals, which must ultimately confirm any orders that may be issued here, may have the

pleadings before their court as they shall have to pass upon the matters of law that your Honor has now ruled upon.

In other words, I take it that your Honor in this last ruling has made a ruling which is really a ruling of law and of fact.

Examiner Bennett: Yes, a ruling of law and of fact. You are offering certain things as evidence, and I am saying that they are irrelevant.

Mr. Weisman: I believe that the matter should be before the Court and a part of the record so that your Honor's ruling may be examined with regard

2855 to the underlying facts. Therefore, I except to your Honor's ruling in its entirety and separately as to the individual statements therein contained.

I will also say at this time, and I would beg of your Honor to permit my associate, Mr. Feldman, to make a statement with regard to our position and contention with regard to this phase of this matter. I have asked to present a very brief statement in that regard. It will only take one or two minutes.

Examiner Bennett: I will ask him to make that on your direct case.

Mr. Weisman: I take it that your Honor refuses him that permission?

2856 Examiner Bennett: I must decline. I have passed upon that. I decline to receive it now because it is something which has now been passed upon and no good purpose would be served by further discussing it.

You have an exception and that is all that is necessary to protect your rights.

Mr. Weisman: May we have an adjournment until 2.15? It is now 12.45 o'clock P. M. and I should like to have at least an hour for luncheon, if I might.

Examiner Bennett: No. We have to get along. We will have an adjournment until 2 o'clock, gentlemen.

Please be here promptly so that we may go ahead without any delay.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

2858

Examiner Bennett: Before you resume, Mr. Weisman, the Examiner would like to make a very short statement.

It has been called to his attention that probably the language was broader than he intended in his statement about the opinion of Judge Brewster in this litigation, which was brought into the case to-day.

I stated in the beginning that I was considering it for the purpose of this case, and I want that distinctly understood. I was not making a general statement as to the merits or demerits of the opinion for any other purpose except for the purpose of this case.

You may proceed.

Mr. Weisman: Thank you.

2859

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman.

Q. Mr. Seegal, your store had been a co-operating retailer for about three years prior to—I guess it was about two years prior to, or about two and a half years prior to March, or the latter part of February, 1936? A. Yes, sir.

Q. During the time that you have been a co-operating retailer, you knew, did you not, from personal experience of your own store, that it was the policy of the Guild manufacturers not to sell their merchandise to those people who had indicated that they were not in sympathy with the Guild's efforts to curb design piracy; is that not so? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Now, by the letter that Mr. Riley sent, it was there by intended to serve notice on the Guild, was it not, that it was not your policy to co-operate any further with the purposes of the Guild as you understood them to be?

2861 Mr. Haycraft: I object to the question, Mr. Examiner. The exhibit will speak for itself.

Mr. Weisman: Well, I can ask his intention in causing the exhibit to be sent.

Mr. Haycraft: He did not cause the exhibit to be sent.

Mr. Weisman: He testified he did.

Examiner Bennett: Well, I will let him answer.

The Witness: Will you read the question?

(Last question read.)

A. Mr. Riley's letter was notification that we——

By Mr. Weisman.

2862 Q. No, look, please, what I want— A. Well——

Q. We are all desirous of shortening this matter. Now, that is a simple question. A. Now, it is a simple question but it is possible you are getting—if I answer that "yes" or "no" I would not get it over to this Court.

Q. Well, let us see— A. The very important point.

Q. Well, let us see what part of that question you think you cannot answer "yes" or "no"; we will have it read again, possibly.

(Question again read.)

A. It was the late activities of the Guild that we objected to.

Q. That is right, that is why I said as you then understood, as you understood them to be. A. It was more than purposes; it was activities.

Q. Well, purposes and activities. A. Yes, sir.

Q. Now, when you sent that letter, you believed, did you not, that if the Guild members were in earnest in their policy that they would, as the result of your notification to them, cease to be willing to do business with you, did you not? A. We believed that the Guild might change some of their activities as a result of Mr. Riley's letter and perhaps have a peaceful solution to the problem. 2864

Q. In other words, you felt that if the whole eighteen stores at one time indicated that they were not going to support the Guild that the manufacturers might change their ideas? A. Might reconsider their most recent activities.

Q. Yes, and you came to this conclusion because of what you believed was the weight of your concerted action? A. The weight, not in terms of power, but in terms of opinion of certain retailers.

Q. Concerted action by it?

Mr. Haycraft: Objected to.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: I will let him answer. 2865

A. We felt that the group of retailers in presenting an opinion like this would receive careful consideration by the Fashion Originators Guild.

By Mr. Weisman.

Q. Yes. A. Not from the angle of threat——

Q. Now, you don't know, do you, that it did not receive careful consideration? "Yes" or "no."

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Do you know whether it received careful consideration or not?

Mr. Haycraft: That is objected to as irrelevant and immaterial to the issues in this case.

Mr. Weisman: All right.

Mr. Haycraft: Whether it received careful con-
2867 sideration or otherwise.

Mr. Weisman: Well, we will withdraw the question. I don't want to prolong. I am going to stick to my promise to try to——

By Mr. Weisman.

Q. Now, after you had made plain your intentions with regard to the policy of the Guild by the letter of Mr. Riley, you learned that you were red carded? A. Yes, sir.

Q. That meant that, when we say "red carded," that the Guild members had been notified by means of a card sent to them, which was red in color, that you had indicated your unwillingness to further co-operate with the Guild in its policy and activities as they then were; is
2868 that not so? A. Yes, sir.

Q. Now, when you received that notification, or when you learned of this decision, you did not believe that the manufacturers were in earnest in their determination, did you?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Mr. Weisman: You brought it out on your own direct examination.

Mr. Haycraft: No, I did not.

Mr. Weisman: Yes, you did. Now, look, Everett, on your direct examination this witness testified that he sends his buyers around. I am reading from the record—to find out if they, the manufacturers, were in earnest. Now, that was on direct examination. I do not want to take up so much time arguing, Judge.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Well, I will sustain the objection to that; I do not think it is helping us any. 2870

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Notwithstanding—you subsequently found, did you not, that the manufacturers were in earnest in their determination not to do business with you because of your declaration of unwillingness to co-operate with the Guild in its purposes and activities as they then were? A. I cannot answer that question "yes" or "no."

Q. Well, will you tell me, just as briefly as you can, what there is in that question that you cannot answer? A. I will try to make it brief. Your question states, I believe, that we found out that they did not want to do business with us because we had notified the Guild that we could not co-operate—— 2871

Q. Your point is, you do not know what is in their mind? A. No. My point is that I have reason to believe, in fact I know, positively know, that some manufacturers—

Q. (Interposing) Well, wait a moment. Maybe I can help you in this fashion——

Mr. Haycraft: Let him complete his answer.

Mr. Weisman: Wait a moment. He has indicated all that I mean, Everett. I am going to be very brief.

By Mr. Weisman.

Q. After you were red carded, as you have stated that you were, you want to tell me that some manufacturers would have liked to do business with you but as members of the Guild they could not do business with you; is that it? A. Because of fear of penalties——

Q. Yes. A. —and so forth, of——

Q. Surely. But these manufacturers who were willing
2873 to do business with you were members of the Guild? A. That is right.

Q. They were members of the Guild? A. Yes.

Q. And you mean, do you not, that these few manufacturers whom you say would have liked to do business with you felt that if at this particular time they could do business with you, without incurring violation of their pledge to the Guild, they would personally benefit thereby; is that not it? A. Yes, and that they wanted to——

Q. Yes, and these manufacturers, if they had done business with you, that would have virtually destroyed the Guild policy, would it not? A. Those manufacturers felt that that would have hurt them, because of penalties——

Q. (Interposing) No, I know that. A. Yes.

Q. Never mind as to that. A. Oh, you——
2874

Q. But I say that generally, if they had done business that would have been a virtual ending of the Guild in its policy; is that not so?

Mr. Haycraft: Don't answer.

Objected to—I object to that question.

Examiner Bennett: I will sustain the objection. I think that anybody can express an opinion on that as well as this witness.

Mr. Haycraft: Yes.

By Mr. Weisman.

Q. Well, did you or did you not, when you caused the letter of Mr. Riley to be sent to the Guild, expect to be red carded?

Mr. Haycraft: He has already answered that question, Mr. Examiner; I object to it.

Examiner Bennett: I will sustain the objection to that question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. When the telegram was sent to you, which telegram followed the receipt by the Guild of the letter from Mr. Riley, and your store did not reply to that letter, did you not realize that the failure to reply to the letter might be construed by the Guild as an invitation to be red carded? A. It might. 2876

Q. Well, quite frankly, and as a business man, was not that the fair implication of the telegram?

Mr. Haycraft: Oh, that is objected to.

Mr. Weisman: Well, is it? I will reframe it.

By Mr. Weisman.

Q. Did not that telegram convey to you that that was its fair implication? A. Frankly, the chance looked more than 50 per cent. that we would be red carded, but not a hundred per cent. 2877

Q. I see. In other words, you felt that if you had this firm stand they might recede from their position?

Mr. Haycraft: I object to the form of the question.

Examiner Bennett: Well——

Mr. Haycraft: I think, Mr. Examiner, the witness has made it very plain——

Mr. Weisman: I cannot hear you.

Mr. Haycraft: —what the situation was.

Examiner Bennett: I think you are interpreting it—I think you will have to reframe your question.

Mr. Weisman: May I have the question?

(Question read.)

Mr. Weisman: Well, I will withdraw the question.

Examiner Bennett: All right.

Mr. Weisman: That is all.

Examiner Bennett: No redirect?

2878 Mr. Haycraft: A little redirect, yes.

Redirect examination by Mr. Haycraft.

Q. At the time that you received notice that you had been red carded, I believe you testified that there were some orders outstanding? A. Yes, sir.

Q. And I am not clear as to the length of time that those orders were outstanding at that time, and how long it was after that time before they were actually filled. Could you give us that detail? A. Yes.

Mr. Weisman: Well——

By Mr. Haycraft.

2880 Q. I do not think the record is clear on that point, there is some testimony as to two or three weeks of delay.

Mr. Weisman: If he personally knows. Now, this means, Judge, and I am calling your attention now so that you may use the same discretion towards my adversary that you used towards me—this means that we are going over now each and every one of these orders, in my examination on this redirect. I say this because it is obvious, I

believe, that this witness does not know that as to each order, it is just one of these questions, and I think it adds nothing to this case, and I believe that he is merely unnecessarily prolonging it.

Now, if your Honor does not agree with that, I will then have to go into the twenty-odd manufacturers in detail, and if we take five minutes for each manufacturer we have a hundred minutes, or approximately two hours and forty minutes.

Mr. Haycraft: That is all right, we can stay here a week if that is necessary.

Mr. Weisman: All right. I just want that on the record. 2882

Examiner Bennett: I beg your pardon?

Mr. Weisman: He says that we can stay here a week. Now you cannot blow hot and cold. When I am examining we are in a hurry; when he is examining we can stay here a week.

Mr. Haycraft: No, I never hurried you in your examination.

Examiner Bennett: All right.

Mr. Weisman: I further object to this improper redirect examination. It was all brought out on direct examination. On his direct examination he asked him about these orders and what happened. The witness says there was a stipulation. And then after three weeks' interval they got the merchandise in. Now, we are going over it in detail again. 2883

Mr. Haycraft: I did not say that.

Mr. Weisman: Well, if that is to be the procedure that this case is to be governed by, I think what is sauce for the goose is sauce for the gander, and we should have the same privilege. I respectfully object to this line of testimony.

Examiner Bennett: I will entertain—if the examining attorney presses it, I am going to entertain his question and when it comes to recross-examination I will decide on that, how far it goes.

I would suggest that the only useful thing is to get the date of that stipulation, and, if he remembers the time thereafter when the goods were delivered, if that is what you are trying to fix.

Mr. Haycraft: That is what I am trying to fix, Mr. Examiner.

Mr. Weisman: Well, the date of the stipulation is now in evidence. We don't have to fix that.

2885

Examiner Bennett: It is in evidence, is it?

Mr. Weisman: Yes, your Honor, it is on that last exhibit, Commission's Exhibit 358, if my memory serves me correctly.

Examiner Bennett: Yes, that is in evidence.

Mr. Weisman: Yes.

Mr. Haycraft: What is the date?

Mr. Weisman: It is your exhibit; I have not got it.

Examiner Bennett: See if that is true.

Mr. Weisman: Where is Commission's Exhibit No. 358?

Mr. Martin: Here it is. It is dated March 9.

Mr. Weisman: Yes, your Honor, it is dated March 9.

2886

Examiner Bennett: March 9, 1936?

Mr. Weisman: 1936.

Examiner Bennett: Well, if you want to ask one question as to whether that came in due course after that, or——

Mr. Haycraft: I am trying to find out when it was that he received the red card—when was it he received notice he had been red carded.

The Witness: You are asking me?

By Mr. Haycraft.

Q. Yes. A. About the 15th of February, I believe.

Mr. Weisman: Do you know?

The Witness: I can examine my records.

Examiner Bennett: Long after the red card.

Mr. Weisman: I submit this certainly is not redirect. We got all of this on direct examination.

The Witness: You have got it.

Mr. Weisman: We are starting to try the case all over again, Judge.

Examiner Bennett: If that is in the record I will sustain the objection to it, if it is in the record sufficiently, it is there. 2888

By Mr. Haycraft.

Q. What is the date of the Riley letter? A. The Riley letter is dated February 15; we were red carded February 17.

Examiner Bennett: I say, if that is in the record already——

Mr. Haycraft: No, it is not stated in the record. That is the reason I want it here.

Examiner Bennett: That is my recollection.

Mr. Haycraft: We did not have the exact date before.

Examiner Bennett: I beg your pardon? 2889

Mr. Haycraft: We did not have the exact date before. The Riley letter is dated the 14th, I believe.

The Witness: 17—15th is the date.

Examiner Bennett: Well, if we did not have the date before, you may state the date.

The Witness: Riley's letter was—telegram from Post was on February 15, in reply to Riley's letter

of February 14. We were red carded as of February 17.

Mr. Haycraft: All right.

Examiner Bennett: Yes.

Mr. Post: Anybody got a calendar?

Mr. Haycraft: Yes, I have one (handing calendar to Mr. Weisman).

Mr. Weisman: Off the record.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: I understood your Honor to say that if we got the date, March 9, the date of the

2891 stipulation, that you would limit the query as to how soon after the stipulation——

Mr. Haycraft: No.

Examiner Bennett: Yes. Well, I understood that these dates are all in the record. I find that they are not in the record. They are obviously dates of some importance, and we are going to have them. Now, as to your question as to the date of the red carding——

By Mr. Haycraft.

Q. First, I will ask when it was that Filenes were red carded, so far as you know? A. February 19.

Examiner Bennett: 1936?

2892 Mr. Haycraft: 1936.

The Witness: Yes.

By Mr. Haycraft.

Q. Now, from February 19 to March 9 had you received any goods from the Guild manufacturers with whom you had outstanding orders? A. No, sir.

Q. Now, referring to Commission's Exhibit 358, I will ask you how long after March 9, the date of the letter, you

received the goods which were on order? A. Within twenty-four hours after March 9 we started to receive shipments of merchandise, which continued up until the middle of the month, and I believe some after the 15th of March.

Q. Now, were the orders which were outstanding on February 19 orders which had been placed individually before February 19, or some time before? A. Some were placed some time before, substantially before; some very recently before the 19th.

Q. Now, you were questioned on cross-examination with respect to a comparison of your sales figures of the three dress departments referred to in your direct testimony, 2894
affected by the red carding on the part of the Guild. You had made a comparison between February, 1936, and February, 1935, and, as I recall it, the February, 1936, sales figures were higher than February, 1935? A. Yes, sir.

By Mr. Haycraft.

Q. You are familiar with the comparison of the figures that were presented yesterday?

Mr. Weisman: Objected to.

A. Yes, sir.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. 2895

Examiner Bennett: It is a foundation question; overruled.

Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. Do you have them before you now? A. Yes, sir.

Q. I will ask you whether or not you, in your experi-

ence, and your familiarity with the business of those departments, are in a position to testify as to whether there was any peculiar situation that existed that caused the figures in February, 1936, to be substantially higher than the figures of February, 1935?

Mr. Weisman: Objected to as incompetent—

A. Yes.

Mr. Weisman: Wait a moment.

Examiner Bennett: Well, I consider that still a foundation question; overruled.

2897 Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. Then, in the light of that experience, I will ask you to testify as to the cause for the excess in 1936 over 1935?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial; no proper foundation is yet laid, your Honor.

Examiner Bennett: Read the question.

Mr. Weisman: What excess? That is no excess.

Examiner Bennett: I will ask him to state first just what that condition was that he speaks of.

2898 The Witness: Me?

Examiner Bennett: Yes, sir.

The Witness: Yes, sir. There was a much heralded garment strike which was supposed to begin on February 1. A great deal of notice had been given through trade journals, and so forth, and in order to prepare for this impending garment strike, Filenes bought very much more merchandise in January, for February delivery, than we normally

would. In one of the divisions alone of the business, in Mr. Drew's division, with approval of management, we bought $37,500 more just to take care of the strike. We also bought substantially in Mr. Gross' division and Mr. Zerkowsky's division. We therefore were well prepared for the February business in spite of being red carded in the middle of February.

As a matter of fact, the increase in business in the month of February was exactly the same in those dress departments, almost to a tenth of 1 per cent., as was the main store to which I have previously referred, and 3 per cent. better than the 2900
Federal Reserve——

Mr. Weisman: Just a moment. I ask that that answer be stricken out. It is not responsive to your Honor's question. It is argumentative, not a statement.

Examiner Bennett: Not a part of it, if you want that which is responsive to the question, then you may—I was intending my question as a foundation question—you can repeat—you can repeat the question, if you wish, Mr. Haycraft, and have him repeat his answer and I will strike out the portion relating to the condition of business—that is, the peculiar circumstances; that is, the circumstances of the strike.

2901

Mr. Haycraft: He answered both ways.

Examiner Bennett: And the preparation for the strike which had been heralded.

Mr. Haycraft: I will ask, then, that my question be repeated to the witness.

Mr. Weisman: You mean that the Judge's question be repeated.

Mr. Haycraft: No.

Examiner Bennett: No. The Judge's question has been answered. I have stricken out the portion relating to the condition of business.

If you will read the answer, I will indicate what is stricken.

(Question read as follows:

"Q. I will ask him to state first what that condition was that he speaks of. A. Yes, sir. There was a much heralded garment strike which was supposed to begin on February 1. A great deal of notice had been given through trade journals, and so forth, and in order to prepare for this impending

2903 garment strike, Filenes bought very much more merchandise in January, for February delivery, than we normally would. In one of the divisions alone of the business, in Mr. Drew's division, with approval of management, we bought $37,500 more just to take care of the strike. We also bought substantially in Mr. Gross' division and Mr. Zerkowswy's division. We therefore were well prepared for the February business in spite of being red carded in the middle of February.")

Examiner Bennett: The rest of the answer is stricken.

Now, you may repeat Mr. Haycraft's question.

(Question read as follows:

2904 "Q. Then, in the light of that experience, I will ask you to testify as to the cause for the excess in 1936 over 1935?")

Mr. Weisman: Has he already answered that?

Examiner Bennett: He has answered in that particular—no, he has related the peculiar circumstances which made him competent that he could answer.

Now, go ahead.

The Witness: You want me to repeat what I said before?

Examiner Bennett: Well——

The Witness: I would like to start in——

Mr. Weisman: Oh, I will stipulate that he will repeat the same thing that he said before.

The Witness: But I want to add—I was interrupted—I want to add some things to that. I had not finished my answer.

Examiner Bennett: Go ahead and answer the question.

The Witness: Would you repeat the stricken-out part. 2906

Mr. Weisman: Oh, I ask that it be not repeated.

The Witness: That is going to be my answer, plus some more.

Mr. Weisman: The reason it was stricken out was because it should not appear in the record. Now he says that you——

The Witness: I thought this was a new question.

Examiner Bennett: Because of your objection that it was not responsive——

Mr. Weisman: Yes.

Examiner Bennett: That is the only reason why I struck it.

Mr. Weisman: Yes.

Examiner Bennett: Now, you may read the question that was stricken out. 2907

(The continued answer was read as follows:

"As a matter of fact, the increase in business in the month of February was exactly the same in those dress departments, almost to a tenth of 1 per cent., as was the main store to which I have previously referred; and 3 per cent. better than the Federal Reserve——.")

The Witness: Now——

Mr. Weisman: Now, may I know what question is before the witness?

Examiner Bennett: I beg your pardon?

Mr. Weisman: May I know, now, what question is before the witness?

Examiner Bennett: The question was read to him by the reporter, which was Mr. Haycraft's question.

The Witness: That is my understanding.

Examiner Bennett: Read the question.

(Question again read as follows:

"Q. Then, in the light of that experience, I will
2909 ask you to testify as to the cause for the excess in 1936 over 1935?")

Examiner Bennett: Now, have you finished your answer?

The Witness: Part of my answer is the stricken out part and I would like to go on.

Examiner Bennett: Go on.

Mr. Weisman: No, I would like to have the answer to that question.

Examiner Bennett: You can read the answer as far as it has gone.

The Witness: I will take out the stricken out part.

Mr. Weisman: And before that, may I have my
2910 objection to that question? In that the question is improper in form and incompetent, in view of your Honor's own ruling. Your Honor ruled, as I understand, this was only subject of opinion evidence. The witness has not been asked for his opinion. He has been asked for the fact, which obviously this Court and any court can see cannot be given on a question like this. It is only a question of opinion, not a question of fact. Such matter is not susceptible of factual proof, and I object to the form of the question.

Examiner Bennett: I think probably that objection is well taken.

Mr. Weisman: What is that?

Examiner Bennett: I say, I think that probably your objection is well taken.

Mr. Weisman: Thank you.

Examiner Bennett: Put it in that form, Mr. Haycraft.

Mr. Haycraft: All right, I will amend my question and state that——

By Mr. Haycraft.

Q. State what, in your opinion? 2912

Examiner Bennett: Have you an opinion?

The Witness: About the February business?

By Mr. Haycraft.

Q. Yes.

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. 1936 compared with 1935. A. I have.

Q. Will you state it? A. Business in February, 1936, compared to 1935, in those dress departments was good, but no better than the main store itself. It was better than our competitors, as shown by the Federal Reserve figures. The dress departments in question were ahead of last year 11.3 per cent. The upstairs store—— 2913

Mr. Weisman: No. May it please your Honor—

Examiner Bennett: That is part of the answer. Just be still, please.

Mr. Weisman: All right.

Examiner Bennett: You can make a motion to strike.

A. (Resumed) —the upstairs store was ahead 11.5 per cent. The Federal Reserve figures for February showed the town was ahead in dresses 9.9 per cent.

We had—this going ahead of competition in dresses was in accordance with what had been the custom for some months previous.

By Mr. Haycraft,

Q. Would you say that——

Mr. Weisman: Just a moment, just a moment; that is a question and an answer. Now, I move to strike out from the answer the latter part thereof.
2915 As I recall the question, he was asked to give his opinion as to why the February business in 1936 was better than the February business in 1935. Now, that only requires a statement of the reasons, and not a statement of a comparison of what other stores did, and so forth and so on, and I ask that the latter part of the answer be stricken out, and that the answer be confined to the question, to-wit, what was his opinion as to why this condition existed, and he answered that in the beginning by saying, "stocks and so forth, and so on, in anticipation of the strike." The latter part is not a part of his opinion.

Examiner Bennett: All right; overruled.

2916 Mr. Weisman: Exception.

Examiner Bennett: Your motion is denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. In your opinion, was the comparison of these three dress departments in February, 1936, as compared with 1935, a normal increase in business?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial. We are now going into all fields of speculation. That is objected to. Not proper. Additionally, it is not proper redirect.

Examiner Bennett: I will sustain the objection to that. I do not think we have to drag this out. We are going into all the economic factors.

By Mr. Haycraft.

Q. You were asked in cross-examination to compare the March sales. A. Yes, sir.

Q. For those three departments, for 1936, with 1935? A. Yes, sir. 2918

Q. I will ask you whether or not you have made a comparison of the three dress departments for that month in those two years with the total sales of the main store? A. I have.

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, no proper redirect.

Examiner Bennett: I think your question and the correctness of these conclusions as to that matter—I will let him give his statement on them.

Mr. Weisman: Exception.

A. Our business in the dress departments started to slump——

2919

Mr. Weisman: Now, I ask that that be stricken out.

Mr. Haycraft: Mr. Examiner, I would ask that the witness be allowed to complete his answer before he is interrupted.

Examiner Bennett: He may.

A. (Resumed) —started to slump in March very decidedly compared to the main store. In March the main

store had an increase of 10.8 per cent. The dress departments in question had an increase of 3.0 per cent.

By Mr. Haycraft.

Q. Now, I ask you to direct your attention to the first ten days of April. You were called upon in cross-examination to make a comparison of the first ten days of April, 1935, with April, 1936. First I will ask you whether or not the two periods are comparable, in your judgment? A. They are not.

Q. Why? A. This year, Easter came one week earlier than last year. Easter is a very important factor affecting
2921 our business, and particularly the garment business. The comparison, using April 10, gives you the first and second week before Easter this year, against the second and third week before Easter last year. Obviously, you would then have a very substantial increase in business, in such a comparison, which would tend to wash out during the next week, so that the only fair way to judge would be the entire month.

Q. Do you have such comparison? A. I do.

Mr. Weisman: Just a moment. I ask that the entire answer be stricken out as irresponsive, argumentative, giving a conclusion of the witness, with such words and superlatives "very great slump," and all that, all of which is not competent in reply
2922 to this question.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Will you make a comparison, then, of April?

By Mr. Haycraft.

Q. Do you recall having testified as to the total store figures for the month of May, main store figures, in response to a question propounded by counsel for the respondent? A. I do.

Q. I will now ask you to testify as to the total sales of the three affected departments, it having been the subject of your testimony heretofore? A. The three affected divisions of the business showed an increase of 3.3 per cent. for the month of May.

Q. As compared with the main store?

Mr. Weisman: Now, just a moment. I object to any comparison as not being proper redirect examination. 2924

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. As compared with that of the main store. A. The main store showed an increase of 7.1 per cent.

Q. Will you make the same comparison for the month of June? A. For the month of June the three affected dress divisions showed an increase of 4.5 per cent., and the main store showed an increase of 11.2 per cent.

Q. Now, for the first twenty-four days of July, will you make the same comparison? A. The affected dress divisions showed a decrease in business of 9.9 per cent., and the main store showed an increase of 8.6 per cent., through July 24. 2925

Q. Now, in these three divisions, the three departments of divisions, I will ask you whether or not different priced lines of dresses manufactured by members of the Guild are found?

Mr. Weisman: I object to it as not proper redirect examination.

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

A. The answer is "Yes."

By Mr. Haycraft.

Q. I will ask you further whether each department has low-priced lines and high-priced lines of Guild merchandise?

Mr. Weisman: Objected to as not proper redirect
2927 examination.

Examiner Bennett: I think that is in the record, is it not?

Mr. Haycraft: It may be.

Examiner Bennett: Without any dispute?

Mr. Haycraft: It may be.

Examiner Bennett: Without any questioning on cross? I will sustain the objection.

By Mr. Haycraft.

Q. I will ask you whether or not in your judgment or opinion, Seegal, a comparison of the total volume of sales of the three dress divisions with the main store fully discloses the effect on the various lines of dresses, price lines
2928 of dresses in those divisions——

Mr. Weisman (interposing): Objected to.

By Mr. Haycraft.

Q. —of the red carding by the Guild?

Mr. Weisman: Oh, I object to that as incompetent, irrelevant and immaterial, and now seeking to substitute the opinion of this witness for the

determination of the Commission and the Circuit Court of Appeals and everybody who is going to read this record.

Furthermore, it is not proper redirect examination; it is an argument. He is now asking the witness to argue his case for him.

Examiner Bennett: I think it is in the record already; I will sustain the objection.

Mr. Weisman: Thank you.

Mr. Haycraft: I had not any further redirect.

Examiner Bennett: All right.

Mr. Haycraft: I do want to say this, however, that I think the witness should be given an opportunity to make an explanation—— 2930

Mr. Weisman (interposing): Wait until I get finished.

Mr. Haycraft: —of the wedding gown episode, in defense of his own credibility, and, with that in mind, I will ask the witness to testify——

By Mr. Haycraft.

Q. I will ask the witness to testify as to whether or not he, in his official position, gave instructions as to where, or under what circumstances, the employees of Filenes were to obtain the wedding dresses that he was unable to obtain from the Guild manufacturers?

Examiner Bennett: I will let him answer that. 2931

A. I did give instructions, in that wedding dress episode. The divisional merchandise manager of that department, Mr. Gross, came to me——

Mr. Weisman (interposing): Now, I object to this business "came to me," and "said to me," and "did with me." He was asked in the question what instructions he gave. Now, this is a highly intelli-

gent, skillful witness, and I submit that he knows what that question is, and if he does not remember, I ask that it be read to him again, and then he may have it before him. It is not necessary to start in with one of these summations for the Commission. We have no jury here.

Mr. Haycraft: I think, Mr. Examiner, that when the credibility and the integrity of the witness has been attacked, that the counsel for the respondents who made the attack should not be in position to dictate the terms under which the witness should reply.

2933 Mr. Weisman: I submit that we are in a court—

Mr. Haycraft: —and I submit——

Mr. Weisman: We are supposed to have an orderly procedure, and I submit that this procedure should go on question and answer. You have asked a question, and I submit I am entitled to an answer. The most you are entitled to is an answer and not a stump speech.

May we have the question read?

Examiner Bennett: Yes.

(Question read.)

Examiner Bennett: The objection is overruled; you may go ahead with your answer.

Mr. Weisman: Exception.

2934 A. Mr. Gross, the divisional merchandise manager, came to me about this problem. He told me at the time that they were quite sure that those dresses were on sale in a store in New York. I told him that we must do everything, regardless of cost, to satisfy the customers in a situation like this. We could not give the customers the alibi about the Guild that, if necessary, and I presume it would be necessary, we must buy those dresses in that store in New York at full retail price. I gave him orders that he was to do so.

The dresses came in, the customer was satisfied, and that is the last that I know, and that the management of Filenes knows of that transaction.

Mr. Haycraft: That is all.

Recross-examination by Mr. Weisman.

Q. I understood you to testify a moment ago in your efforts, as stated by Mr. Haycraft, to clear your reputation of the charge of lack of credibility, that nobody in the management of Filenes knew anything more about this wedding dress transaction than you have just testified to? A. Correct. 2936

Q. Now, will you kindly tell us—no. And when you so testified, in your effort to clear yourself of any charge of lack of credibility, you testified to that statement of mind in the management as being a fact; is that so? A. Yes, sir.

Q. Now, did you ever discuss this with Mr. Louis Kirstein? A. I never did, because he was away——

Q. (Interposing) Wait a moment. Did you? A. No, no.

Q. Is Mr. Kirstein in the management of Filenes Sons Company? A. Yes, sir.

Q. Then, how do you know whether or not Mr. Kirstein ever knew about this or had anything to do with it? A. Because he was away on the Caribbean Sea during the entire time this episode took place; it would be nothing 2937 short of miraculous for him to know anything about it.

Q. Now, what about Mr. Lincoln Filene? A. Mr. Lincoln Filene would not know about this unless it came through either Mr. Wright or myself, and it did not come through either one.

Q. What was the date of this wedding dress transaction? A. This wedding dress transaction was either the end of February or very early March.

Q. How do you know what the buyer or merchandise manager knew? A. You want to ask each question separately?

Q. Well, how do you know what the merchandise manager knew? A. The merchandise manager knew——

Q. —as distinguished from what he told you he knew? A. The merchandise manager—all these things function through me to the merchandise manager.

Q. I see, and you would have it in your effort to clear yourself of the charge of lack of credibility, that because they cleared through you you know whatever is in their mind; is that so? A. I would know that they would not know about this transaction; at least, it was quite un-

2939 likely that they would know, unless I knew——

Q. Oh. A. Because it cleared through me.

Q. Now, your statement is that the thing is unlikely; is that it? A. Unlikely enough so that I could make a good wager on it.

Q. Oh, your testimony is of the nature of things that one wagers upon; is that it?

Mr. Haycraft: Objected to.

A. When I am sure of a thing, I wager to it.

Q. I see.

Mr. Haycraft: Mr. Examiner——

2940 *By Mr. Weisman.*

Q. You think that helps clear your credibility?

Mr. Haycraft: Just a moment.

Mr. Weisman: All right. I think it is sufficiently plain.

Mr. Haycraft: I move to strike the last two questions and answers referring to subordinates, and the testimony of this witness was that the management of Filenes——

Examiner Bennett: Granted.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you look upon your merchandise manager as part of the— A. Not strictly speaking.

Q. When you said you knew what was in the management's mind— A. Yes, sir.

Q. Did you mean to testify that you included in that omniscience which you possessed what was in the merchandise manager's mind, too?

Mr. Haycraft: Objected to as to form; it is objectionable, Mr. Examiner. 2942

A. I meant——

Mr. Weisman: What is objectionable about it?
Mr. Haycraft: It is offensive.
Examiner Bennett: I will let him answer.

By Mr. Weisman.

Q. You included the merchandise manager? A. I would like to include him; yes, sir.

Q. Yes. In other words, you are quite willing now to testify that you even knew what was in the merchandise manager's mind; is that it?

Examiner Bennett: The Examiner will make his ruling as to striking that. 2943
Mr. Weisman: You mean he may answer?
Examiner Bennett: Yes.
Mr. Weisman: Yes.
The Witness: What is the question, please?
(Question read.).

A. Yes, because more——

By Mr. Weisman.

Q. Yes, that is enough. A. Yes, sir.

Q. In addition to your other qualifications which make you the assistant to the vice-president, and the assistant of the manager, would you tell me, in all seriousness, whether or not it is your claim that you are also a mind reader?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Well, now——

2945 *By Mr. Weisman.*

Q. Well, are you a mind reader?

Mr. Haycraft: Objected to.

Examiner Bennett: Please do not get farcical in your cross-examination, Mr. Weisman.

Mr. Weisman: Well, he is a man that can tell what is in somebody else's mind.

Examiner Bennett: Please——

By Mr. Weisman.

Q. You were asked on redirect examination about when you had placed the orders with the manufacturers referred to on Commission's Exhibit 358; do you remember that?

2946 A. Yes, sir.

Q. And you testified, I believe, that you had placed such orders for a period of time, either immediately before February 17, of differentiating from the 19th, or in some cases long before; is that correct? A. Yes, sir.

Q. And at that time when you placed those orders you were still co-operating with the Guild in its policy, and its then activities, of protection of original styles? A. Yes, sir.

Q. And that was known to the manufacturers when they accepted your order, was it not? A. Naturally.

Q. And you knew when you gave them that order that they then would not take the order if you were not co-operating with them in their activities as they then were, and in their purposes in eliminating style piracy? A. Yes, sir.

Q. Now, in your efforts to explain why you did such a good business in February, I understood you to say that you did that good business because you had such a big stock? A. That was not the only reason.

Q. Well, was that not the only reason you gave Mr. Haycraft? A. No, sir; I pointed out that we did as well 2948
as the rest of our store, and also the competition had a good increase in business, too, at that time.

Q. Did you not speak about the stock, a big stock? A. Yes, sir.

Q. $37,000? A. Yes.

Q. Well, was not that an inducing cause for this big business? A. That helped to offset a loss we may have had from being red carded.

Q. Well, now, then, by that, you did not understand Mr. Haycraft's questions, did you——

Mr. Haycraft: Wait a moment.

By Mr. Weisman.

Q. Did you? A. Certainly. 2949

Mr. Haycraft: Wait a moment. That all goes back to the cross-examination.

By Mr. Weisman.

Q. Did it?

Mr. Weisman: It goes back to your redirect.

Mr. Haycraft: No, no.

Mr. Weisman: And it comes right forward, if I may be permitted to go on. Never mind where it went back to; let me see.

By Mr. Weisman.

Q. Were you not asked a question somewhat along this line: In your opinion, what was the reason for the advance in the sale in these departments which were affected by the Guild, is that not so? A. Yes, sir.

Q. And did not you give as your first reason the story of a much heralded strike, and that because of that you had put in a lot of merchandise in stock, and did you
2951 not even use the words that "with the consent of the management and with its knowledge, the buyer put in $37,000 worth of merc' andise"; is that not so? A. That is correct.

Q. And when you so testified, did you not do that in order to impress the Commission, or the Examiner, or whomever your testimony came before, that the reason that you had such good business was because you had a big stock? A. Of course, that was one of them.

Q. Of course. Let us agree on it, then. A. Yes, that was one of the chief reasons.

Q. That was the chief reason. A. New fresh stock.

Q. I see. New fresh stock. Well, is not it Filenes practice for them to always have on hand a sufficiently new fresh stock? Was not that your thought in January? A.
2952 We tried to have new fresh stock.

Q. And in December. A. We tried to have new fresh stock.

Q. And as a matter of fact because of the imminence of this strike pending, it was harder to get a new fresh stock in February, for example, than it would have been in January? A. It was harder, but we bought a lot more.

Q. But I say, it was harder. A. A little harder.

Q. Sure, just a little harder. A. Just a little bit harder.

Q. You are seeking now to minimize the hardness, is that it? A. I am not, I am trying to fairly state——

Q. Yes. A. —state the difficulties, if any, in getting merchandise for February; they were not great.

Q. Well, let us see. On your redirect examination you were very glib in describing the offset, or what you call the slump, due to an increase in business in the departments affected by the Guild policies.

Mr. Haycraft: That is objected to, Mr. Examiner.

By Mr. Weisman.

Q. Is not that so? 2954

Mr. Haycraft: That was stricken, Mr. Examiner.

Mr. Weisman: Well——

Examiner Bennett: Will you read the question?

Mr. Weisman: I will withdraw it, Judge.

Examiner Bennett: All right.

Mr. Weisman: I do not want to waste too much time.

Examiner Bennett: You are going into your recross-examination for some time, are you?

Mr. Weisman: Yes, Judge.

Examiner Bennett: Well, we will take a recess.

Mr. Weisman: Thank you.

(There was a short recess taken.)

Examiner Bennett: You may proceed, Mr. Weisman. 2955

By Mr. Weisman.

Q. On your redirect examination I believe that you gave some figures comparing the volume of what you called the affected departments with the volume done with the entire store? A. With the entire upstairs.

Q. Upstairs store? A. Main store.

Q. For such probative weight as it may have with the Federal Trade Commission in view of your redirect testimony, I would like to ask you for some figures with regard to certain other departments, generally. I am going to go, first, to the glove department.

Mr. Haycraft: I object, if your Honor please.

Mr. Weisman: Let me finish, please—now be a good fellow and let us get along without any friction on this thing—I would like to know from you—well, I will just continue the question:

By Mr. Weisman.

2957 Q. —to the glove department. I would like to know from you a statement as to the total business done in the glove department of your store and in all related stores for the month of July, 1935; that is, the twenty-four days of the month as compared to July, 1936?

Mr. Haycraft: Now, Mr. Examiner, that is not proper recross examination in the light of the redirect examination. As you will recall, on cross examination, the witness was asked certain questions with respect to his total sales for the months from June and for July, which he gave, not from, but for the months of June and July, which he gave on the record.

2958 An attempt was made at that time to bring in the testimony which is now being asked, and was properly ruled out by the Examiner. There was certainly no question on redirect examination which would lay any foundation in this record for this request.

Mr. Weisman: May I be heard?

Mr. Haycraft: I have not finished.

Mr. Weisman: Go ahead.

Mr. Haycraft: The only purpose of comparison, or for asking for the comparison that was made by the witness upon the figures, was to straighten out what was left up in the air as a partial picture of the comparison in an attempt made by counsel for the respondent as to have the statement of the witness as to business done in the Dress Department—

Mr. Weisman: May I be heard?

Examiner Bennett: Yes, but make it as short as your can, please.

Mr. Weisman: What is that, your Honor?

Examiner Bennett: Make it short, please.

Mr. Weisman: Your Honor, I can make it just as 2960
short as I can consistent with clarity.

Examiner Bennett: Yes, please do.

Mr. Weisman: On direct testimony this witness testified that the Guild policy had an unfavorable effect upon his business, or words to that effect. I do not expect to quote the exact language.

Examiner Bennett: Yes.

Mr. Weisman: Thereupon, upon cross-examination, I elicited from him the information which tended to show that the only way that this unfavorable reaction could possibly manifest itself was that their sales for the period 1936 when that policy was in operation were greater than sales for the year before, and then on his redirect examination, and 2961
not on my cross-examination, Mr. Haycraft elicited that the advance of the Dress Department, affected by the Guild, was not as great as the advance that the store made generally. I submit that that was proper redirect examination, and that I am now entitled to show in a large number of the related departments, which are totally unaffected by the Guild policy, the recession in volume of sales, notwithstanding testimony that the store generally went

ahead, was anywhere from 40 per cent. or from 60 per cent. downward, and that instead of making an advance it had, in effect, and in actuality, gone backwards. I submit that in view of the manner in which Mr. Haycraft opened up the door I have this substantial right to show these figures.

Examiner Bennett: If there is any objection the objection is sustained.

Mr. Haycraft: There is an objection.

Examiner Bennett: It is sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2963 Mr. Weisman: Then I make this offer of proof, if the witness had——

Mr. Haycraft: I object to this offer of proof. It is simply a duplication.

Examiner Bennett: You can make it if it has not already been made.

Mr. Haycraft: It is already made on the record.

Mr. Weisman: It is not already on the record.

I will make this offer of proof: That if I had been permitted to go into the questions as indicated by my first question—and I will not ask the succeeding questions as I understand the Examiner will take the same action in regard to each one of them, and that the same objection will be made.

2964 Mr. Haycraft: Yes.

Examiner Bennett: Yes.

Mr. Weisman: In that case, I will make this offer of proof that if I had been permitted to go into these questions as indicated on my first question, the proof would show that:

For the period of twenty-four days of July, 1935, in the Junior Glove Department there was a total of $1202 done in 1935, while in 1936 the total was $779.

That in the Glove Department, Fabric and Lined, in the twenty-four day period, July, 1936, the total was $5,006, notwithstanding the fact that for the same period in the prior year, 1935, the total was $5,800.

In the Hosiery Department for the aforesaid period, the total done in 1936 for that period was $1,320 against—no, that was wrong—it was $2,419 for 1936 as against $2,832 for 1935.

That in the Gotham Hosiery Department for that period, in 1936, the total was $1,655 as against $1,938 for the year 1935; that is all of this particular period. 2966

And——

Mr. Haycraft: I move to strike that out.

Mr. Weisman: Wait until I finish and then make one motion.

That in the Hairnet Department, the total for July, 1936 period, was $1,320 as against the 1935 period of $1,336.

That in the Miscellaneous Jewelry Department, the total for 1936 was $4,736 as against $4,942 for the same period in 1935.

That in the Yarn Department, the total for the 1936 period was $1,647 as against $1,745 for 1935 for the same period.

That in the Knit Underwear Department the total for 1936 was $2,332 as against $3,119 for the 1935 period. 2967

That in the Women's Unionsuit Department, the total was $1,036 for the 1936 period as against $1,371 for the 1935 period.

That in the Rayon and Cotton Underwear Department for Women, the total for 1936 was $6,414 as against $6,951 for 1935—or is this $6,915——

That in the Misses' and Children's Knit Underwear Department, the total was $249 for the 1936 period as against $269 for the 1935 period.

That in the Boys' Furnishings Department, the total 1936 period was $3,499 as against $3,783 for the 1935 period.

That in the Women's and Misses' Shoe Department, the total for the 1936 period was $7,731 as against $7,801 for the 1935 period.

That in the Boys' Underwear Department, the total for the 1936 period was $3,095 for the 1936 period as against $3,585 for the 1935 period.

2969 That in the Belt and Jewelry Department, it was $1,800 for the 1936 period as against $2,155 for the 1935 period.

That in the Knitwear Department it was $2,517 for the 1936 period as against $3,546 for the 1935 period.

That in the Shirt Department it was $15,281 for the 1936 as against $16,229 for the 1935 period.

That in the Collar Department it was $445 for the 1936 period as against $498 for the 1935 period.

That in the Handkerchief Department it was $619 for the 1936 period as against $639 for the 1935 period.

That in the Men's Suit Department it was $3,669 for the 1936 period as against $7,078 for the 1935

2970 period.

That in the Summer Suit Department it was $12,651 for 1936 as against $16,440 for the 1935 period.

That in the Bathrobe Department it was $1,406 for the 1936 period as against $1,771 for the 1935 period.

That in the Nursery Supplies Department it was $2,922 for the 1936 period as against $3,460 for the 1935 period.

That in the Infants' Wear Department it was $2,242 for the 1936 period as against $2,571 for the 1935 period.

That in the Infants' Suit Department for the year 1936 it was $1,304—that is, for the 1936 period—as against $1,581 for the 1935 period.

That in the Infants' Knitwear Department it was $933 for the period in 1936 as against $1,022 for the same period in 1935.

That in the Misses' Skirts Department it was $1,374 for the 1936 period as against $1,542 for the 1935 period.

That in the Misses' Sweaters Department it was 2972
$1,332 for the 1936 period as against $1,467 for the 1935 period.

That in the Misses'—I beg your pardon—that in the Women's Skirt Department it was $164 for the 1936 period as against $513 for the 1935 period.

That in the Women's Sweaters Department it was $1,332 for the 1936 period as against $4,426 for the 1935 period.

That in the Expensive Sweaters Department it was $3,283 for the 1936 period as against $4,472 for the 1935 period.

On the previous one it should have been $3,332.

That in the Women's Inexpensive Coats—well, I do not think——

2973

By Mr. Weisman.

Q. Is that a department properly in this? A. No.

Mr. Weisman: All right. We will leave that out.

That in the Women's Underwear Department it was $5,945 for the period in 1936 as against $8,834 for the 1935 period.

That in the Women's Department for Extra Sizes it was, for the 1936 period, $1,403, and as against $1,801 for the 1936—1935 period. I will restate that so it will be clear: That in the Women's Department for Extra Sizes for the 1936 period it was $1,403 as against $1,801 for the 1935 period.

That in the Misses' and Girls' Underwear Department it was $831 for the 1936 period as against $1,080 for the 1935 period.

That in the Millinery Department it was $3,867 for the 1936 period as against $5,171 for the 1935 period.

2975 I would further say that with regard to this offer of proof these departments were taken, or, rather, these figures were taken from figures furnished us by Wm. Filenes Sons Company and were taken as more nearly approximating those departments in which ladies' apparel and the kindred things are usually found, and as evidence that in the departments that were totally unaffected by the Guild the off-sale is much larger than in 1936 and that they went off to a large—to a greater degree than—that they went off to a very large degree, while in those departments where the Guild policies were claimed to be effective the sales went up.

2976 For the purposes of the record, I would say that I also, without going into detail because I do not want to waste time by making a similar offer of proof to each individual item, that it shows substantially the same general trend with regard to the month of June, 1936, as contrasted with June, 1935, and also the same offer of proof with regard to the month of May, 1936, as contrasted with the month of May, 1935, showing that in both of those things in those various departments there was generally that same type of recession in volume of

sales as there were in the ones enumerated in greater particularity, and I offer to prove in the same particularity the same general type of recession as to those departments for both of those two months laterally mentioned.

Mr. Haycraft: I move to strike out all of this statement.

Examiner Bennett: The same statement may be stricken as incompetent, immaterial and irrelevant.

Mr. Weisman: I ask the statement of tender of proof be permitted to stand so——

Examiner Bennett: The tender of proof is in 2978
the record, physically, of course. I do not take it out. It is merely indicating that the Examiner was not going to pay any attention to it.

Mr. Weisman: I except.

That is all I have for this witness.

Mr. Haycraft: That is all I have for this witness. I have no further questions for the witness.

Examiner Bennett: You may be excused.

(Witness excused.)

Mr. Haycraft: I will call Miss Kimball to take the stand.

MATHILDE KIMBALL was thereupon called as a witness 2979
for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name, please? A. Mathilde Kimball.
Q. How do you spell your first name? A. M-a-t-h-i-l-d-e.
Q. How do you spell your last name? A. K-i-m-b-a-l-l.

Q. Where do you live? A. 8 Chiswick Road, Brookline.

Q. Massachusetts? A. Massachusetts.

Q. What is your occupation? A. Buyer for Wm. Filenes Sons Company, Boston, Mass.

Q. What department? A. Misses' machine made dresses. This department was formerly known as 6-10-E.

Q. How long have you been buyer for that department? A. Officially since February 1, 1936.

Q. What did you do? A. Assistant buyer, same department.

Q. For how long a period of time? A. For three years; about three years.

Q. What priced dresses are handled in that department? A. $4.75 primarily, some $5.75.

Q. When was that department originated in the Filenes Store?

Mr. Weisman: I think it must have been before this young lady had that position.

A. I think it was originated in 1928 on the same——

Mr. Weisman: I ask that the answer be stricken out. Obviously, this witness is not competent to prove the department. It is not competent to prove the department through her; as I understand it, she has been with Filenes, and she has been assistant buyer since 1933.

The Witness: I have been in the store for eight years, though.

Mr. Haycraft: Owing to the objection, I will ask the witness this:

By Mr. Haycraft.

Q. I will ask you how long you have been in the employ of Wm. Filenes Sons Company? A. Since July, 1928.

Q. Between July, 1928, until the time you became assistant buyer, what did you do? A. I was in the training squad. I did work variously; in other words, I had worked in the advertising office and in various departments in the store.

Q. Do you know when, as a matter of fact, the department, of which you are now buyer, was started by Filenes? A. Well, it is an outgrowth of the House Dress Department.

Mr. Weisman: I ask that the answer be stricken out. The answer is one that can be answered "yes" or "no."

Examiner Bennett: It may be stricken. 2984

A. I do not know exactly when, but it has been there as long as I have been in the store.

Mr. Weisman: I will concede that.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 352-C, 352-D, 352-B, 349, 336-B, 336-A, and I will ask you whether or not you can identify in any way these papers? A. Yes, sir; I can.

Mr. Weisman: Wait a minute.

Just for the purpose of an orderly procedure, may we have them identified one at a time because it 2985
may be that she can identify some and cannot identify others.

Mr. Haycraft: Let me alone. Mr. Examiner, I will get along if you will let me alone. This is merely a preliminary question and I will take them up one by one.

Mr. Weisman: Why not take this up one by one to begin and we will save a lot of time.

Mr. Haycraft: I will conduct my examination as I deem proper.

By Mr. Haycraft.

Q. Showing you Commission's Exhibit No. 35— A. I do identify them.

By Mr. Haycraft.

Q. Does your signature appear on every one of these exhibits? A. On this one it does.

Q. Commission's Exhibit No. 352 for Identification? A. Yes, sir.

2987

Q. What are those? A. Those are the returns to Lombardy, which dresses were not accepted by me.

Mr. Haycraft: I offer this in evidence now.

Mr. Weisman: Now, you can bring them over here to me if you do not want me to sit up.

Mr. Haycraft: Yes, I will bring them over to you with pleasure if you will just stay there.

Mr. Weisman: I object to the introduction of these into evidence. We have the witness here. We do not have to have her declaration with regard to these documents show what happened, because she can tell us what she did. This is purely secondary evidence. This is now an attempt to bring this witness here and show that she wrote at some other time statements, and I submit that this evidence would be what she did and not an effort to substantiate her story when it has not even been questioned. Maybe I would not question it or deny it. Maybe I would not deny that there were goods returned because they were copies of Guild merchandise. There is nothing wrong about that. This is not competent to prove anything. Why does not counsel ask her what she did?

2988

Mr. Haycraft: If you will recall, Mr. Examiner, the history of these exhibits is that they were identified in New York.

By Examiner Bennett.

Q. Are these cards that you sent out? A. These cards were sent out by Filenes.

Q. Were these cards that you have identified sent out in the ordinary and regular course of business? A. Yes, sir.

Q. By Mr. Filene? A. Yes, sir.

Q. Is that the— A. Usual procedure.

Q. Is that the course of Filenes, of Mr. Filene in the 2990
case or in cases of this kind; is that the usual course of procedure adopted by him? A. Yes, sir. Whenever I had to make returns on goods and dresses were shipped back, we issued cards—wrote cards to the manufacturer telling them that we had to return the dresses because they were copies of Guild merchandise.

Q. That they were shipped back for that purpose? A. Yes, sir.

Examiner Bennett: Objection overruled. The document will be received.

Mr. Weisman: Exception.

May I also have an exception, your Honor, on the further ground that it is incompetent, immaterial and irrelevant for any purpose whatever? 2991

Examiner Bennett: Yes.

(The documents referred to, heretofore marked for identification Commission's Exhibits 352-C and 352-D, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 352-B for Identification and ask you if you can identify that as a carbon copy of a letter sent to you? A. Yes, sir.

Q. This is a copy of an original letter received by you from Lombardy Frocks?

Mr. Weisman: I object to this. Where is the original? I further ask that counsel be admonished by the Court to cease from describing the exhibit and let the witness describe them unless he wants to take the stand and testify. He is not under oath as yet.

2993

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes.

By Mr. Haycraft.

Q. Do you recall receiving the original? A. Well, as to that, this is an answer to the shipment that was made on these two cards that you just showed the Judge, telling us that they could not accept the dresses.

Mr. Weisman: I object.

Mr. Haycraft: I offer this carbon copy in evidence.

2994

Mr. Weisman: I object, in the absence of the original, it is incompetent, immaterial and irrelevant; in fact, it is wholly incompetent. It now appears that this is a letter, a carbon copy of a letter written by somebody else. She got the original letter, if anything. Furthermore, I object on the ground it is incompetent, immaterial and irrelevant, and, furthermore, that in view of the stipulation that the Commission has made in this case with

regard to the immateriality as to whether dresses are copies or not, that their entire proof is directed to the question of an alleged boycott; I furthermore submit that the letter is material if it were competent, which it is not, I urge.

I object to the witness talking with counsel while she is on the witness stand.

By Examiner Bennett.

Q. Where is the original of this letter; do you know? A. I do not know. I believe it may be in the office of our attorney. I do not remember.

Q. Where did you get this carbon copy? 2996

Mr. Haycraft: I handed it to her. I got that carbon copy from Mr. Ballon in New York, who identified that as having come from the files of the Lombardy Frocks.

Examiner Bennett: This seems, on its face, to be a duplicate-original. It is signed and complete so far as the communication is concerned.

The objection as to its not being an original is overruled and it is received in evidence as Commission's Exhibit 352-B.

(The document referred to, heretofore marked for identification Commission's Exhibit 352-B, was marked as an exhibit and received in evidence.) 2997

Mr. Weisman: I except.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 349—I thought it was 347 a while ago but it is 349—I should have used 349 instead of 347—anyhow, I show you Commission's Exhibit 349 for Identification and ask you if you can identify it? A. Yes, sir.

2998 *Mathilde Kimball—For Commission—Direct.*

Q. What is it? A. This is the balance of a shipment that we had made on some dresses which we made to the Excellent Dress Company.

Q. Do you recognize the signature on there; is that of Mr. Drew? A. Yes, sir. I did not sign that, but my clerical assistant did, and he was instructed to return these dresses; they were dresses we had sold up until the time that we were notified that they were copies of Guild dresses.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman: Same objection—I presume the same ruling.

2999 Do you want to see it?

Examiner Bennett: Well, I want to see it. I do not presume.

Mr. Weisman: My objection goes to the competency of any of this offer, if your Honor please. We have here the witness who made the return and she could testify of her own knowledge. It is secondary evidence when the primary testimony is instantly available.

Examiner Bennett: Overruled. Received. This is a duplicate copy.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

(The document referred to, heretofore marked
3000 for identification Commission's Exhibit 349, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 336-A and ask you if you can identify that?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant for any purpose whatever.

Examiner Bennett: Overruled. Go ahead.

A. This is a return from Filenes.

Mr. Weisman: Now, the answer to that, will your Honor tell her, is "yes" or "no." She was asked if she could identify that.

By Examiner Bennett.

Q. Can you? A. Yes, sir, I can.

By Mr. Haycraft.

Q. Do you know whether or not—first, do you know the signature attached to this letter? A. Yes, sir, I do. It is not mine, but it was the signature of my superior at that time; that is, after the time of the department of which I was then the assistant buyer. 3002

Q. At the time? A. Yes, sir.

Q. I also show you Commission's Exhibit No. 336-B for Identification and ask you if you can identify that in the same way; is that the signature of the division manager? A. Yes, sir; that is the signature of the division manager.

Mr. Haycraft: I offer these two in evidence.

By Examiner Bennett.

Q. Miss Kimball, what are they? A. One is a return made from Filenes to the manufacturer, notifying the manufacturer we are going to make the return of a few dresses that were copies of Guild dresses. 3003

Q. That is a form you sent out? A. Yes, sir. And the other one is the answer from said manufacturer to our division manager telling him we are not interested whether or not he considers——

Q. Well, that is all right. That was received by Filenes? A. I think so.

Mr. Weisman: No. You are mistaken.

The Witness: The second one was.

By Mr. Weisman.

Q. If you are saying to the Court that it was received by Filenes you are wrong? A. It was an answer.

Mr. Weisman: They are both letters sent out by Filenes. The girl is mistaken.

The Witness: This is the letter in answer to a letter received from Excellent Dress Company.

Mr. Weisman: May I examine on the voir dire on these two?

3005

Examiner Bennett: You may examine on the voir dire.

EXAMINATION ON THE VOIR DIRE.

By Mr. Weisman.

Q. This letter was signed by Mr. Drew? A. I believe that is his signature.

Q. You know it? A. Yes.

Q. Mr. Drew is in Boston? A. Yes, sir.

Q. Over at the store? A. No, he is not.

Q. Where is he? A. He is right here in the court room.

Q. He happens to be right in the court room? A. Yes, sir.

3006

Q. How about Mr. Shields? A. What?

Q. Where is he? A. He is present.

Q. What? A. He is present.

Q. Where? A. In the court room.

Mr. Weisman: I object to the introduction of these documents in evidence on this examination as not the best evidence. Both of these men are present. It appears that both men are in court.

Mr. Haycraft: I will call them if the Examiner feels it is necessary.

Mr. Weisman: I want you to prove your case in the way that it should be; I want you to prove your case with what I believe to be competent testimony.

Mr. Haycraft: I will prove my case with what I believe to be competent testimony. I am not interested in what you believe.

Mr. Weisman: The very idea. Good. That usually happens before a reversal.

Mr. Haycraft: I think you will probably get as many reversals as I do, and maybe more.

Mr. Weisman: Pride goeth before a fall, and a haughty spirit before destruction. 3008

Mr. Haycraft: Look out.

Examiner Bennett: The objection is overruled. They will be received as Commission's Exhibits Nos. 336-A and 336-B, previously marked for identification.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 336-A and 336-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. These letters refer to returns of merchandise to manufacturers? A. Yes. 3009

Q. I will ask you to testify when you first began your policy or practice of returning merchandise to manufacturers because or upon the requests of the Fashion Originators Guild upon the ground that they were copies of Guild members' merchandise? A. Some time during the year, I would say August, 1933, from there on.

By Mr. Haycraft.

Q. I will ask you whether or not you were required or you did find it necessary to make such returns continuously from that time? A. Yes, sir.

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant. Young lady, you should not answer until I make my objection. No proper foundation laid. The testimony, furthermore, is just merely cumulative. There has been no objection offered to her prior question, which was that she did since August, 1933, when they signed up with the Guild. I thought I would let her answer, and if I did, she might say that they did not do it. I thought maybe he was trying to discredit his prior witness.

3011

Examiner Bennett: Are you trying to show, and did not your witness Seegal cover all of this on his testimony?

Mr. Haycraft: This is a foundation question. I have not got to the real question as yet.

Mr. Weisman: May we find out what this is the foundation for? I think we are entitled to be enlightened in that regard.

Examiner Bennett: Yes.

Mr. Weisman: Then, what is the foundation?

Mr. Haycraft: You will find out later.

3012

Mr. Weisman: Your Honor has ruled that we may know that.

Examiner Bennett: No. I believe not. Your request is denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What was the procedure followed in your department with respect to determining when a dress should be returned?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant, especially in view of counsel's stipulation.

Examiner Bennett: Well, it may not relate to that. I will hear it. Objection overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer. A. Whenever the representative of the Guild, Miss Brady, would come into the department and show us a picture, claiming that was the picture of a Guild registered origination, she would ask me whether I had that particular dress, and—we would—at first we would 3014
immediately return that dress, if we had it, whether it was in the receiving room or on the floor. Some time later we had her prove that it was a copy of a Guild dress. Oftentimes—ah—these dresses were not exact duplicates. We immediately returned the dresses upon her request. Sometimes she came into the department and took the dresses right off of the floor and put them into the shipping room and just issued an order for those dresses to be returned to the manufacturer.

Q. Did any change of policy of handling returns occur in the late fall of 1935 or early fall? A. I think it was about that time that we had little slips given to us.

Q. Given to you by whom? A. By Miss Brady.

Q. Yes. A. The little slip told us—we had to sign the 3015
slip telling—this slip told us about——

Mr. Weisman: I object. These slips ought to be produced. They will speak for themselves.

By Mr. Haycraft.

Q. Have you one of those slips?

By Mr. Weisman.

Q. Are there any in Boston? A. Yes.

Q. Has Mr. Seegal one?

Mr. Seegal: Yes.

Mr. Haycraft: Would you let me have it?

Mr. Seegal: Here it is, Mr. Haycraft.

Mr. Haycraft: I ask that this slip be marked Commission's Exhibit 359 for Identification.

(The slip referred to was marked for identification, "Commission's Exhibit 359.")

3017 *By Mr. Haycraft.*

Q. I show you Commission's Exhibit 359, for identification, and ask you if this is one of the slips you have in mind? A. Yes.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman: I have no objection to this paper going into evidence, Judge. Of course, I have an objection to all of the testimony of this witness.

Examiner Bennett: It will be received. Objection overruled.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification "Commission's Exhibit 359," was marked as an exhibit and received in evidence.)

3018 *By Mr. Haycraft.*

Q. On this date, I think you stated it was August, 1935? A. Yes.

Q. Was there any change in the frequency with which dresses were returned from your department to manufacturers?

Mr. Weisman: I object as incompetent, immaterial and irrelevant. If this practice went on, it made no difference whether it was done frequently or unfrequently; we are here to judge the facts, and if it were wrong, if it were done once, it would make no difference as to that, and if it were right, if it were done times, it could not make it wrong. If it were wrong and it were done only once, it would not make it right.

Mr. Haycraft: It might have some difference as to the effect.

Mr. Weisman: Impossible.

Examiner Bennett: Overruled. 3020

Mr. Weisman: Exception. Furthermore, this is a conclusion of the witness. To say "frequently" means her conclusion, and where they have the return book and a record that will give it with exactitude, I submit that is the best evidence of these returns and not this witness' statement of whether it was frequent or unfrequent.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I should say as time went on it became more frequent. After the $6.75 manufacturers were taken into the Guild, that was natural.

Q. When did you receive notice of that? 3021

Mr. Weisman: I ask that the latter part of the answer be stricken out as irresponsive.

Examiner Bennett: Well, it may be stricken.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. What explanation do you have as to the increase in the frequency?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. Now we are wandering all over the lot to get this witness to explain these opinions of hers. Certainly this is piling error upon error, I respectfully submit. Before, when I urged this objection, my adversary urged that we were interested in the fact, and now we are substituting fancy for fact.

Mr. Haycraft: We are looking for facts right now and nothing else.

Mr. Weisman: Now we have a question where we are asking for something that is purely a matter of speculation and opinion, and I submit that the question is incompetent, irrelevant, immaterial, and improper in form, leading and suggestive in view of the previous answer.

3023

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

The Witness: What is the question?

(Question read.)

A. Well, I am of the opinion, as more of the lower-priced manufacturers were taken into the Guild, clamps were put on the $4.75 cost range.

By Mr. Haycraft.

3024 Q. When was it that the $6.75 was taken into the Guild?

Mr. Weisman: If she knows. After all, you have called her here, and she is just a girl; she is not one of the executives of Filenes, and she is not one of the Guild's executives and we want to be kind to her.

Mr. Haycraft: I hope you are.

By Mr. Haycraft.

Q. If you know. A. I am sorry. I do not know the exact date. I do not buy the $6.75 cost merchandise.

Q. Do you know the approximate date? A. I do not.

Q. Do you know of any way of getting the exact figures at all as to the number of returns from your department? A. I do not have them, but I can get them.

Q. That is, for how long a period back? A. Yes, sir; we can get them.

Q. For how long a period back? A. Right from the start.

Q. What would these returns show?

3026

Mr. Weisman: I object as not the best evidence?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What would your records show?

Mr. Weisman: Your Honor, I must object to that again, "What would your records show," when the records are here, and they are in a position to show for themselves what they are and what they will say. I submit that this question is an incompetent question and unfair to ask this young lady.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Thank you. 3027

By Mr. Haycraft.

Q. In what form are those records?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, what form they are. You mean, are they written or oral records? The only record I know is a written record.

Examiner Bennett: It is objected to, as I understand, as incompetent because not being the best evidence?

Mr. Weisman: Yes, sir.

Examiner Bennett: I will sustain the objection. I think it is a good objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. At what price were these $4.75 dresses sold? A. $6.95 and $7.95.

Q. Who are your principal competitors? A. Chain
3029 stores such as Lerners, Wilbur Rogers, and various department stores in the City of Boston, and specialty shops.

Q. Since June, 1933, at a time when the Filene store became a member of the Guild, became a co-operator of the Guild, can you testify as to whether or not in your buying of $4.75 dresses you were restricted—whether your buying of $4.75 dresses was restricted in any way?

Mr. Weisman: I object as incompetent, immaterial and irrelevant. It calls for a conclusion of the witness. If he means orders were made and they put the stamp on them, I submit that is a direct question and should be asked of her, but the question as asked, "restricted," might mean anything. I do not know what it means. I am quite sure your
3030 Honor will find it rather vague.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. I was restricted in buying anything that was a copy of a registered dress. There were many times I did not know whether the dress was a copy or not. When it came into stock it would have to go back.

Naturally I did not want to tie up my money in dresses that were coming in and going back, so I would try to find out if the dress was a copy and if it were, I did not buy it, which meant I was not in competition with my competitors on that dress.

Mr. Weisman: Just a moment. I submit that is a complete answer. The last part of it I ask be stricken.

Examiner Bennett: The last clause is stricken. You are correct.

By Mr. Haycraft.

3032

Q. What effect did this refraining from purchasing, that you have indicated, have upon your department?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, and no proper foundation laid. We are going to get some more of this effect questions and we will wander all over the lot. It is of absolutely no use, and I ask your Honor, in the exercise of your discretion, to limit that type of testimony. Otherwise we will be here for two weeks.

Examiner Bennett: On what? On what do you refer?

Mr. Haycraft: On the sales of the department.

By Examiner Bennett.

3033

Q. Did it have any effect upon the sales of your department? A. Yes, sir; it did. It meant that you could not—

Q. That is all. A. I believe you could——

Q. That is all I wanted to know.

Examiner Bennett: The objection is overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Well, answer the question. A. What is the question?

Q. What is the effect? A. We could not get "hot numbers."

By Mr. Weisman.

Q. What is that? You could not get "hot numbers"? A. No. We could not get "hot numbers."

Mr. Haycraft: I object to interrupting me.

Examiner Bennett: Yes. Let the witness proceed with her answer.

3035

A. Well, as to "hot numbers," that is a term on the market that we use. There were certain numbers there that we call "Forwards," which our competitors had, numbers selling in large quantities at $6.95 that I could not have. Naturally, a young person not seeing any more than that, she would go elsewhere and get that; she would go elsewhere and go to a store where she could get the dress that she wanted, and she stopped coming into my department. You cannot give the exact amount of the loss, but I know that I can say that I did not go ahead as beyond the year 1935 in percentage as we did in other years; that is, in the year 1934 we went ahead 18 per cent. and the year 1935 we went ahead only 5 per cent. This department had been going ahead for several years at a very

3036

great pace, and it did not that particular year. I feel it is particularly due to the fact that I could not carry certain numbers that I should have had, certain hot numbers.

By Mr. Haycraft.

Q. I will ask the witness whether the witness will at this time name some of the manufacturers of hot numbers that she referred to in her last answer?

Mr. Weisman: I object to that as immaterial. If she will identify the hot number manufacturers with some certain particular hot number at some particular time, that would be something we could cross-examine upon.

Examiner Bennett: We will take the questions one at a time and I will then take into consideration the result. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer the question. A. There are three resources that refused to sell, that refused to take my orders with 3038
the guaranty stamp on them. They are Lombardy, Loma, and Noxall.

Q. Located where? A. All in New York City.

Q. When was it that they declined to take your orders with that stamp on them? A. I do not know the date, but I know that I could not do any buying—whenever—right from the start whenever I use the stamp.

By Examiner Bennett.

Q. What year? A. 1934.

Q. Any other year? A. I would say inclusive, like 1933 to 1935.

By Mr. Haycraft. 3039

Q. That is, during that whole period? A. Yes, sir.

Q. When was it that Miss Brady began to shop your department? A. I do not know the exact date. I know she came soon after Filenes had made some agreement with the Guild.

By Mr. Weisman.

Q. Was that in 1933? A. The Guild was in 1933.

Mr. Haycraft: That is all.

The Witness: I think, I am not sure, but I do not think I finished that last question.

Cross-examination by Mr. Weisman.

Q. How long have you been with Filenes?

The Witness: I did not finish that last question. I did not finish on that last question.

3041

By Mr. Haycraft.

Q. Did you have something more that you wished to state, some more manufacturers of hot numbers? A. No, but I would like to add that those manufacturers later on would accept our orders.

Q. Would? A. Yes.

Q. When was that? A. That was quite some time later. I do not know the exact date.

By Examiner Bennett.

Q. Do you know the year? A. 1935 was the year.

Q. Late in 1935? A. I would say the middle of 1935.

3042 *By Mr. Haycraft.*

Q. And from then on, from that time on? A. We have done business with them from that time on.

Q. To the present time? A. Yes, sir.

Q. Does that apply to the manufacturers whose names you have given? A. Yes, sir.

Mr. Haycraft: I have nothing further.

By Mr. Weisman.

Q. Miss Kimball, you mean, do you not, that there was a time in the beginning of the Guild program that these houses wanted the right to sell you copies? A. I do not understand your question.

Q. I am trying to make it easy for you. A. You do not have to try to make it easy for me.

Q. All right. I will try to make it as hard as I know how for you if you would rather have it that way, young lady. A. Well——

Q. When did you become a buyer for this store? A. Of this particular department?

Q. Yes. A. February, 1936. 3044

Q. That is about six months that you have been buyer? A. Yes, sir.

Q. Before that you were assistant buyer? A. Officially.

Q. Both officially—what do you mean by "officially"? What do you mean "officially"? When I said before that you were the assistant buyer, you said "officially." What did you mean by that answer? A. I said officially I was the buyer since February, 1936. Prior to that time I was assistant buyer, but I—I was assistant to a man that had several departments which gave me a great deal more to do than the ordinary assistant.

Q. What do you know about the ordinary assistant; how many assistants have you got in this department? A. I have been assistant in other departments so I have some 3045 direct knowledge of what an assistant buyer has to do ordinarily, an ordinary assistant buyer.

Q. What other departments were you assistant in? A. House Dress Department.

Q. When were you assistant in the House Dress Department? A. During the years 1929 to 1933.

Q. From 1929 to 1933? A. Yes.

Q. Where is the House Dress Department with relation to this Machine-Made Dress Department? A. It is the same.

Q. It is the same department? A. Yes, sir; the same name. This particular department we have under discussion is the Master Department, the House Dress Department, and the one you have reference to, the Misses' Department, that comes within the House Dress Department of another floor.

Q. Let me understand you. Maybe I need your help even though you have spurned mine. A. Yes.

Q. You say this department in which you are assistant
3047 buyer comes within the House Dress Department? A. Yes, sir.

Q. And that before you were assistant buyer for the Misses' Machine-Made Dresses Department you were assistant for the House Dress Department? A. Yes, sir.

Q. Who was the buyer for the House Dress Department A. When I was assistant?

Q. Yes. A. Miss Kaplan.

Q. Who was the buyer when you were officially the assistant buyer for this particular department? A. Mr. Shields.

Q. Mr. Shields? A. Mr. Shields.

Q. Mr. Shields is the gentleman who has been sitting in the court room throughout our proceedings here, with
3048 you yesterday and to-day; is that the Mr. Shields? A. He is here.

Mr. Weisman: Will Mr. Shields stand up?

(A person stood up in the rear of the court room.)

Q. Is that the Mr. Shields you referred to? A. Yes, sir.

Q. Mr. Shields is your superior? A. No, sir.

Q. Where is Mr. Shields now? Is he promoted? A. Yes, sir.

Q. You were promoted to be the buyer? A. Yes, sir.

Q. In 1935 you stated that you had some trouble in placing your orders? A. Yes, sir.

Q. With the stamp on them? A. Yes, sir; with the stamp on them.

Q. That is; under this stamp you were not willing to buy copies? A. That is right.

Q. And the merchants who were making copies were not willing to sell you merchandise which might be returned? A. That is true.

Q. But this only existed for a little time? A. It seemed like a long time to me.

Q. I do not care how long it seemed to you. I say that facetiously, but, as a matter of fact, and, seriously speaking, it was about a month or two? A. It was longer. 3050

Q. It stopped in 1935? A. Yes, sir.

Q. Since then you do not want to give us the opinion, or the Court the opinion, then, that you have been unable to buy dresses from Lerner—not Lerner, but Loma? A. You mean Loma?

Q. Yes. A. No. I did not say so.

Q. We are not quarreling. I am just trying to clear up this matter. I grant that. You do not want to give us that idea, do you? A. No.

Q. You have been able to get merchandise from Loma; you can get the goods? A. What do you mean?

Q. They still sell you goods? A. They are selling me anything I want to buy now. They will sell me anything I want to buy. 3051

Q. That is fine; that is a situation that is very happy to you and your employer, you do not have any trouble in getting anything you want to buy from Loma? A. Or any manufacturers.

Q. Or any manufacturers at all? A. Yes, sir.

Q. The same thing is true as to Lombardy's? A. Yes, sir.

Q. You are not frightened by me? A. Certainly not.

Q. Then, why do you not speak up? A. I said, "yes, sir."

Q. I cannot hear you, my dear girl. Noxall Company, that was the name? A. Yes, sir.

Q. You do not have any trouble in getting merchandise from them; you buy what you want to buy? A. Yes, sir.

Q. Your store—as buyer, you went through the instruction school, did you not? A. No, I did not say that.

Q. What did you say? A. I said I was in the training school.

Q. In that training school they teach you how to conduct yourself as a minor executive of Filenes; is that it? A.
3053 We had instruction. I do not know just what you mean by your question. What do you want to know?

Q. I want to know, if you do not mind, about this school, or whatever you call it. Frankly, I am rather curious, for the sake of the record, to have, not personally, to find out just what sort of instruction you obtained at this instruction school from Filenes, but for the purpose of the record. A. Instruction not only in merchandising, in merchandising, in advertising, and whatever phase of the store one might be interested in entering.

Q. You know Filenes entered into some kind of arrangement with the Guild? A. Yes.

Q. And the sum and substance of this arrangement was that Filenes would not handle or purchase copies of originations that had been made up by members of the Guild?
3054 A. Knowingly.

Q. Knowingly. Yes. I mean that you would not do it knowingly. I agree with you there. If you did it knowingly, and it subsequently appeared that you had, you would seek to undo or right the wrong or breach that you had committed by acquiring such merchandise? A. Yes, sir.

Q. That is very simple, is it? A. Yes.

Q. You understand that, do you? A. Yes.

Q. Yes? A. Yes.

Q. As a minor executive of Filenes, since your employer had entered into that commitment you felt it your duty, I take it, to comply with the terms of that commitment; is that so? A. Yes, sir.

Q. In the exercise of that duty you sought wherever possible to refrain from knowingly purchasing copies of Guild originations for sale in your department; is that so? A. Yes, sir.

Q. What? A. Yes, sir.

Q. True? A. True.

Q. And thereafter if you found that you made a mistake 3056
because of lack of knowledge, I do not mean that you would knowingly break your promise, but if you should have bought a piece of merchandise which was subsequently found to be a copy of the Guild merchandise, in the exercise of your duties you would cause that to be returned? A. Yes, sir.

Q. On your direct examination you did say that at the same time you had trouble in getting certain numbers from Lombardy and Noxall? A. Yes, sir.

Q. Hot numbers? A. Yes, sir; and others.

Q. And then you said because you wanted to tell us the whole story, before I started to examine you, and you had not finished your answer, you did finish it, and the finish was, "However, since 1935 I did not have that trouble." 3057
A. I said, I believe I said that they would accept our orders.

Q. With the Guild stamp? A. Yes, sir.

Q. That had restricted them for a short period of time? A. I did not say I did buy from them.

Q. But that if you were willing to buy from them they would be glad to sell Filenes with the stamp on the order; is that it? A. Yes, sir.

Q. You are not worried about what anybody in the back thinks about what you are testifying here, are you? A. Oh, no.

Q. Would you try to listen to my questions? A. I am.

Q. Are you trying to look over at my shoulder to see how the people in the back think you are getting along in answering my questions? A. I am not. I cannot even see over your shoulder.

Q. I just wanted to make sure. I wanted to make sure about that. You need not worry. You are here as a witness sworn to tell the truth. A. I am.

Q. You were sworn as a witness, were you? A. I was.

3059 Q. I see. I was going to waive your taking the oath. I think you would tell the truth without it. A. Thank you.

Q. I think Mr. Haycraft asked you something and you did not answer it. He wanted to know from you, and we are only talking about dresses, what a "hot number" was. Do you remember that? A. Yes, sir.

Q. A "hot number" is a style that sells quickly; when we are talking of it in the dress business? A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Very frequently does it not happen that the manufacturer will design or make up a fast selling number, copy one; is that so? A. There are some good fast selling numbers.

Q. That is what I mean. They go like this (counsel snaps his fingers quickly three times). That quick with
3060 the purchasing public; is that so? A. Yes, sir.

Q. That is true? A. Surely.

Q. When these numbers do receive what you and I call "consumer acceptation," you know what I mean by that term, do you? A. Yes, sir; I do.

Q. Yes? A. Yes.

Q. Then these houses like Lombardy's and Learners and Loma's, and Noxall or others, I do not mean any particu-

lar house, will copy them down into cheaper merchandise; is that so?

Mr. Haycraft: That is objected to.

Mr. Weisman: We are trying to find out what a "hot number" is.

Mr. Haycraft: That is a poor way to do it.

The Witness: I do not know.

Examiner Bennett: If she knows.

By Mr. Weisman.

Q. You know about hot numbers? A. I do not know anything about manufacturers.

Q. No? A. No. 3062

Mr. Haycraft: She was asked whether manufacturers copy them. How can she possibly know what manufacturers do.

Mr. Weisman: We will find out.

By Mr. Weisman.

Q. You do not know anything about manufacturers, you said? A. Correct.

Q. Or manufacturing right? A. Right.

Q. Do you know anything about copying? A. Whether the manufacturer copies or not—no.

Q. You do not know anything about those two things? A. No. 3063

Q. All you know about is what is what? A. I hope I know about buying dresses and trying to sell them.

Q. Do you mean that you can buy dresses to advantage in the operation of your department without knowing anything about the manufacturing of dresses or about copying? A. I think so.

Q. You do? A. Yes.

Q. Do you really mean that? A. Yes, I do.

Q. Sincerely? A. Sincerely.

Q. You said that, on your direct examination, that you could not get hold of "hot numbers"; do you remember saying that? A. Yes, sir; I do.

Q. When you said you could not get hold of "hot numbers," you mean "hot numbers" in the dress business; is that so? A. Yes.

Q. It is? A. Yes.

Q. When you told the Court that you were injured, in that you could not get hold of hot numbers, you knew what a hot number was, did you not know that? You had something in mind when you said "hot numbers"; is that so? A. Yes.

3065

Q. And you know just what that term meant; you knew that term meant something by that, did you? A. If I understand your question, I mean dresses that were forwards, that our competitors had that were fast-selling dresses and that happened to be copies and that I could not buy.

Q. You could not buy them because they were copies of higher-priced dresses; is that so? A. Yes, sir.

Q. That is the only trouble you really had? A. Yes, sir.

Q. And you and I—you and I can get along better if you will just look right straight at me.

Mr. Haycraft: Perhaps she does not want to look

3066 at you, Mr. Weisman.

A. I am looking right straight at you.

By Mr. Weisman.

Q. You just keep it up. I rather like it? A. You do? Well.

Q. That was your complaint on direct examination when you said you could not get "hot numbers"; is that so? A.

I mean that I could not carry numbers that were copies of Guild dresses.

Q. Yes. A. That my competitors might have.

Q. Might have because it was not their policy, as it was the policy of your store, to discourage copying; is that so; as you understood it; nobody is going to hold you to it.

Mr. Haycraft: That is objected to; as the policy of the store, she would not know that.

Mr. Weisman: I object to counsel prompting the witness.

Mr. Haycraft: It was established very clearly that this girl on the stand did not establish the policies of the store. 3068

Mr. Weisman: Nobody said she did. I am asking her what she knew.

Examiner Bennett: Overruled.

A. I do not know it, no.

By Mr. Weisman.

Q. Let us see whether you did or did not. You would not try to avoid an anwer by finding refuge in the statement that you did not know if you really knew? A. No, I really did not know the policy.

Q. Did you not know it was the policy of the store not to handle copies of Guild merchandise? A. With reservations. 3069

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Then you knew it was the policy of the store not to handle copies of Guild merchandise, but you mean the reservation applies to the policy of the store and not to Guild merchandise; is that so? A. Yes, sir.

Q. Do you know what these reservations were? A. I have some opinion of them.

Q. Was that opinion created by what you heard Mr. Seegal testify to when you were sitting back there in the court room yesterday and to-day? A. No, I knew previously.

Q. What? A. No. I knew previously.

Q. You knew previously, so then it now develops you did know the policy of the store?

Mr. Haycraft: She said she had an opinion.

The Witness: I said I had an opinion.

Mr. Weisman: Now, look, brother, do not prompt
3071 the witness and put the very answer in the witness' mouth. This is an honest witness and a bright witness and she does not need any prompting.

Mr. Haycraft: I am not going to have you misquote the previous testimony of the witness. That is unfair.

Mr. Weisman: You know I am not misquoting anything. I do not think it is proper to put the very words into the witness' mouth, an answer to the question.

Mr. Haycraft: I did not do that.

Mr. Weisman: We will have the question and answer read and see.

Read the two previous answers of the witness.

3072 (Record read.)

Mr. Weisman: I think that is sufficient.

Examiner Bennett: Proceed, gentlemen.

Mr. Weisman: If you want to put the answer in the witness' mouth, why, I do not know what I can do about it, apparently. The reporter has read the answer and I think it is perfectly clear from that. Right before you said something and after you said

something I think that it shows just what happened. I just want to show that so that we can keep it straight on the record.

Mr. Haycraft: I am trying to keep you from putting error in your questions to the witness.

Examiner Bennett: Read the question and proceed.

(Question read.)

A. I said I had an opinion.

Mr. Weisman: Why, we are just wasting time on that.

Examiner Bennett: Off the record. 3074

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Now, it does appear, then, Miss Kimball, that you did know the policy of your store with regard to copies?

Mr. Haycraft: I object to that question. She has not said she knew the policy of the store. I object to the form of the question.

Mr. Weisman: I withdraw the question. I do not want to argue over this girl. I want to get the facts.

By Mr. Weisman. 3075

Q. Did you know the policy of your store with regard to handling copied merchandise? A. I said I had some opinion.

Mr. Haycraft: I object to the question and move the answer be stricken.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. When you said you did not know before, you were in error? A. There is a difference from having an opinion and knowing.

Q. I am trying to find out and I, in an effort to find out, will ask you to tell me what is the difference between your knowing and my question. Can you say what is the difference between those two things? What is the difference? Will you answer me, then? What did you see over there that might help you answer the question? A. I was not looking at anybody.

Q. I asked you whether you knew it and you told me
3077 you had an opinion on it; is that so. You said there is a difference. When did you get the opinion that you had, and where? Where did you get this opinion that you had concerning the store's policy? A. Through some of my superiors.

Q. From some of your superiors? A. Yes, sir.

Q. From which of your superiors? A. I do not remember.

Q. Who was your superior? A. My boss?

Q. Who was your immediate superior? A. Mr. Shields.

Q. Mr. Shields? A. Mr. Shields.

Q. Did you get your opinion from anything he said to you? A. Perhaps. I said superiors. I may have formed my opinion from him and a few others.

3078 Q. Who are the few others? A. I do not remember.

Q. You do not remember? A. No.

Q. And you said "a few others." Give me one other that you may have gotten your opinion from? A. I do not know.

Q. You do not know? A. No.

Q. Can you remember what they might have said that gave you an opinion on that? A. No, I do not.

Q. Can you remember what your opinion was? A. I do not have to remember. I can give you my opinion of what our policy was.

Q. I want to know, now, whether or not you always had the same opinion, or whether listening to Mr. Seegal's testimony changed your opinion in any regard? A. My opinion of the agreement was——

Q. No, no, no. I do not want that yet. We will come to that gradually. A. Yes.

Q. What I want to know is whether or not you always had the same opinion as you now have concerning your store's policy? A. As far as I am concerned, yes.

Q. Yes? A. As far as my particular department is 3080
concerned.

Q. I see. A. Yes.

Q. Then, so you had the same opinion of your store's policy with regard to copies in August, 1933, as you have now? A. I do not know the exact date.

Q. About that? A. Yes.

Q. Your opinion has remained constant and fixed? A. Yes.

Q. It has been the same opinion? A. Yes.

Q. All the way from 1933? A. Yes.

Q. To 1936, the early part of March, 1936? A. Yes.

Q. Is that correct? A. Yes.

Q. Tell us what your opinion as to your story policy with regard to handling copies of merchandise is which 3081
was originally designed by members of the Fashion Originators Guild of America, Inc.? A. To return the merchandise that was adjudged a copy of Guild merchandise unless we obtained permission to carry it in such cases as our competitive stores would have it.

Q. Now, if you can——

Mr. Weisman: May I ask something off the record?

Examiner Bennett: Off the record. I want to ask the witness something myself.

(There was a discussion off the record.)

Examiner Bennett: Back on the record. It appears that it is not possible to finish the cross-examination of this witness until a late hour to-night, and that there is yet another witness, or perhaps more to follow.

This witness is now temporarily excused and I will ask this witness to reappear for further cross-examination to-morrow morning at 9 o'clock, Eastern Standard Time, in this court room.

(Witness excused.)

3083

We will, at this time, take an adjournment until to-morrow morning at 9 o'clock A. M., Eastern Standard Time.

(Whereupon, at 5 o'clock P. M., July 28, 1936, the hearing was adjourned.)

Court Room No. 5, Federal Building,
Boston, Mass., July 29, 1936.

Met, pursuant to adjournment, 8.30 A. M.

Before: JOHN W. BENNETT, Examiner.

3084

APPEARANCES:

R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: Gentlemen, since everyone is here, and the desire has been expressed by both counsel and acquiesced in by all interested parties to start one-half hour early, I will grant that request.

You may proceed.

MATHILDE KIMBALL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman. 3086

Q. Miss Kimball, in your testimony yesterday I understood you to say that with regard to these three manufacturers who, up to 1935, you could not get merchandise with the stamp on in your orders, you subsequently could get—and you found that they would take the orders that you would give them if you found their merchandise satisfactory? A. Yes.

Q. I also find on your testimony that you said that they refused to take you orders from 1934 to 1935? A. Yes.

Q. I want you to try to refresh your recollection, if you can, and say whether or not this condition which you referred to existed not in 1934 but for a few months in 1935? A. Yes.

Q. That is correct? A. Yes. 3087

Q. In other words, your statement yesterday that you could not get them to take your orders with the warranty stamp on it during the years 1934 and 1935 was an honest mistake by you in the course of your testimony. What really was the fact was that for a short time in 1935 they would take them? A. I believe I said in 1935 the manufacturers, but I gave you an all-inclusive date when we did have difficulty—an all-inclusive date was not very specific—I said I did not know the exact date.

Q. Let me call your attention to this, and I know if you have made an honest mistake, and there is no harm, we all do it. A. We all do that, yes.

Q. There is nothing wrong about that. A. No.

Q. I will call your attention to it so that you may correct it. Let me see where that is. A. I can give you the correct date if you want it now.

Q. You say that you can give me the correct date if I want it now? A. Yes.

Q. You mean by that that you have discussed this with somebody overnight? A. No. I looked up some of my returns.

3089 Q. Do you mean, now—look, now, I am not talking about returns. A. No?

Q. Let me clear up your mind. A. I understand what you mean, but I am just telling you that I did look up some of my records after getting out of here last night.

Q. Yes. A. Because I admitted I did not know the exact date.

Q. Then, the only time that you had trouble in placing your orders with the stamp on them was for about a month or two in 1935? A. Yes.

Q. Is that so? A. Yes.

Q. And if your testimony yesterday was to the effect that you had considerable trouble in 1934 and 1935 that was an honest mistake on your part that you believed when you said it, and upon a more mature consideration and

3090 upon examination you now find yourself in error, and that you now want to correct? A. Yes.

Q. Is that so? A. I said 1935 and not 1934.

Q. If you said 1935 there would not be any error. Let me read what you said so when I seek to correct you you will see I am frank about it. A. Yes.

Q. I will just show it to you. A. All right.

Q. This question was asked you at page 1561: "Q. When was it they declined to take your orders with that stamp

on them? A. I do not know the date, but I know that I could not do any buying—whenever—right from the start whenever I used the stamp. By Examiner Bennett: Q. What year? A. 1934. Q. Any other year? A. I would say inclusive, like 1933 to 1935." Now, that is what I would call your attention to. A. I do not think those answers refer to those three manufacturers. In that answer I was referring to my entire buying. But I would restrict it within the period. That is what I was doing there, I was restricting it within that period.

Q. You mean—let me see, you mean when you answered the Court that during that period you would not buy copies of Guild merchandise? A. Yes.

3092

Q. Yes? A. Yes.

Mr. Weisman: Is that perfectly plain to your Honor?

Examiner Bennett: I am listening to you.

Mr. Weisman: I said, is it perfectly plain?

By Mr. Weisman.

Q. You do not mean that during that period you had trouble placing the orders with the manufacturers? A. No.

Q. As to that you only had such trouble as you may have had during a short period, which was approximately thirty days in 1935; is that correct? A. I do not know how many days.

3093

Q. A short period. A. But it was in the late fall of 1935.

Q. A short period? A. Yes.

Q. Subsequently, between the expiration of that short period that trouble resolved itself and disappeared so that now you can give your orders if you are kind enough, or if you think their merchandise is such that you want to have it; is that so?

Mr. Martin: I object to it as incompetent, irrelevant, and not a part of the direct examination.

Mr. Weisman: I do not think it calls for a reply, your Honor.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let her answer.

The Witness: What is the question?

(Question again read.)

By Mr. Weisman.

Q. The Court said you may answer. A. Now—by now
3095 you mean the present time?

Q. Present and since the latter part of 1935. A. I think very obviously, yes. I think that is most obvious.

Q. You say your answer is "obviously, yes"? A. Yes.

Q. Obviously, yes? A. Yes.

Q. Yes? A. True.

Q. Now, I also understood you to say that you were in this department during 1933, your present dress department? A. Yes.

Q. There is nothing tricky about these questions; don't be troubled. You know whether you were there. A. Well.

Q. I understood you to say that you were official assistant buyer; do you remember that? A. Yes.

Q. I remember yesterday in answer to my question you stressed the word—that you were "official assistant buyer."
3096 A. Yes.

Q. When you said "officially assistant buyer" you did not mean that while you were officially assistant buyer you performed duties somewhere else; do you? A. No.

Q. You mean that you performed duties in your department? A. Yes.

Q. May I say, and am I fair or correct when I am about to infer by that, by your use of that word "officially assistant buyer," that you mean us to understand that in truth

and in fact you really acted as buyer while you only had the title, officially assistant buyer; is that so? You keep using the word "officially." A. I was not the buyer, I did not do all of the buying, but I did do some of the buying.

Q. You knew what was going on in the department? A. Yes. That is, I cannot say that I knew every single thing that went on in the department.

Q. You wish now to differentiate between your testimony and Mr. Seegal's yesterday, when he said he knew what was going on in somebody else's mind; is that it?

Mr. Martin: I object.

Mr. Weisman: Well, I was just trying to make it plain to the witness. 3098

Examiner Bennett: Sustained.

Mr. Weisman: I will withdraw the question.

By Mr. Weisman.

Q. What was going on you knew about that where it was in connection with your duties? A. Well, I think there is a distinction there.

Q. Yes? A. I knew what was humanly possible to know. I cannot say I knew everything. There was a superior and I had a clerical and I had a stockkeeper.

Q. But generally you knew, did you not? A. I think so.

Q. Of course, you probably did? A. Yes.

Q. You did not sleep? A. Oh, no.

Q. You knew what price merchandise was being handled 3099 there, did you? A. Yes.

Q. In 1933 what price merchandise was being handled in that department, in your department? A. Well, I cannot say definitely the price lines, I can give you the general lines.

Q. That is what we want from you, my dear girl. A. $3.75, $4.75, and I cannot say whether we carried any $5's or not; I do not know which one we were paying; whether

we were all the up or going down: in other words, whether we changed our price lines because sometimes we traded down and sometimes we traded up.

By Examiner Bennett.

Q. Wholesale price? A. Yes, sir.

Q. What was the retail price? A. That is primarily the $6.95 to $5.95 to $7.95 and some $8.95.

By Mr. Weisman.

Q. What was your lowest price in that department in 1933, if you remember? A. I cannot give you an answer
3101 to that exactly.

Q. I do not want the exact answer. Would you say it was $3.75? A. I would—I cannot give you a definite price. I feel quite certain we had some at $3.75.

Q. Yes. It is not very important. A. I want to be sure of that.

Q. What? A. I want to be sure I see that. And I thank you, and I am certain of it.

Q. Yes. A. I do.

Q. And you yesterday testified that you also had $4.75. There is no question about that, is there? A. No. You are talking about two years, now?

Q. No. I am talking about 1933. A. Yes. Yesterday I said our department—this department in question was
3102 primarily a $4.75 department. That is where we do our volume.

Q. That is where you do your volume? A. That is where we do our volume.

Q. When you say that is where you do your volume, what do you mean? A. In that department.

Q. I am speaking of that department, my dear girl. A. Yes.

Q. When you say you do your volume in that department, in the $4.75 line, you do not want us to understand that you did not handle some $4—some $5.75? A. No, I do not.

Q. No? A. No.

Q. And also when you say that it is a fact that you also handled $5.75 dresses? A. Yes.

Q. Wholesale price? A. Yes.

Q. And also $6.75? A. No.

Q. No? A. No.

Q. All right. Just from $3.75 to $5.75? A. Yes.

Q. True? A. Yes.

Q. This was true also in 1933? A. I cannot say. 3104

Q. What is your best opinion? A. Well——

Q. You have been there for eight years. Surely you know something about what went on in the department? A. I was not in this department eight years.

Q. You certainly know when you testified what went on in this department which you were in for five years or four years. A. Not in this particular branch.

Q. Where were you? A. I was in the House Dress Department before.

Q. How long were you in this department? A. This one?

Q. Yes. A. Well——

Q. Can you tell us that? A. I cannot give you the exact priced line because we change from season to season. 3105

Q. I did not ask you that. I said how long have you been in this department? A. I have answered you that before.

Q. Please answer it again for me because I do not seem to understand what you claim—how long you claim to have been in this department. Have you answered it? A. From 1933.

Q. From 1933? A. From 1933.

Q. That is what I am trying to find out. A moment ago you said you were not in this department in 1934? A. No, I did not say so.

Q. Then you were in this department in 1934? A. I did not say I was not—I did not say I was in the department in 1934.

Q. Well, we will start all over again. We seem to be traveling around in circles. A. Not me.

Q. Where were you in 1933? A. What do you mean?

Q. Were you, according to your best recollection and knowledge of the entire situation and of what you were doing in this department in 1933? A. Yes.

3107 Q. That is your testimony? A. Yes.

Q. You were in this department in 1933? A. Yes.

Q. And you were in this department in 1934? A. Yes.

Q. And you were in this department in 1935? A. Yes.

Q. And you are now in this department and have been during 1936? A. Yes.

Q. Now, you also were—I withdraw that— At the present time, and for the year 1936, the bulk of your volume of sales in this department is done in the $4.75 wholesale price range; is that so? A. I do not have the actual figures of each price line. I cannot give them to you.

By Mr. Weisman.

3108 Q. I did not ask you for the actual figures. I said, from your experience and knowledge of the department, can you tell me whether or not in this year the bulk of your business is done in merchandise which costs you at wholesale $4.75? A. I cannot give you the exact figures to-day.

Q. I did not ask you for the exact figures. I want your knowledge of this department. I want to know from you in what wholesale price range is the bulk of your business

done in this department; in what wholesale price range is the bulk of your business in this department done? A. I would say $4.75.

Q. All right. Why did you not say that the first time and save me asking the question three times? A. Well.

Q. Was that likewise true in 1935? A. No.

Q. In 1935 in what price range would you say that the bulk of your business was done? A. At $3.75 and $5.75.

Q. Now, in 1934, was the bulk of your business done in merchandise that costs wholesale $3.75 and $5.75? A. No.

Q. "No"; is that your answer? A. Yes.

Q. No? A. Yes.

Q. Speak up so we can hear you. In 1934 in what wholesale price range was the bulk of your business—the bulk of the business of this department done? A. $4.75. 3110

Q. $4.75? A. $4.75.

Q. In 1933 in what wholesale price range was the bulk of the business of this department done? A. I cannot say definitely. I would say offhand $4.75.

Q. $4.75? A. Yes.

Q. So that we have it as follows: "In 1933 and in 1934 and in 1936 the bulk of the business done in this department was done in garments which cost wholesale $4.75, while in 1935 the bulk of the business was done in garments which cost at wholesale $3.75 and $5.75." A. Yes.

Q. That is correct? A. Yes.

Q. I also understand that in 1933 you, pursuant to the orders of your superiors, commenced to affix to all of your orders the warranty stamp; is that so? A. I do not know the exact date. 3111

Q. I did not ask you for the exact date. You testified yesterday it was about August, 1933, and that is the date when the agreement was made between the Filenes, or the declaration of co-operation was entered into; is that so? A. Yes.

Q. In 1933, from the time of the commencement, you continued to put all of the—to put that stamp on all of the orders; is that correct? A. I presume that somebody did. I do not know the date, Mr. Weisman.

Q. Assuming some time in 1933, I do not want the exact date, but the latter part when you commenced to operate. A. It had no bearing on my department in that year, no particular bearing.

Q. I did not ask you that. I asked you— A. I did not put the stamp on. I am not in a position to tell you.

Q. Who did put the stamp on? A. Our merchandising office.

3113 Q. Did you ever see these orders? A. I did not see the orders, necessarily, after they are sent upstairs.

Q. You do not want us to understand, do you, that Wm. Filenes Sons Company after they entered into this declaration of co-operation which said that they would put their stamp on there, did not put it on? A. I made no such intimation.

Q. Do you not know, as a matter of fact, that when Wm. Filenes Sons said that they were going to put the stamp on, from that point on they did put it on? A. I know that the stamp was on.

Q. Yes. A. I do not know the date when it went on.

Q. I am simply trying to fix the date that the stamp was on. A. I did not understand your question.

3114 Q. All right. During the year 1934—now, we are through with 1933—that stamp was put on the orders, was it? A. I presume so. I do not know.

Q. Well, let me see—do you know whether or not you are putting the stamp on now? A. Thank you. I certainly do. I certainly do know we do not have the stamp on.

Q. You certainly do know that you do not have the stamp on now? A. Yes, I certainly do know we do not have the stamp on now.

Q. How do you "certainly know" that; do not look at him. He does not know any more than you. A. I am not looking at him. I just looked at him a moment ago.

Q. Well, you were. That minute you were. A. Well, I just looked that way.

Q. I want to make this clear. I mean that Mr. Martin does not know any more about this transaction than you do, excuse me. I do not know that he does not know more about other things, of course. You said, "I certainly know that we are not putting the stamp on now"; I want to know how you "certainly know" that.

Mr. Martin: I object to it as incompetent, immaterial and irrelevant for any purpose whatsoever. 3116

The Witness: I think the answer is very obvious.

Mr. Martin: I think as to whether or not she knows as to whether or not the stamp was put on or not is immaterial for any purpose whatsoever.

Mr. Weisman: I think this is quite material. I am trying to bring some of these things in backwards because this is on cross-examination. We are on the cross-examination of this witness and we certainly have a right to do that.

By Mr. Weisman.

Q. Tell me——

Mr. Martin: I object. I ask for a ruling. 3117

Examiner Bennett: I am going to let her answer.

By Mr. Weisman.

Q. Now, you know that you are not using the stamp now, do you not? A. We are no longer—we have no longer any agreement with the F.O.G.A.

Q. How do you know that? Do not look at him. A. I have been informed from my superiors that we no longer have any agreement with the F.O.G.A.

Q. And that means the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When were you informed by your superiors to that effect? A. February—some time in the middle of February or around the first week of the—well, I would say around the week of the 13th.

Q. Who informed you? A. Our merchandise man.

Q. Do not be so coy; tell us his name. A. Mr. Gross.

Q. Mr. Gross told you in or about the middle of February that it was no longer necessary for you to affix the stamp to your orders; is that so? A. That we were no longer—that no longer did we have an agreement with
3119 the Fashion Originators Guild of America, Inc.

Q. You know the name pretty well? A. I should.

Q. And therefore, what? A. I assumed that we no longer have the Guild stamp.

Q. And since February you have not used the Guild stamp, the middle of February? A. Yes.

Q. Yes? A. True.

Q. Since you have not used the Guild stamp, have you felt free to purchase copies of Guild merchandise? A. I have bought merchandise with never thinking about whether they were copies or not.

Q. You did not care? A. I—yes.

Q. Is that—but that is only since you learned that your store was no longer co-operating with the Guild? A. Yes, sir.

3120 Q. Prior to that time, which was prior to February of this year, about the middle of February, you said wherever possible—no, you said in every instance you sought to refrain from buying copies of Guild merchandise; is that true? A. Knowingly.

Q. Yes? A. Knowingly, we never did.

Q. If you bought that unknowingly and you subsequently became aware of the fact that they were copies

of Guild merchandise, you sent them back to the manufacturers; is that so? A. Whenever they were adjudged to be a copy.

Q. Yes. A. And I was ordered to return them, I did.

Q. In other words, you never returned them until they were adjudged copies? A. True.

Q. Correct? A. Yes.

Q. It was necessary, then, before a garment was returned, that it should be first adjudged a copy, you stated? A. That it was—that I be—that we be proved that it was a copy.

Q. In other words, if there was proved to you, to your satisfaction, that it was a Guild copy, or that it had been 3122
adjudged to be a Guild copy by a competent person, then you would cause it to be returned; is that so? A. And, may I add——

Q. Yes, if you first answer "yes" or "no" and then you can give me a full answer. A. I cannot answer that "yes" or "no."

Q. Answer it just as best you can; go on and tell me. A. By "adjudged it to be a copy, and proved to be," I mean that we were given proof that that dress was a copy of a Fashion Originators Guild member's dress.

Q. Yes. A. And we returned it. Not that I personally had to be proven that it was a copy.

Q. I understand. In other words, if it had been duly adjudged by somebody competent, and you received evidence 3123
of that adjudication, then and then only would you return it? A. Yes, sir.

Q. That is correct? A. Yes.

Q. Now, that was the procedure that you followed, did you, in February, 1936—that is to say, up until the middle of February, 1936? A. Yes, sir.

Q. That was the procedure you followed in 1935? A. Yes, but it was not very much——

Q. And that was the procedure that you followed in 1934 and 1933? A. If there was a need for it.

Q. You testified yesterday that you knew Miss Brady, did you? A. Yes.

Q. How long have you known Miss Brady? A. Ever since she was a representative for the Fashion Originators Guild of America, Inc.

Q. Well, that was some time in the early part of 1934, was it? A. I would say in 1935. I do not know the date.

Q. All right. A. I do not know exactly.

Q. That was since the early part, or some part of 1934, would you say? A. I would say part of, or the latter part
3125 of 1935.

Q. 1935. Latter part. How did you meet her? She came into the store and introduced herself to you, or did one of your superiors bring her in to you and introduce her to you? A. I do not recall.

Q. You do not recall? A. No.

Q. And— A. I think she just came in and announced herself.

Q. To you? A. Yes.

Q. Thereafter, she came in from time to time? A. Yes.

Q. When she came in she came in on this business of copies; is that so? A. Yes.

Q. When she would come in she would usually ask for you, as the representative of your department, would she not; she would not discuss that with your "cleries," as
3126 you said, would she? A. Yes, sometimes.

Q. Of course, but when you were around would she discuss this with you, would she not? A. Not always.

Q. Not always? A. No.

Q. If you were there she would discuss it with you rather than with your inferiors or subordinates? A. Sometimes with the floor superintendent.

Q. Is the floor superintendent your superior or your subordinate? A. She is under an entirely different

pyramid in our store. She has nothing directly to do with the merchandising.

Q. When she would come in and she would, if she would speak to you she would tell you in words or in substance that a certain dress that you had in this department had been adjudged a copy; is that right? A. No, not that it had been adjudged a copy, but that it was a copy.

Q. But that it was a copy? A. Yes.

Q. Well, you said before that you would not take any action until you had received reasonable proof that it had been adjudged a copy, so then I take it after she told you this you would then ask for her proof? A. Yes.

Q. You would ask her for that? A. Yes. 3128

Q. Then she would submit her proof to you? A. Yes.

Q. Is that right? A. Yes.

Q. If the proof satisfied you that, as a reasonable person, that a dress was, in fact, a copy, you would send it back? A. Yes.

Q. You would? A. Yes.

Q. That was the customary procedure that Miss Brady followed; is that so? A. Yes.

Q. Now, sometimes stores would have copies of merchandise of which you were carrying the original; is that so? A. Yes.

Q. I mean, this was a two-way street? A. Yes.

Q. It was? A. Yes.

Q. You were being protected by this policy, and by "you," I mean Filenes from other stores carrying copies 3129
of your merchandise, as you were protecting them from your carrying copies of their original merchandise; is that so? A. Yes.

Q. Now, when you found that a competitor had a copy of a number that you had in stock, would you notify Miss Brady? A. I am not qualified to answer that question because I did not handle any of the higher-priced merchan-

dise, so I would not know whether anybody else had copies of our higher-priced merchandise.

Examiner Bennett: Call her attention to that particular item.

By Mr. Weisman.

Q. Let me ask you this question, Miss Kimball: You were in charge of this department in the early part of 1934? A. Yes.

Q. And as that person in charge of this department you were interested in making the best possible showing with regard to sales? A. Yes.

3131 Q. If somebody had a copy of your dress which you were carrying at $4.75 and somebody had a copy of it at $3.75, would you call that to the attention of your superior? A. No, here was no need for it; $4.75 never went into the Guild that I know of.

Q. That is not what I asked you. You really do not know whether they were or not members of the Guild? A. Well, I guess you are right about that. I never knew of it.

Q. I think you said you did on your testimony yesterday. A. Did I?

Q. I am asking you now, if you found a copy of the lesser priced dress, what would you do about it?

3132 Mr. Martin: I object as calling for an opinion. There is no evidence that she ever found any copy.

Mr. Weisman: I will withdraw the question in that particular form in order to satisfy counsel. You see, I am willing to co-operate.

By Mr. Weisman.

Q. Well, you know—do you not know that Filenes, from time to time, communicated with the Guild and requested

the Guild to cause the removal of copies from sale by competitors? A. I know what you are driving at, but you are not putting it the right way so that I can answer it.

Q. You know what I am driving at by my question but I am not putting it in a way that you can answer it; is that what you mean? A. You mean, if other stores have any particular copy of any kind, I had to return whether we called it to their attention or not?

Q. No. I see now that you did not understand my question at all. I will try to make it clearer to you. What I want to know from you is whether or not you know that if Filenes, as a store, learned that some other store was carrying a copy of an original that Filenes had in stock, 3134 that Filenes would ask the Guild to use its offices to have that returned? A. I do not know.

Q. You never knew of it? A. No.

Q. That was never called to your attention at any time? A. No, because it was not necessary to me. It was not a matter which would be of interest to me.

Q. If it was not called to your attention, the reason makes no difference. You did not know about it? A. No.

Q. How often would Miss Brady come in to see you, if you know; once a week, once a month, or what? A. I would say at least once a day.

Q. Once a day? A. Once a day, at least.

Q. And when she came in, you knew what she came in for? A. Yes, sir.

3135

Q. After a while, from this constant association with her, your became reasonably acquainted with her and as one person to another, a reasonable friendship existed between you and her? A. Yes.

Mr. Martin: I object to that as incompetent, immaterial and irrelevant. What possible bearing can it have?

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that if the witness were permitted to answer, the answer would have been in the affirmative.

By Mr. Weisman.

Q. You knew of it every time she came into the store; is that true? A. Yes, sir.

Q. She came into the store openly—I mean, she did not come in through the back entrance, for instance, or anything of that kind, did she? A. No.

Q. Well, you knew her each time she came into the store? A. Yes.

3137 Q. She came into the store openly? I mean, she did not come in through back entrances, or anything of that kind, did she? A. (Witness shakes head negatively.)

Q. I cannot hear you. A. No.

Mr. Weisman: Her lips form the word "No."

By Mr. Weisman.

Q. And you understood that she was coming into the store, did you not——

Mr. Martin: Objected to.

Mr. Weisman: Well, I did not finish——

Mr. Martin: Well——

3138 *By Mr. Weisman.*

Q. ——with the knowledge and acquiescence of your superiors? A. Yes.

Mr. Martin: I——

Mr. Weisman: That is all.

Examiner Bennett: Any redirect?

Mr. Martin: No redirect, your Honor.

Examiner Bennett: Thank you very much; you are excused.

(Witness excused.)

Mr. Martin: I call Miss Goldstein, your Honor.

ANNA GOLDSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name?

The Witness: Anna Goldstein.

Direct examination by Mr. Martin.

Q. Now, Miss Goldstein, will you please state your full name and your address? A. Anna Goldstein, 19 Allston Street, Brookline, Mass.

Q. Now, what is your occupation, Miss Goldstein? A. Divisional merchandise manager, ready-to-wear and intimate apparel, with the R. H. White Company.

Mr. Weisman: May I have the answer?

(Answer read.)

By Mr. Martin.

Q. Now, what business is R. H. White Company engaged in, Miss Goldstein? A. Department store.

Q. Where is its place of business? A. On Washington Street.

Q. Do they operate more than one store? A. Just the one on Washington Street, and then we have a Cambridge store.

Q. Now, with reference to your main store on Washington Street, what type of merchandise does R. H. White

Company handle? A. Merchandise in the nature of soft and hard—that is usually termed soft and hard articles.

Q. Well, will you please explain that?

Mr. Weisman: Oh, can we not get right down to the dress department and save a little time? We are not interested in the hard articles; we want to come to the soft ones.

By Mr. Martin.

Q. Will you please explain your answer for me, Miss Goldstein? I am not familiar with the technical terms of the trade. A. Hard, as I understand it, meaning furnishings, everything pertaining to the home, and soft, accessories, wearing apparel, in the nature of that merchandise.

3143

Q. Does your store carry a full line of ladies' garments? A. Yes.

Q. Now, as divisional manager of the ready-to-wear and intimate apparel departments, what are your duties, Miss Goldstein? A. To guide and co-ordinate the responsibilities of the buyers that work with me.

Q. Do your duties include any buying on your part? A. No.

Q. Do you have anything at all to do with the buying of ladies' dresses? A. No.

Q. Does your store have any such classification or designation of employees as merchandise managers, for ladies' dresses? A. No.

3144

Q. Do you have more than one department with relation to ladies' and misses' dresses and garments? A. We have, yes.

Q. Will you name them? A. Women's and misses' inexpensive dresses, misses' better dresses, women's better dresses.

Q. So that your women's and misses' dresses are divided into three grand divisions; is that correct? A. Yes.

Q. Now, who is in charge of the buying for those three divisions? A. Mr. Leon Mandelson, buyer for the misses' and women's inexpensive; Miss Morse, buyer of the misses' better; Miss Starratt, buyer of the women's better.

Q. Now, are these three buyers, Mr. Mandelson, Miss Morse, and Miss Starratt, under your supervision as divisional merchandise manager? A. Yes.

Q. What contact do you have with them with reference to their performance of their duties as buyers? A. They report to me.

Q. Do these buyers have anything to do with the selling 3146
in their respective departments, and, if so, just what do they have to do with it? A. I will have to qualify that. A buyer's job is truly a selling job, selling what they buy through their sales force, so they in turn can sell it to the customers. That is all the selling they do.

Q. Are you in charge, or have supervision of the selling in these departments as well as in the buying? A. No.

Q. Now, in the regular course and conduct of the business and in the performance of your duties as divisional merchandise manager, do you, from time to time, make periodic checks of the departments under your supervision in order to determine the trend of sales?

Mr. Weisman: May I have the question read? I was interrupted. 3147

(Question read.)

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, and not in proper form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I do.

Q. Now, Miss Goldstein, have you ever heard of an organization called the Fashion Originators Guild of America, Inc.? A. Yes.

Q. Where did you first hear of it? A. In '33.

Q. Do you know what part of 1933? Can you be more specific? A. The latter part.

Q. The latter part of 1933. Now, from the time you first heard of the Fashion Originators Guild of America in the latter part of 1933, down to and including April, 1936, did you, and when I say you I refer to the R. H. White Company, in any way co-operate with the Fashion Originators Guild in its activities? A. I wonder if I can
3149 inject the following—I have been in the employ of R. H. White's only for the last year and a half. I joined them in January, '35.

Mr. Weisman: That is quite all right. May we get the question, then?

Mr. Martin: Since.

Mr. Weisman: Limit it.

Mr. Martin: Limit it——

Mr. Weisman: To the period that the young lady was employed.

By Mr. Martin.

Q. From the time you became connected with R. H. White Company, in what part of 1933 was it? A. Janu-
3150 ary, the last part of January, '35.

Q. Down to April, 1936, has your store, to you knowledge, in any way co-operated with the Fashion Originators Guild of America in its activities? A. We were red carded in February, therefore we could not co-operate through '36.

Q. I said at any time. You misunderstood me.

Mr. Weisman: May I have the answer stricken out now that the witness understands it?

Examiner Bennett: Yes, it may be stricken.

By Mr. Martin.

Q. Did you at any time during that period, including January, 1935, down to April of this year, at any time during that period did your store co-operate with the Guild? A. Yes.

Q. Now, in what way did your store co-operate with them? A. According to the by-laws laid down with reservations——

3152

Mr. Weisman: No, no. May I—we want to know what, by that question, what your store did, not according to this or that.

Mr. Martin: Yes.

Mr. Weisman: Yes, what you did.

By Mr. Martin.

Q. Just tell what your store did to co-operate with the Guild. Did you ever sign any statement, to your knowledge, disclosing to the Guild your intention to co-operate with them? A. I don't know.

Q. Well, now, can you testify, of your own knowledge, what your store did during the time that you have been with them, and up to April, 1936? Just what they did do to co-operate with the Guild; that is, if you know? A. We placed the warranty stamp on orders pertaining to ready-to-wear, such as dresses, coats——

3153

Mr. Martin: Have you got that Exhibit 306?

Mr. Weisman: Well, we will stipulate instead of wasting time looking for it. The warranty stamp is the Commission's Exhibit 306. We all know about it, Judge.

Mr. Martin: That is agreeable to counsel.

Examiner Bennett: All right.

By Mr. Martin.

Q. Now, what happened when you placed this warranty stamp, which it is stipulated was used on orders which were placed by the R. H. White Company?

Examiner Bennett: I will ask the witness if the buyers reported to her their activities in behalf of the concern which employed them.

The Witness: Yes.

3155 Examiner Bennett: In what detail did they report?

The Witness: Rather detailed, full, as full as I could gather to my knowledge.

Examiner Bennett: So you had knowledge of what they were doing?

The Witness: Yes.

Examiner Bennett: And it was received in the ordinary course of business, was it?

The Witness: Yes.

Examiner Bennett: I think she is qualified to answer that question.

Mr. Martin: Now, if you will read the question.

(Question read as follows: "Now, what happened when you placed this warranty stamp, which it is
3156 stipulated was used on orders which were placed by the R. H. White Company?")

Mr. Weisman: May it please your Honor, I respectfully except to your Honor's ruling. I do not want to be unduly prolonging this, but I think that that question should be limited to some time. Obviously, something might happen in one case.

Examiner Bennett: Well, I think that that——

Mr. Weisman: I don't know——

Examiner Bennett: I think that is a fair suggestion. I wish you would make it more specific as to time, Mr. Martin.

By Mr. Martin.

Q. Limiting your answer to the fall of 1935, what happened when you placed these warranty stamps on your merchandise orders?

Mr. Weisman: If anything.

Examiner Bennett: Well, that may be incorporated in the question.

A. The clause was specific in itself as evidenced by the 3158
terminology used, which embarrassed us in instances to the degree that manufacturers did not ship merchandise to us; that our competitors were in position to receive, because they did not use the same warranty clause on their orders, as well as those that did use it.

By Mr. Martin.

Q. Now, Miss Goldstein, in co-operating with the Guild in its activities, at any time between the time of your employment, January, 1935, to April, 1936, did you return any garments? A. Yes.

Q. To manufacturers? A. Yes.

Q. To your knowledge, does the Fashion Originators Guild of America employ a shopper in Boston? A. Yes. 3159

Q. Do you know her name? A. Miss Brady.

Q. Have you ever met her, or do you know her personally? A. Yes.

Q. Have you ever met her in performance of her duties in Whites Store? A. Yes.

Q. What was she doing? A. She would come up to my office and submit for my attention, in instances where she

could not locate the buyer, subjects of merchandise claimed to be the originals of which she found copies in our stocks.

Q. In what department were her activities confined? A. In all dress departments in our store.

Q. That is the three ones— A. In the three departments.

Q. The women's and misses' inexpensive dresses, the misses' better dresses, and the women's better dresses? A. Yes.

By Mr. Martin.

Q. Did Miss Brady ever request you to return any
3161 dresses to the manufacturers? A. Yes.

Q. What were the reasons for her request? A. Copies.

Q. Now, can you testify as to the number of garments, of the number of instances in which garments were returned to the manufacturer pursuant to the request of Miss Brady?

Mr. Weisman: Objected to. The witness has not testified that garments were ever returned pursuant to her request. She has testified that Miss Brady has requested the return and she has testified——

Mr. Martin: Well, now, I will ask a further question if you want me to do it.

Examiner Bennett: He is just asking her about that merchandise.

3162 Mr. Weisman: I do not think it is a proper question to ask.

Examiner Bennett: All right, object to it.

Mr. Weisman: And it leaves an inference that the dresses were returned, or requested, when the fact is they were only returned if they were found to be adjudged copies. That is the vice of it; and furthermore, in view of the stipulation which, of course, we are all equally bound by, I do not see the sudden insistence upon this form of question.

Mr. Martin: No sudden insistence.

Mr. Weisman: It has been stipulated in this case that the dresses that were returned were copies, and it is immaterial whether or not, in fact, or in truth, they were copies—that the question is whether or not this and——

Mr. Martin: I am not asking that. I am asking the number of instances.

Examiner Bennett: The objection is overruled; answer the question.

The Witness: May I have the question?

(Last question read.)

3164

By Mr. Martin.

Q. Answer it "yes" or "no." Can you testify? A. Yes.

Q. Will you please do so. A. May I refer to my memorandum?

Q. Certainly. A. (Witness refers to paper.) Eighty-two units.

Q By "units," you mean— A. Pieces.

Q. Dresses, pieces? A. Pieces.

Q. Can you give the dates and the occasions of these returns? A. August 23, '35.

Q. Just a moment.

Mr. Martin: May I read this off and save time (referring to the paper produced by the witness)?

Mr. Weisman: No objection. 3165

By Mr. Martin.

Q. I ask you if you can identify this (referring to paper produced by the witness)?

Mr. Weisman: I will stipulate this; we want to save time; we will put this right in evidence.

Mr. Martin: It is stipulated that a list headed "Dresses returned at the request of F.O.G.A." be admitted into evidence as Commission's—the next number.

Mr. Weisman: Except that it is also understood that the fact it is received merely for the purpose of showing the number of dresses and the time received, and no proof of the fact that they were returned solely at the request of the F.O.G.A.

Mr. Martin: No, I am not going to limit it to that—she——

Mr. Weisman: Well, she has not testified yet
3167 that any dresses were returned solely at our request.

Mr. Martin: Oh——

Mr. Weisman: And, as a matter of fact, there isn't any sense in trying to get her to say so, because I am sure that on cross-examination she will tell us the whole story.

(List of dresses returned at the request of the F.O.G.A. was marked for identification Commission's Exhibit 360.)

By Mr. Martin.

Q. Were these dresses which you have testified were returned, were they returned at the request of Miss Brady, and for that reason only? A. Yes.

3168 Q. Now, I ask you, can you identify this paper as a list of dresses returned at the request of the F.O.G.A. by the R. H. White Store? A. Yes.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit 360.

Examiner Bennett: It may be marked, and it is received as Commission's Exhibit 360.

(The list referred to, heretofore marked for identification Commission's Exhibit 360, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Do you recall when the R. H. White Store was red carded? A. Yes.

Q. Now, what was the first knowledge which you had of the fact that R. H. White & Company had been red carded?

Mr. Weisman: Objected to as immaterial as to her particular knowledge. The knowedge is not important. It is the facts leading up to the matter which might be important. 3170

Mr. Martin: I think the question is highly proper.

Mr. Weisman: Objected to as irrelevant.

Mr. Martin: And it does not need any argument by me as to the defense of it.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

A. Through the medium of "Women's Wear."

By Mr. Martin.

Q. Will you explain that just a little bit further? A. "Women's Wear" is a daily record used by the trade. First, to my knowledge, that we were red carded—about the fact that R. H. White were red carded—came to me through reading this in the "Women's Wear." 3171

Q. To your knowledge, did the Fashion Originators Guild in any way notify R. H. White & Company by mail, telegram, or telephone, that they had been red carded? A. I don't know.

Q. Now, what did R. H. White & Company do after they had received notice of being red carded, if they did anything? A. We sent Miss Mosse, our buyer of Better Misses' Dresses, into the market to buy merchandise, because we needed it, and she was turned down, refused to have merchandise shown to her by the members of the F.O.G.A.

Q. Were any of your other buyers denied access to the manufacturers who were members of the Fashion Originators Guild? A. Miss Starratt, who was sent to market at a later date because she then found it necessary to replenish her stock, experienced the same reception.

3173 Q. Can you testify as to the names of manufacturers who were members of the Guild, and from whom you had purchased, prior to the time of being red carded, women's and misses' dresses? A. May I refresh my memory?

Q. You can answer that "yes" or "no." A. Yes.

Q. Have you a list that you can refer to? A. Yes.

Q. Let me see it.

(Witness produces list and hands to counsel.)

Q. Will you name those manufacturers? A. Milton Altmark, Inc., Aywon Dress Company, Inc., Casino Dresses, Inc., Cecele Dance Frocks, Daytime Frocks, F. E. D. Dress Company, A. Goodman & Company, International Dress Company, Marie-Lynn Dance Frocks, Phil Zahn & Company, Radiant Dress Company, Rosen Brothers Frocks, Sheila-Lynn Dresses, Frank Starr Friedlander, Witlin & Schneider, E. N. Marcus & Company of Boston.

3174

The previous were all New York offices in New York. I did not name all. Do you want me to name them all?

Q. Name them all. A. It will take a lot of time.

Mr. Martin: Are you willing to let it be copied into the record?

Mr. Weisman: Let it be copied into the record.

Mr. Martin: Your Honor please, it is stipulated that this list may be copied, that this was the list—

Mr. Weisman: No, that was not the list. I said let the reporter copy all these names into the record.

Mr. Martin: That is what I say.

Mr. Weisman: With the same force as if the witness had testified to them.

Mr. Martin: That is what I want to get.

Mr. Weisman: All right.

Mr. Martin: It is stipulated between counsel that that was agreed upon. 3176

Examiner Bennett: Have you stipulated that that list shall go in as——

Mr. Weisman: Not the list itself. There are a lot of names. The Reporter will copy them off and they will be her answer to this question.

Examiner Bennett: Yes. You are offering that as Commission's Exhibit 361?

Mr. Weisman: No, it is not an exhibit, Judge.

Examiner Bennett: I beg your pardon?

Mr. Weisman: It is not an exhibit; it is testimony.

Examiner Bennett: Oh, I see.

Mr. Weisman: Instead of reading all these names, she has looked at the card, and she has read it, and the Reporter will copy off the names 3177 as if she had said them, and save us the trouble of repeating the names.

All right, Miss——

Examiner Bennett: All right, if the Reporter will copy them off right now.

(The names copied into the record by the Reporter are as follows:

Milton Altmark, Inc.,
Aywon Dress Company, Inc.,
Bon Ray Dan Frocks, Inc.,
Casino Dresses, Inc.,
Cecele Dance Frocks, Inc.,
Cohen-Tunick, Inc.,
Daytime Frocks, Inc.,
F. E. D. Dress Company,
Harry Frank,
A. Goodman & Company, Inc.,
3179 Julius Grossman & Fred Greenberg,
International Dress Company, Inc.,
Lee Claire Costumes, Inc.,
Marie-Lynn Dance Frocks, Inc.,
Phil Zahn & Company, Inc.,
Radiant Dress Company,
C. H. D. Robbins Company,
Rosen Brothers Frocks, Inc.,
Sheila-Lynn Dresses, Inc.,
Frank Starr-Friedlander, Inc.,
Stern & Goldberg, Inc.,
Witlin & Schneider,
Lydle Brothers,
E. N. Marcus & Company, Boston.)

3180 Examiner Bennett: Now, is it your testimony that this card contains the list of the members of the respondents with whom you did business?

The Witness: Yes.

Examiner Bennett: Very well.

By Mr. Martin.

Q. Can you recall, Miss Goldstein, the names of the manufacturers who denied access to your salesmen? Answer "Yes" or "No"? A. Yes.

Q. Will you give the names of the manufacturers and your salesmen to whom they denied access? A. (Witness refers to paper.) Milton Altmark, Aywon Dress Company, Goldstein & Anton, Bretter & Sussman, Witlin & Schneider, Lila Modes, Marie-Lynn Dance Frocks, Dolces Dress Company, C. H. D. Robbins Company, Rosen Brothers Frocks, E. N. Marcus & Company, Boston, Franklin Dress Company, of Chicago.

Examiner Bennett: Now, the rest of the answer?

By Mr. Martin.

Q. Now, what buyers did those manufacturers fail to give access to? A. The misses' dress houses were approached by Miss Morse, the buyer of misses' better dresses. The women's dress manufacturers to Miss Starratt, the buyer of women's better dresses. 3182

Q. Now, Miss Goldstein, with reference to the type of garments, dresses, handled by your firm, do you know what is the usual or customary time which elapses between the placing of the order and the delivery of the goods pursuant to that order? Do you know that time? A. Yes.

Q. What is it? A. Depending upon price line merchandise, in the lower inexpensive price lines, immediate delivery, such as $4.75, $6.75, up to $8.75.

Q. Now, above that? A. Above that, anywheres from one week to three weeks, depending upon the time of the year. 3183

By Mr. Martin.

Q. Now, Miss Goldstein, at the time that R. H. White Company were red carded, were there outstanding with manufacturers who were members of the Fashion Originators Guild any unfilled orders? A. Yes.

Q. Were they filled? A. No.

Q. In the ordinary conduct of the business, do you know whether or not your store made any attempts to place re orders after you were red carded? A. Yes.

Q. Did you make any attempts? A. Yes.

Q. Were the orders filled? A. No.

By Mr. Martin.

Q. When you made these attempts to re-order, were the re-orders accepted by the Guild manufacturers? A. No.

Q. Since the time you were red carded, have you been able to buy any garments from manufacturers who were members of the Fashion Originators Guild and with whom
3185 you had been doing business prior to the time of red carding? A. No.

Q. When was the last time you tried to place an order with one of the manufacturers who were members of that Fashion Originators Guild and with whom you had done business prior to being red carded? A. The latter part of February.

Q. Of what year? A. 1936.

Q. Now, the garments that you bought from manufacturers who were members of the Fashion Originators Guild, prior to being red carded, were in what price ranges? A. In the main $10.75, cost up to $16.75.

Q. The bulk of those dresses were at what price? A. $10.75 and $12.75.

3186 Q. To the best of your knowledge, Miss Goldstein, how long had the Guild membership included manufacturers in the brackets below $10.75?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. What has her knowledge got to do with it? The testimony that is in the case is your direct case, when he subpoenaed the Guild, and we put all our membership in.

Mr. Martin: That is a foundation question.

Mr. Weisman: I don't care. It seems to me, your Honor, that is a new plan of procedure here. Whenever a new question is asked, the examiner-attorney has recourse to the statement that it is a foundation question. Obviously, it cannot be a foundation for anything, and an incompetent question cannot be made competent by being denominated a foundation question.

What is the difference—let us have the question again. Your Honor will see it is wholly incompetent, immaterial and irrelevant. She certainly is not an expert on the Guild. Our roster is in evi- 3188
dence, our by-laws are in evidence, the declaration of co-operation is in evidence, and I submit it can serve no good purpose to permit such questions to be in the record, and I respectfully object and ask that the question be excluded.

Examiner Bennett: I will ask the examining attorney to reframe his question, if he wants it as a foundation question, and to make such assumption as he—that is, if he has the date—I assume you have the date?

By Mr. Martin.

Q. Miss Goldstein, I—— (Handing paper to counsel.)

Mr. Weisman: Do you want to offer that in evi- 3189
dence?

Mr. Martin: Yes.

Mr. Weisman: I have no objection.

By Mr. Martin.

Q. I ask you if you can identify that as a copy of a letter received by you from the Fashion Originators Guild under date of November 7, 1935? Can you identify that?

A. Yes.

Mr. Martin: I offer this in evidence, your Honor, please, as Commission's Exhibit 361.

Examiner Bennett: 361-A and 361-B.

Mr. Martin: It is all one letter, your Honor, consisting of two pages.

Examiner Bennett: Two pages. Any objection?

Mr. Weisman: No, your Honor.

Examiner Bennett: Received.

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of November 7, 1935, to Miss Anna Goldstein, R. H.
3191 White & Company, Boston, Mass., was marked Commission's Exhibits 361-A and 361-B, and received in evidence.)

Mr. Weisman: We have no objection, subject to this statement; we believe—we may be mistaken about this—that this letter is already in evidence and has another exhibit number, but it would not make any difference if it goes in again. We find that it is——

Mr. Post: I am not sure about that.

Mr. Martin: It does not appear to be a form letter. It is addressed to her.

Mr. Weisman: Well, it was——

Mr. Martin: I mean her——

3192 Mr. Weisman: It is mimeographed, and the name is merely put in.

By Mr. Martin.

Q. Now, will you refer to Commission's Exhibits 361-A and B, and tell us when you were first notified that the Fashion Originators Guild of America included manufacturers in the brackets under $10.75?

Mr. Weisman: I submit, your Honor, the letter is dated, and she testified that they received it, and the letter is the best evidence of what it says, and when it is dated.

Mr. Martin: I have not asked her what it said, Mr. Weisman. I asked her when she got it.

Examiner Bennett: Overruled; go ahead.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Answer the question. A. The early part of the fall of '36, it came to my knowledge.

Q. The fall? 3194

Examiner Bennett: Of 1936?

The Witness: Of '35. It came to my knowledge that the $6.75, $7.75 and $8.75 dress lines were included under the Protected Affiliated Fashion Originators Guild of America.

Mr. Weisman: May I see it?

Mr. Martin: Surely (handing paper to counsel).

By Mr. Martin.

Q. Now, prior to that time, was the lowest priced dress which you bought from F.O.G.A. manufacturers in the $10.75 bracket? A. Yes.

Q. Now, these dresses which you have referred to that you bought from manufacturers who were members of the Fashion Originators Guild of America, were they sold in all of the departments you have referred to, or were they limited? A. I would like to ask a question if I may? I am not clear. 3195

Q. You may. A. Does that include $6.75, and is the inclusion of the $6.75?

Q. I included—you have testified that you bought dresses from manufacturers who were members of the

Fashion Originators Guild. Now, I want to know in what departments did you sell the dresses which you bought from Fashion Originators Guild members? Did you sell them in all departments or were they limited to any special department? A. They were included in two departments, namely, the misses' better and the women's better.

Q. Now, Miss Goldstein, in the ordinary course of your business have you made a study of the business of R. H. White & Company with relation to the various dress departments to determine what effect upon those dress departments your inability to buy from manufacturers who
3197 are members of the Guild has had? You can answer that "yes" or "no."

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant whether she has made such a study or not. We have no means of asking her what the study was on cross-examination in connection therewith. It is not the subject matter of any particular fact, but is a conclusion of this witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Martin.

Q. You may answer that question "yes" or "no." A.
3198 Yes, I have.

Q. What study did you make, Miss Goldstein? A. We have in existence what is known as a "unit control system" for our principal price lines which we maintain for yearly, monthly, weekly comparison. In comparing the unit sales results per price line for this year and last year I have arrived at a conclusion which enables me to make a statement.

Q. You have testified that you have made a study? A. Yes, sir.

Q. Now I ask you, from this study what is your conclusion as to the effect of the inability to get Fashion Originators Guild members' dresses or garments on the business of R. H. White & Company? A. In the price lines entailed, which our store for the year 1935 compared with the first five months of 1936, our sales decreased in this particular --in those particular price lines down 16.6 per cent.

Mr. Weisman: I object.

Mr. Martin: I object until the witness has completed the answer to any interruption.

Examiner Bennett: She is giving her answer. Please do not interrupt until she completes.

Mr. Weisman: I thought she had completed it. 3200

Examiner Bennett: No.

By Mr. Martin.

Q. Finish your answer. A. What was my answer to this point, please?

(Answer read by the reporter.)

A. —16.6 per cent. of the price lines entailed in F.O.G.A. merchandise through the store not being able to buy them on the open market.

By Mr. Weisman.

Q. Are you finished? A. Yes. 3201

Q. You are sure? A. Yes.

Mr. Weisman: I ask that the answer be stricken out as not responsive to the question.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Prior to the early fall of 1935, Miss Goldstein, did your store buy lower-priced garments from manufacturers who were not members of the Guild? A. Yes.

Q. Do you know when you, and by "you" I refer to R. H. White & Company, first started to use the Guild stamp on orders placed by you? A. No, sir.

Q. Can you testify as to when R. H. White & Company was first called upon to make returns of garments under the plan of co-operation? A. No, sir.

Q. Since your connection with the store R. H. White & Company, which began in January, 1935, and up to and
3203 including the time when the store was red carded, did R. H. White & Company restrict its buying policy; that is, did it endeavor not to buy copies of designs which were registered with the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I would like to make this comment off the record.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: On the record.

Mr. Martin: Change that question, Mr. Reporter, and make it "copies" instead of——

Mr. Weisman (interposing): "Copies of original designs of Fashion Originators Guild of America,
3204 Inc.'s manufacturers." I have no objection to the answer to that.

The Witness: What is the question?

(The question was read as above set forth.)

The Witness: I do not understand the question.

By Mr. Martin.

Q. Since your connection with the store of R. H. White & Company, which began in January, 1935, and up until

l including the time when the store was red carded, did H. White & Company restrict its buying policy; that did it endeavor not to buy copies of or restrict its purases so that it did not buy copies of original styles manctured by members of the Fashion Originators Guild of erica, Inc.? A. Yes, sir.

Q. Now, Miss Goldstein, can you name any manufacers who refused to accept orders which had the Guild mp placed on them?

Mr. Weisman: If she knows to begin with.

Mr. Martin.

Q. Yes, or no. A. Yes. 3206

Q. Will you name them? A. Noxall and Feinberg and eisen. That is all.

Mr. Martin: That is all I have for this witness.

Examiner Bennett: You may cross-examine.

oss-examination by Mr. Weisman.

Q. In answer to certain questions of Mr. Martin you ted that you made a study of the effect of your inability get Guild merchandise; is that correct? A. Yes.

Q. Yes? A. Yes.

Q. You have then—I withdraw that—where did you conct this study? A. In the course of my business day.

Q. I did not say when, I asked you where it would be. 3207 at would be where? A. That would be in the store.

Q. In the course of your business day and in the store? Yes, sir.

Q. Now, you are the divisional merchandise manager of men's ready-to-wear and for the intimate apparel; is t so? A. Yes.

Q. True? A. Yes.

Q. As such, you have stated that you are in control of the buyers who directly buy for the departments? A. Yes, sir.

Q. And now this question: Was the truth of your conclusions on those circumstances important? A. What is that?

Q. The truth of your conclusions was rather important to you in the performance of your duties; was it? A. Yes.

Q. In some degree, and to the same degree in fact it is equally important here, you believe, do you not? A. Yes, sir,

Q. Have you at any time been informed that it is impo-
3209 tant to Filenes, which in the parent company of R. H. White & Company, the company by which you are employed, that it appear that the damage or injury was large?

Mr. Martin: I object to that as improper cross-examination. There is no testimony that this witness gave that there is any connection between William Filenes & Sons Company and R. H. White & Company.

Mr. Weisman: Mr. Seegal testified to that.

Mr. Martin: You are cross-examining this witness and this witness has made no such statement on her examination.

Mr. Weisman: I am not cross-examining her on that fact. I am cross-examining her and using that
3210 in my cross-examination as to whether or not anyone told her that this was important; that is the point of the cross-examination. I am not asking her to deny that R. H. White & Company is a subsidiary of Wm. Filenes Sons Company. We have that in the record by Mr. Seegal. I am using it in an effort to determine the credibility of this witness and to show her bias, knowledge, and general background so that we may be able to determine with some

degree of certainty the probative value, weight, faith and credit which may be given to her testimony.

Examiner Bennett: I will sustain the objection. I think it is not—whether or not it is important to Filenes I think is not important to us.

Mr. Weisman: I am going to the credibility of the witness, your Honor.

Examiner Bennett: Go ahead.

Mr. Weisman: I except to your Honor's ruling.

Examiner Bennett: You have your exception.

By Mr. Weisman.

Q. Do you know that R. H. White & Company is a wholly-owned subsidiary of Filenes? 3212

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know who Mr. Seegal is, who testified in this case?

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman. 3213

Q. Who is the president of R. H. White & Company?

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not the president of R. H. White & Company is also the director of Filenes, a director of that company, I mean?

Mr. Martin: I object.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not R. H. White & Company joined with Filenes in a suit that was brought by Filenes against the Fashion Originators Guild of America, Inc.?

Mr. Martin: I object.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

3215 *By Mr. Weisman.*

Q. Did anyone ever tell you that it was important to R. H. White & Company that it appear that the dress department was doing badly?

Mr. Martin: I object, that is wholly incompetent, immaterial and irrelevant.
Examiner Bennett: I will sustain the objection.
Mr. Martin: Thank you.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. When did you first come to this court room?

3216 Mr. Martin: I object to that as incompetent, immaterial and irrelevant to the issues of this case when she came here, if she came here a month ago or a year ago.

Examiner Bennett: What are you going to try to prove by that?

Mr. Weisman: I am going to prove that this witness sat here throughout this entire hearing; that she sat here in the company of Mr. Rayfield; that

she listened to prior witnesses; that her testimony is influenced by what she saw and heard in this hearing and by the testimony of others and furthermore by her desire to make the situation appear in a light which will be most favorable to R. H. White & Company, and to Wm. Filenes Sons Company in its personal and direct conflict with the Guild; that she is a biased and interested witness and that many of her statements have been prompted by what she has been told to testify to; I want to show who her superiors are and what their connection is with others and what their interest is, so that we may determine how much she has been influenced by the 3218
fact of her employment, and the fact of her employers' connection with others and their connection with the respondent herein. It seems to me inescapable and that this is all of vital importance to the Commission in getting the true picture here.

Examiner Bennett: Well, of course, that question, how long she has been there, would not cover that, but—I will let her answer that. I think anything that shows light on possible bias will be competent and proper.

Mr. Weisman: That is all I want to show here.

By Mr. Weisman.

Q. How long have you been in the court room? A. Since 3219
I have been "soapened" (subpoenaed) to appear.

Q. You say "soapened"? A. Yes, sir.

Q. You would not come if you were not subpoenaed? A. No, I would not.

Mr. Martin: I object.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. You mean that you have no interest in this case and you would not come if you were not subpoenaed, is that right? A. No, I was "soapened" (subpoenaed).

Q. I asked you would you not have come if you were not subpoenaed and you said "no," is that the truth? A. I came because I was "soapened" (subpoenaed).

Q. That is not my question. After that I asked you if you would come if you were subpoenaed—if you were not subpoenaed, and you said "no"? A. I do not remember saying anything of that kind.

3221 Mr. Weisman: I will ask the Reporter to read that question and let us see how much of a memory you have in regard to that.

(The question and answer referred to were read as follows: "Q. You would not come if you were not subpoenaed? "A. No, I would not.")

By Mr. Weisman.

Q. Did you hear that?

Mr. Martin: I object to that as wholly immaterial, incompetent and irrelevant for any purpose.

Mr. Weisman: Here is a witness testifying to her memory of a lot of things that buyers allegedly told her and I want to find out, and I want it to
3222 appear in the record that a question and answer that was made by her not more than two or three seconds ago, now she says she did not remember making at all. I want that to appear in the record as showing that either she is untruthful, or her memory is entitled to no credence, it is so unreliable.

Mr. Martin: I object to that and ask that it be stricken out.

Mr. Weisman: I insist that it stay in the record because that will be made a part of my argument to the Commission as to the type of witnesses we are meeting here.

Examiner Bennett: Have you any reply to make to that?

Mr. Martin: Whether it will be in the record is not for you to say, but for the Examiner to say. I think you are improperly usurping the position of the Examiner.

Mr. Weisman: I did not attempt to do so. I was simply asking the Examiner to leave it in and I was stating to the Examiner the reasons that I wanted 3224
it in, but I want to say that I do not desire to usurp his position as you seem to do. I want to show here in your Honor's very presence, what type of a witness we have, either untruthful, or with a memory so unreliable as to negative entirely her testimony.

Examiner Bennett: It is in the record so far as your failure to get answers concerning certain questions. I will strike out the argument.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, that the Reporter has read that question and answer to you, do you remember having said to me that you would not come if you were not subpoenaed? 3225

Mr. Martin: I object to that as being incompetent, immaterial and irrelevant.

Mr. Weisman: I submit it is proper cross-examination.

Examiner Bennett: All right. I will let her answer.

By Mr. Weisman.

Q. Now, do you remember it? A. I do.

Q. When you made that answer, was that a truthful answer? A. Which answer are you referring to?

Q. Now, would you not have come if you had not been subpoenaed? A. No—I do not understand your question.

Q. Would you have come if you had not been subpoenaed? A. Yes.

Q. In other words, we have it now that if the Federal Trade Commission had not subpoenaed you to come here and testify you would not have come voluntarily, is that right?

3227 Mr. Martin: I object to this, if your Honor please, the question of whether this witness would or would not have come here unless she had been subpoenaed is entirely and wholly and completely irrelevant to the issues herein involved and I see no purpose in asking a question of that kind.

Examiner Bennett: I will sustain an objection to that.

Mr. Weisman: Exception.

Examiner Bennett: Now proceed.

Mr. Weisman: May it please your honor, here is a witness who says she is an executive in charge of a——

3228 Examiner Bennett (interposing): There is no need of arguing. I have already passed on that. There is no use of these post-mortems, these post-mortem examinations. You have your exceptions. You can make that argument before the Commission.

Mr. Weisman: I shall do so at the proper time. I except to your Honor denying me the right to present my reasons for pressing the question.

Examiner Bennett: All right. Proceed. Exception granted.

By Mr. Weisman.

Q. You testified, if I recall correctly, that if the Guild program—that you thought the Guild program had harmed your business. Did you say that? A. Yes.

Q. And do you not know that this proceeding is for the purpose of stopping that program? A. I do not.

Q. What do you think this proceeding is for?

Mr. Martin: I object, your Honor. What she thinks this proceeding is for has nothing to do with the issues involved.

Mr. Weisman: I take it that the witness is seemingly an intelligent executive of this department store and comes here and tells us calmly that she does not know the purposes of this proceeding which has been in every trade paper in the United States devoted to this industry, I do not have to be bound by that answer and I submit I am entitled to probe her to see if she is in fact telling the truth about this matter. 3230

Mr. Martin: This witness was summoned here as a witness on behalf of the Commission. She has, as such, been asked certain questions and is now on cross-examination by Mr. Weisman as to those questions. As to the question of what her knowledge is as to what this case is about, it has no reference to the issues in this case.

Mr. Weisman: Except to tell us whether she is telling us the truth or not. That is always a perfectly proper examination on cross-examination to test the veracity of the witness, her interest, her bias, and anything that might color her testimony one way or the other. 3231

Examiner Bennett: Nevertheless, I think I shall sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Tell me this, then; are you interested in seeing that this Guild program is stopped?

Mr. Martin: The same objection.

Examiner Bennett: Overruled. She may answer.

The Witness: May I have the question?

Q. (Question read.) A. I do not know.

By Mr. Weisman.

Q. You do not know what? A. I have not formed a
3233 conclusion.

Q. Did you not say that it hurt your business? A. Yes, sir.

Q. Are you interested in seeing that anything that hurts your business is stopped? A. I have not considered that.

Q. Well, now that I call it to your attention, what do you think about it? A. I do not know.

Q. Is it part of your duties to see that those things which injure your business, or wherever it is within your possibility to do so, are removed by you? A. Yes.

Mr. Martin: There has been no evidence here that it is within her possibility to remove those objections, or conditions.

Mr. Weisman: It does not make any difference.

3234 Examiner Bennett: Overruled. You may answer.

By Mr. Weisman.

Q. The Court says you may answer.

The Witness: What is the question?

Q. (Question read.) A. With limitations.

Q. Are not your duties to do those things which will foster and advance the interest of your dress department; is that part of your duties? A. With limitations.

Q. Yes, of course, with limitations, we do not expect you to do the impossible. A. No.

Q. If it is true that the Guild program has injured your business, and you have made a study of the injury, and you have come to a certain conclusion, how is it that you do not want this program stopped? A. I am only a co-worker in the organization and have limited power.

Q. Do you have personal feelings, have you? A. I have not defined them.

Q. I did not ask you whether you had defined them; I asked you whether you had them. 3236

Mr. Martin: I object.

Examiner Bennett: I think she did not, I am subject to correction, as I remember she did not testify that she did not wish the activities of the Guild stopped.

Mr. Weisman: Let us see what she did. I think she did.

Examiner Bennett: I do not think so.

Mr. Weisman: Well, we can clear that up very readily.

By Mr. Weisman.

Q. Do you want the Guild's activities to continue? A. I have to refer to my superior. 3237

Q. Please stop looking back there to see whether they approve or disapprove of your testimony. Just watch me.

Mr. Martin: I object.

Mr. Weisman: What do you want to do? You want to set up a signal system?

Mr. Martin: Certainly not.

By Mr. Weisman.

Q. I want to know what you want; your superiors do not appear here; your superiors did not see fit to testify in this case although he did in the other case, but he has struck you up in this case for some reason.

Mr. Martin: I object.

By Mr. Weisman.

Q. He has put you on the witness stand to testify and he is sitting back in the court room there, very interesting, very interesting.

3239 Mr. Martin: I object.

By Mr. Weisman.

Q. I want to know what you feel about it.

Examiner Bennett: Objection sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Who is your superior? A. Our president.

Q. Oh, do not hide the name, tell us who it is. A. Mr. Raphael.

Q. What is the full name? A. Mr. B. F. Raphael, as I know it.

3240 Q. Mr. B. F. Raphael was in court all the time you were in court, was he not?

Mr. Martin: I object to that as incompetent and immaterial, who was in court.

Examiner Bennett: I will let her answer.

By Mr. Weisman.

Q. Answer the question. A. What is the question?

Q. (Question read.) A. Yes.

Q. He sat alongside of you? A. Not all of the time.
Q. Most of the time? A. Part of the time.
Q. I did not say all of the time, did I? A. No.
Q. No. A. No.
Q. You went out from the court with him? A. And others.
Q. And others? A. And others.
Q. And you discussed your testimony with him and others? A. No.
Q. With him? A. No.
Q. With others? A. No.
Q. Do you want this court to believe that during all of the time since you were subpoenaed until to-day you never discussed with Mr. Raphael the subject matter of your testimony; is that correct? 3242

Mr. Martin: If your Honor please, I think that question entirely improper. She has not given any testimony or had not at the time that Mr. Weisman is referring to.

By Mr. Weisman.

Q. Testimony that you were to give or that you would give in this case.

The Witness: Am I to answer this and, if so, what is the question?

(Question read as amended.)

Examiner Bennett: Pay attention to that question very carefully. I call your attention to "subject matter." 3243

A. Yes.

By Mr. Weisman.

Q. What do you mean by this? You did discuss this with him? What do you mean by the work "yes," was that

that you did not discuss it with him? A. "Yes" means "yes."

Q. Well, I will agree with you, my dear girl, when you say "yes" means "yes"; do you mean by "yes" you did discuss it with him? A. That is not the question.

Q. I am asking you this question, now, did your "yes" to the previous question mean "yes," you did discuss the subject matter," or "yes, you did not discuss the subject matter with Mr. Raphael," the subject matter of the testimony that you were going to give? A. I discussed with Mr. Raphael my knowledge of what I knew pertaining to my functions in the store and my activities.

3245 Q. Did you discuss with him the effect of the Guild policy upon the business of the R. H. White & Company? A. Not in detail.

Q. I did not ask you whether you did it in detail or whether you did it at large; I want to know whether you did it at all. A. In conversations.

Q. All right. When was the conversation that you had with him on that subject? A. I do not recall.

Q. Well, what is your best recollection? A. To the best recollection, in the course of conversation, some time Monday.

Q. Where did that conversation take place?

Mr. Martin: If your Honor please, I cannot see the relevancy of the location of the conversation.

3246 Mr. Weisman: This is a foundation question. I am just laying a foundation.

Mr. Martin: If your Honor please, I am going to ask Mr. Weisman the same thing that he asked me before, "What are you laying a foundation for?"

Mr. Weisman: The Court ruled that you did not have to tell me, and I do not have to tell it for this witness, this witness is no fool, she is a very smart woman, and I am not going to disclose it so that she can guide her testimony.

Mr. Martin: I do not think it is at all material or relevant as to the issues in this case.

Mr. Weisman: It will become very apparent as I draw it out.

Mr. Martin: I think we are just wasting time on this proposition, Mr. Examiner, and I object.

Examiner Bennett: It is nothing new, wasting time, but we will go ahead and let her answer.

The Witness: What is the question?

Q. (Question read.) A. I do not recall.

By Mr. Weisman. 3248

Q. In other words, you cannot recall where a conversation with Mr. Raphael that happened Monday, you cannot recall where it took place? A. That is right.

Q. Do you remember whether anybody else but Mr. Raphael was present when that conversation was had? A. No.

Q. You know you are under oath here? A. Yes.

Q. You know what an oath means? A. Yes.

Q. And you cannot remember that? A. No.

Q. Generally, how is your memory?

Mr. Martin: I object.

Mr. Weisman: That is always proper on cross-examination, surely, Mr. Examiner, to go into the memory of the witness. The witness may be able to 3249
tell us that she has lapses in her memory either natural or induced, or what not.

Examiner Bennett: I will sustain the objection to it just the same. I think her memory should be shown by answers to questions, but not that question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you believe that you suffer from a lack of ordinary memory?

Mr. Martin: I object.
Examiner Bennett; Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, your testified that you made a study and this study consisted of an examination, by you, of your reports showing the total volume done in this department in 1936
3251 and the volume done for the corresponding period in 1936. A. In units.

Q. In units. Did you do it in dollars and cents? A. Interpreted by units into volume.

Q. Did you get your total volume for 1936; is that right? A. That is right.

Q. Now, what months did you do it for? A. For a five months' period.

Q. For a five months' period? A. Yes.

Q. Commencing when? A. February.

Q. Ending in? A. June.

Q. Commencing February and ending in June, 1936? A. Yes.

Q. And this study of those months consisted of comparing the total volume during those five months' period with
3252 the total volume during the same period in 1935? A. Of the price lines embodying dresses which formerly we had available from resources with members of the Guild.

Q. What you did do was not to take the total volume done in the dress department, but you picked out certain dresses and said, "Those are the dresses we are going to compare what we did this year with what we did last year"; is that so? A. No, not dresses but price lines. Price lines that were influenced by Guild members' sources of supply.

Q. So that is what you did. Now, let us see just a moment; this is rather interesting, my dear young lady. It was the volume that you did in your women's and misses' inexpensive dresses department in those five months—what was that volume? A. What was what?

Q. What was the volume that you did in your women's and misses' inexpensive dresses department in those five months? A. I do not know whether I could quote dollars, I can quote it in percentage, as I quoted in my testimony.

Q. Have you records? A. Oh, yes.

Q. You have records and you did not quote the percentage of what you did in that department, you quoted the percentage as to what you did as to certain dresses that 3254
were purchased by you at certain prices. What I am trying to find out from you is what you did during these competitive, or, rather, these comparative periods, I believe you use them for comparative purposes, in the respective departments; is that entirely plain to you—I am asking you simply is that entirely plain to you?

Mr. Martin: I object to the question.

Mr. Weisman: The question is, "Is that entirely plain to you?" Are you objecting as to whether or not it is entirely plain to her?

Mr. Martin: You know what I am objecting to. I object to any line of inquiry such as the previous question. There is no direct testimony as to what was done in any of these particular departments of 3255
the store. Miss Goldstein's testimony was that in the lines affected there was a 16.6 per cent. decrease for the five months' period of 1936 over the same period of 1935, but there was no figure or no accounting at all with reference to these various departments where those dresses were sold. If he wants to go ahead and question her on just the dresses involved in this phase of the price lines, I

will concede the correctness of that, but outside of that it is improper cross-examination.

Mr. Weisman: Of course it is perfectly obvious that this witness comes here and says that in the particular line of dresses, "which I picked out and which I say are affected by the Guild there was a decrease."

Now, it is perfectly competent for me to show, especially since she limited to $16.75, to show that in these departments, as bearing upon the testimony in this case, the Guild operated from $3.75 to $4.75, and, furthermore, to show that at the time, as a
3257 whole, that they did equally well, and that such being the testimony that the testimony that this witness has given is barren and worthless and of no effect or value because we can show, by this full picture, just what took place, and that the Guild activities were not properly reflected in the comparisons which were taken. In other words, on direct testimony, this witness made certain statements with reference to what she claimed was price lines which were the Guild price lines, or price lines affected by the Guild program. I think it is perfectly proper for me on cross-examination to refute and show that that statement is incorrect, and that, as a matter of fact, the Guild program covered other dresses besides those that she said, in her opinion,
3258 were dresses in price lines affected by the Guild policy. It goes directly to the value and worth of her statement, and also as to its accuracy.

Examiner Bennett: I think that would be perfectly all right in your direct case. I sustain the objection.

Mr. Weisman: Exception. I now wish to make this formal offer of proof, that if I had been enabled to pursue this line of inquiry a little further it

would have developed that in every dress department consisting of women's and misses' inexpensive dresses and women's better dresses and misses' better dresses, there was no such recession in total volume, and, furthermore, that all of their departments are equally affected by the Guild program, so that the prior testimony on this subject by this witness is totally without any probative value, or worse.

I respectfully except to the Court's ruling. I think this is a vital and substantial denial of the essential rights of the respondents herein. I shall say no more. I will now go to the next question. 3260

Examiner Bennett: Just a moment. I merely want to remark that assuming that that offer of proof could be fulfilled, it is irrelevant as to a test of the witness on her direct testimony, so therefore it was shut out by the Examiner.

Mr. Weisman: I must respectfully except to your Honor's statement, and reiterate again all of the grounds just stated as a reason for propounding this question.

Examiner Bennett: You have your exception.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. In any event, your study limited itself to a comparison of those particular price lines; is that correct? A. Yes, those particular price lines. 3261

Q. Yes. You did not take into consideration what was done at $4.75; is that so, wholesale?

Mr. Martin: I object.

Examiner Bennett: I will let her answer that.

By Mr. Weisman.

Q. Did you? A. I was concerned with price line effect.

Q. I said, I ask you—I did not ask you whether you were concerned with price line effect. I asked you to take into consideration the business done by R. H. White & Company in $4.75 wholesale price dresses? That, now, is a very simple question; it is a direct question, and I think you ought to be able to answer it. A. In unit control you compare price line with price line. That is the purpose of a unit control record.

Q. That does not answer my question. I will put it to you again because I think you can answer it: Perhaps if
3263 you know that I am seeking to present evidence to the Commission and to the Examiner that you are purposely and willfully and definitely and intentionally continually evading an answer to my question, and let me assure you that that will not help R. H. White & Company, please bear that in mind.

I am going to ask you the question again: The question I am asking you is whether or not in your fixing the volume done in the respective and comparative periods, you took into consideration the business done by R. H. White in regard to dresses which cost wholesale $4.75. A. I was considering those that went——

Q. "Yes" or "no"; "yes" or "no." A. The line of dresses involved priced at $16.75 and up.

3264 Q. In other words, in giving us those figures you did not take into consideration any dresses which cost R. H. White less than $16.75? A. I will correct it, $10.75, because I have referred to the retail price; that is what I was referring to.

Q. $10.75. It is perfectly obvious you did not take into consideration any lower priced dresses; is that so? A. At that time, no.

Q. Why would you not tell me that a moment ago? A. I told you that.

Q. That is your best answer? A. Yes.

Q. All right. A. Yes.

Q. Is it your statement that your business is wholly unaffected by the Guild program with regard to any dresses which cost wholesale less than $10.75?

Mr. Martin: I object to that. She did not make that statement.

Mr. Weisman: I say she did make it, or she did not make it, and I want to find out just what the facts are about it. Let the witness answer the question and she will tell us.

Mr. Martin: I object.

Examiner Bennett: I will let you answer it. 3266

The Witness: What is the question?

Q. (Question read.) A. No.

By Mr. Weisman.

Q. You do know, do you not, that the Guild program does affect dresses below $10.75? A. Not since we have been red carded.

Q. You mean since you have been red carded the Guild program does not affect you at all because you do not adhere to it? A. It does not affect us in the lower-priced lines.

Q. You are not affected to-day one iota? A. In the lower-priced line. 3267

Q. In the lower-priced line; is that so? A. Yes. That is so.

Q. In other words, the Guild program, be it good or bad or indifferent, does not concern you, it does you no good and it does you no harm in the lower-priced lines; that is, the price lines below $10.75?

Examiner Bennett: I do not understand this part of the inquiry. I would like to know. I under-

stood from this witness there were two periods covered by her study, and she is now being questioned about the five months which are in 1935, and the five months which are in 1936.

By Examiner Bennett.

Q. Is that true? A. Yes, sir.

Q. Now, tell me whether during the former period which your study covered those low-priced dresses were within the scope of the Fashion Originators Guild of America; whether they were part of the dresses that were affected by the policy of the Guild? A. They were affected to the
3269 extent——

Q. They were affected? A. Yes, sir.

Mr. Weisman: I submit, your Honor, I would like to have an answer to your Honor's question.

Examiner Bennett: Just a moment.

By Examiner Bennett.

Q. Pay attention to the question and to the period. I mean, in the period 1935, the five months of 1935 you said— A. Yes.

Q. I just want to know. I am asking for information. I want to find out what was included. A. Yes, they were affected in 1935 to a degree.

Q. Were they affected in 1935, then? A. Yes, sir.
3270

By Mr. Weisman.

Q. When you were carrying merchandise at $10.75, as you stated, did you frequently find that this merchandise was copied down so that copies of it might appear, or did appear at, let us say, $8.75, or lower prices than $10.75?

Mr. Martin: I object.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, I understood you you stated that there were two merchants with whom you had trouble in placing orders with the stamp for some time in 1935; is that correct? A. For a time.

Q. Yes. And for how long a time? A. I don't remember the exact period. But I would say, my best knowledge, about a month or six weeks.

Q. And then that difficulty cleared up? A. It would clear up and break up again.

Q. Well, let us see. In 1935 the Noxall Waist & Dress Company and Frieberg & Weisen refused to accept your orders with the warranty stamp on them? A. Yes. 3272

Q. And they continued to refuse to accept them for about 30 days? A. About that time.

Q. And then they decided that they would accept them and whatever orders you were kind enough to give them they accepted from you? A. Yes.

Q. And during all of that—and since then, you have, from time to time, done business with Frieberg & Weisen? A. Yes.

Q. And with the Noxall Waist & Dress Company? A. Yes.

Q. And when they have taken your orders, you, in accordance with your store's declaration of co-operation, put on there the warranty which told them that you would not accept copies of original merchandise manufactured by the Guild members; is that so? A. Yes. 3273

Q. Now, you understood this stamp, did you not, the wording of it, you said you knew its terms? A. Yes.

Q. Now, what were its terms? A. That——

Mr. Martin: I object to that, your Honor. The stamp is in evidence.

Mr. Weisman: I want to know what she understood its terms to be.

Mr. Martin: He is asking her what the terms are.

Mr. Weisman: No, I didn't say that. I said, "What do you understand the terms to be?"

Examiner Bennett: All right.

Mr. Martin: What the terms are.

Examiner Bennett: You may answer.

Mr. Martin: All right; go ahead and answer.

A. That our store was not to be shipped, or to knowingly accept copies of dresses registered with the Fashion Originators Guild of America.

By Mr. Weisman.

3275 Q. As originals. And as long as that was the commitment of R. H. White, you wanted to keep it? A. Yes, sir.

Q. And in the keeping of it you sought not to knowingly purchase or acquire copies of Guild merchandise, original Guild merchandise? A. Yes.

Q. And if you did acquire it, unknowingly—no, I will withdraw that. If you did acquire it during this period, I take it, you would only buy it unknowingly; is that not so? A. Our buyers would be guilty unknowingly.

Q. Yes. I mean, it was not your purpose to try to buy copies and, in the vernacular, get away with it? If copies appeared, you did not want them there, because you knew your store's policy and its promise; is that not so? A. Yes.

3276 Q. No question about that. I mean, a store like R. H. White would not enter into a commitment with a set of merchants, and then seek to break it; if you broke it, that was an innocent thing; is that not so? A. Yes.

Q. And you knew that other merchants and retailers were also cooperating in the Guild policy, did you not? A. Yes.

Q. You were not alone in it, in Boston, there were others? A. Yes, sir.

Q. And you expected the others also to keep up to their commitments; in other words, it was a sort of two-party or ten-party or trade arrangement; is that not so? A. I don't know.

Q. Well, let me ask you the question this way: You knew that certain competitors were also co-operating with the Fashion Originators Guild, did you not? A. Yes.

Q. And you expected them in their co-operation to be honest, so that no unfair advantage would be taken of R. H. White competitively: is that not so? A. I did not have that power to expect.

Q. No, I did not say that you could enforce it—I say that you expected your competitors to be honest, did you not? A. I did not question their honesty. 3278

Q. In other words, you took it for granted; is that not so? A. Not from my experience, I could not take it for granted.

Q. Well, did you think all your competitors were dishonest? Is that what you mean to infer, and that all honesty lies only with R. H. White & Company? A. I am not discussing their honesty; I am trying to infer our experience that at times dresses we had to return were found in other stores.

Q. All right. Let us see, then. Was R. H. White desirous of being honest in their co-operation with the Guild? A. I don't understand what you mean by honest.

Q. I see. Were R. H. White desirous of using their best and sincere efforts, while they were co-operating with the Guild, to see that no copies were handled by them of Guild merchandise? A. Yes, with exceptions. 3279

Q. I see. Now, where they made a mistake and got copies of Guild merchandise were they pleased to have that mistake called to their attention? A. Yes.

Q. Was that what Miss Brady frequently did? A. Yes.

Q. Now, suppose Miss Brady were mistaken, would you accept her word, just send it back without finding it out

whether or not it was a copy? A. We were never confronted with that situation.

Q. Well, what do you mean by that, that she only came to you where dresses had already been adjudged copies and gave you the evidence of the fact that they had been adjudged copies? A. Yes.

Q. I see. And then when Miss Brady came to you and gave you evidence that the dress had been adjudged a copy, and then you would return it? A. Yes, in the main.

Q. In other words, Miss Goldstein, you were running your business, were you not? You never abdicated your duties, did you? A. I run my business under the super-
3281 vision and guidance of my superiors.

Q. Of your superiors. I mean that. And the reason that you would return copies of dresses was because you were satisfied that they had really been adjudged copies; is that not so? A. Yes.

Q. And when you said to Mr. Martin that you returned them solely at the request of Miss Brady, you do not mean that in the exercise of your duties you would not have returned them if you knew they were copies, and Miss Brady did not come in to tell you to return them—you were desirous of carrying out your promise, were you not? A. Yes.

Q. And if Miss Brady had not come in to tell it to you, and you knew, or had found out that they were copies of Guild merchandise, as an honest merchant R. H. White
3282 would have returned those dresses——

Mr. Martin: I——

By Mr. Weisman.

Q. —in accordance with their declaration of co-operation; is that not a fact?

Mr. Martin: I object, your Honor, pure speculation.

Mr. Weisman: It is not at all. It is a statement of fact. Honesty is a fact, just as much as weight, and I am quite convinced——

Examiner Bennett: Let her answer.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. The Court says you may answer.

The Witness: May I have the question?

(Question read.)

A. If we knew, if it was called to our attention?

Q. Yes. A. By Miss Brady or otherwise. 3284

Q. Or otherwise. And the reason you returned dresses was to keep your commitment with the Guild, is that not so, and with those who were otherwise co-operating with the Guild? A. I can answer for ourselves only.

Q. I only want you to answer for yourselves, that is right. For yourself, what about it? A. Just for White's, yes.

Q. Yes. And you knew that your commitment was to return only dresses that were copies of Guild merchandise, original Guild merchandise; is that not so? A. Yes.

Q. And you were not willing to go beyond that commitment, were you? A. I don't understand that.

Q. I mean, you would not return dresses to please somebody, you would only return dresses because they were copies of Guild merchandise; is that not so? A. Involving a Guild discussion, yes. 3285

Q. Yes, I mean that, that is all right. Now, how long did you know Miss Brady? You said you met her in 1935; do I understand your answer? A. I believe she breezed up to my office some time in 1935, I think.

Q. You think she is a sort of breezy person? A. She is little and quick.

Q. She came in and she told you who she was? A. I believe I had to ask for her credentials.

Q. But you got them? A. Yes.

Q. Were you not rather glad to meet her? A. Yes, of course.

Q. I mean, she was going to help you keep your promise, see that you did not unknowingly break your promise that you were desirous of keeping; is that not so? A. Yes.

Q. And keeping that promise was a moral and ethical duty which by consent it had undertaken—the promise; is that not so? A. That is, excluding my firm's promise.

Q. Yes, and, therefore, realizing that she was going to
3287 help you maintain your firm's moral and ethical standards, you were glad to see her, were you not, as you would anyone else who was going to do that? A. I do not know what you mean by "glad."

Q. Pleased. A. I do not know what you mean by "pleased."

Q. Well— A. That does not always enter into every transaction of a business.

Mr. Martin: I object—all right.

By Mr. Weisman.

Q. Then, I will ask you—I will withdraw it. Are you not always pleased when someone aids you in fulfilling a moral duty which otherwise, through lack of knowledge,
3288 you might not be able to fulfill?

Mr. Martin: Objected to as being immaterial.

Mr. Weisman: Oh, I think it is very material, Judge.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Are we having a——

By Mr. Weisman.

Q. Now, on these various occasions, Miss Brady would come into the store and she would see you, as the chief person in charge, I think you testified, or, if you were not there, she would see the buyers? A. No, the reverse; if the buyers were not there she would see me.

Q. She would see you? A. Yes.

Q. And if the buyer were not there when she would see you, she would come in and say to you, in words or substance, "Miss Goldstein, your No. so and so is a copy of a dress which was originated by a member of the Fashion Originators Guild. That number has already been adjudged a copy on somebody else's complaint, and we don't 3290
think you ought to carry it in accordance with your promise"; is that not so? A. Well, she would not go into details.

Q. No. A. No.

Q. In substance? I was not there. Now, when you found that out, that gave you an opportunity—when you found that out to be a fact, that gave you an opportunity of fulfilling the pledge which your store had undertaken; is that not so? A. With exceptions, yes.

Q. Yes. I know. You mean reservations? A. That is right.

Q. That is right? A. Thank you.

Q. You are talking about the reservations that Mr. Seegal spoke about? A. I had my own.

Q. Oh, you had your own? A. Yes. 3291

Q. Mental? A. I have not qualified them.

Q. Well, I want you to now. Were those mental reservations or were they physical reservations, or did you write them out?

Mr. Martin: I object to this, your Honor.

Mr. Weisman: She says "reservations." I am entitled to know what kind of reservations the lady had, they were not——

Mr. Martin: Immaterial.

Mr. Weisman: Anything about her personal affairs; they were about this subject matter.

Mr. Martin: Not proper subject of cross-examination.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: All right.

Examiner Bennett: Because it is going into——

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, you said that the first time you found out you
3293 were red carded was around February 10, you found it out through an article in the "Women's Wear"?

Mr. Weisman: Please note, reporter.

By Mr. Weisman.

Q. Before then hadn't you had quite a lot of extensive correspondence with the Guild concerning certain copies that you had refused to remove? A. Not my correspondence.

Q. Well, you knew that Mr. Rapheal was having correspondence, did you not?

Mr. Martin: Objected to.

Mr. Weisman: This is perfectly good, Judge; it
3294 is not only good, but it is——.

Examiner Bennett: I do not know how we can get anywhere——

Mr. Martin: Being in their cross-examination—

Examiner Bennett: Yes.

Mr. Weisman: Judge, may I be heard on that? Here is a witness——

Examiner Bennett: Well, tell me.

Mr. Weisman: Yes.

Examiner Bennett: Was the gentleman you named, was he her superior?

Mr. Weisman: Yes, he is the president of the company.

Examiner Bennett: Well, I will sustain the objection to that. It is merely going into something that would be totally a hearsay proposition on her part. She is not directing her superiors, nor are they reporting to her.

Mr. Weisman: Well——

Examiner Bennett: She gets nothing from——

Mr. Weisman: When I said it was immaterial whether or not she knew about the red carding, your Honor ruled against me, because, of course, I 3296
adopted the same course of thought that your Honor is now adopting. You might just as well suppose we put an office boy on the stand and he says, "I do not know when this and this happened." The important thing is that the executive head of a concern knew all about it. Now, your Honor heard her answer because she said, oh, in the usual course she would have letters. Now, when I seek to bring out in this very business——

Examiner Bennett: I did not say anything about the usual course in connection with the red carding.

Mr. Weisman: How?

Examiner Bennett: I say, I said I did not say 3297
anything about the usual course in connection with the red carding.

Mr. Weisman: Your Honor let her testify that if she did not learn—that if—the materiality, then was her testimony, Judge, that she did not learn about the red card until she read it in the paper? That was tendered by these people to show lack of adequate notice to them.

Examiner Bennett: I presume it was tendered for the purpose of showing that when the Guild red carded people it went out and published it broadcast it over the United States. I presume that was the reason for it, and I think it is a rather good reason in connection with this proceeding.

Mr. Weisman: If your Honor——

Examiner Bennett: They are charging boycott and the product of boycott is to make known that their act in boycotting the concern——

Mr. Weisman (interposing): Well, if your Honor limits——

3299 Examiner Bennett: That was the reason, that was the reason that I sustained that.

Mr. Weisman: Well, then, I submit that it was entirely immaterial because there was not any proof at all that we released it to the "Women's Wear"——

Examiner Bennett: Well——

Mr. Weisman: Well, it is equally as possible that these people gave a statement as well on that side of that question, and that hundreds of statements were issued on all sides of this controversy.

Examiner Bennett: It doesn't make any difference who released it, that particular combination.

Mr. Weisman: In view of your Honor's statement, it would make a great difference, and I ask that since that was the purpose for which your 3300 Honor admitted this testimony, on this witness' direct testimony, that the same be stricken from the record now.

Examiner Bennett: That was one purpose. I deny the motion.

Mr. Weisman: Exception.

Where is that letter from Miss Goldstein?

(Counsel hands paper to Mr. Weisman.)

By Mr. Weisman.

Q. Now, you said you did not know anything about this. Is that right, that Mr. Rapheal may have been aware that there was a controversy between the Guild, which started in November and went—without looking at the rest of this letter, I ask you whether or not that is your signature? A. That is.

Q. Now, a moment ago you testified, did you not, that you did not have any part in the correspondence which led up to the red card; is that so?

Mr. Martin: Objected to, your Honor. I object to any line of testimony of this kind to show any controversy that they may have had with the Guild 3302
at any time prior to red carding, for any purpose. That was not brought into question by direct testimony. This witness was asked the specific question of when did you first know the store was red carded and she testified early in February of 1935. She was then asked how did she know it, and she said that the first knowledge she had was in "Women's Wear."

Now, anything dealing with any controversy between these parties prior to that time was not brought into question, and I submit that any cross-examination on that is irrelevant and is not proper cross-examination. She has testified fully to what she was asked, but she was not questioned with re- 3303
gard to the other subject matter, and I submit that it is not proper cross-examination.

Mr. Weisman: Of course, here is a witness that says the first time she learned of this was in February, 1936. She says she learned it through "Women's Wear."

Mr. Martin: Now, be more specific, Mr. Weisman—letters of being red carded.

Mr. Weisman: Red carded.

Mr. Martin: Let us make that certain.

Mr. Weisman: That is all right, that is all right. I am sure the Court so understood that this is it, and that she learned it through the "Women's Wear."

Now, I submit that this testimony has been admitted over my objection.

Examiner Bennett: Yes.

Mr. Weisman: It could only have been admitted on one of two theories, either to show that we notified the world when we red carded someone, if it is admitted and limited to that theory alone I must

3305 then renew my objection and move to strike it out because there was no proof that we gave it out and I do not know that we did.

Examiner Bennett: I do not know that it made any difference who gave it out.

Mr. Weisman: Yes.

Examiner Bennett: It was just simply——

Mr. Weisman: And I——

Examiner Bennett: Just a moment. With that sort of combination in existence, of course its actions became public.

Mr. Weisman: Yes.

Examiner Bennett: The trade gets it.

Mr. Weisman: That is right.

3306 Examiner Bennett: That does not make any difference.

Mr. Weisman: Now, I had assumed that there was an offer to show that this Guild acts arbitrarily, quickly, that you do not get a chance to argue with them, that they say, "You cannot have merchandise if it is offered for that purpose."

Now, I want to show that for three months we sought to adjust this controversy, and that it was

only when the letters finally came in, and they said to us that you can't adjust, that then we had nothing to do——

Examiner Bennett: That is part of your direct case.

Mr. Weisman: Well——

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

I think I can get through very speedily with this witness.

Examiner Bennett: Yes. We will, unless you can keep that 1 o'clock promise, why——

Mr. Weisman: I am pretty close to it now.

3308

Examiner Bennett: I am afraid we cannot go ahead indefinitely; we have been in session a long time.

Mr. Weisman: Just one question.

By Mr. Weisman.

Q. Did you see the letter sent out by Mr. Reilly of the A.M.C.?

Mr. Martin: Objected to as improper cross-examination.

Examiner Bennett: Sustained. I understand that is one of the letters that had to do with this controversy?

Mr. Weisman: Yes.

3309

Examiner Bennett: All right.

Mr. Weisman: May I say—and I want to say it very quickly—Judge, do you not think that it is rather fulsome of us to come back to Boston on our direct case just to prove a point like this?

Examiner Bennett: Well, yes, you will probably be in Boston all right.

Mr. Weisman: What?

Examiner Bennett: You will probably be in Boston all right.

Mr. Weisman: I doubt it very much, unless I come here to get those records—well, maybe you are right. I will subpoena them. Maybe I will be here for these other people. I except to your Honor's ruling, notwithstanding.

By Mr. Weisman.

Q. When you received Commission's Exhibits 361-A and B, did you make any response thereto? A. I do not recall.

Q. That is another one of the things you cannot remember; is that it? A. I don't recall.

3311

Q. Well, look at it and refresh your recollection and see whether or not thus refreshed whether you made any response? A. (Witness examines paper.) I don't remember.

Q. Well, did you, on and after the time you received this letter, adhere to the program therein set forth? A. With our usual——

Q. Reservations? A. Reservations.

Q. In other words, you felt that you had the right to only perform your promise towards the Guild as long as the promise did not run counter, or the performance did not run counter, to these reservations that you refer to?

Mr. Martin: I object to that; not in evidence.

Examiner Bennett: You may answer.

3312

By Mr. Weisman.

Q. The Court says you may answer.

Mr. Martin: Go ahead.

A. As long as it did not embarrass us to the extent of being non-competitive.

Q. Now, my dear girl, will you—in other words—and I have it from you—your reservations with your promise

to the Guild, were that you would fulfill the promise as long as it did not embarrass you to fulfill it in so far as your competitors were concerned; is that it? A. Yes.

Q. And as a result of those claimed reservations on your part the Guild and R. H. White had a number of differences commencing in or about November, 1935?

Mr. Martin: I object to that, your Honor; improper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. My offer of proof would be that that was the basis thereof.

By Mr. Weisman. 3314

Q. And, as a result of these claimed reservations, your store—the Guild finally notified its members that your store was no longer co-operating——

Mr. Martin: Objected to.

Q. Is that not so?

Mr. Martin: Your Honor——

Examiner Bennett: Sustained.

Mr. Weisman: That is the red card.

Examiner Bennett: Sustained. She——

By Mr. Weisman.

Q. When you say—well, I will withdraw that. I think that is all with this witness. 3315

Examiner Bennett: All right. Any redirect?

Mr. Martin: No redirect examination.

Now the witness may stand down.

Mr. Weisman: Well, I do not want this witness to leave.

(Witness excused.)

3316 *Anna Goldstein—For Commission—Cross.*

Mr. Martin: Now, if your Honor please, at this time the Commission has no further evidence to offer in Boston, and we ask that the Examiner recess to meet in Philadelphia on Friday morning, July 31, at 10.30 o'clock, in Room 313 of the U. S. Post Office Building.

Mr. Martin: Well, your conferee had it.

(Thereupon, at 1.10 o'clock P. M., July 29, 1936, the hearing in the above-entitled matter was adjourned.)

3317

BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769.

3318

Court Room No. 313,
U. S. Post Office Building,
Philadelphia, Pa.,
July 31, 1936.

(Met pursuant to adjournment, 9.30 A. M.)

Before: JOHN W. BENNETT, *Examiner*.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED, 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

MR. JAMISON of SUNDHEIM, FOLZ & SUKHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing 3320
for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of Fashion Originators Guild of America, Inc. et al., Docket No. 2769, from Boston, Massachusetts.

You may resume, Mr. Haycraft.

Mr. Haycraft: I will ask Mr. Tily to take the stand at this time.

Will you be sworn, please, Mr. Tily.

HERBERT J. TILY was thereupon called as a witness for 3321
the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?

The Witness: Herbert J. Tily.

Direct examination by Mr. Haycraft.

Q. Where do you live, Mr. Tily? A. Cynwd, Pennsylvania.

Q. Is that a suburb of Philadelphia? A. Yes.

Q. What is your occupation? A. President of Strawbridge & Clothier.

Q. How long have you occupied that position? A. As president, for nine years.

Q. In what business is Strawbridge & Clothier engaged? A. General store, commonly known as a department store.

Q. Where is it located? A. Eighth and Market Streets.

Q. In the City of Philadelphia? A. In the City of Philadelphia.

Q. How long has Strawbridge & Clothier been established as a department store in Philadelphia? A. It was originally what was known as an old dry goods store, es-
3323. tablished in 1868, and somewhere in the late '80's it began to develop into its departments, and became known as a department store.

Q. Does it handle, among its merchandise, women's and misses' dresses and coats? A. It does.

Q. How long has that been true? A. In the early '90's that was started.

Q. Does it have a substantial department engaged in that business?

Mr. Weisman: Objected to, I object to the word "substantial" on the ground it is incompetent, immaterial, and irrelevant, calling for a conclusion of this witness.

Examiner Bennett: Overruled; he may answer.
3324

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. Substantial, yes. It has been a very successful department of its business from its inception.

Mr. Weisman: I ask that the latter part of the answer be stricken out. The business might be sub-

stantial or unsubstantial and be successful or unsuccessful.

Examiner Bennett: Not responsive; objection sustained.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Can you give the approximate volume of sales of your women's and misses' dress, suit and coat departments annually? A. At the present time?

Q. Yes.

Mr. Weisman: Just a moment. You said "annually," did you not, in your question? 3326

Mr. Haycraft: Yes.

Mr. Weisman: And the witness asked you—you said "annually." The witness said "At the present time?" You said "Yes."

Now, which is it?

Mr. Haycraft: That question can be answered, Mr. Examiner, in the exact form it is now placed.

Examiner Bennett: Overruled. He may answer.

Mr. Weisman: Exception.

A. Annually, in the neighborhood of 3 millions of dollars.

By Mr. Haycraft. 3327

Q. Now— A. May I say that applies to dresses.

Q. It does not include coats and suits? A. Well, we will include coats and suits, approximately, yes—dresses alone, $3,000,000—I am ashamed to state I cannot remember the exact figures, but they can be obtained.

Q. Now, to what class of trade does Strawbridge & Clothier cater in the sale of its women's dresses and coats and suits? A. To all classes, especially noted for its trade in the better lines of merchandise.

Q. Now, in the sale of dresses, coats and suits, women's and misses', how would you group these garments with respect to prices at which they are sold to the public? A. Group them—you mean as to what price lines?

Q. Yes. A. Well, in dresses they run down according to the division of our departments, department $3.95 up to the very highest lines.

Mr. Weisman: Would your Honor ask the witness to let us know whether or not that is at cost or at retail sales' price?

Mr. Haycraft: I will ask the witness that in due time.

3329 Mr. Weisman: Well, otherwise the question is unintelligible. I do not want it in due time. I am asking your Honor to direct Mr. Haycraft to ask him now so that we may know what we are talking about.

Examiner Bennett: Well, I will ask him——

Mr. Weisman: Thank you.

Examiner Bennett: —whether it is retail or wholesale.

The Witness: Retail.

By Mr. Haycraft.

Q. What is the highest price or range of prices at which you sell garments at retail? A. That question can be bet-
3330 ter answered by one of our divisional managers.

Q. Are you familiar with the wholesale prices paid for women's dresses? A. Not sufficiently familiar to be cross-examined on it. I think that could be better answered by those who are taking care of that part of the business.

Q. Well, do you have a group of dresses that you sell to the better class—I mean—strike that out. Do you have a group of dresses which you describe, or which are generally known, as the better dresses? A. We have.

Q. Do you know which price range is included in that classification? A. Better dresses start from $19.75, the department that we know as our better dress department.

Q. That is the retail price? A. The retail price.

Q. Then do you have moderate priced groups of dresses? A. We do.

Q. Below that? A. Yes, we do.

Q. About what range, approximately? A. The moderate price would run from oh—ten—$10, retail, up to $19.75.

Q. Then, do you have what is known as an economy store, economy shop? A. We have.

Q. In women's dresses? A. Yes, we do.

What price range would that be? A. They run below, quite a bit below. 3332

Q. Then do you have a basement store where women's dresses are sold? A. Yes.

Q. Are you familiar with what is known as the Fashion Originators Guild of America, Inc., the respondent in this proceeding? A. Unfortunately, yes——

Mr. Weisman (interposing): I ask that that be —"Yes" is the answer.

I move to strike out the word "unfortunately," because obviously the witness does not yet commence to know how unfortunate he may hereafter be, and it is merely a conclusion of this witness whether he is presently unfortunate. I ask that it be stricken out. 3333

Mr. Haycraft: I think it can stay, Mr. Examiner.

Mr. Weisman: He was asked whether he was acquainted, and he said "Unfortunately, yes."

Examiner Bennett: Well, all except "Yes" may be stricken.

Mr. Weisman: Thank you. Wait just a moment. May I also ask the Court to advise the witness to directly answer the questions without qualification,

such as have just had. We will get further and go faster.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. When did you first become acquainted with the Fashion Originators Guild of America, Inc.? A. Some time in the autumn or winter of 1932.

Q. What were the circumstances? A. We had received notification from them of their plans, and told what they proposed doing, which included—which begun with their desire—their statement was—began with their desire to
3335 eliminate style piracy in the business.

Q. In what industry? A. In the dresses, coats.

Q. Were you ever solicited to cooperate with the Guild in that plan? A. We were.

Q. When? A. It began, I should say, in the fall or autumn of 1932.

Q. Who made the solicitation? A. It was made by letter by the F.O.G.A., my recollection is, signed by their managing director, Mr. Post.

Q. I show you Commission's Exhibit 99-A to C, inclusive, and ask if you received a copy of that letter from Mr. Rentner, president of the Guild, in June, 1933? A. The facts are so familiar that I presume that letter was received, as I probably had no other way of getting the
3336 facts, although I cannot positively identify that exact letter.

Q. Do you recall, do you have any recollection of receiving letter from Mr. Rentner, with respect to this proposition? A. Yes.

Q. Who was Mr. Rentner at that time, to your knowledge? A. I am not positive as to what he was at that time.

Q. Did you subsequently indicate to the Guild that you would cooperate? A. Subsequently, yes.

Q. Do you have with you a letter indicating the extent to which you would cooperate with the Guild? A. Yes.

Q. May I have it? A. (Witness hands paper to counsel.)

(Letter from Strawbridge & Clothier, under date of June 30, 1933, to Fashion Originators Guild of America, Inc., was marked for identification Commission's Exhibit 362.)

Mr. Haycraft: I offer this letter in evidence, Mr. Examiner, Commission's Exhibit 362.

Examiner Bennett: 362.

By Mr. Haycraft. 3338

Q. Mr. Tily, were there any reasons or circumstances, to your knowledge, aside from those indicated in the two exhibits which have been received in evidence, Commission's Exhibits 362 and 363, which prompted you to cooperate with the Guild in the manner indicated in those two exhibits?

Mr. Weisman: Objected to; first, that——

Examiner Bennett: I think if there were reasons expressed to this respondent—if no, I will have to sustain the objection.

Mr. Weisman: Thank you.

Examiner Bennett: If there were reasons expressed to this respondent, or brought to its attention 3339 in some way, well, it would be binding on the respondent; otherwise, I do not see why it would be.

By Mr. Haycraft.

Q. I call your attention, Mr. Tily, to the following statement in Commission's Exhibit 363: "We are in entire sympathy with your effort to stop the unethical practices from

3340 *Herbert J. Tily—For Commission—Direct.*

which both manufacturers and retailers suffer." I will ask you what those practices were that you had in mind when you wrote that letter?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial.

Examiner Bennett: Overruled; he may answer.

Mr. Weisman: Exception.

The Witness: Will you read that question, please.

Q. (Question read.) A. Largely the copying of designs of dresses, largely that.

3341

By Mr. Haycraft.

Q. I direct your attention to the next statement: "We will continue to cooperate with you just so long as it is possible for us to do so—reserving to ourselves the right to discontinue or change the present understanding." Did you, in your discussions with representatives of the Guild, raise any question as to the practicability of cooperating with the Guild in its plan?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, and, furthermore, that it is a question which is improper in form, and I ask that the first part of the question, which is a quotation, which could bear no relation to the question,

3342 and does not as framed, be stricken out.

Furthermore, I ask that counsel be directed to cease attempting to lead the witness in this fashion. It is counsel testifying and not the witness. Counsel states the question and the witness says yes. That is not testimony from this witness.

Examiner Bennett: I will instruct the witness that that question can be answered "yes" or "no," and to answer "yes" or "no," and I will overrule the objection.

The Witness: May the question be read, please?

Q. (Question read.) A. I did not personally.

By Mr. Haycraft.

Q. Who else, besides yourself, in your organization, were in on these negotiations between the Guild and Strawbridge & Clothier? A. Our divisional merchandise manager, Mr. Taylor; our general merchandise manager, Mr. Smith.

Q. At the time that you signed this letter of cooperation, Commission's Exhibit No. 362, did you know who were the members of the Fashion Originators Guild of America, 3344
Inc.? A. Not in detail. I knew what their line of business was, that they were manufacturers of the better type of dresses and coats. As to the details of the names, no, but as to the characterization, or the type of business they were doing, yes.

Q. The language I wish to call your attention to is as follows: "We are proceeding on the principle that since the Guild comprises all the outstanding style houses of the country, every retailer who is desirous of conducting his business in a wholesome, capable manner, will subscribe to the upholding of the policy enunciated by the enclosed declaration."

I will ask you whether or not you have a recollection of being told by representatives of the Guild that which 3345
I have just called your attention to? A. Not told to me personally, no, but I know that that condition existed.

Mr. Weisman: I object. The witness has answered the question, and I ask that he be directed to heed the Court's admonition that he confine himself to answering the question and then stop. Tactics of this kind very clearly show the type of

witnesses that are being brought here, and the extreme bias with which their witness is presented to the Court.

Mr. Haycraft: Rubbish.

Examiner Bennett: I will strike out the latter part of the answer.

By Mr. Haycraft.

Q. Do you know of your own knowledge that that is the condition that existed in the industry? A. Yes.

Q. Yes? A. Yes.

Q Were those facts, to which I have directed your
3347 attention, and which you say you know about of your own knowledge, and did know about, a factor which you took into consideration at the time that you signed your declaration of cooperation, being Commission's Exhibit 362? A. Yes. The two outstanding factors was the fact that they did include practically all the manufacturers in that type of business, and that the threat, if I may so denominate it, was that our buyers, unless we signed, would not only not be sold, but would not have access to their showrooms.

That was the determining factor. We had a fine business, looked upon as a representative store of the better class, and it was utterly impossible for us to carry on and maintain our good will because I do not refer to good will, itself, in reference only to dresses and copies, but there is
3348 the finer thing, the inability of a better class consumer to get from us those fine things, through us, all of her better class articles which, in turn, meant that they could not get that from us, and that went through all our better class trade, because it necessarily sent them to competitors. If they were not able to get certain types of dresses from us, the better types of dress, we would lose business all the way down the line, because they would go to the other type of manufacturer's outlet, namely, the store in Philadelphia

where they could obtain them, and our customers would be going to our competitors. We viewed with great alarm the possible effect upon our business. That was the major factor.

Q. How long were you a member—how long were you cooperating with the Guild in its plan of stamping out style piracy? A. From June 30, 1933, until we were red carded in February of this year.

Q. Are you familiar with the reasons assigned by the Guild for the red carding of Strawbridge & Clothier? A. Yes. The reason stated, the alleged reason was that we failed—had failed to cooperate with it—the major statement or major factor was that we failed to cooperate—that 3350
we had refused to give the name of a manufacturer who had allegedly made copies and sold them to us.

By Mr. Weisman.

Q. This is the subject of correspondence? A. Not by me.

Q. No? A. No.

Q. Do you have any personal knowledge of what you are now testifying to, or is it what somebody else told you and which is contained in correspondence? A. It was told to me. They spoke about the letters.

Mr. Haycraft: I object to the witness being interrupted in this fashion. I insist that he be allowed to complete his answer and then counsel may object. 3351

Mr. Weisman: Look here, my dear fellow, I ask that an examination on the voir dire be allowed in order to test this witness' testimony for the purpose of making an objection to it.

Mr. Haycraft: I object to being interrupted until he has completed his testimony. Then if it is wrong it can be stricken out. It is not in any rule of evidence that I ever heard of that a witness can be interrupted in this manner.

Mr. Weisman: In the first place, it is something that somebody else told him, and that somebody else told him the contents of a writing which has not been shown to be unavailable. Therefore, it is objectionable on two grounds; first, that it is hearsay; second, that it is secondary evidence; thirdly, that the document has been produced, and, fourthly, that no effort has been made to, nor has it been shown to this Tribunal that the document itself is not available to be presented into evidence.

Examiner Bennett: I have repeatedly passed on that question, if it came within his knowledge as

3353 an executive.

By Examiner Bennett.

Q. That is knowledge that you have obtained in the regular and ordinary course of your business? A. By men who reported to me in my business.

Q. In the course of your business? A. Yes, sir; this was a question of policy which had to be decided finally by me as president of the business, and my responsibility to stockholders and others, and in the ordinary course of business by men who came to me with facts as they viewed or saw them.

Those who stated those facts can be put on oath and we can see whether or not they are true. If neces-

3354 sary, the letters themselves can be brought here.

Mr. Weisman: I think his answer is sufficient to justify my objection.

Examiner Bennett: Read the answer of the witness so far as given.

(Answer read.)

By Examiner Bennett.

Q. Had you completed your answer? A. I was going to add that this Commission's Exhibit No. 362, I think it was my letter where we made the reservation.

Mr. Weisman: I shall object to the witness telling what is in the letter. The letter is the best evidence of what it contains. I except to your Honor's overruling my objection. I presume you overruled it?

Examiner Bennett: Yes.

Mr. Weisman: Exception.

3356

By Mr. Haycraft:

Q. I ask you to refer to the letter with regard to the reservation that you have in mind, and state the facts and circumstances to which you now refer?

Mr. Weisman: I object to it as incompetent, immaterial and irrelevant. The letter shows on its face what it contains. This witness' interpretation of it will not be of any benefit to this Court and is merely an interpretation which should be that of that Tribunal and not of the witness.

Examiner Bennett: Overruled. I will listen to what the witness has to say.

Mr. Weisman: Exception.

3357

A. "We do not and will not knowingly sell in our ladies' ready-to-wear departments any copies of pirated dresses of original garments created by any members of your Association. We, however, are to be the judges as to whether garments have been copied or pirated. Furthermore, we propose to annex * * *, and so forth."

Under that we felt we had the right to say whether or not it was a copy, and that again was based on our experience, and the report to me in the regular course of

business by our people that copies in the estimation of the Guild were dresses which had been modified in some way—and, furthermore, that we had made arrangements to confine certain dresses to us with them and then from their own design, if they changed a pocket from the left hand to the right hand, or some small thing like that, and then it was looked upon as not being a copy upon that basis, we wanted to have some say in the matter.

So, we felt that our reservation was desirable, and also for the reason that it is extremely difficult at times to tell what constitutes a copy, as indicated.

3359 Mr. Weisman: I move that all of this testimony with regard to this reservation be stricken out as incompetent, immaterial and irrelevant, not binding upon the respondents, and, furthermore that the answer lacks any coherency and is not capable of a reasonable interpretation.

Examiner Bennett: Yes. I will strike it out from the point "in the estimation of the Guild."

By Mr. Hayeraft.

Q. Did you give the date when you were red carded? A. February 6—my recollection is February 6.

Q. Well, what was the result of the red carding? A. What?

3360 Q. How did it affect your sources of supply, of garments that you had been buying from members of the Guild? A. Absolutely stopped it.

Q. Do you know whether or not at the time that you were red carded you had orders outstanding with members of the Guild? A. We had.

Q. You had? A. Yes.

Q. Are you sufficiently familiar with your business to testify as to the names of the concerns with whom you had orders and the amount of business that you had then pending? A. No.

Q. You are not? A. No.

Q. There are orders, however— A. There are orders, and it can be presented, if you prefer it here.

Q. And there are men who can testify to that, are there? A. There are.

Q. I will ask you if you have made any investigation through your proper, usual, and customary sources of information, and regular sources of information, in your own organization, as to the effect of your inability to get 3362
garments from members of the Guild, upon your business? A. It had the effect of——

Q. No, no, no. My question was whether you have made the investigation. Just "yes" or "no." A. I have.

Q. As a result of that investigation that you have made through your subordinates in charge, as indicated in your previous answers, I will ask you to testify, as president of Strawbridge & Clothier, as to the effect upon your business as a result of your inability to get garments from the members of the Fashion Originators Guild of America, Inc.? A. I——

3363

Mr. Weisman: I object to the form of the question. Even the president of Strawbridge & Clothier is not clothed with omniscience, so that he can say with certainty what it was. If all of the witnesses which are produced here by the Commission are to be clothed with the halo of the Divine Being, then, of course, we are up against the proposition of no small difficulty because I doubt seriously that the Commission is going to grant such omniscience to our witnesses.

For those reasons, I submit that the question is highly improper in its present form, and substan-
3365 tially prejudicial to the rights of the respondents herein. How can we possibly cross-examine upon such broad and sweeping statements as that? How can we possibly give any pertinent rebuttal to it?

Examiner Bennett: I will let him answer. The objection is overruled.

Mr. Weisman: Exception.

A. In so far as its effect on our sales is concerned, which, of course, is more than a matter just of opinion, it is a matter of fact because we can quote it from records in our business, which records can be subpoenaed, if necessary, the immediate effect was somewhat as follows:

The immediate effect to begin with was the loss of 19 per cent. in our better dress business in the month of
3366 February, as against a gain of 9 per cent. in our total business.

In the month of March it was a loss of 10 per cent. in our better dress business as against a gain of 13.2 per cent. in our general business.

In April it was a loss of 11 per cent. in our better dress department as against a gain in our total business of 4.5 per cent.

In May it was a loss of 6 per cent. in our better dress business, or department, as against a gain in our total business of 15 per cent.

In June it was a loss of 1 per cent. in our better dress business as against a gain in the business in general of approximately 10.99 and a fraction per cent.

Q. When you say a loss or a gain, does that mean the per cent. as compared with the previous year's percentage? A. That is for the corresponding month of the previous year.

Q. The previous year? A. Yes.

Q. Was there any other effect besides the effect upon the sales? A. Yes. There was, very definitely, an effect upon 3368
our good will in two ways: First, the way I intimated in the previous answer that the inability of people, as indicated by our figures—that is, a loss to us through their inability to get the better type of merchandise at the same time that other stores were getting this merchandise brought about criticism, a criticism upon our business which we think is very detrimental, because not only were people—did we lose the sale but we lost the reputation of carrying things which we had a reputation for carrying ever since we have been in business.

Q. Did you, during the time that you were co-operating with the Guild, establish, and have you established any department which carried the better line of dresses exclusively? A. Yes. We established a shop called the "Guild Shop." This shop carried exclusively Guild gar- 3369
ments—garments made by the Fashion Originators Guild of America, Inc., of course, and not being able to get those goods that department had to be eliminated—and it was closed.

Q. Now, during the time that you were co-operating with the Guild, did you co-operate to the extent of returning

garments to manufacturers who were alleged to be—which were alleged to be copies of garments manufactured by members of the Guild? A. That information was given me by people in charge of that branch of our business.

Mr. Weisman: I ask that that answer be stricken out so that I may have an opportunity to object and get a ruling of the Court.

Examiner Bennett: Granted.

Mr. Weisman: We find in this an occurrence, I believe, an unfortunate recurrence of this being "alleged." I think my friend and I agreed that we were going to stick to the facts and as to copies
3371 especially there since we have a stipulation in this case which has precluded any interrogation on my prior examination in that regard, and I do not want to widen this scope of examination all over the lot in order to develop that, and therefore I suggest that if he will withdraw the word "alleged," I will withdraw my objection, if he will make the question, "Simply did they return goods."

Mr. Haycraft: The stipulation is just to the contrary; it agrees that we will not go into the question of whether or not they were copies, and that is the reason I used the term "alleged."

Mr. Weisman: Look here, my friend, I am getting a little tired of this. Now, we have the record
3372 and I want to get that record and see what the stipulation is. Turn to the record.

(There was a discussion off the record.)

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Read the question.

A. We very often, after I am satisfied that on the basis of simply an allegation of being copies, I find that they would be returned. I do not mean by that that we would

simply send them back upon the allegation of being a copy. Our stores had to have proof that they were copies in some way before they were returned. Some of my men might dispute that and that's the reason I made the first part of my answer that I did, but, as a matter of fact—it is a fact that they know more about it than I do. Of course, we did not, upon the basis of just a simple allegation as to being a copy, return them. After proof, which was satisfactory to us, however, they were returned.

By Mr. Haycraft.

Q. In regard to your former testimony as to the effect— immediate effect of the red carding upon the business of 3374
Strawbridge & Clothier, I will ask you whether or not, from your experience in the position which you now occupy, and have been occupying for many years, and the results of the operation of your business in times gone by, and up to the present time, if you have an opinion as to the future effect upon the business of Strawbridge & Clothier, as a result of the activities of the Fashion Originators Guild of America, Inc., as you have observed it and experienced it? A. The men that——

Q. The question is whether you have an opinion as to the future. A. I have.

Q. Will you state it? A. The thing of immediate moment to us, the immediate concern, is the approaching autumn business. From the figures which I have previ- 3375
ously read, you can see that this thing was most hurtful during the spring fashion season. We now face the autumn-fall fashion season. With all of our resources, the best of them will be closed to us, we are very apprehensive of its effect upon our business. We would not be apprehensive if the conditions which ruled our business ruled every other business in the City of Philadelphia, Pa. However, such is not the case——

Mr. Weisman: I object to whether he would or would not be apprehensive.

Examiner Bennett: I will allow it.

Mr. Weisman: Exception.

Examiner Bennett: Granted.

A. I might make the statement that the reason why we are apprehensive is because we know——

Mr. Weisman: I object as to why this witness is apprehensive. Apprehension has not as yet become a fact of evidentiary value or evidentiary substantial in any form whatsoever. If we are going into
3377 the shadows and twilight zones of men's minds where they have apprehensions, speculations, vague emotional eruptions and disruptions, surely this will be the most extraordinary lawsuit that was ever carried on in this or any other country.

Examiner Bennett: He is testifying as to his opinion.

Mr. Weisman: He is now testifying as to his apprehension, Judge, which he says is based upon an opinion and something else.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Apprehension is built on opinion, I might state in passing.

3378 We are fearful of this because of our experience in the spring season. To meet that, we have been put to more expense already, and we anticipate to being put to more as time goes on if we are to continue to be red carded. We have been obliged—it takes a long while to develop the type of skill which has been developed by our Fashion Originators Guild members, the Fashion Originators Guild members, I should say. We have been obliged already to

make effort from time to time to develop our own resources by subsidizing, by giving them funds, interesting ourselves, indirectly; making loans to them so that they can supply us with these goods which we must have to maintain our position in this city as a first-class store for everything which people want.

The longer this continues, the more it will cost us until the time—and this the Guild should be apprehensive of, probably, if I might use the word—until the time that we have succeeded in developing a sufficient number of manufacturers who can supply the goods which the Guild now supplies.

Mr. Weisman: I would like this admonition to 3380
the Guild be stricken out unless my answer to him also will go into the record, to wit: That when these men have been spending their own money in the development of this kind of high-grade merchandise, then that is something the Guild will never worry about because they had better, Strawbridge & Clothier, worry about it themselves because you will find that when these manufacturers have gone to the expense, time and effort to develop themselves into a first-class manufacturing institution, that they will then be within the Guild.

Examiner Bennett: All right, it may be in the record if that is the idea.

Mr. Haycraft: I merely desire to call counsel's 3381
threat in the record to the attention of the Commission. I think that the Commission will be very glad to know of this threat by counsel.

Mr. Weisman: I only want to say this on the record: That if it is considered an improper threat, by Mr. Haycraft or others, to stop the acts of thieves, of pirates and others of the same stamp, then it may be said to be a threat, if it is a threat

for an honest man to defend himself against thieves and those who consort with thieves, I am quite happy to accept the appellation, otherwise I think the record speaks for itself.

Mr. Haycraft: It seems to be more or less a question of a little pirate and a big pirate than anything else the way you put it.

Mr. Welsman: That is the way you think. Straight thinking goes with straight reasoning, and straight reasoning is what the Guild has been doing. When the time comes that the stamping out of thievery and the conducts of thieves is regarded
3383 as a threat, then I say our entire system has fallen never to rise again.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, if you gentlemen have finished your comments among yourselves, we will proceed.

Mr. Haycraft: I have nothing further for the witness.

Cross-examination by Mr. Weisman.

Q. I believe you testified that you have been president of Strawbridge & Clothier for nine years? A. Yes, sir.

Q. May I ask you before that were you with Straw-
3384 bridge & Clothier? A. Before that for some forty-six years, yes, sir.

Q. Forty-six years? A. Forty-six years.

Q. Then you have been with Strawbridge & Clothier for fifty-four years? A. Fifty-seven years this year.

Q. Thank you. A. Yes, sir.

Q. And you know the personnel and policy of Strawbridge & Clothier under your regime? A. I do.

Q. You do? A. Yes.

Q. And your subordinates, I understood you have said, report to you on all of these matters of policy, and you are the ultimate authority in connection with that policy? A. Major policies.

Q. Major policies? A. Major policies.

Q. I assume you used the word "major" because you knew I had or we had under discussion in this inquiry the matter of your policy with regard to the Fashion Originators Guild of America, Inc.? A. I used it because it is a fact. When I discuss major policies, that is the fact, and that there are policies and decisions as to policy which are related to other matters which are delegated to other experts in our business. 3386

Q. Other experts? A. Yes.

Q. Those matters of your decision with regard to co-operating during the elimination or towards the elimination of style piracy, was this a major policy or a minor policy? A. I think it was very decidedly a major policy.

Q. Therefore, you knew what was being done in connection with it; is that correct, Mr. Tily? A. I knew what was being done in so far as it was reported to me by my men in the regular course of business.

Q. You did? A. Yes.

Q. You are not seeking to hide behind that statement that you knew what was being done in so far as it was reported to you by your men in the regular course of business, are you; you are not trying to hedge or hide behind that statement in any way? A. No. 3387

Q. You are not? A. No.

Q. Let us stay out in the open daylight now and not hide behind anything. A. I will not hide.

Q. Do you mean you were responsible for what was done, were you not? A. What is your question?

Q. You were responsible for what was done so far as Strawbridge & Clothier was concerned, were you not? A. I was, yes.

Q. You admit that? A. It is a fact.

Q. You knew what Mr. Taylor told you and what he did with regard to this policy? A. Generally, yes.

Q. Generally? A. Yes.

Q. You knew what Mr. Frank Smith did? A. Frank Smith?

Q. Yes. A. Generally.

Q. Generally? A. Right.

Q. Did you have a Mr. Clarke with you? A. Mr. Clarke is our publicity director.

Q. Mr. Clarke is your publicity director? A. Yes.

Q. Do you know what he did generally with regard to
3389 this policy? A. No—no, I did not know, generally.

Q. In other words, is it your opinion that Mr. Clarke may have acted independently without consulting the head of Strawbridge & Clothier with regard to this policy? A. Excepting as that authority had been delegated to Mr. Clarke as merchandising manager, or Mr. Smith, as merchandising manager.

Q. Yes. Now, what were Mr. Taylor's duties? A. He was divisional manager, which, in our business, means that he had control of a certain branch of our business and that was confined to the dresses.

Q. What does Mr. Clarke have to do with the business of Strawbridge & Clothier? A. He is now our publicity director and acts in consultation on merchandise matters so far as it affects publicity, and policy, with our Mr.
3390 Smith. The two consult on those matters as well as others.

Q. And he has the purpose, of course—in other words, his purpose was to increase your sales; that is why you have a publicity director? A. Unquestionably.

Q. No doubt about it? A. No.

Q. Now, to call—his duty was to call to the attention of the public, I take it, those things which you bought.

and which you thought might increase the sales of your store by their sale, and other matters which he thought might so increase the sales of your store? A. General promotion of the business, and particularly promotion as it affected that department or departments; yes, sir.

Q. What was Mr. Frank Smith's purpose? A. His position?

Q. Yes. A. General merchandise manager.

Q. I see. Now, we are not merchants and we may not know as much about those terms as you do. Will you kindly explain that to me? A. I might explain that being general merchandise manager—the general merchandise manager is the man to whom the divisional managers re- 3392
port. He is responsible for all merchandising problems in the business, and the arrangements thereof. Reporting to him are divisional managers, and in turn the buyers report to them.

Q. Now, do you know Mr. Bergdoll? A. I—yes, I think I do.

Q. Who is Mr. Bergdoll? A. Yes, he is the general—he has charge of the ready-to-wear division, the merchandise man for the Associated Merchandising Corporation.

Q. And what is your relationship to the Associated Merchandising Corporation, and when I say "your," I mean the firm of Strawbridge & Clothier? A. Pardon me.

Mr. Haycraft: All of this is objected to as not 3393
being proper cross-examination, incompetent, immaterial and irrelevant. Mr. Examiner, this was not gone into on direct examination at all.

Mr. Weisman: Mr. Examiner, this is a foundation question to show what their general policy was, and how it was arrived at.

Mr. Haycraft: I object to that, if your Honor please. There is no basis for such examination as

this. No question was asked this witness with respect to the American Merchandising.

Mr. Weisman: I don't have to confine myself to questions that you asked. I am constantly met with that peculiar type of objection. I didn't ask about that; therefore, you can't—I may be asking about this, "Does this prove something else that you asked about."

Examiner Bennett: I am not going into that Association business to any extent.

The Witness: We are members along with some other nineteen stores.

3395 *By Mr. Weisman.*

Q. And are some of the purposes for which you are members that you may co-ordinate, so to speak, your policy with other stores?

Mr. Haycraft: Same objection, Mr. Examiner, to this.

Examiner Bennett: I will let him answer. Overruled.

A. Co-ordination of policy, no, not on co-ordination of policy.

By Mr. Weisman.

3396 Q. Well, what then? A. Policies are discussed. Each store is absolutely independent and comes to its own decision as to what its policy is.

Q. Yes, but your policies are discussed with Mr. Bendoll in connection with merchandising of dresses? A. Details of purchasing and things having to do with merchandising, yes, which includes in some cases policy matters, yes.

Q. Yes. And from time to time did you discuss your policy with regard to the Fashion Originators Guild with Mr. Bergdoll? A. They were discussed by our people.

Examiner Bennett: Are you objecting?

Mr. Haycraft: To that? I am objecting to all questions relating to Mr. Bergdoll.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Your Honor's hearing is much better than mine, although I sit much closer to Mr. Haycraft than does your Honor. I didn't hear the objection.

Examiner Bennett: I didn't hear it, either.

Mr. Weisman: I thought that your Honor heard 3398
something that I couldn't.

Examiner Bennett: I was asking him if he was—I think we have gone as far in this direction as is useful to us.

Mr. Weisman: I respectfully——

Examiner Bennett: All right.

Mr. Weisman: —except.

Examiner Bennett: Note an exception.

By Mr. Weisman.

Q. Did Mr. Bergdoll, from time to time, express with your knowledge to the Guild your attitude to it or towards its policies and activities?

3399

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I make this offer of proof: If the witness were permitted to answer that question, I would show that Mr. Bergdoll, from time to time acting for and on behalf of Strawbridge & Clothier, did communicate with us and discuss the policy of the store

towards this matter of protection of original styles of members of the Fashion Originators Guild.

I respectfully except to your Honor's refusal to allow me to go into that matter.

Examiner Bennett: The offer is irrelevant on its face in view of the testimony of this witness.

By Mr. Weisman.

Q. Well, as a matter of fact, didn't your store write a letter to the Guild authorizing Mr. Bergdoll to act for and on its behalf with the Guild? A. It did.

Q. Have you a copy of that letter here? A. No.

3401

Mr. Weisman: Now, your Honor sees how vitally I have been injured by your Honor's ruling.

Examiner Bennett: What has that to do with the issues in this case?

Mr. Weisman: We will show what Mr. Bergdoll's avowed representative, what their expression of policy was towards this.

The Witness: I might help you, if you are hunting for that letter, if you want me to. I didn't—I have rather indefinite recollection of it.

Mr. Weisman: We have a copy of it here. We will produce it.

Mr. Haycraft: What of it? I am objecting to it, Mr. Examiner; as not being proper cross-examination.

3402

Mr. Weisman: I mean, this is pretty indicative of your present course. You are objecting before you see what we are offering, and you did that once before.

Mr. Haycraft: I am objecting to the entire line of examination with respect to Mr. Bergdoll. If they want to put Mr. Bergdoll on the stand to testify as to what he did, that is all right.

Mr. Weisman: I wouldn't want to put Mr. Bergdoll on the stand.

Mr. Haycraft: It is not proper cross-examination?

Mr. Weisman: I am cross-examining him.

Mr. Haycraft: I suggest that counsel refrain from addressing the Examiner while I am addressing the Examiner. Common courtesy asks for that; requires it.

I say, if they want—if counsel for the respondent wants to put Mr. Bergdoll on to prove certain things as to what Mr. Bergdoll may have done it is perfectly all right when the time comes. It is certainly 3404
not proper cross-examination as to this witness as to the matters which I interrogated him on direct.

Mr. Weisman: May I have the last question?

(Question and answer read.)

By Mr. Weisman.

Q. And by that letter you wrote, did you not——

Mr. Haycraft: Objected to. Reading from an exhibit, from a letter which is not in evidence.

Mr. Weisman: I haven't. Now do you know I am reading?

Mr. Haycraft: Oh, well.

Mr. Weisman: Are you another mind reader. Now the lawyer can read minds. 3405

Mr. Haycraft: The question shows that you are reading.

Examiner Bennett: Ask your question.

Mr. Weisman: Will you instruct counsel not to interrupt my questions?

Examiner Bennett: Go ahead and ask your question and let's have this hearing——

Mr. Weisman: May I have the question to the point where I was interrupted?

(Question read.)

Mr. Haycraft: You see, Mr. Examiner, he is reading from an exhibit. He is reading from an exhibit which is not in evidence. I object to the reading from that letter.

Examiner Bennett: You can question him until doom's day on that association and you won't get one answer in the record. I have told you that to begin with, and that line is shut off. I let you develop the trend of it before I shut you off, and I
3407 am not going to listen to any answer to any question you may ask. Of course, you may ask questions if you want to waste time.

Mr. Weisman: Of course, your Honor perhaps misconceives the purpose of, at this time, the asking of these questions. At the proper time I will show what the A.M.C. is and how it operates, and so forth and so on, but that is not the purpose of asking this witness this question. This witness has testified that a Mr. Bergdoll was his accredited representative to deal with the Guild. Now, I want to fix that irrespective of whether or not the A.M.C. was good, bad or indifferent, whether in itself it was a monopoly or whether it depressed or injured the
3408 manufacturers. That is not the purport of this question. It is to prove from this witness that he authorized Bergdoll to act for and on his behalf so that we may, in cross-examination of this witness submit what Bergdoll did for and on behalf of this store. And I submit I should be entitled so to do.

Mr. Haycraft: I object to that. That is just the reason why I am objecting to all of this line of examination. What Bergdoll may have done is irrelevant and immaterial to this witness' testimony and not proper cross-examination.

Examiner Bennett: Yes. I think that it is beyond cross-examination. It may be proper at the time, but the proper time hasn't come.

By Mr. Weisman.

Q. Do you know Mr. Charles G. Taylor? A. Yes.

Q. I show you this signature—I will withdraw that. Have you ever seen his signature?

Mr. Haycraft: I object to the question. I object to the portent on the part of counsel for the respondent to evade and avoid the ruling of the Examiner by now showing to the witness a paper signed by another man and addressed to Mr. Bergdoll to bring out the very things about which I have been objecting to right along. 3410

Mr. Weisman: Judge, there isn't a single fact in his statement.

Mr. Haycraft: Not Mr. Bergdoll ——

Mr. Weisman: Again he is trying——

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I make this offer of proof: That if I had been permitted to ask this question the witness would have stated that he recognizes and has seen the signature of Mr. Charles G. Taylor, whom he has before identified as his divisional merchandise manager. 3411

The Witness: Former divisional merchandise manager at the time.

By Mr. Weisman.

Q. Yes. Former divisional merchandise manager.

Mr. Weisman: And I respectfully except to the ruling.

By Mr. Weisman.

Q. I show you this signature and ask you whether or not you recognize that as the signature of Mr. Taylor?

Mr. Haycraft: It is the same question and the same objection.

Examiner Bennett: Sustained.

Mr. Weisman: May I ask upon what theory your Honor sustains these objections? Your Honor doesn't even know what I am going to prove. I am trying to prove——

Examiner Bennett: Sustained. Let me see these
3413 papers?

Mr. Weisman: What?

Examiner Bennett: Let me see these papers?

Mr. Weisman: You said, "Let me see these?"

Examiner Bennett: Yes.

(The paper referred to was handed to the Examiner.)

Examiner Bennett: Sustain the objection.

Mr. Weisman: Exception.

And now I ask that this letter be marked for identification.

Examiner Bennett: It may be marked for identification the next respondents' exhibit.

(Letter from Strawbridge & Clothier, under date
3414 of December 28, 1935, was marked for identification Respondents' Exhibit 16.)

By Mr. Weisman.

Q. Do you know whether or not prior to February, 1936 Mr. Bergdoll had been acting as—Mr. Bergdoll, in New York, had been acting as your representative in connection with your transactions with the Guild? A. In a qualified way.

Q. And for how long was he so acting in such qualified way? A. At the time that we authorized him to do it, which I don't know exactly when it was.

Q. Well, how long, Mr. Tily? A. Well, if I knew I would tell you.

Q. What is your best recollection? A. Probably from the time we had the notification as for the change of policy until the time of the red carding, but he was not solely our representative. He was a representative in a qualified way. My recollection was that——

Q. We understand you have so testified. Now, how long had he been your representative in a qualified way? A. From the time that thing was under question. My recollection is that I wrote—may I have—I have some papers here. May I refer to them? 3416

Q. Why, certainly. A. My recollection is that it was not very long. I may be wrong in that, but this is very definitely a fact: We were—we were told some time in the early part of February——

Q. No, wait a minute. I guess you have forgotten my question was— A. Yes, I will answer you.

Q. How long had he been acting in a qualified way? What is your best recollection? A. I am endeavoring to find out. I think I will endeavor——

Q. No. I don't want your thoughts out loud because I can't tell whether you are giving us the correct thoughts or all of them out loud. The Examiner does not permit the witness to think out loud. He only permits him to answer out loud. Now, you can answer me as loud as you want, but I want an answer. I said, What is your best recollection of the time during which Mr. Bergdoll was acting as your qualified representative, a representative with qualifications? A. My recollection is that it was a short time before the writing of this letter (indicating). 3417

Q. Well, what letter was written? A. The letter was written that we had been giving care and consideration to

their letter of February 4. It has been "thoroughly discussed by our merchandising organization. Will you be good enough to answer the following questions as your declaration of the co-operation which has been signed by other merchants?"

"Are you willing to tell us who they are and what proportion of the better element of the craft they represent? On receipt of this information we shall be glad to give the matter further consideration as it is our endeavor to act in consonance with the majority of the better retailers of the country."

Q. When was that letter written? A. February 6.

3419 Q. February 6?

Examiner Bennett: What year?

The Witness: 1936.

By Mr. Weisman.

Q. Now, would you say it was only from that time that Mr. Bergdoll was authorized to act as your qualified representative? A. My recollection is that we wanted him, and so notified——

Q. No. Now, please. A. Yes. My recollection is that you were notified that we had authorized him to find out some of these facts which we asked for here.

Q. Mr. Tily, you evidently have forgotten the question. You have still not answered my question or understood my

3420 question. I will ask it again. I said to you: Is it your best recollection, as head of Strawbridge & Clothier, with your complete knowledge of its policies, that Mr. Bergdoll was not authorized to act as your representative in a qualified way before February 6, or is it your recollection that prior to then you had already authorized him to act? A. Prior to then, but just how long I do not know.

Q. Now, I am asking you to give me your best recollection of how long prior to them it was, whether it was a

month or three years or two years or six months? A. My recollection——

Q. Do you have any recollection of that? A. My recollection is, as I have just told you, that it was a short time before this trouble, this new thing.

Q. What do you mean by a short time? A. Well, a short time—in my mind, a short time—now, a short time is relative; isn't it?

Q. I am asking the questions. You are giving the answers. A. A man's lifetime compared with eternity is short. It is so relative.

Q. Did you mean when you said a short time that you meant he had been authorized for a short time, when you 3422
compare the time that he was authorized to all eternity; is that what you meant? A. Not unless you——

Q. Then what did you mean? I am trying to find out from you what you meant when you told me he had only been authorized for a short time. A. I can only make a guess as to the exact length of time.

Q. Well, what is your best guess?

Mr. Haycraft: I object to guesses.

Mr. Weisman: I would like to see how the head of this business guesses about his representations, and I submit it is a proper item of cross-examination on the credibility of the rest of his testimony.

By Mr. Weisman. 3423

Q. Now give us your guess, then?

Mr. Haycraft: I object.

By Mr. Weisman.

Q. If that is the best you can do as the head of this business?

Mr. Haycraft: I object to the guess, Mr. Examiner, and the fact that he is the head of this business is a reason why he should not know the details of such things as that. Naturally, as the witness has already said, it is anyone's common knowledge that a president of an organization of this size is not familiar——

Mr. Weisman: Are you trying to justify him or tell him not to answer?

Examiner Bennett: Just a moment.

Mr. Haycraft: —is not familiar with all of the details of the business. I object to any further
3425 questioning on this length of time. The witness has said he doesn't know and he apparently hasn't any recollection. I don't think he ought to be further badgered about it.

Examiner Bennett: Why can't you give it to us without a guess?

The Witness: I am under oath, as I was reminded a little while ago.

Mr. Weisman: Did you need the reminder?

The Witness: No, I didn't need the reminder. I——

Examiner Bennett: You were not familiar with those details?

The Witness: I was not familiar with their—no, not familiar with all details. My recollection is
3426 that it was a short time, and a short time can be—I would say some time, a short time would be between the 1st of January, possibly, and the time of our red carding.

Examiner Bennett: That is, this year?

The Witness: This year.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you remember a conference that was had between yourself and Mr. Taylor concerning the authorization to Mr. Bergdoll? A. Yes.

Q. When was that conference? A. That I do not remember. It was during—I can say this: It was during the time between the issuance of the new policy and the time of our red carding.

Q. You said that Mr. Bergdoll was to act as your qualified representative. Was that correct? Do I quote you correctly? A. Yes.

Q. What do you mean? What qualifications did you mean when you used the word "qualifications"? A. Limi- 3428
tations.

Q. Restrictions or limitations? A. Yes. Well, my recollection was, and that is my——

Q. Well, what would the limitations— A. The limitations, as I understand it, as I recall it, were to examine the records and see how many merchants had signed, because they had made—they had replied, that is, several thousand. Just who they were we were anxious to find out who they were. And the authorization, the correct authorization I made was that Mr. Bergdoll would get that information for us. That was the limitation, qualification I had in mind.

Q. Did you give that qualification to Mr. Bergdoll? Did you tell him that he was limited in his representation 3429
of you?

Mr. Haycraft: That is objected to.

A. No.

Mr. Weisman: I want——

Examiner Bennett: He may answer.

Mr. Weisman: The Court says you may answer.

A. I don't recall that.

By Mr. Weisman.

Q. Did you tell the Guild that Mr. Bergdoll, in his representation of you, was limited?

Mr. Haycraft: Same objection.
Examiner Bennett: Same ruling.
The Witness: Don't recall that.

By Mr. Weisman.

Q. Well, do you—you sent him forth as your representative; didn't you? A. In the qualified way in which I have spoken of.

3431 Q. How did the people who were to deal with him know that he was acting in a qualified way rather than in an absolute way? That is what I am trying to find out from you. A. I don't know how they would know it.

Q. How? A. That is something that they would have to testify to, how they know.

Q. Didn't you think that if you were sending somebody out as a limited representative, the person who he was to deal with should be notified by you of the fact that his representation of you was limited?

Mr. Haycraft: Same objection.
Examiner Bennett: Overruled. He may answer.

By Mr. Weisman.

3432 Q. I think the purport of the question was whether or not you divulged to the Guild at any time the fact that Mr. Bergdoll's representation of Strawbridge & Clothier was a limited one. A. I did not.

Q. When you say, "I did not," do you mean that somebody else did? A. I have no knowledge that anybody else did.

Q. So, in other words, in so far as you know, notwithstanding the fact that you have testified here that Mr.

Bergdoll was your representative in a limited fashion, or with restrictions, yet such restrictions were nevertheless conveyed to the Guild? A. I have no knowledge that they were so conveyed.

Q. But you have knowledge that you notified the Guild, have you not, that he was your representative? A. I have a knowledge, yes, that I notified the Guild.

Q. What? A. Either directly or indirectly. My recollection is that he was to get this information for us of which——

Q. Wait a minute. You say "my recollection is either direct"—haven't you a recollection on whether or not you personally notified the Guild that Mr. Bergdoll was to act as your representative with the Guild? A. I have my recollection; my sole, definite recollection is that he was to find out for us. 3434

Q. No. That isn't what I asked you. Listen to the question: I want to know whether or not you have a recollection that you personally notified the Guild that Mr. Bergdoll was to act as your representative? A. I did not personally; not to my recollection.

Q And that is your best recollection? A. Except in this qualified way.

Q. No. No. Is that your best recollection, that you never personally notified the Guild that Mr Bergdoll was to act as your representative? A. Except in this qualified way. My personal recollection is that I, in trying to develop a reason for going along, if we could, that he was to examine certain records for us. 3435

Q. No. No. You still don't answer my question and it is a very simple one.

Mr. Haycraft: He has answered it.

Mr. Weisman: Please don't interrupt me. The Court knows whether I am right or wrong, and it doesn't need your assistance.

Mr. Haycraft: Mr. Examiner, I object to any further interrogation on this point. The witness has said that he did not have a personal recollection of notifying the Guild. Now, that to my mind is a fair and complete answer.

Mr. Weisman: Let me ask him, if you heard that.

Mr. Haycraft: You have already asked him that question three or four times.

By Mr. Weisman.

Q. Let's see. You made a statement——

3437 Mr. Haycraft: Go back in the record.

By Mr. Weisman.

Q. Did you testify that you have no personal recollection of having personally notified the Guild that Mr. Bergdoll was the representative of Strawbridge & Clothier? Did you so testify?

Examiner Bennett: I will sustain the objection to a question of that kind.

Mr. Weisman: All right.

By Mr. Weisman.

Q. Now, you did testify that you have a recollection of
3438 things which transpired, I believe, in 1932; you said in the winter of 1932; and you testified as to your recollection of conversations that you had, state you had in 1932 isn't that so? A. Conversations?

Q. Didn't you testify on direct examination that you had certain conversations with Mr. Post? A. That I had certain conversations?

Q. Yes. A. I did not so testify.

Q. Well, let me ask you. Did you state that you had a recollection that you received letters from Mr. Post in the autumn or winter of 1932? A. Yes.

Q. On behalf of the Guild? A. Yes.

Q. You have given that as your recollection? A. Yes.

Q. And notwithstanding your testifying from your recollection you cannot remember by that same recollection whether or not you personally notified the Guild in February, 1936, that Mr. Bergdoll was your representative; is that so? A. That is so, except in the qualified way of which I have spoken.

Q. Is this your signature, Mr. Tily (indicating)? A. Yes, that is the letter, I recall. 3440

Mr. Weisman: I offer that for identification.

(Letter from Strawbridge & Clothier, Philadelphia, under date of February 8, 1936, to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, was marked for identification Respondents' Exhibit 17.)

By Mr. Weisman.

Q. Did you send that letter to the Guild on February 6, 1936? A. I did.

Q. You now recollect it? A. Yes.

Q. When you see it? A. I thought that was a qualification in it. I know the reason—— 3441

Q. You said you thought there was a qualification? A. Yes. It was based on a letter received from Mr. Post to examine certain records for us.

Q. Didn't you testify— A. That is the qualification.

Q. Didn't you testify before that there was a qualification? Didn't you testify to that? A. Yes; there was a qualification, yes.

Q. There— A. Not in the letter.

Mr. Weisman: I offer the letter in evidence. Do you want to see it?

Examiner Bennett: You may have an exception. That letter is not intelligible as it stands.

By Mr. Weisman.

Q. I show you Respondents' Exhibit 17 for Identification, referred to therein (indicating). You refer to a letter of February 7. I ask you whether or not this copy of a letter of February 7 is the letter therein referred to? It had with it this other sheet (indicating). A. I remember receiving it.

3443 Q. And that is the letter of February 7, 1936, referred to in your letter of February 8; is that right? A. Yes.

Mr. Weisman: I now offer both in evidence.

Examiner Bennett: It is Commission's Exhibit 364 for Identification.

(Copy of letter from President, Strawbridge & Clothier, under date of February 6, 1936, to Mr Albert M. Post, Executive Director, Fashion Guild Originators of America, New York, N. Y., was marked Commission's Exhibit 364 and received in evidence.)

(Letter from Strawbridge & Clothier, heretofore marked for identification Respondents' Exhibit 17, 3444 was marked as an exhibit and received in evidence.)

(Copy of a letter from Albert M. Post, Executive Director of Fashion Originators Guild of America, Inc., under date of February 7, 1936, to Herbert J. Tily, Strawbridge & Clothier, Philadelphia, Pennsylvania, was marked Respondents' Exhibit 18-A and received in evidence.)

(Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild was marked Respondents' Exhibit 18-B and received in evidence.)

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Judge, we are now finished with this particular line of inquiry, and I notice it is 12.30 o'clock.

Examiner Bennett: All right. We will adjourn until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.) 3446

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. You may resume, Mr. Weisman.

By Mr. Weisman.

Q. Now, Mr. Tily, Strawbridge & Clothier, you have testified, is a large institution? A. (Witness shakes head in the affirmative.)

Q. The stenographer cannot hear you if you cannot speak. You just shook your head. Would you please answer? A. It is. 3447

Q. You are the head of that institution and in charge of its policies? A. I am.

Q. May I ask you—and no implication is intended by the question—whether or not as the directing head of that institution it is a policy of your store to keep the promises or commitments they make to the people with whom they do business? A. Absolutely.

Q. There is no question about that? A. No question.

Q. May I also ask you whether or not you understood that you were doing business with the various members of the Fashion Originators Guild? A. That's true.

Q. And may I also ask you whether part of your policy—and no implication is meant by this question—was to be truthful and straightforward with them? A. Yes, sir.

Q. And you, as a member of this large institution, also had a sense of responsibility to your institution, as such, and to your stockholders and board of directors, as you have testified on direct examination? A. That is quite so.

3449 Q. Now, you would not, I take it, then, in the ordinary practice and performance of your duties, write to your customers a statement which was untruthful, would you? A. Not if we knew it to be so.

Q. And, if you made a statement at that time when you wrote any particular letter, it was the truth when you made it? A. So far as we knew.

Q. And I also take it that if the statements you made at a prior time are at variance with any of your present recollection, you would like to correct that testimony? A That is so.

Q. May I ask you whether or not, as the head of this business, and as the directing person in charge of its policies, it was your practice to hide anything from the
3450 people you were doing business with which was of interest to your company to disclose? A. No.

Q. In other words, then, I take it that if your company might be injured by a course of conduct, and that conduct was persisted in by anybody with whom you were doing business, as part of your duties to your company, and your stockholders, you would seek to change that? A. Quite correct, sir.

Q. Now, your position is a responsible one? A. It is.

Q. And you fully realize its responsibilities? A. I do.

Q. Now, in Commission's Exhibit 362, you wrote to the Fashion Originators Guild, over your signature, the following: "We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property right of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." Now, that was true, was it not? A. Yes, it was.

Q. Now, in this position that you maintain, when you wrote that letter you were exercising your functions as head of this large institution? A. I was.

Q. And when you wrote in that letter concerning the 3252
recognition of a property right of the manufacturers, you knew what you were writing about, did you not? A. Yes.

Q. You are not in the habit of signing letters over your signature, and on the stationery of Strawbridge & Clothier, without any knowledge of what you are writing about? A. No.

Q. Your duties compel you, or impel you, I would rather say, to be a well-informed, conscientious and honest executive; is that not so? A. That is so.

Q. And, as such well informed, conscientious executive, did you, when you wrote of the property right of the manufacturers in the styles created by them, know what you were talking about? Did you? A. Not from my knowledge of dresses, no.

Q. In other words, this letter is an example where you 3453
wrote a letter and used a lot of words, the meaning of which you did not know anything about? A. No, it is not so.

Q. Well, did you know of the property right of manufacturers in their style organizations? A. I knew; I did not know that they had a real property right, legally.

Q. But did you know of a moral property—well, I will withdraw that. There is no implication in this question: In the conduct of your business and as the executive head of so large an institution as this is, in the conduct of your business do you recognize moral as well as legal observations on the people with whom you do business? A. Moral, ethical and——

Q. Moral and ethical? A. Moral, ethical and legal, or all of them.

Q. When you refer to the property right of manufacturers in their styles created by them, I take it that you felt that there was a moral property right which they had?

3455 A. That is correct.

Q. Now, this was a moral right in that you felt that these people had created something which the law in its present state, did not give them the right of protection in regard thereto; is that it?

Mr. Haycraft: That is objected to as irrelevant and immaterial: not in this case.

Mr. Weisman: I submit it is rather important Judge.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, I take it this way, then, that at that time you

3456 felt that you morally ought to protect such property right as you morally felt they had in the style originations?

Mr. Haycraft: Same objection.

Mr. Weisman: Oh, I submit that is perfectly—

Examiner Bennett: Well, I will overrule that.

By Mr. Weisman.

Q. The Court says that you shall answer. A. Morally, yes.

Q. Yes. You also wrote as follows: "Believing the principles declared by your members"—now, before you wrote that you believed the principles, you knew what the principle was, did you not? A. It was the protection of any moral right a man might have.

Q. And when you wrote this letter you, by using the words "believing the principle," wanted to convey to these people with whom you were doing business that you had a firm belief in that principle; is that not so? A. Believing in—firm—you have introduced firm, because my letter has a qualification in it.

Q. Well, I am coming to that. A. That is the reason that I did not want——

3458

Q. Well, you— A. I believed in it.

Q. You wanted them to know that you believed in the principle. A. Yes, yes.

Q. And you said that you furthermore believed the principle to be proper for the protection of the public. Now, that was true, too, was it not? A. Absolutely true.

Q. You were not seeking to parade under a sanctity? A. No——

Q. Or a moral tone that was not a fact, were you?

Mr. Haycraft: Objected to on the same ground.

Mr. Weisman: This man says in this letter that he believes this is for the benefit of the public, and I want to know whether he is truthful in that statement. I submit it is entirely proper cross-examination both as to fact and as to the credibility of the witness.

3459

Mr. Haycraft: The letter speaks for itself.

Mr. Weisman: No, but I want him to speak for himself. A man may write anything. I want to find out whether he is truthful when he wrote it.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: You may answer if you have any answer.

A. Not seeking to parade, no.

By Mr. Weisman.

Q. In other words, when you said that this policy of the Guild was a protection for the public, you honestly believed it and meant it; is that not so? A. Yes.

Q. And I also understood you to say that before you acquiesced in this policy and came to this conclusion, you had discussed it with your Mr. Taylor, who was your divi-
3461 sional manager, and your Mr. Smith; is that not so?

Mr. Haycraft: What is that question?

A. If I did state it it is in the record——

Mr. Haycraft: What is the question?
(Question read.)

A. That is correct.

By Mr. Weisman.

Q. That is correct? A. Yes.

Q. And it is so correct not only that you so stated on your direct examination, but it is correct in fact, is it
3462 not? A. That I discussed it, absolutely.

Q. Now, so that the sentiments expressed in this letter therefore represent not alone your sentiments, but the sentiments combined of Mr. Smith and Mr. Taylor; is that not so? A. As to—yes. As to the moral significance, they are not our words, you know; they are yours.

Q. No. A. They are yours.

Q. You signed this letter? A. Yes—they are your clients' words.

Q. Yes, and—well, you would not, as the head of this company, Mr. Tily, sign a statement on the letterhead of Strawbridge & Clothier, with your own personal signature on it, unless it was true, would you? A. No.

Q. So it was true? A. Yes.

Q. Now, you also wrote that this policy was properly for the protection of the public, for the retailer; that was you, is that not so? A. That is right.

Q. In other words, this policy was also for your protection? A. Yes.

Q. And you also stated it was for the protection of the manufacturer? A. Correct.

Q. You also stated in this letter the following: "We 3464
wish to go on record"—referring to the foregoing—"as stating our fixed business policy," is that so? A. It is there; yes, sir.

Q. Then you stated that your fixed policy would be as follows: "We do not and will not knowingly sell in our Ladies' Ready-to-Wear Department any copies or pirated dresses of original garments created by any members of your Association." A. That is the statement.

Q. Now, that was an honest statement? A. Honest statement.

Q. Now, I take it, or may I take it, from this letter, that you were not going to do that because you recognized the property right of the manufacturer in his original design? A. And——

3465

Mr. Haycraft: I object.

Q. And that also——

Mr. Haycraft: Just a moment.

Mr. Weisman: I will withdraw my last question.

By Mr. Weisman.

Q. Now, as the head of——

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. —of this large institution in this grand metropolis which we are now visiting, you recognize, do you not, a duty to the public? A. We do.

Q. And you are ever mindful, in the conduct of your business, that it is part of your duty to honestly fulfill that duty to the public? A. Quite so.

3467 Q. And when you wrote this letter that you wrote, you meant to convey, did you not, in words or substance, that this style protection of original design was properly for the protection of the public? A. Quite correct, sir.

Q. And you believed it to be for the protection of the public; is that so? A. That is so.

Q. Now, in the practice of your business, as the head of this business, are you, to the best of your ability, ever mindful for the accomplishment of those things which will best serve the public, best serve your store's interest and best serve the interests of those with whom you do business? A. That is our——

Q. And is that your complete aim? A. Our complete aim.

3468 Q. This letter was honest? A. Honest.

Q. Honest? A. Yes.

Q. If that was so, will you tell me why on your direct examination at the hands of Mr. Haycraft you testified that the greatest reason that you joined the Guild was because you were forced to do so, or words to that effect? Does anyone ever have to force you to do that which is best for the public, best for the persons you do business with and best for your own store?

Mr. Haycraft: Objected to as a double question. I think we had better take them one at a time.

Mr. Weisman: Very well. We will take them one at a time.

Examiner Bennett: Overruled. I shall let the witness explain. If counsel desires to ask the question serially he may do so.

By Mr. Weisman.

Q. You may answer? A. What is the first question you want me to answer?

(Question read.)

3470

Examiner Bennett: Are you contending that that is the only reason he gave?

Mr. Weisman: He said that that was the greatest reason. His testimony was that the greatest factor which they took into consideration was that, and then he repeated that and said that the determining factor was that, and furthermore, and so forth and so on.

By Mr. Weisman.

Q. Please give your answer to the question. A. The determining factor was that because of the conditions which existed at that time—everything which I have answered I answer again as to the affirmative as to honesty of purpose, and so forth.

3471

It is a question of ability to do it. We may want to be as right as—we always want to be right. There are certain definite impossibilities at times, although you may try very hard to be correct. You may try to do right. We have tried to avoid being unfair with manufacturers' rights and others constantly in the prosecution of our business. Away from the determining factor, why, we

felt it was impossible to—we felt it was impossible—however, we had no objection—we had to go along with you although we agreed with the principles.

Q. We will come to that later.

Mr. Haycraft: Let the witness complete his explanation.

By Examiner Bennett.

Q. Have you finished your answer? A. No, sir.

Q. All right. Please proceed with your answer. A Will you please read my answer as far as I have given it?

3473

(Answer read.)

A. The one—the fact that one has sought to be honest is simply a question that entered into it. As to which was the finally determinative question with us which made us act is another thing. We tried our level best to weigh this thing.

Q. I do not believe I understand that answer very well. Do you understand the question? A. Yes, I do. I was just making a comment there.

We are in favor of anything that can be done. There is no law supporting property rights. There is a law supporting discrimination and the discrimination was the thing which made us feel it was impossible to carry the thing out, as has been proven in our judgment.

3474

Mr. Weisman: I ask that that part be stricken out as to what has been proven in their judgment.

Examiner Bennett: Motion granted.

A. Well, the fact which finally satisfied us, in our desire to be fair with the public and the manufacturer—although we felt it was impossible as a thing to carry out

successfully—we felt that trouble would ensue, for various reasons, among which is one as to what constituted a copy, and that is why we put that reservation in our letter in regard to the decision in regard to copies because we felt that it was matter with which we should have something to say about when the determinations as to what copies were came up—but the Court is aware of that—however, the great fear was the fact, which has since proven to be a fact——

Mr. Weisman: I object to that.

A. —which we believed was the fact, which we believed to be the fact and what our investigations seem to indi- 3476
cate, it was a fact, is that when it has no universal application, as a patent right applies, it could not be carried out.

So that the determinative factor was in view of the monopoly which you folks deservedly had because of the great skill in your designs, because of your mnaufacturing ability which you had, we felt we had no other recourse. And in adopting your principles we were adopting principles in which we firmly believed, but we felt there was no protection to the honest man, and we believed that that is a fact and, consequently, the honest merchant, the man who would keep his agreement, the man who could conscientiously keep his agreement, we felt there was no arrangement made whereby the dishonest merchant, or the 3477
merchant who was not a party to this agreement, could be held to keep his agreement. We felt, therefore, that there was no agreement which was universal in its nature, and we further felt that there was a distinct necessity for a protection to go beyond such a few; that it was a necessity for the protection of everybody, the manufacturer, the merchant and the customers, because, for instance, our customers have other rights except the right to a dress

which is an individual dress. They have rights in so far as costs are concerned. The customers have rights so far as many, many other things are concerned. We have rights, too, in that regard; competition brought out through discrimination between the right merchants and the other fellow who does not sign this agreement, because that discrimination works such a hardship.

So we felt we wanted to be right and still do, and we wanted to do right then and we want to do right now, and if you can show us a way that we can be protected in buying our goods, so we can be protected in being right and so you do not serve anybody—I repeat, anybody except
3479 those who have signed your agreement, why, we will—

By Mr. Weisman.

Q. (Interposing) In other words, you think that the only trouble with this program is that it is not universal enough; is that so? A. It cannot work unless it is universal.

Q. You just said that if the members of the Fashion Originators Guild of America would not sell anybody—and you emphasized "anybody," and you repeated it, you said it twice, except those who signed up and lived up to the pledge, that then it would be all right; did you just say that? A. I did.

Q. And is that the fact? A. It is.

3480 Q. Do you not know, as a matter of fact, that that is the very thing that the Fashion Originators Guild of America, Inc., did; namely, that it refuses to sell to anybody that did not recognize property rights in style originations; do you not, as the president of this concern, this great concern of Strawbridge & Clothier, do you not know that? A. No, indeed. I know something, or I seem to know the contrary.

Q. What? A. I seem to know the contrary.

Q. In other words, if the contrary is not true, if it should develop that the Fashion Originators Guild cannot and will not sell—the members of the Fashion Originators Guild, Inc., will not sell its merchandise to anyone except those who will protect original fashions, then you, with your large merchandising experience behind you, and I bow to it—I mean that sincerely—would you say that its program is good; is that so? A. If it is workable; yes, sir.

Q. And good? A. Well, in view of what I think, yes, good.

Q. In view of what you think, it is good; what do you think about it? A. Well, it is good. 3482

Q. Would you say it was good? A. Good. Good. Good.

Q. Would you say it would be good for you? A. Yes.

Q. Would you say, then, it would be good for the public? A. Yes.

Q. Would you say that it would be good for the manufacturer? A. Yes, I would say so.

(At this point a party entered the court room and handed the witness a document.)

Q. What is this, this is something new and novel to me. What is that he handed you? A. This is a copy of that letter. This is a copy of the letter of February 7. I want you to see it.

(Witness hands document to counsel.) 3483

Q. I will look at it in a moment. A. Yes. Do so.

Q. Then it would be good for the manufacturer; is that so? A. Unquestionably.

Q. Then it would be good for the retailer? A. Unquestionably.

Q. Then, being good for the manufacturer, retailer and consumer, it is pretty nearly good for all concerned because those are all that are concerned; is that so? A. Correct.

Q. Now, by this letter signed by you as president, you also stated on June 30, 1933: "Furthermore, we propose to annex to all of our orders for ladies' ready-to-wear merchandise, the following clause: 'This order is placed upon the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted.'" Was that put upon all of your orders? A. Yes. That has been put on our orders.

Q. From June 30, 1933, when this letter was written, up until the time that your relationship with the Guild
3485 ceased, which I believe was in February of this year, was it your instruction, as head of this business, that all orders for ladies' ready-to-wear should contain that clause? A. Yes.

Q. When you wrote that letter to the Fashion Originators Guild of America, Inc., did you write it to inform them of your honest intention to continue to live up to that promise? A. Absolutely so.

Q. Yes? A. Yes.

Q. Now, you occupy a very responsible position, do you not? A. You have said so several times; I am beginning to believe it myself.

Q. Let me ask you; Before I said it, did you have any doubt about it? A. No, none at all.

3486 Q. Then, when you said you were only beginning to believe it when you heard me say it several times, that was not entirely truthful? A. Well, it was the reiteration that I was objecting to.

Q. Wait a minute. I want to find out something. From the beginning of the time that I told you that you had a pretty responsible position you say you began to think you did, but prior to that time you did not believe that, or did you? A. Surely I believed it. I know it.

Q. Then your statement that because I said it several times you were beginning to believe was not entirely truthful because you believed it before you ever knew of my existence; is that so? A. It was truthful, but it was facetious.

Q. Facetious? A. Yes.

Q. Well, please, since you are on the witness stand and being examined by me under oath, refrain during that time from being facetious. This is a very serious proposition to the Fashion Originators Guild of America, my clients here, and I would appreciate your taking the matter seriously, if you will. A. Very well.

Q. Now, exercising the responsibilities of your large position that you maintain, did you at any time write to Mr. Post or did you ever tell to Mr. Post or say to Mr. Post that the reasons given in this letter were not all of the reasons, but that you had some other reasons for joining the Guild? A. No. 3488

Q. Tell me, as the head of this institution of Strawbridge & Clothier, exercising all of the functions of that of president, if you had some other reasons than the ones expressed to us; to these people—did you not think it your duty to these people to tell them why?

Mr. Haycraft: I object. He could not be expected to put in the confines of that letter every idea which might have come to his mind in connection with the matter.

Examiner Bennett: Sustained. 3489

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Let me ask you this——

Examiner Bennett: It is perfectly obvious that he could not get in the confines of the letter all of the reasons in one particular letter.

Mr. Weisman: Quite right, your Honor. I did not say that. I said did he ever at any other time, I am with you on that. I can understand that within the confines of the letter he might not. I said, "Did you ever at any time, covering the period of three years?" I am entirely in accord with your Honor on that, and I want to be fair to this man.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Now, I will ask you another question, then: Did you ever write to the Guild, or to Mr. Post, as its executive
3491 head, in the performance of your duties toward your company, and state, in words or substance, the reasons that you went into the Guild, or not the reasons we gave you, but we had some others?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In answer to my question a moment ago wherein you stated in words or substance that if this program would become universal, or if the Guild manufacturers confined their merchandise wholly to those who were ethical in their handling of goods, then it would be good to the pub-
3492 lic, good to the retailer, and good to the manufacturer; you said that the manufacturer deservedly had a property right in his original; do you remember using that language? A. Yes.

Q. Why do you say he deservedly had a property right? A. Because——

Mr. Haycraft (interposing): Wait a minute. I object to what the witness said being misinterpreted; I must interrupt at this time to raise an

objection that counsel is placing in the mouth of the witness words which he did not state because in his former answer he made a different answer to that, and on the further objection that this is cross-examination upon cross-examination and therefore improper.

Mr. Weisman: Now, wait. This witness certainly said that the manufacturer deservedly had a property right in this original.

Mr. Haycraft: Even if that is so, I object to it on the other grounds previously stated.

Mr. Weisman: We will see about that.

Examiner Bennett: I overrule the objection. 3494

A. Deservedly had a right——

Mr. Haycraft: I object to that as not in accordance with the testimony of the witness.

(Question read.)

By Mr. Weisman.

Q. We can get this straight and you and I, Mr. Tily, can work this out. Did you say, or did you not say, so we will be fair about it, that you felt that the manufacturer deservedly had property rights in his style originations? A. When it was his original?

Q. Yes. A. Of course.

Q. We were only concerned with what was his original. A. Yes. 3495

Q. In this case? A. Yes.

Q. Because you have also testified that the only time you ever returned merchandise was when it was proved to be a copy of a style origination? A. Yes.

Q. What did you mean by "deservedly had a right"? A. The same right that an inventor has to a patent except his right is given by law and this is——

Q. This right is not protected but good morals ought to protect it; is that your opinion?

Mr. Haycraft: I object.

Examiner Bennett: Sustained. I think you have been all over that ground.

Mr. Weisman: I except and offer to prove that if the witness were permitted to answer he would answer in the affirmative.

Mr. Haycraft: Move to strike.

Examiner Bennett: The motion is overruled.

By Mr. Weisman.

3497 Q. Do you know how many members there were in April of this year in the Fashion Originators Guild of America? A. No.

Q. Did you ever seek to find out? A. I sought to find out how many had signed up on the new agreement.

Q. I am not speaking of that. A. I did not seek to find out how many members there were.

Q. Perhaps my question was so framed that you could not understand it and the fault is mine. Let me now amend my question by saying: Do you know how many manufacturer members were members of the Guild in that year and, more particularly, for the month of April? A. No, not for the year or the month.

Q. Do you know whether there were eighteen or twenty?

3498 A. I know there were a great many more than that, because I had a list that we went into in so far as it would be our interest to do so, and I know from looking at the list that it would be more than that.

Q. Do you know how many members there were in the Guild in December, 1935? A. No.

Q. Do you know how many members there were in the Guild in December, 1934? A. No.

Q. Do you know how many members there were in the Guild in December, 1933? A. No.

Q. Do you know how many members there were in the Guild in August, 1933? A. No.

Q. Did you ever know that if you do not know it now? A. No.

Q. You are sure of that? A. Sure; just how many.

Q. Did you ever ask how many? A. I never, personally, asked.

Q. Did you ever find out how many members there were in June, 1933, manufacturing members of the Guild? A. No.

Q. Did you ever know at that time how many there were—how many manufacturers there were who were not members of the Guild but who were selling the same class of merchandise that the Guild members were selling? A. No. 3500

Q. Are you certain of that? A. Now, wait a minute. Yes, I am certain of it. I do not know as to the exact details. I could not give you that.

Q. I did not ask you for the exact details. A. The exact numbers, that is right. I do not know the exact numbers.

Q. What is your opinion of the number of dress manufacturers that there were in business in the City of New York, N. Y., in June, 1933, manufacturing merchandise at $10.75 and upward?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection. If he knows the fact he can give it.

Mr. Weisman: May I speak on that? 3501

Examiner Bennett: No; I have ruled that it will be all right if he knows the fact.

Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Do you know approximately how many members comprised the membership of the Guild, manufacturer members, in June, 1933? A. No.

Q. Do you know whether it was fifty or one hundred? A. I do not know exactly.

Q. I did not ask for exactly. A. No. Well, it was more than fifty. I do not know just how many.

Q. Would you say it was one hundred? A. I do not know just what it was.

Q. I want to get your best guess. Would you say it was 200? A. I would not say anything, not knowing.

3503 Q. All right. You would not say anything, not knowing? A. Yes.

Q. Would it surprise you to know that in June, 1933, there were, in the City of New York, upwards of 2,000 manufacturers of ladies' dresses selling at wholesale at $10.75 and upward?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. The Court says you may answer. A. No, I do not know. You asked me if I would be surprised?

3504 Q. Yes. A. Well, not having made any guess as to anything, why, I am not surprised.

Q. Have you any idea how many manufacturers there were in the City of New York in June, 1933, manufacturing ladies' ready-to-wear dresses at $10.75 and upwards? A. I——

Mr. Haycraft: The witness said he had no knowledge of anything, and could not even guess. This is merely surplusage.

Mr. Weisman: I think that this is a perfectly proper question, your Honor.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Overruled.

A. I have no idea.

By Mr. Weisman.

Q. Do you have any idea, and did you have any idea on that subject in June, 1933? A. Did I?

Q. Yes. A. I had an idea—if I may qualify it that the particular manufacturers of which I have spoken, or the manufacturers of the type of $10.75 dresses and upward 3506
that we needed to satisfy our customers.

Q. Did you not know that in June, 1933, at the time you wrote this letter, Commission's Exhibit 362, there were only thirty-five members in the Fashion Originators Guild of America, Inc.; does that come to you as a complete surprise to you? A. Complete, yes, it surprises me to learn that. I did not know it was that small. I knew it was a very small group, but I did not know it was that small.

Q. You knew they had a very small proportion of the manufacturers, but you did not realize when you said that, talking about the manufacturers, that they were only—that they only had thirty-five manufacturers in the Guild? A. But, it is manufacturers of a type—— 3507

Q. I am not asking you about that. I am asking you about your realization; is that so? A. Yes.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

Mr. Weisman: I should like to have the last two questions and answers read so that I may get my place again.

(Questions and answers were read.)

By Mr. Weisman.

Q. You testified on your direct examination something about a "Guild Shop" in the store. A. Yes, but it was not in the store.

Q. Where was that "Guild Shop"? A. Ardmore, Pa.

Q. Whose idea was the opening of that "Guild Shop"? A. Mine.

Q. Personally? A. Personally.

Q. The Guild did not stimulate that, they did not ask you to do that? A. No. It was our own idea.

Q. Your own idea? A. Yes.

Q. You did not need them to tell you to do it? A. Oh,
3509 no.

Q. What was the purpose of that "Guild Shop"? A. To emphasize better dresses.

Q. What do you mean, "to emphasize better dresses"? I do not understand you. A. To emphasize better dresses from two standpoints. First, the standpoint of dress, especially, however, the standard of style significance. That was the second. There is the practical monopoly of which I spoke.

Mr. Weisman: I ask that the latter part of the answer be stricken out.

Mr. Haycraft: I object. If it does not suit you I do not think it should go out.

Examiner Bennett: Oh, yes; granted.

3510

By Mr. Weisman.

Q. You put up a nice big placque in front of that store did you not? A. In front of our store?

Q. In front of the shop, "The Guild Shop," in Ardmore? A. In front of the shop, yes.

Q. That placque, you understood, was a representation to the public, was it? A. It was.

Q. It contained reading matter that you wanted the public to read; is that so? A. Yes.

Q. You would not have anything thereon that was not truthful, would you? A. Not knowingly by any manner of means.

Q. You say "not knowingly"; you knew what the placque contained? A. Yes, sir. But not truthfully—now.

Q. What? A. We would not knowingly have put anything there that we knew to be untrue.

Q. You would not recklessly disregard the truth and then say you did not know about it? A. No.

Q. In other words, you stand squarely behind what was on that placque? A. Always do. 3512

Q. What did you put on the placque?

Mr. Haycraft: I object.

Mr. Weisman: I want to show the statement made by someone on the outside showing a different statement from what the witness now states to the Court, when it was made under his supervision and direction and with his approval. It is for the purpose of refuting his previous testimony and goes directly to the credibility of the witness.

Mr. Haycraft: It is not proper cross-examination.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

3513

By Mr. Weisman.

Q. Did you believe that the placque was a distinct endorsement of the Fashion Originators Guild?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant, and not proper cross-examination.

Mr. Weisman: To save time I will withdraw the question and reframe it.

By Mr. Weisman.

Q. Did you place that placque there as a distinct endorsement of the Fashion Originators Guild, its aims and purposes?

Mr. Haycraft: Same objection.

Examiner Bennett: I will let the witness answer that question.

By Mr. Weisman.

Q. The Judge says you can answer the question. A. No. It was not our purpose.

3515 Q. Do you know Mr. Roy E. Clarke? A. I think so.

Q. Don't you know it? A. Yes.

Q. Is he still with your organization? A. He is.

Q. He is? A. Yes.

Q. Do you know whether or not he wrote to the Guild as follows——

Mr. Haycraft: I object.

By Mr. Weisman.

Q. "It seems to us that this is a distinct endorsement of your organization, but we do not wish until you knew about it and are glad to note that so doing is acceptable to you."

3516 Mr. Haycraft: I object to the question and move that the question be stricken out because he is reading from a document which is not in evidence, and also on the basis of the objections I have heretofore asserted and urged to this question.

Examiner Bennett: I sustain the objection on the ground of irrelevancy. I think that that question is not involved; certainly, it does not involve the contradiction of anything the witness has said, and I do not see where it is competent on any other theory.

Mr. Weisman: It is competent to show the evident endorsement of the Guild. It is competent to show that where he says he was forced to join the Guild certainly it did not make it necessary for him to write a letter of this sort in which he states that this is a distinct endorsement of this organization. Certainly the statement contained in this letter is a direct refutation of his statements that he was forced to join it. A man who is forced to do something ordinarily does not write in very enthusiastic letters about it. It seems to me that it is very serviceable for the idea suggested by me just then.

3518

Examiner Bennett: No. I do not think so.

Mr. Weisman: It is further important on the ground of questioning the credibility of the witness in telling it, Judge.

Examiner Bennett: I have ruled. Please, let us not have so many of these post-mortems after I have ruled.

Mr. Weisman: Yes, sir. May I have an exception?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Did you——

3519

Mr. Weisman: Well, before asking you that question may I make this offer, that if I were permitted to have this witness answer the question he would have stated that Mr. Roy E. Clarke was in charge of the publicity of the Strawbridge & Clothier Company, of which this witness is president, and that Mr. Clarke wrote to the Guild on March 6, 1935, to wit—two years after they had joined the Guild—as follows:

"It seems to us that this"—referring to the placque—"is a distinct endorsement of your organization." Certainly that is germane, Judge.

Mr. Haycraft: I move to strike out the offer.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

Examiner Bennett: It is irrelevant.

By Mr. Weisman.

Q. You stated that your concern did a volume of $3,000,000 per year in dresses; was I correct in making that statement? A. Correct.

3521 Q. What? A. Quite correct.

Q. Does that include coats and suits? A. No.

Q. That is just in dresses? A. Yes.

Q. You also stated—what proportion of your business is done in what you call "better dresses"? A. I have not the figures. You will have the—I do not have those exact figures. I have the totals. We keep matters of that type handled through our divisional men, or merchandising men, and it does not go through me.

Q. In other words, you do not know anything about that? A. The divisions?

Q. I am asking you whether you know? A. No.

Q. No? A. No.

Q. That is all right, then. I just wanted to know if you knew. A. No.

3522 Q. What price do you place upon the better dresses; in what price range? A. The price range of the really better dresses, $19.75 up.

Q. What do you mean by "the really better dresses"? have you any dresses that are not really better? A. In my testimony, I testified to better dresses, and I had in mind that department which we call the Misses' Better Dress Department.

Q. What is the price range there? A. In my testimony I testified as to the better dresses; I had in mind——

Q. No, no. I just asked you what the price range was there. A. Oh, I beg your pardon.

Q. What is it? A. $19.75 up—no, wait one minute. I would rather you would ask the divisional men.

Q. No. I would rather ask you. A. You have asked me. I do not recall exactly.

Q. How is it you cannot recall that for me when you can recall for Mr. Haycraft so splendidly? You testified, when you were being questioned by Mr. Haycraft, and you testified, did you not, on that subject this morning with great glibness? A. I had before that Women's Better 3524
Dresses Department.

Q. From whom did you get that information? A. It was on a piece of paper.

Q. Who made up that information from which you got that thought? A. It was taken from our figures.

Q. Who made it up? A. Our accountants who have access to those records.

Q. Do those papers show what the better dresses—misses' better dresses sold for? A. No.

Q. How do you know the prices you gave Mr. Haycraft this morning? A. In the misses' better dresses all I gave—if I gave him the prices I do not recall that I did.

Q. You have recollected a great many things that happened in 1932, 1933, and now you cannot recall what happened in this court room this morning? 3525

By Mr. Weisman.

Q. You may answer that question now.

The Witness: I do not know what the question is.

(Question read.)

Mr. Haycraft: I object.

Examiner Bennett: I have no passed upon it yet, but I will sustain it in that form. So far as I recall, he did not make that statement.

Mr. Weisman: I beg your Honor's pardon. I did not hear.

Examiner Bennett: He did not make a statement that he could not recollect it, as I recall it.

By Mr. Weisman.

Q. Well, let us see—with regard to the retail price of ladies' better dresses, which you sell in your store, what is your recollection of the prices you gave us this morn-
3527 ing? A. $19.75 and up is my recollection.

Q. Is that—where did you get that price? A. From the statement I have at the office as to what constituted the better dresses.

Q. And was that statement prepared for the purposes of this hearing? A. That statement was one-handed to me, and I got it from a member of the department, the department which was involved.

Q. Who handed it to you? A. It was handed to me—this particular one was handed to me by our merchandise manager.

Q. When? A. Yesterday.

Q. Yesterday? A. Yes.

Q. Why did he hand it to you? A. For the purposes of
3528 testifying.

Q. How did you know what you were going to testify to? A. I was going to testify as to the effect upon our good will.

Q. No, no, no. I say, how did you know that you were going to be asked about the prices of these better dresses? A. It would—it was rather a desirable thing to be established.

Q. I did not ask you that. How did you know that you were going to be asked about the prices of these misses' better dresses? A. That was to be a part of my direct testimony.

Q. How did you know what your direct testimony was going to be; the questions that were going to be put to you on your direct testimony? A. Oh, that came up during the conference which we had at the store.

Q. When and where? A. In my office in my store.

Q. Who was present at that conference? A. Our divisional managers, our—our divisional merchandise manager, and the attorney for the F.T.C.

Q. The Federal Trade Commission? A. Yes. 3530

Q. When? A. Yesterday.

Q. Yesterday? A. Yes.

Q. And as a result of that you took a piece of paper given to you which gave your better dresses as being sold from $19.75 and up; is that so? A. No. Those papers had been prepared before, before the attorney came to Philadelphia.

Q. What is the wholesale prices of the dresses that you sell for $19.75 and up? A. I do not know.

Q. What? A. I am not the dress buyer.

Q. You know a lot about your dresses, do you not?

Mr. Haycraft: He said he did not.

By Mr. Weisman. 3531

Q. Let us go a little further and see if he really does not know.

Examiner Bennett: The witness on direct testimony said he had no details of that situation, but it was reported to him by an assistant in that connection.

By Mr. Weisman.

Q. Offhand, then, so there can be no question about it you do not know the wholesale prices of the dresses that you sell for $19.75? A. I do not.

Q. Did you know it in 1933?

Mr. Haycraft: I object.

By Mr. Weisman.

Q. At the time you signed the declaration of co-operation?

Mr. Haycraft: I object.

3533

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I wish to make this offer of proof, that if the witness had been permitted to answer, he would have answered that he did not know that in 1933.

Examiner Bennett: I think that that is proper.

Mr. Weisman: As an offer of proof?

Examiner Bennett: Yes.

Mr. Weisman: I say to your Honor that this is very important on the question of passing on the credibility as to the reasons that he did not know even the wholesale prices of the dresses. I submit that my substantive rights—that is, the substantive rights of my clients—have been seriously impaired

3534

by the refusal to permit me to ask and receive an answer to this question.

Examiner Bennett: The refusal stands.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Is this a fair statement, Mr. Tily, that most of the things that you have testified to you really do not kno

yourself, but, from what somebody told you in the ordinary course of your business? A. Pursuant to information brought to me by those in whom I have absolute confidence.

Q. And the people who brought you that information are still with the store? A. Yes.

Q. Are they all in Philadelphia? A. What?

Q. They are all here in Philadelphia? A. Yes.

Mr. Haycraft: And will testify in this proceeding if we ever get to them.

Mr. Weisman: It will be a new surprise for me to see you bring anyone in here in the form of a witness who can testify from anything except hearsay. 3536

Mr. Haycraft: How about the witness on the stand two days in Boston, Mr. Seegal.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, if you gentlemen have finished this colloquy between yourselves we will proceed on the record.

By Mr. Weisman.

Q. Did you say to me—I withdraw that—did you say to Mr. Haycraft this morning that in your co-operation with the Guild—that your co-operation with the Guild began with your desire to eliminate style piracy? 3537

Mr. Haycraft: I object to that.

Mr. Weisman: The witness shook his head meaning yes.

By Mr. Weisman.

Q. Do not shake your head but please answer "yes" or "no," so that we can get it on the record.

Examiner Bennett: I will overrule the objection and see what you are getting at. I think you are starting in on the same thing that you threshed out to a frazzle before.

Mr. Weisman: Well, we will see in a moment.

By Mr. Weisman.

Q. Will you please answer the question? A. What is the question.

Mr. Weisman: Read the question.

(Question read.)

3539 Mr. Haycraft: I must say I do not care whether the witness shakes his head or not, he did not make any such statement as that.

Mr. Weisman: I will ask him what he did say.

By Mr. Weisman.

Q. Did you make such a statement? A. I do not recall that statement, not that exact statement; in substance, yes.

Q. Is that a fact? A. In substance, style piracy—in our desire to co-operate as we have stated—was a factor in our original decision.

Q. Is it a fact that your co-operation with the Guild began with your desire to eliminate style piracy? A. I do not know whether it began, if that was the statement I gave, that is correct.

3540 Q. Did your previous statement tell the truth? A. If it began—if that is my statement, yes. You may not be putting the exact words.

Q. In 1933 you had, as the head of this company, Strawbridge & Clothier, a desire to eliminate style piracy? A. I have several times stated that, yes.

Q. Do you still have an honest desire to eliminate style piracy? A. If possible; we have that desire but do not believe it possible.

Q. You have the desire? A. Yes.

Q. The possibilities are for the court? A. Yes.

Q. The desires are for you? A. Yes.

Mr. Haycraft: I object to that last statement of counsel, as to the possibilities being with the court. The witness has something to say as to the practicability of that. He has already testified on that. I move to strike out that question of counsel from the record.

Examiner Bennett: If you are making a motion to strike, you are referring to the question propounded by counsel for the respondent as to the possibilities of removing style piracy? 3542

Mr. Weisman: I asked him if he had an honest desire to eliminate style piracy, and he said that if possible he desired to do so, but did not believe it possible, and I told him, or asked him if it were not true that the possibilities are for the Court and the desires are for him, to which he said yes.

Examiner Bennett: Read the questions and answers referred to.

(Questions and answers were read.)

Examiner Bennett: I will let it stand.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. What was the total volume—I withdraw that. Do you know what dress departments the Guild policy now is applicable to? A. Well—— 3543

Q. Do you know? A. Yes. Those run from $10.75 up to—$10.75 up to, that includes misses' dresses of various kinds, misses' dress coats and general coats.

By Examiner Bennett.

Q. Are you speaking of the retail prices? A. No, that is the cost prices, $10.75 and up, $10.75—no, $10.75 retail, not wholesale.

By Mr. Weisman.

Q. Well, just which is it? A. Retail.

Q. That is the minimum? A. $10.75 retail.

Q. Retail? A. Retail.

Q. What is the wholesale price of the dresses that sell at $10.75 retail? A. I think I told you before that those items are a matter of detail that I am not familiar with.

Q. You are only interested in sales, not purchases? A. I am interested in profits, we deal in percentages of totals. My job is to deal in totals, the merchandise manager is the man who deals in the details.

Q. As dealing in details, you are not interested? A. No.

3545 Q. As dealing in totals you are not interested in cost; your statement, or explanation, is that your profits come from totals and not from cost and profits? A. Both.

Q. Both, of course.

Mr. Haycraft: I object.

Mr. Weisman: The witness has answered the question.

Examiner Bennett: Objection overruled.

By Mr. Weisman.

Q. Do you not know the costs in your business? A. Not on $10.75 or $9.75, and other things; I would not have a chance to go into those details with the multitudinous

3546 other matters that I have to deal with during the course of the day. I have capable and competent assistants who take care of matters of that kind.

Q. Let me ask you this, on volume what was your total volume in your Dress Department in February, 1936? A. I read from a paper this morning.

Q. Aside from the paper, do you mean that if you are divorced from the paper that divorces you from all knowledge of your business? A. Detailed knowledge. You have

asked me to testify as to a department. This morning I testified in general.

Q. Who made up this paper? A. Why, our own people made that up.

Q. Did you check it to see if it was correct? A. I did not have to.

Q. I did not ask you that. I asked you if you did. A. I did not check it to see if it was correct, no.

Q. So, as a matter of fact, you do not know whether it was correct or not on other than your belief that it was correct? A. Correct.

Q. You, notwithstanding the fact that this is a serious case to the Fashion Originators Guild, and the fact that 3548
you are under oath in this case, you took a sheet of paper that you have no idea whether it is correct or not except just a speculative idea that it possibly is, and come in here and testify on it; is that the idea? A. I——

Mr. Haycraft: I object to that last question as highly improper.

Mr. Weisman: Mr. Examiner, this witness comes in here and says that he is testifying to something because it is on a piece of paper, and that is all that he can testify to.

Examiner Bennett: I doubt if you have any right to lecture him on that.

Mr. Weisman: But I will certainly lecture him plenty when I come to write my brief. 3549

Examiner Bennett: Suppose you do it in your brief but do not do it on the trial of this case.

By Mr. Weisman.

Q. What was your volume of dress business in the month of February, 1936? A. I do not know.

Q. What was your volume of dress business in the month of February, 1935? A. I do not know. I read that from a paper.

Q. No, no. What is your answer to that? A. My answer is no.

Q. What was your volume of dress business for the month of March, 1936? A. I do not know.

Q. What was the volume of your dress business in the month of March, 1935? A. I do not know.

Q. What was the volume of your dress business in the month of April, 1936? A. I do not know.

Q. What was the volume of your dress business in the month of April, 1935? A. I do not recall.

Q. What was the volume of your dress business in the month of May, 1936? A. I do not recall.

3551 Q. What was the volume of your dress business in the month of May, 1935? A. I do not recall.

Q. What was the volume of your dress business in the month of June, 1936? A. I do not recall.

Q. What was the volume of your dress business in the month of June, 1935? A. I do not recall.

Q. Did you—June was comparatively a recent month, —that is, it is last month. Do you want us to believe that you cannot recall what your volume was in June, 1936? A. I do not care whether you believe me or not, but it is true.

Q. Did you ever know it? A. Sure I knew if I had looked it over at the time.

Q. Did you look it over? What I am trying to find out is it a fact that you do not recall, or is it a fact that you

3552 never knew? A. Never is a long time.

Q. It is not so very long when we apply it to June, 1936. Did you ever actually see the figures setting forth the total of business done in your Dress Department of Strawbridge & Clothier for June, 1936? A. I saw that at the time divided into the various divisions of our Dress Department.

Q. Did you ever total that? A. We talked about that yesterday.

Q. Did you ever total that? A. I have the total in my pocket.

Q. Let us have it. A. Well——

Q. May I see that, Mr. Tily? A. Yes.

(Witness hands counsel a document.)

Q. Do you say that the piece of paper you just handed me is the piece of paper which you used, and from which you were enabled to tell yesterday the total dollar volume of your Dress Department in the month of June, 1936? A. It is not arranged by months there.

Q. By which you could tell the dollar volume of the Dress Department for any given time? A. The total for 3554
the entire time, yes.

Q. Total dollar volume; is that so? A. Yes, sir.

Mr. Weisman: I offer this piece of paper in evidence.

Mr. Haycraft: I object.

Mr. Weisman: I will give it to the Court and the Court will see my reason.

(Counsel hands a document to the Examiner.)

Examiner Bennett: I will sustain the objection to this line of questioning. This piece of paper does not have any bearing on the particular thing you are questioning the witness about now.

Mr. Weisman: The fact is that it does not. I think the Court will see that the document does con- 3555
tradict it on that very basis.

Examiner Bennett: You may use that paper to get certain information. When you get to that then we will see whether we want to use this paper or not. I thought you read the information from that paper and I assume you read it correctly.

By Mr. Weisman.

Q. I understood you——

Mr. Weisman: Just a moment. I except to your Honor's ruling.

Examiner Bennett: Noted.

By Mr. Weisman.

Q. I understood you to say that you do not know what was your total dollar volume in the Dress Department of your business in the month of February, 1936; is that correct? A. Correct.

3557 Q. I ask you to look at this piece of paper and ask you whether or not the figure 100.6 will give you any refreshment of your recollection as to what was the business in your Dress Department? A. Yes.

Q. How much? A. $100,600.

Q. $100,600 you did in your Dress Department in February, 1936; is that correct?

Examiner Bennett: Proceed.

The Witness: In making the statement this morning I spoke of better dresses generally and showed certain losses. I should have said "misses' better dresses." The loss figure which I gave, which I copied from the paper which I had on another paper in my own handwriting, which I just copied,

3558 were misses' better dresses. The mistake was in saying better dresses without the qualification.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Yes. A. In this whole situation.

Examiner Bennett: I don't object.

Now, as to your motion, I am going to grant your motion to strike the testimony as to the percentages

Mr. Weisman: Thank you.

Examiner Bennett: And, of course, that terminates your cross-examination on that phase of the case.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. We are not going to ask you any questions about that. You may put it away now. Thank you. A. You are very welcome, sir.

(There was a discussion off the record.)

3560

By Mr. Weisman.

Q. Just a few more questions, then. You stated, I believe, that Strawbridge & Clothier were subsidizing some manufacturers; did you not? A. Yes.

Q. How many? A. Well, Strawbridge & Clothier in connection with the A.M.C. are doing it.

Q. Wait a minute. Didn't you say this morning that it was Strawbridge & Clothier and not the A.M.C. which was— A. I said we are.

Q. Who did you think we understood, when you said "we"? You weren't testifying on behalf of the A.M.C.; were you? Don't you want to correct that? A. "We" to my mind meant what we had to put in it, our proportion of the total.

3561

Q. Do you mean that you and a lot of other retailers who belong to the A.M.C. got together and subsidized some non-Guild manufacturers? A. We were endeavoring to get what you wouldn't let us have except on your terms.

Q. No. No. That isn't what I asked you. You want to get away. You have got to help me, too. You answer my questions. A. Yes; that is quite true.

Q. How many manufacturers were so subsidized? A. I would rather you would ask one of the divisional men.

Q. Well, do you know? A. Not exactly. Four or five, I should say; I am not sure just how many. I know——

Q. Where are they located? A. In the City of New York.

Q. Do you know who they are? A. No. That is——

Q. Now, you also said on your direct examination that "we have also lent large sums of money to manufacturers." Now, when you said "we," you didn't mean Strawbridge & Clothier then? A. "We" meant the A.M.C. our proportion of it.

3563 Q. How much was your proportion of it? A. $5,000.

Q. How many stores in the A.M.C. each put up $5,000? A. I think it was in the neighborhood of $50,000 altogether, is my recollection.

Q. In other words, I am then to understand that the A.M.C., acting on your behalf and acting on the behalf of other stores who are members of the A.M.C., have advanced to manufacturers of ladies' dresses the sum of $50,000? A. That is my recollection of the total. I am not sure that is the exact amount.

Q. This was your stockholders' money. Weren't you interested? A. I am concerned with what our amount was, which, I have told you, was $5,000.

Q. How much were you asked for?

3564 Mr. Haycraft: That is objected to, how much was asked for.

The Examiner: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. You stated on your direct examination that some manufacturers were lent the money and some very subsidized; is that correct? A. Yes. I think the "subsidized"

is probably wrong. I think the use of the term "subsidy" is probably wrong. If one makes a loan which you feel you may not get back, in that sense it is a subsidy.

Q. Do you know whether a note was taken for that? A. No. The A.M.C. know all about that.

Q. What evidence have you got with regard to your stockholders' money that the A.M.C. has got it? A. We have no evidence except the fact that we have chipped into a pool, also have passed——

Q. You say you have no evidence except you chipped into a pool? A. (Witness nods head affirmatively.)

Q. In this case a letter was written by Mr. Reilly on February 14, and which is in evidence—I don't know its 3566
number. That is the Reilly letter, Judge, in which he wrote, "We have been authorized by the store principal of eighteen member stores of this association to inform you that from this day on we would like to put ourselves on record as being willing not to co-operate as theretofore." Do you remember that letter?

Mr. Haycraft: That is objected to; irrelevant, immaterial and not proper cross-examination.

Mr. Weisman: Well, I will withdraw the question.

By Mr. Weisman.

Q. In such letter were you one of the member stores 3567
therein referred to?

Mr. Haycraft: That is objected to, Mr. Examiner; irrelevant and immaterial, and not proper cross-examination.

Examiner Bennett: What do you expect to prove?

Mr. Haycraft: Well, it——

Examiner Bennett: Did you say that was withdrawn before they were red carded?

Mr. Weisman: Well, yes, Judge.

Examiner Bennett: Well, I will take it for that purpose.

By Mr. Weisman.

Q. Were you one of the member stores? A. Have been one of the member stores for years.

Q. You are familiar with Mr. P. J. Reilly's letter of February, 1936?

Mr. Haycraft: February what?

Mr. Weisman: February 14. I beg your pardon.

3569 A. I don't remember that letter, no.

Mr. Haycraft: Just a moment, Mr. Examiner. I want to point out——

Examiner Bennett: That is February 14?

Mr. Haycraft: Yes; that is eight days after he claims he was red-carded.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. Well, coming back, then, how many were there of you manufacturers that chipped in or made this pool, as you say? A. How many——

3570 Mr. Haycraft: That is objected to, Mr. Examiner, as irrelevant and immaterial. The witness has indicated the extent to which he contributed. I think that is as far as he should go in the cross-examination at this point.

Mr. Weisman: I don't think I am limited to that.

Examiner Bennett: Let me have that question, please.

(The question and answer were read by the reporter as above recorded.)

Examiner Bennett: I will sustain the objection. I think we went over that.

By Mr. Weisman.

Q. This morning in answer to Mr. Haycraft's question you not only said that you lent the money, but you said that you subsidized them; didn't you? A. Yes.

Q. As a matter of fact, you didn't subsidize anybody; isn't that so? A. Well, the lending of money whether—the lending of money where there may be no return is a subsidy in that sense. 3572

Q. And that was the sense that you meant? A. Yes.

Q. In other words, there was the legal obligation to return it, but if these people weren't successful in their business they wouldn't be able to return it? A. Quite correct.

Q. Isn't that true of anybody that you lend money to? A. Yes.

Q. Well, then, why did you use the word "subsidy" if it weren't to give this Court an opinion that you gave them the money? A. Because when you lend to responsible people for the purpose of—or for some purpose in business you investigate their credit. Under the circumstances all we could investigate was their ability to produce. The circumstances were such that we must have these dresses and consequently regardless of credit and basing our conclusions only on their ability to make them, competition —the kind of things that we want, their ability to make it. We lent it, and feeling that it is probably a total—may be a total loss. 3573

Q. You also said this morning, you used this word with regard to this, "by giving them funds." As a matter of fact, you didn't give anybody funds; you lent the funds, isn't that so? A. That is correct.

Q. And that was a bit of over-enthusiasm for the Commission's case when you used the words "by giving them funds"; is that it? A. A little verbal inaccuracy.

Q. You haven't erred in my favor in any of your verbal inaccuracies yet; have you? A. I don't know. That remains to be determined, ha, ha, ha.

Mr. Weisman: Now, Judge, you have kindly granted my motion to strike out that testimony concerning the volume in this particular narrow field which was introduced.

Examiner Bennett: Yes. Yes.

Mr. Weisman: I also ask that that motion be
3575 deemed to include the testimony as to this witness' conclusions based upon that testimony.

This morning he testified that based on the experience and knowledge gotten from those figures which you have now stricken out, he had such and such opinions as to it. Now, I naturally intended to cross-examine him but since you have stricken out the matter upon which that opinion is based, I ask that the motion be granted as to that which followed.

Examiner Bennett: There was some testimony that was entirely independent. Some of his statements as to losses were entirely independent of that particular thing.

3576 Mr. Weisman: But as to those that were not?

Examiner Bennett: Those, of course, that were dependent direct as to that testimony, of course, are stricken out of the record.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. I also understood you to say that it takes a long time to develop the skill necessary to produce style origi-

nations; is that correct? A. (Witness nods head affirmatively.) I did say that, yes.

Q. Well, I mea: — A. To build up an institution which could do it, yes.

Q. Have you now found out that it also takes a lot of money? A. Well, you rather scoffed at our $3000 a few moments ago. It depends on what you call a lot of money.

Q. You spoke about $50,000, too; didn't you? A. $50,000 for the entire group.

Q. By the way, have you pledged yourself to any further money, if that is insufficient? A. Not as yet.

Q. Do you expect to? A. We have to, if conditions remain as they are. 3578

Q. In other words, it takes a lot of money to develop and a lot of skill to develop an original style; is that it? A. A lot of skill, yes, and a lot of money in business.

Q. In other words, a manufacturer—now, if you don't know this, tell me—a manufacturer who develops an original line, or a line of originals, spends a good deal of money in developing that original line; isn't that so? A. He might spend less than we, because we have got to develop from the ground up.

Q. I didn't ask whether he spends less than you or spent more than you. See? You might spend more because you are a $20,000,000 concern, combined, and this is only one poor little manufacturer, so we are not going to enter into any comparison. You are the head of a big business enterprise and you do $3,000,000 in dresses, and I want 3579 to find out whether or not—and you are, I take it, complaining about your inability to get original designs from Fashion Originators Guild members; that is correct, isn't it? A. Correct.

Q. Now I am asking you whether or not you know it to be a fact that it takes a lot of money and effort to produce these originals? A. That is what we look forward to having to do, but we are inexperienced.

Q. I am not asking you—wait a minute, Mr. Tily. I am not asking you what you are looking forward to doing. I am asking you whether you know this to be a fact or if you don't know it to be a fact.

Examiner Bennett: Right here I want to say that you seem to be asking a question which the witness is not qualified to answer.

Mr. Weisman: If he doesn't know, I want him to say so.

Examiner Bennett: Did you ever go into the manufacturing of dresses?

The Witness: No.

3581 Examiner Bennett: Did you ever do any developing of original styles?

The Witness: No.

Examiner Bennett: This goes on the record. You did not?

The Witness: No.

Examiner Bennett: Well, how is he competent to answer those questions?

By Mr. Weisman.

Q. Did your buyers ever discuss with you the matter of this origination of style?. A. Yes, but not in connection with—well, yes.

Q. And were these conversations in the ordinary course
3582 and conduct of your business? A. Yes.

Q. Did you learn from them in the ordinary course and conduct of your business and the reports that were brought to you that manufacturers who produced original styles did so at a large cost to themselves?

Mr. Haycraft: That is objected to. There is no foundation laid.

Examiner Bennett: Sustained. There is no foundation for that any more than there is for the

question. You haven't shown that those buyers are familiar with these original styles or original manufacturers. You know better than that. Why do you go into those things?

Mr. Weisman: I submit, Judge, that the basis of all of this man's direct testimony is what he learned from these buyers in the ordinary course and conduct of his business.

Examiner Bennett: I know.

Mr. Weisman: And when I ask him the same question, the questions based upon the same knowledge, they are excluded. Now, I don't particularly care much about it, Judge, because I will prove 3584
it directly; but I do say that I think—and don't take this on the record——

(There was a discussion off the record.)

By Mr. Weisman.

Q. Do you know whether or not the Guild and its members are quite willing to resume relations with you provided you will indicate it as a part of your store policy to not deal in copies? A. Do I know that?

Q. Yes. A. Not to anything that they have directly said to me.

Q. What? A. Not to anything that has been directly communicated to me since we were red carded. The presumption is that we had signed that agreement. We would 3585
not—we would still be dealing with them.

Q. Well, you were— A. That constitutes the knowledge, I suppose.

Q. You were red carded, were you not, because of the claim—without going into the merits of—by the Guild that your had departed from the policy of protection of original merchandise; isn't that so? A. Yes.

Q. Now, you know, do you not, that if you are willing to enter into or make any statement to the Guild that it is

your intention not to deal in copies of original Guild merchandise, the Guild and its members are quite willing and anxious to do business with Strawbridge & Clothier? A. I assume that is a fact.

Q. Well, you know it, don't you? A. Yes.

Q. In other words, you understand that the Guild is only unwilling, or the members of the Guild are only unwilling to do business with you as long as Strawbridge & Clothier persist in their unwillingness—may be justified and it may not; no implication—to protect the original originations or creations of the Guild manufacturers; isn't that so? A. Yes.

3587 Mr. Weisman: That is all.

Redirect examination by Mr. Haycraft.

Q. In respect to the last examination, I ask you if you can identify this paper which I hand you? A. I do.

Mr. Haycraft: Mark it for identification.

Mr. Weisman: May I see it?

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of February 4, 1936, to Strawbridge & Clothier, Philadelphia, Pa., attention of Mr. Tily, was marked for identification Commission's Exhibit 366.)

3588

(Copy of Declaration of Co-operation in Anti-Piracy was marked for identification Commission's Exhibits 367-A and 367-B.)

By Mr. Haycraft.

Q. Showing you the paper which you just identified as Commission's Exhibit 366 for Identification, I will ask

you if you received the original of that letter from the Guild? A. Yes.

Mr. Haycraft: I offer Commission's Exhibit 366 in evidence.

Mr. Weisman: No objection, Judge.

Examiner Bennett: All right. It may be received as Commission's Exhibit No. 366; is it?

Mr. Haycraft: I suppose. I don't remember what 365 was. I think this ought to be 365.

All right. We will settle this up some other time.

(Letter referred to, heretofore marked for identification Commission's Exhibit 366, was marked as an exhibit and received in evidence.) 3590

By Mr. Haycraft.

Q. In this letter, Commission's Exhibit 366, the following statements appear: "As your staff have refused to co-operate, apparently because they claim that your declaration does not cover the mechanics of co-operation, we are required in fairness to all other co-operating retailers to return your original 'Declaration' signed on June 30, 1933, by Mr. Tily." I ask you if that is the Commission's Exhibit 362 which was identified in evidence this morning? Do you recall the letter? A. The letter which I referred to my views of February 4; wasn't it?

Q. No; the 362 was the original letter, the original co-operation letter which you signed on June 30, 1933. Do you recall that? A. Oh, yes. Yes. 3591

Q. Then continuing with the letter: "However, we are enclosing herewith our new and supplementary 'Declaration of Co-operation' which we believe you will find not only explicit, but just and fair. Our members require that the new Declaration be signed in order to continue dealing with you. If we do not receive the new signed Declara-

tion on or before February 10, 1936, we must assume that it is not your intention to co-operate with us in our fight against the evils that beset the industry." I now ask you whether or not the paper which I hand you now is the copy of the new declaration of the co-operation referred to in Commission's Exhibit 362? A. I would have to examine it in detail in connection with the other (referring to Commission's Exhibits 367-A and 367-B). But let me see. It embodies the new conditions——

Mr. Weisman: I ask that the answer be stricken out. I mean, obviously this witness cannot remember.

3593 Examiner Bennett: What is the answer?

The Witness: I identify that as the declaration of co-operation which was sent us.

By Mr. Haycraft.

Q. With this letter, Commission's Exhibit 366? A. Yes.

Mr. Haycraft: I offer that in evidence, marked Commission's Exhibits 367-A and 367-B. This is a copy. The original, I assume, is in the witness' file.

Mr. Weisman: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked
3594 for identification Commission's Exhibits 367-A and 367-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Now, Mr. Tily, I show you Commission's Exhibit No. 364, which you identified earlier this afternoon or this morning. A. Yes.

Q. I show you Commission's Exhibit 366 and ask you if Commission's Exhibit 366 is the letter of February 4 that is mentioned in Commission's Exhibit 364? A. It is.

Q. Now, calling your attention to Respondents' Exhibits 17 and 18-A and B, I ask you if that corresponds and is related to Commission's Exhibit No. 366, the letter from the Fashion Originators Guild of February 4, 1936? A. Well, yes, correct, with a qualification.

Mr. Weisman (to the Reporter): I don't think you heard that, "Yes, well, correct, with a qualification."

The Witness: No, I didn't say that.

Mr. Weisman: Your answer was "correct"? 3596

The Witness: Yes.

Q. The line of examination, cross-examination, was referring to a time, I believe, with respect to when Mr. Bergdoll represented your organization or the A.M.C. in dealing with the Guild. In making one of your answers you referred to the issuance of a new policy by the Guild. A. (Witness nods head affirmatively.)

Q. Now, I want to know what you had in mind when you said that in connection with the Guild activities, or in connection with Mr. Bergdoll's employment? A. Two things were. In the first place, the fair trade conditions which were put in this, which we felt were unfair interference with our business; but our great fear was that— 3597

Mr. Weisman: Now, I submit that——

Mr. Haycraft: That may be stricken. Not responsive.

By Mr. Haycraft.

Q. What I am trying to find out——

Mr. Weisman: If he knows.

By Mr. Haycraft.

Q. —Mr. Tily, is what was, or when was there inaugurated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly when, but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit.

Q. New conditions here, you refer to— A. This exhibit.

Q. Commission's Exhibit No. 367-A? A. Yes, new agreement.

Q. Would it refer to the prospective affiliates, first paragraph in that letter, Commission's Exhibit No. 367-A? A.

3599 Yes.

Q. Do you know when that took place? A. Exactly?

Q. Yes. A. No. No. I do not.

Q. Do you know whether or not it was more than a month or two months prior to the sending out of this letter? A. It was some long while before the closing up.

Q. What was your understanding of that change in policy?

Mr. Weisman: Objected to as being incompetent, immaterial and irrelevant.

Examiner Bennett: As to what his understanding was?

Mr. Weisman: As to what his understanding was.

3600 Mr. Haycraft: What his understanding was of the change of policy by the Guild.

Examiner Bennett: I will let him answer. Overruled.

Mr. Weisman: Exception.

A. The change of policy included not only that but it included the extension of this fartherly, lines farther down.

By Mr. Haycraft.

Q. Will you explain what you mean by that? A. The—in the price lines which were very much lower than they had been before.

Q. What were they before, if you recall? A. $10.75.

Mr. Weisman: Wait a minute. Will he tell us whether it was $10.75 wholesale or retail?

The Witness: Well, we will let our divisional manager answer that.

Mr. Weisman: I object to this witness testifying ad nauseum this way about something that he doesn't know about.

3602

Examiner Bennett: That is sustained.

Mr. Weisman: Thank you.

Examiner Bennett: If the witness doesn't know, what is the use of following that up?

Mr. Haycraft: All right. That is all.

Mr. Weisman: Now, may it please your Honor, by reason of this new direct, I will have to——

Examiner Bennett: This gentleman has been held up here all afternoon on a long cross-examination. If you have any recross-examination I am going to ask you to have it right now.

Mr. Weisman: Wouldn't your Honor permit me to examine him Monday?

Examiner Bennett: Oh, no.

Mr. Weisman: He lives in town. He works in 3603
town.

Examiner Bennett: Unless he volunteers. I don't object to his coming if he wants to for further cross-examination.

Mr. Weisman: Wouldn't you return Monday morning and that would permit yourself to go by train to your mountain home?

The Witness: How long will you be?

Mr. Weisman: Well, at least an hour or so.

The Witness: All right. Monday morning, then.

Mr. Weisman: Thank you.

Examiner Bennett: I don't know if that will be an hour or not.

Mr. Weisman: Well, maybe it will be more.

Examiner Bennett: Yes, maybe it will be less, too.

Mr. Weisman: Excuse me. I thought you meant I was not giving him sufficient time.

Examiner Bennett: Yes.

The Witness: I think on the whole I would
3605 rather have it this afternoon.

Examiner Bennett: I want to say to you that we are not going to continue these hearings indefinitely because of mere cross-examination. Now, you have just about had an hour on the direct examination to-day and all of the rest of the day, except the last 20 minutes, was spent on cross-examination. Any reasonable cross-examination is all right, but you cannot take up two or three days with a witness.

Mr. Weisman: I agree with you. Judge, here was a lot of stuff that went into evidence now, and I say to you in utter candor I didn't want to object to it. This wasn't proper redirect. It was direct examination. This stuff should have been gone into on direct. All of my associates jumped at me and
3606 said so.

Examiner Bennett: Those two exhibits were probably not proper.

Mr. Weisman: See? But I didn't object.

Examiner Bennett: I know you didn't object, and so you are cut off.

Mr. Weisman: Well, I know.

Examiner Bennett: You may cross-examine on them.

Mr. Weisman: But I haven't got time, I told your Honor.

Examiner Bennett: We are right here.

Mr. Weisman: I beg your Honor's indulgence. I expected an adjournment at 4.30. I will try to get through as rapidly Monday morning with this witness as possible.

Examiner Bennett: Well, I wish you would.

Mr. Weisman: And I give you my promise that I will write out my questions in advance. I will have them ready for him, and I just want to clear up the record with regard to these matters that have been introduced in evidence. 3608

Examiner Bennett: All right.

Mr. Haycraft: I just wanted to point out that these two pieces of evidence that he has referred to were simply a completion of the evidence that he put in evidence, exhibits he put in evidence himself to complete the story.

Mr. Weisman: They refer to his red carding. It should have gone in on direct, but I thought the Commission might just as well have them in, and I didn't object. I shouldn't be penalized therefor.

Examiner Bennett: All right.

Mr. Weisman: Thank you.

Examiner Bennett: You may cross-examine him for, let's see—oh, I guess it is about time. All right. We will adjourn until 10.30 Monday morning, next Monday morning. 3609

Mr. Weisman: That is 9.30 Standard Time?

Examiner Bennett: That is 9.30 Standard Time.

(Whereupon, at 4.30 o'clock P. M., July 31, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313, U. S. Post Office Building,
Philadelphia, Pa., August 3, 1936.

Met pursuant to adjournment, 9.30 A. M.

Before: JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

3611

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED 2nd, Esq., of Saul, Ewing, Remick & Saul, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

MR. JAMISON of Sundheim, Folz & Sundheim, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

3612

Examiner Bennett: You may proceed.

Mr. Weisman: Thank you. May I have Commission's Exhibit No. 366?

(Exhibit referred to was handed to Mr. Weisman.)

HERBERT J. TILY resumed the stand and testified further as follows:

Recross-examination by Mr. Weisman.

Q. Mr. Tily, you testified that you received from the Fashion Originators Guild Commission's Exhibit No. 366? A. Yes, I don't know what it is, though, by number.

Q. Take a look at it. (Exhibit referred to was handed to the witness.) A. Yes.

Q. You identified this as having come personally to your attention? A. Yes.

Q. I notice that it is marked personally to your attention? A. (Witness n ds head affirmatively.) 3614

Q. I didn't hear your answer. A. Yes.

Q. When you received this—I will withdraw that. Have you got a copy of the answer that you made to this (referring to Commission's Exhibit No. 366)? A. It is in evidence.

Q. What paper do you say is in evidence which is an answer to this? A. As an answer to that?

Q. Yes. A. It was the one which we had written as to the number of people who were signatories to this new plan. It was—may I correct that? May I correct that?

Q. Certainly. A. That was at a time when the question of our joining was being debated, was being considered by us, and I had written that in an endeavor to get so far—as to the number of people who were signatories to this 3615 thing. They had given us until the 10th, my recollection is, and I am glad my recollection is also that I wrote that letter on the 6th of February, and that probably the same day or the day after, despite the fact that they asked for further information, we received word that we were red carded.

Q. Who did you receive word from? A. That. That letter which you—366.

Q. No. You added gratuitously to your answer, and not in answer to anything that I said, that you received word that you had been red carded. I didn't ask you that, but now since you volunteered that information, I would like to know from you from whom you received that word and in what form, if you please? A. We have a card which states that we were red carded.

Q. You say you have a card that states that you were red carded? A. (Witness nods head affirmatively.)

Q. Where is that card? A. I haven't it here.

Q. Have you ever seen such a card? A. I have.

Q. Has that gentleman who is going through his brief
3617 case got that card? A. I don't know, sir. I haven't seen him just this morning. I have been away.

Q. I am going to ask you this question, and please listen to it very carefully. You just made a statement that you learned you had been red carded by reason of the fact that shortly after February 6 you or your store received a red card from the Guild; is that so?

Mr. Haycraft: Oh, Mr. Examiner, he didn't say anything about receiving a red card from the Guild.

Mr. Weisman: Let's see.

Mr. Haycraft: I object to that question.

Mr. Weisman: Look——

Mr. Haycraft: That question contains language which the witness did not use.

3618 Mr. Weisman: Well, now, will you read the question?

Q. (Question read.) A. I don't know when we received it. I hadn't seen it. I didn't see the red card for some time. The fact is, what concerns me, we knew——

By Mr. Weisman.

Q. Wait a minute. You have already given me an answer. I see that your assistant, or someone working with

you, has from that brief case produced a red card which he has handed to Mr. Haycraft.

Mr. Weisman: May I have it?

Mr. Haycraft: No. The witness may have it.

Mr. Weisman: Oh, don't be so technical.

By Mr. Weisman.

Q. (Indicating) Is that what you are referrng to? A. That is the card.

Q. May I see it? A. If the attorney—if I am asked to show it.

Q. May I see the red card that was just handed you by Mr. Haycraft? 3620

Examiner Bennett: The Examiner says the Attorney has the right to see the card.

(The card referred to was handed to Mr. Weisman.)

(The card referred to, heretofore marked for identification Respondents' Exhibit 19, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. Mr. Tily, I show you Respondents' Exhibit 19. Do I understand you to say that your tore received from the Fashion Originators Guild of America——

3621

Mr. Haycraft: That is objected to. He did not say so.

Examiner Bennett: Well, let him answer, if he knows.

By Mr. Weisman.

Q. You may answer, the Court says. A. As to whether or not we received this card?

Q. Yes. A. I haven't the slightest knowledge of that.

Q. Where do you think you got it? A. I haven't the slightest notion of it. The first I saw of it was in our files that our attorney, one of our vice presidents, had.

Q. When was the first you saw it? A. Probably three or four weeks ago.

Q. Have you any idea how it came into your attorney's file? A. Not the slightest.

Q. Do you know whether or not Strawbridge & Clothier received that from the Fashion Originators Guild? A. I do not.

Q. Do you know whether or not the Fashion Originators
3623 Guild ever sent this out (indicating)? A. I do not.

Q. Do you know personally whether or not this red card was ever issued by the Fashion Originators Guild? A. I do not.

Mr. Weisman: I now move that all testimony of this witness as to red carding be stricken from the record. He says he knows nothing about it.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Mr. Tily, you testified last week that as the head of this store you were interested in seeing that it kept its promises and lived up to all reasonable ethical concepts
3624 attaching to your business; is that so?

Mr. Haycraft: Objected to as being improper recross-examination.

Mr. Weisman: It is a foundation question.

Mr. Haycraft: I can't help it. It refers to a direct examination and not to recross-examination. It is not a proper foundation question.

Mr. Weisman: It refers to his cross-examination as to these documents.

Mr. Haycraft: Well, that is just the point. I object to it because it is not proper recross-examination. It is going back into old material, old testimony.

Examiner Bennett: You may recross-examine.

Mr. Weisman: I am laying a foundation for it.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Yes. Well, I will sustain that objection.

Mr. Weisman: Exception.

Examiner Bennett: That has nothing to do with those papers. 3626

Mr. Weisman: Oh, yes, it has, because these papers say that they didn't do it.

Examiner Bennett: Go ahead.

By Mr. Weisman.

Q. In Commission's Exhibit No. 366, I notice this statement: "In addition, from time to time, your store has in other ways failed to refuse to co-operate with the Guild in its efforts to wipe out the nefarious practice of style piracy in the ready-to-wear industry." Do you remember that? A. The letter, yes.

Q. Well, didn't you think that was a rather serious criticism of your store? A. Yes, and a serious misstatement, too, I thought.

Q. Well, since you thought that it was a serious criticism, and since you thought it was, as you now added without my asking you, that it was a serious misstatement, didn't you, as the head of this store, think it encumbent upon you to deny such a serious criticism and serious misstatement? A. I thought it was useless to deny it. 3627

Q. That is the best explanation you can give for your failure to deny it; is that so? A. It is.

Q. In other words—now, I read this statement from the letter: "as your staff refused to co-operate apparently because they claim that your declaration does not cover the mechanics of co-operation, we are required in fairness to all other co-operating retailers to return your original declaration signed June 30, 1933, by Mr. Tily." You understood that, didn't you? A. Yes.

Q. And the understanding by you that these manufacturers were claiming that you had refused to co-operate, and that, therefore, they were returning this declaration of co-operation; is that so?

3629 Mr. Haycraft: I object to that. The exhibit speaks for itself.

Examiner Bennett: Yes.

Mr. Weisman: But not for the witness. Not for what he did when he got them; his conduct is not explained thereby.

Examiner Bennett: Your application to question the question along those lines is denied.

Mr. Weisman: I except.

By Mr. Weisman.

Q. When you received this new declaration of co-operation referred to in Commission's Exhibit No. 366, and referred to in Commission's Exhibit No. 364, did you personally read it? A. What is 364?

3630 Q. The letter of February 6. A. Did I personally read it?

Q. Yes. A. Yes.

Mr. Weisman: May we have the exhibit, consisting of the declaration?

(There was a discussion off the record.)

By Mr. Weisman.

Q. I hand you this document, Commission's Exhibits Nos. 367-A and 367-B, which is—I will ask you if that is what was contained in Commission's Exhibit No. 366? A. Yes.

Q. Is that the declaration that was therein contained, or is it a copy made by you? A. I do not know whether it was made by me, or whether it is just a copy—who made the copy, if they did.

Q. How do you know that it is a correct copy of the original? A. I do not know that.

Q. Did you testify last Friday in answer to Mr. Haycraft's question that it was a correct copy of the original? 3632
A. I have no recollection of having so testified.

Q. Did you identify this Commission's Exhibits 367-A and 367-B as being a correct of the original, or—as a correct copy of the original that you received enclosed in Commission's Exhibit No. 366? A. I did, it is in evidence.

Q. And if you did, is it true? A. That it is a correct copy?

Q. Yes. A. I have stated I do not absolutely know. I do not have the slightest idea.

Q. If you do not know, and do not have the slightest idea, how could you so testify?

Examiner Bennett: The testimony was it was his best recollection. I believe that is what he said.

Mr. Weisman: He is now saying he does not 3633
have the slightest idea.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. What was there which recalled to your mind that it is a copy of the original? A. The general conditions which I glanced over which were printed—as in general but not

in detail, but the total effect of it made further co-operation impossible, the total effect of it made further co-operation impossible.

Q. What was there in that that you say made further co-operation impossible? A. Of a number of conditions which after conversations with our people we found to be utterly impossible.

Q. As a result of that, you came to the conclusion that further co-operation with the Guild along the lines set forth in Commission's Exhibits 367-A and B was utterly impossible? A. Yes.

Q. Did you so notify the Guild? A. I did not.

3635 Q. Did you notify anybody else? A. No.

Q. Did you cause anybody else to notify the Guild? A. No.

Q. Did you think that that was your duty, having promised them to co-operate, did you think now, after arriving at the conclusion that further co-operation was utterly impossible, that it was your duty to advise them, or cause them to be advised? A. I did not think it was at all necessary. It was up to them, then.

Q. That is, you thought that you would just go on doing as you pleased without notifying them of your change in attitude? A. We run our business usually as we please.

Q. You run your business usually just as you please? A. Absolutely.

Q. In any event, through some channel the Guild found

3636 that you intended to no longer co-operate, did they? A. We found out that they did not intend to sell us any more goods.

Q. Why are you trying to hide? You knew that they did because you did not intend to co-operate for the elimination of style piracy; is that so? A. In the condition, the additional conditions they tried to have us co-operate with in the elimination of style piracy, it was utterly impossible for us to do.

Q. I show you respondents' Exhibit 19, and ask you whether or not you can read the words therein, "Definitely refused to co-operate"? A. Yes. That does not make it true.

Q. You have just made it true by your testimony. You have just said that you found it utterly impossible further to co-operate; so it was true, was it? A. You made it true. Your clients make it true.

Q. Irrespective of who made it true, if your refusal to co-operate was true—that was true, was it not? A. We made no statement of a refusal to co-operate.

Q. But you had a secret intent without telling anybody; is that it? A. Secret—what makes it secret? 3637

Q. If you do not tell anybody and keep it to yourself; is that your understanding of secret? A. We told a good many people in our own institution.

Q. But outside of your own institution you did not? A. No. It was none of their business.

Q. So, then, it was outside of your institution secret that you no longer were going to co-operate? A. If it is important, yes.

Q. Then, whether it is important or not, it is true? A. That is the fact.

Q. Why did you not say so instead of trying to spar with me? A. I like to hear you talk.

Q. You like to hear me talk? A. Oh, yes.

Q. Very well. 3639

Mr. Weisman: If you will advise the Court, and if the Court will grant your desire, if the Court will run along, I will talk to you about four hours or more, yet, but I am afraid your Honor will stop me. He says he is fencing with me and hiding and evading, side-stepping, and parrying because he likes to hear me talk. If your Honor has the same affection for the rasping sound of my voice, for which I

humbly apologize, I am willing to go on and give all of the enjoyment to this witness.

Examiner Bennett: I am not going to allow you to continue, Mr. Weisman, on any such basis as that.

By Mr. Weisman.

Q. I do not think his Honor would. I notice that the first point in this declaration of co-operation says as follows: "We do not and will not wilfully buy for our ready-to-wear departments any copies of merchandise created by present or future members of your Association in all
3641 price ranges, or those firms joined with you under the classification of 'Protective Affiliates.'" Did you object to that clause? A. We objected to the entire thing, to the new thing in its entirety.

Q. I want to find out just what particular thing there was new that you remember about it that you objected to? A. Nothing new that I recall, but we just objected to the entire thing.

Q. Since you agreed—first, let me ask you, is there anything new in No. 1 that you can think of? A. There is nothing new in No. 1 that I can think of.

Q. Then it must be the same? A. I think it is.

Q. Since you agree to No. 1, you did not, upon receipt thereof, have any objection to it that you can think of, is
3642 that true?

Mr. Haycraft: May the witness have a copy of the document counsel is reading from?

Mr. Weisman: Give him a copy. I have to have one copy myself.

Mr. Haycraft: I have the original here.

Mr. Weisman: I am reading it.

Mr. Haycraft: I want the witness to have it so he can know what is really in it.

Mr. Weisman: I resent that.

Mr. Haycraft: If you like. I want to object to this question as incompetent, irrelevant and immaterial, and not proper recross-examination, on the ground that it does not make any difference whether the witness accepted that desire or refusal to co-operate, so far as the issues in this case are concerned. What he did or did not do in that regard has nothing to do with it.

Mr. Weisman: What do you think about that?

Examiner Bennett: I will sustain the objection to going into every clause of this; this is not a declaration by the witness.

3644

Mr. Weisman: If your Honor please, this was submitted on redirect examination. I have not as yet had a chance to go into it.

Mr. Haycraft: Certainly it was submitted on redirect examination.

Mr. Weisman: He said because of that it was utterly impossible for him to co-operate. I want to see whether or not that statement is wholly founded upon some factual basis as set forth in the document, in detail, or if it is not a complete misapprehension of the document as it stands. I can only do that by going into the clauses of this document. After all, there are only eight of them and I can do it in two minutes.

Examiner Bennett: Sustained. 3645

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Mr. Tily——

Mr. Weisman: Well, maybe I can settle it this way. Mr. Haycraft, will you stipulate with me that he arbitrarily and capriciously and utterly without any reason, refused, without any good reason, to co-operate?

Mr. Haycraft: Certainly not. He refused because of the new conditions set forth in that. He has so testified.

Mr. Weisman: That makes it necessary for me to go into those, Mr. Examiner.

Examiner Bennett: You can go ahead and get from him what new conditions had been added. Let him go over the document in that fashion.

Mr. Weisman: I submit that I should be entitled to go into it in my own fashion and get it in my own way.

Examiner Bennett: I do not think you can go
3647 into it when you seek to go into it the longest way possible.

Mr. Weisman: Not at all, your Honor. I have no desire to go into it the longest way possible. I have no greater love for the sound of my voice than your Honor has, and I seek to get along as fast as possible, but it is necessary to adequately and properly defend my clients herein.

Examiner Bennett: I do not object to your voice. I do object to filling up the record.

By Mr. Weisman.

Q. Look at No. 2. A. I have not answered No. 1 as yet.

Mr. Weisman: I think the witness has answered
3648 No. 1. Let the reporter read the question and the answer, both.

(Question and answer read.)

By Mr. Weisman.

Q. So you did say "No"? A. That is the only thing—

Q. Is that the answer, "No"? A. May I correct my answer?

Q. Wait a minute.

The Witness: May I correct my answer, your Honor? I do not know whether he read it in its entirety or not.

Mr. Weisman: The reporter has just read back while you were watching the document, which is what I said. I submit that is a complete statement of what was said therein. You have had it before you while it was being read, anyhow.

By Mr. Weisman.

Q. Do you see anything that the reporter left out? A. No, I did not say—when you did not—I do not know whether you did say all. 3650

Q. What is that? I did not catch the significance of your answer. A. I did not know whether you said, or did not say, "In all price ranges," that was to be by us considered an impossible condition, no matter what else there was therein, that would have been enough because we felt it was impossible for you to defend us.

Q. So, when you got that far you were finished? A. No, I was not finished.

Q. You said that was enough? A. That was enough, but we read it all; but that was enough.

Q. You were of the opinion that the protection of originators' originations was good for the public and good for the store, of which you were the head, and good for the manufacturer; how do you explain to the Court that you did not make any explanation to the Guild setting forth the reasons why you did not want to sign this? 3651

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant.

Mr. Weisman: It is a clear question of the credibility of the witness.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. As a matter of fact, your answer to the Guild did not object to Commission's Exhibits 367-A or 367-B at all, did it? A. No.

Q. No? A. No.

Q. The letter which you wrote merely said in words or substance, tell us who else signed the declaration of co-operation; is that the fact? Is that so? A. Correct. It did inquire as to who else had signed the declaration of co-operation.

Q. As a matter of fact, in your redirect examination you testified, did you not, that the new policy, or the policy that
3653 you denominated as "new" of the Fashion Originators Guild, had been inaugurated many months before you were what you were called "red carded"; is that so? A. "Inaugurated"—I do not recall the word. I think the question was, when did I hear of it?

Q. Well, let us read the question now. A. That is better for you to read what I actually said.

Q. I will be glad to do so.

Mr. Weisman: Mr. Haycraft, so you will know, I am reading question appearing at page 1889: "By Mr. Haycraft. Q. Mr. Tily, is what was, or when was there inaugurated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly
3654 when, but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit."

Mr. Haycraft: What page?

Mr. Weisman: Why don't you wait for me to finish my question before you ask what page it was? I told your what the page was at first. If you would pay attention instead of sitting there dreaming we could get along a little faster.

Mr. Haycraft: I am not the one who is dreaming. There is one dreaming, I think. What is the page?

Mr. Weisman: The page is 1889. I would appreciate it if you would be kind enough to wait until I finish my question. Now, I have lost my trend of thought, and I will have to repeat it all over again.

Mr. Haycraft: Isn't that too bad.

Mr. Weisman: Your lack of consideration for counsel makes itself more apparent every day.

By Mr. Weisman.

Q. I will read the question to you: "By Mr. Haycraft. Q. —Mr. Tily, is what was, or when was there inaugu- 3656
rated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly when but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit." I have read the question and the answer in its entirety so there will be no quarrel about it. Now, do you remember that the word "inaugurated" was used? A. I do not.

Q. Inaugurated? A. Inaugurated.

Q. Did you state that this new policy was inaugurated a long time before you were red carded? A. Some time before in the previous year.

Q. Did you say "a long time"? A. At some other time.

Q. Did you not answer to Mr. Haycraft that it was some 3657
other time, or that it seemed a long time, or that it was a long time? A. That I do not recall.

Q. You do not recall any of those expressions? A. No.

Q. Now that you do not recall it, which was it; did it only seem a long time, or was it a long time? A. "Long" is a very relative term.

Q. You used it. What did you mean that you thought it only seemed a long time, or that it was a long time? A. Some time before.

Q. Now, you have been with this store fifty-four years, have you not? A. That is a long time.

Q. That is a long time? A. Yes.

Q. So that in your judgment the period or intervals of time—referring to your judgment of the period or interval of time, the word, when you use it, "long," may be considerably greater than any consideration or construction that would be placed upon it by another person who had only been associated with your store a short time; would that not be your consideration and construction of the word "long," as you used it there; is that so? A. Well, some other person in the store might consider the word "long"
3659 to mean a different period of time from what I would mean it; I think that is a fair inference, yes.

Q. Now, when you said—first, did you say it was a long time?

Mr. Haycraft: I object. The testimony is all in here.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. How long did you want to convey to the Court, and what period of time do you intend to convey to the Court when you used the words that it was a long time? A. Months.

3660 Q. Months, with the "s"? A. Yes.

Q. Pluralized? A. Yes.

Q. When you say "months," how many months do you mean? A. I do not know just how many I mean. It is a very indefinite thing in my mind, but just how long it was I could not say. It is very indefinite.

Q. If it is very indefinite, why did you say "long"?

Mr. Haycraft: That is objected to. I cannot see any probative value to this cross-examination.

Mr. Weisman: I did not think you would. It is very material to the question of the witness' credibility.

Mr. Haycraft: He is going into his recollection, and he testified two or three times as to that. I cannot see the probative value of it.

Mr. Weisman: He testified on his direct examination after a period of time, and did not use a definite period. I am trying to find out what he means by that.

Mr. Haycraft: That has been thoroughly gone into. No further questioning is necessary along that line. 3662

Mr. Weisman: I think the Court should be allowed to decide that. I do not know exactly what he meant by that. A long time. A long time may mean one thing to one person and another thing to another.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. You say it seemed a long time. It seemed a long time. And now you say it was months, and yet you do not have any hesitancy in stating in your answer to Mr. Haycraft that it was a long time.

Mr. Haycraft: I object to that question, too.

Mr. Weisman: It is not even finished. 3663

Mr. Haycraft: It is clear in the record—he has made the statement. I object to this as needless waste of time.

Mr. Weisman: Oh, no. He does not seem to know. I want to find out what he thinks when he comes in here and says it was a long time. I want to find out what degree of care and attention and value he is placing upon his own testimony so that

the Court may be able to determine it with more accuracy.

Mr. Haycraft: I think you have gone into this quite sufficiently. I think you have exhausted this entirely.

Mr. Weisman: You would be surprised to know how far from the fact it is that I have exhausted my possibilities to probe this witness. I am very far, I will assure you, Mr. Haycraft, from having exhausted my possibilities to probe this particular witness.

Mr. Haycraft: I object to any further interrogation on this point.

3665

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. So that this new policy, it was in any event inaugurated a long time before February 6, 1936; is that right? A. Is that your statement or mine?

Q. I want to know if that is the fact. A. If I said so, it is right.

Q. You still subscribe to it? A. The question of "long"—it has been ruled out by the Court, as I understand it: the length of time. I do not think I need to answer it.

Q. Oh, you do not think you need to answer it? A. No.

3666

Mr. Haycraft: I object to that question.

Mr. Weisman: If your Honor please——

By Mr. Weisman.

Q. I am not concerned with your understanding of the Court's ruling. I will get along with the Court myself.

Examiner Bennett: I think the witness should not argue with the attorney.

Mr. Weisman: Thank you, your Honor, for that direction to the witness.

Examiner Bennett: Is there an objection?

Mr. Haycraft: I object.

Examiner Bennett: Same ruling.

Mr. Weisman: I except. Your Honor, I want to know whether or not he subscribed on Monday to the statement that he made on the prior Friday, and I submit that is a perfectly proper line of interrogation on cross-examination. He made the statement, and I think it goes very clearly to the witness' recollection, and the weight, value, and credit that may be placed upon his testimony. It certainly goes 3668
to show his attitude here before the Court in the record, so that his entire disregard, apparently, of the seriousness of this investigation may be indicated in the record. Here we are having wild statements made by the witness at will upon almost any subject, and I think it should be fully developed upon the record because it certainly goes to discount his entire testimony.

Mr. Haycraft: I object. That is not a fair characterization of the witness' testimony, and I ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Weisman: I except. May I go into this line of interrogation further, your Honor?

Examiner Bennett: No. We will shut it out. 3669

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes. I think we have gotten to the limit on that.

Mr. Weisman: Exception.

Examiner Bennett: Yes. Proceed.

By Mr. Weisman.

Q. In any event, did you try to find in any period of time prior to your red carding, and after the inauguration of this new policy, any way to, or did you try to comply with the new policy? A. The understanding of the new policy was that it included all price ranges.

Q. I did not ask you that.

Mr. Weisman: I ask that the answer be stricken out. The question is easily answered. It is a simple question.

3671 A. We did not try to, nor did we comply with the new policy.

By Mr. Weisman.

Q. So you can answer a question if you want to. A. Sometimes.

Q. So, in other words, you had failed to comply with the policy of the Fashion Originators Guild inaugurated in its efforts to stamp out style piracy for a long period of time before you were ultimately red carded; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer that.

By Mr. Weisman.

3672 Q. The Court says you may answer. A. I have forgotten the question.

Q. What? You have forgotten the question so soon? A. Well, that is what I told you.

Q. Do you want the question read? A. Yes.

Q. (Question read.) A. I have stated that we failed to comply with the price range because it was impossible.

Q. Don't you know that that question can be answered "yes" or "no"? A. I think——

Q. Don't you realize that all that question requires is a "yes" or "no"? A. Quite so.

Q. Won't you please answer it simply one way or the other, "yes" or "no" and let us go to something else? A. I cannot without a qualification.

Q. All right. A. That is the idea.

Q. On Friday you referred in your testimony to the Protective Affiliates, did you not? A. Yes, sir.

Mr. Weisman: I might say in the record that I think we will all concede that the words should have been "Protective Affiliates" and it appears as "Prospective Affiliates."

Mr. Haycraft: Yes. 3674

Examiner Bennett: Yes.

Mr. Weisman: I think it was just a mishearing by the operator, probably.

A. My understanding of it was that organizations similar to this having control of piece goods and the same operations as to style piracy.

By Mr. Weisman.

Q. In other words, when you said to Mr. Haycraft the following question and answer was made: "Q. The new conditions here you refer to. A. —that is exhibit—— Q. Commission's Exhibit 367-A. A. Yes, new agreement." Was that referring to Protective Affiliates, the first paragraph in this letter, Commission's Exhibit 367-A? A. Yes. 3675
At that time I had reference to the Protective Affiliates as set forth in the first paragraph of Commission's Exhibit No. 367-A.

By Mr. Weisman.

Q. You mean that you had objection to somebody who was engaged in the business of protecting piece goods; is

that so? A. Objection between the—objection to the combination between the Guild and the Affiliates.

Q. In other words, the word "Affiliates," or the phrase "Protective Affiliates"—first, what was—was this because of the Protective Affiliates—those piece goods people that you objected to going along with this, among other reasons, is that your new declaration? A. What is that question?

Q. In other words, the phrase "Protective Affiliates" you objected to this piece goods people going along, in connection with your many other reasons for objection to this new declaration? A. Protective Affiliates was not—

3677 Mr. Haycraft: That is objected to as not in accordance with the witness' testimony.

Mr. Weisman: Let the witness state.

Mr. Haycraft: I object to that.

Mr. Weisman: Let the witness finish his answer.

Mr. Haycraft: I do not think that is a proper question to answer.

Examiner Bennett: Oh, I will let him answer if he can give an answer to it.

A. (Continuing) Protective Affiliates was not a new condition as far as my knowledge was concerned.

By Mr. Weisman.

3678 Q. In other words, you had always known the Protective Affiliates of the Guild; is that right? A. I knew there was such an organization; I did not know who they were in detail, the members of it.

Q. You knew that those Protective Affiliates were people engaged in the sale of piece goods? A. Yes.

Q You knew that with the same degree of certainty as you have with regard to all the other matters about which you have testified here; is that so? A. Same degree?

Q. Yes. A. Yes, same degree.

Q. If, then—I will withdraw that. Mr. Tily, don't you know, or did not you ever inform yourself that Protective Affiliates has nothing to do in the slightest degree with piece goods?

Mr. Hayeraft: That is objected to.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Are you, Mr. Tily, testifying as to facts that you know, or are you guessing while you are on the stand? A. I am endeavoring to testify to facts which I know.

3680

Q. And you say that we can thoroughly judge of your knowledge by your answer to me that the Protective Affiliates referred to people engaged in the piece goods business; is that a fair statement? A. It is a fair statement, yes.

Q. Well, suppose I were to say to you that the Protective Affiliates didn't have any reference of any kind, nature, or description to Protective Affiliates, then—I mean to people engaged in the piece goods business, then what would you as a fair and reasonable person think is the worth and value of all of your testimony? A. I had nothing to do with the piece goods?

Q. Yes. A. The copywriting of designs?

Q. That is right. A. With the copywriting of designs?

Q. Nothing to do with it at all. Then what would you say? A. I have been misinformed by somebody.

3681

Q. I see. That wasn't my question, whether you were misinformed. May I have the question read again to you?

(The question was read as follows: "Well, suppose I were to say to you that the Protective Affiliates didn't have any reference of any kind, nature, or description to Protective Affiliates, then—I mean to people engaged in the piece goods business, then

what would you as a fair and reasonable person think is the worth and value of all of your testimony?")

A. Ha, ha, I have been misinformed if they have nothing to do with the copywriting of designs which are—have to do with—not with the copywriting, with the protection of original designs by textile manufacturers.

Q. You would say, wouldn't you, as a fair minded person, that your testimony was a pretty poor performance, wouldn't you, if you had been so misinformed on so important a thing?

3683 Examiner Bennett: I am sustaining the objection to that line of questioning.

Mr. Weisman: All right. I think I have gone enough into that, your Honor.

Examiner Bennett: I don't see why the witness should be asked to get down on his knees and declare that he was all kinds of a chump and that his testimony was no good and all of that sort of thing.

Mr. Weisman: Maybe———

Examiner Bennett: I know, but if you want to argue that from the facts, is one thing, and it is perfectly proper to bring out the facts as a basis for argument. But this is not proper and you know it isn't proper to ask a question of the witness to tell about his own sins.

3684 Mr. Weisman: Frequently witnesses admit to their own sins and that helps give them absolution therefrom.

By Mr. Weisman.

Q. If you are mistaken about what you say wouldn't you want to tender an apology to the Guild?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. I also understood you to testify that a further reason that you didn't want to go along with this Guild program was the inclusion therein of the so-called Fair Trade Practices; is that correct? A. Correct.

Q. As a matter of fact, have you any idea when the Guild adopted those Fair Trade Practices? A. These Fair Trade Practices which were in this new one seemed to be an extension of the old.

Q. Well, what Fair Trade Practices were there in this, 3686
and when you said "in this" I assume you referred to Commission's Exhibit No. 367, that you had objection to? A. May I see?

Q. Can you recall a single one, first? I want to see whether you can. A. The general—the whole general tone of the Fair Trade Practice was the subject of consideration and comment, not only in our store, but elsewhere.

Q. Well, since— A. And——

Q. Since it was the subject of comment in your own store, I want to see if you can remember a single item of the Fair Trade Practices that you say were matters of comment? A. And extension of the method of finding copies?

Q. Yes. A. A rather more rigorous insistence which 3687
wiped out our original qualification.

Q. I see. A. Exception.

Q. Well, let's see. When you referred to the Fair Trade Practice, you didn't mean, did you, something in addition to a program aimed at the elimination of style piracy, did you? A. Something other tha a program for the elimination of style piracy, no.

Q. Yes. You didn't refer, for example, to uniform discounts, or something of that kind? A. No.

Q. You only meant, then, in your testimony about additional Fair Trade Practices, the extension of the style piracy program. You didn't mean an additional program looking to the curing of some additional evils in the industry? A. The extension of style piracy program and the method of enforcement.

Q. Then your answer is "yes"; isn't that so? A. Yes.

Q. In other words, I want to get from you if it is a fact that when you used the words before last week, "additional fair trade practices," you didn't mean additional fair trade practices, but you meant additional ways, perhaps, of enforcing or extending the program of protection of original

3689 designs; isn't that so? A. Yes, by—considered unfair, consequently——

Q. Yes, I understand. A. That is the justification for the use of fair——

Q. Now, will you please listen to my question? I am going to ask the Court to have it repeated and see whether or not you can give me a categorical answer "yes" or "no." It is a simple question.

Mr. Haycraft: I am objecting to that, Mr. Examiner. The witness should be allowed to explain his answer.

Examiner Bennett: Sustained.

Mr. Weisman Exception.

3690 *By Mr. Weisman.*

Q. You don't know of any other fair trade practices that you objected to?

Mr. Haycraft: Further——

Q. —of the——

Examiner Bennett: Sustained.

Mr. Haycraft: — objecting.

Mr. Weisman: Well, I would like to finish my question.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. When you said on your redirect examination in answer to Mr. Haycraft's questions that you found objection to the additional fair trade practices requested by the Guild, did you have in mind anything other than those matters which referred to the protection of style originations?

Mr. Haycraft: Objected to. It has already been answered. 3692

Examiner Bennett: Sustained.

Mr. Weisman: I respectfully except.

Examiner Bennett: All right.

Mr. Weisman: And make this offer of proof: That if the witness were permitted to answer, he would have said, "No."

Mr. Haycraft: He has already said so.

Mr. Weisman: I mean, it is not plain. This witness has hedged, and hemmed and hawed. I think on so important a matter we might have a direct answer.

Examiner Bennett: We spent an hour on cross-examination——

Mr. Weisman: Now, Judge, I think I ought to correct you. It has only been fifty minutes, and ten of those minutes, or fifteen, were taken up in argument with Mr. Haycraft, and not in examination of the witness. 3693

Examiner Bennett: That is your—hard luck. You might cut out the argument.

Mr. Weisman: I don't know whether it is hard luck. Luck is something that comes by chance. I am afraid that perhaps this comes to me by design.

By Mr. Weisman.

Q. With regard to Commission's Exhibit 364, you received an answer to that; didn't you?

Mr. Haycraft: That is objected to as not being proper recross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I make this offer of proof: That if the witness had been directed to answer he would have answered in the affirmative.

Mr. Haycraft: He has already answered in his original examination.

3695 Mr. Weisman: What?

Mr. Haycraft: Original cross-examination.

Mr. Weisman: That is all.

Redirect examination by Mr. Haycraft.

Q. You were asked certain questions on recross-examination as to the correctness of your testimony, particularly with reference to the use of your understanding of the phrase "Protective Affiliates" as used in Commission's Exhibit No. 367-A and B. I will ask you——

Examiner Bennett: I sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

3696 Q. Mr. Tily, when you testified with respect to your understanding of Protective Affiliates, did you testify from your own knowledge, or from knowledge and information given you by others?

Mr. Weisman: Objected to. I thought your Honor sustained that objection.

Examiner Bennett: I sustained the objection

Mr. Weisman: Thank you.

Mr. Haycraft: I would like to make an offer to prove, Mr. Examiner, on that.

Examiner Bennett: You may have an exception.

Mr. Haycraft: I say, I would like to make an offer to prove.

Examiner Bennett: Yes, you may make an offer to prove.

Mr. Haycraft: Offer to prove that if the witness were allowed to answer that he would testify that his understanding of the Protective Affiliates was information given to him by others not within his own knowledge, by others outside of his organization and not within his own knowledge. 3698

Examiner Bennett: I see. All right.

By Mr. Haycraft:

Q. I will ask you now, Mr. Tily, as to the testimony that you gave on direct examination in this case and on redirect examination as well as cross-examination with respect to your own testimony, whether that was information within your knowledge or from employees within your organization.

Mr. Weisman: Object.

Q. —familiar with it?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial. 3699

Examiner Bennett: Sustained.

Mr. Haycraft: I want to make an offer of proof, that if the witness were allowed to testify that he would have testified that the information which he gave to his own organization was either information which he had of his own knowledge or was given to him in the usual course of business with subordinates in charge of the various divisions thereof.

3700

Mr. Weisman: Objected to as incompetent, irrelevant and I move that the offer of proof be stricken out as an improper offer of proof.

Examiner Bennett: I will let it stand.

Mr. Weisman: Exception.

Mr. Haycraft: That is all.

Mr. Weisman: That is all, Mr. Tily.

(Witness excused.)

Mr. Haycraft: May I have just a moment?

Examiner Bennett: Do you want a recess?

Mr. Haycraft: About four minutes.

3701

(There was a short recess taken.)

Examiner Bennett: You will be in order, please. You may resume, Mr. Haycraft.

CHARLES T. TAYLOR was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Charles T. Taylor.

Q. Where do you reside? A. Penn Athletic Club.

3702

Q. Philadelphia? A. Yes.

Q. Occupation? A. Manager, basement store, Strawbridge & Clothier.

Q. How long have you been manager of the basement store of Strawbridge & Clothier? A. The latter part of January, 1936.

Q. Prior to that what was your occupation? A. I was divisional manager in charge of the dress group of departments in Strawbridge & Clothier store.

Mr. Weisman: Exception.

A. (Continued) Prior to the latter part of July, 1936, and as far back as January, 1933, I was in charge of the dress division of Strawbridge & Clothier.

By Mr. Haycraft.

Q. What types of dresses were within your supervision from July, 1933, to January, 1936? A. The type in reference to price and size?

Q. Yes. A. We carried all price dresses in my division, from the lowest price right up to over $100.

Q. That is the retail price? A. Yes.

Q. Can you testify as to the wholesale prices in your division? A. Wholesale price in any particular group of 3704
dresses?

Q. Do you have a division, a definite division dividing them up into groups, any scheme of that sort? A. Yes. We have them divided into the following groups: First, we have the Economy Dress Shop in which we carried dresses up to $12.95 at one time.

Q. That is the retail price? A. Yes, sir.

Q. What was the wholesale price of those dresses? A. Oh, they averaged up to $8.75.

Q. $8.75 and below? A. Yes, sir.

Q. All right. What was your other group that you had? A. The next group would be what we term the "Inexpensive Misses' Department" and the "Women's Inexpensive Dress Department." 3705

By Mr. Weisman.

Q. Is that one department? A. Two.

Q. Two? A. Two.

Q. Give us them one at a time. A. I did.

Q. You did? A. I said, "Inexpensive Misses' Department."

Q. Yes. A. "Inexpensive Women's Department."

Q. Those are the two? A. Yes.

By Mr. Haycraft.

Q. What price range? A. Retail?

Q. Yes. A. $9.95—from $19.75—there was some variation corresponding to the season of the year.

Q. What was the wholesale price of this type of dresses? A. Up to $13.75 cost.

Q. I take it that the price range was the same in both of these departments? A. Yes.

Q. Next? A. Next?

3707 Q. Yes. A. Then we had the Junior Misses' Dress Department.

Q. What was the price range there, both retail and wholesale? A. We took in retail from as low a price as the season required, which might be down to $2.95, excepting in clearances where they might go lower than that, and up to $100.

Q. What would be the range of the wholesale prices then? A. Up to about $70 cost.

Q. $70? A. $70, up to.

Q. Any other departments? A. Then we had our misses' better dress department, which we carried dresses retailing from $19.75 and up, with the exception of certain seasons, summer seasons, in which we permitted that de-

3708 partment to carry lower-priced dresses.

Q. And the wholesale price, what would be the wholesale price? A. Well, the wholesale price would depend upon the particular price range, the $100 dress, that might be up to $70 or up to $75, and on down the line.

Q. What was the beginning? A. The beginning on that was, on our $19.75 and selling—in other words, the selling price would be $19.75 and the wholesale price would be $13.75 and sometimes $12.75.

By Mr. Weisman.

Q. What was that? A. In that it would begin with, on that department, $19.75 selling price, and the wholesale price would be $13.75, and sometimes $14.75. Also, sometimes $12.75. The average would be $12.75.

Q. $12.75? A. Yes.

By Mr. Haycraft.

Q. $12.75 up, you say? A. The average would be about $12.75.

Q. Did you have any other department? A. Then we had the misses' better dress department in which we had, beginning with the same price ranges, and the same cost ranges, the same group of dresses; in other words, we had practically the same price ranges and the same cost ranges that we had in the other. 3710

Q. That is the same as in the women's department? A. Yes, sir; those two departments had about the same price ranges.

Q. For the sake of future reference, do you have numbers for the different departments? A. Yes, sir.

Q. What was the numbers? A. The Women's Better Dress Department, No. 331; the Misses' Better Dress Department, No. 350; the Women's Inexpensive Dress Department, No. 338; the Misses' Inexpensive Dress Department, No. 358; the Junior Dress Department, No. 371; the economy Dress Shop Department, No. 491. 3711

Q. Now, what were your particular duties in connection with that division in the various groups of dresses that you have referred to in your testimony? A. Supervising the buyers who bought these dresses.

Q. Anything else? Did you have anything to do with the sales? A. And to direct the selling of the dresses which were purchased—which we purchased.

Q. Now, in a general way where did you purchase the dresses that you sold in your division at the time that you became division manager?

Mr. Weisman: If he wants to qualify him, that is one thing, but this witness has not qualified that he had anything to do with that, that he did any purchasing at all.

Mr. Haycraft: He said that he supervised the buying. It seems to me that that is enough. I assume that that covers that completely.

Mr. Weisman: I might have an idea of what supervising would mean, and the witness might

3713 Supervising is a question of conclusion. I might supervise it in one way and he might supervise it in another way. If he has the facts I think we ought to have them.

Examiner Bennett: Yes. What he knows is important. We might as well determine it right here as any other time.

By Examiner Bennett.

Q. Did the buyers report to you? A. Yes, sir.

Q. Did they work under your direction? A. Yes, sir.

Q. Did they report all transactions to you? A. They were expected to; yes, sir.

Q. You had full charge of giving instructions as to the

3714 store policies? A. Yes, sir.

Examiner Bennett: I think he is qualified. Go ahead.

By Mr. Haycraft.

Q. Answer the question. A. I have answered the question. You mean——

Q. No, the last one I referred to. A. What is the last question.

Q. (Question read.) A. Meaning what markets or locations?

Q. Yes, what markets? A. New York principally.

Q. Did you do any buying in Boston or Chicago? A. In both cities.

By Mr. Haycraft.

Q. State first if you can give the extent from the standpoint of volume, and if so, you may do so. A. I cannot give the figures as to how much volume we placed in the respective markets. I cannot, offhand. I do not keep records of that kind.

Q. Well, can you testify as to the type of merchandise 3716
that you purchased in the other markets? A. Yes, sir.

Q. As to what merchandise did you purchase in Boston, first?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: Overruled. Go ahead.

Mr. Weisman: Exception.

A. Well, our Women's Better Dress Department enjoyed doing business with a number of manufacturers of women's better dresses in that market. Then, in addition, there were some manufacturers who manufactured dresses which would fall in our moderate-priced department, and we have also women's dress manufacturers—they were, I intended to say, also women's dress manufacturers, most of 3717
them were.

By Mr. Haycraft.

Q. Now, as to Chicago? A. In Chicago the market——

Mr. Weisman: Just a moment. May it please your Honor, I respectfully ask that the answer be stricken as irresponsive.

Examiner Bennett: Overruled. Go ahead.

Mr. Weisman: Exception.

A. (Continued) The Chicago market was used by our Women's Better Dress Department on certain types of merchandise.

By Mr. Haycraft.

Q. Can you describe the type, if you can? A. I think that was——

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and also ask the witness
3719 to wait until I make my objection.

Examiner Bennett: Overruled.

A. (Continued) We purchased the tailored type of dresses there, and also certain types of costume suits.

By Mr. Haycraft.

Q. You are speaking of the present time, or when you came with the firm? A. I am speaking of the time prior to January 1936.

Q. That is when you left that department? A. And as late as to-day we buy that same type there.

Q. Your testimony refers to the time that you were division manager? A. Only to that time, sir.

3720 Q. All right. A. Yes.

Q. Now, as to the type of garments that you bought from New York merchants in the New York market. A. The majority of the dresses which we sell in our store we are able to locate in the New York market.

Q. Is there any advantage in the New York market— A. There is.

Mr. Weisman: I object, if your Honor please.

By Mr. Haycraft.

Q. —as compared with the other markets? A. There is. The advantage is that there is a market close by and it costs us less to send buyers to that market than if we had to send them to the more distant markets.

Q. At the time that you became associated with Strawbridge & Clothier as divisional manager, in January, 1933, was this firm co-operating with the Fashion Originators Guild of America, Inc.? A. At that time there was no agreement between the store of Strawbridge & Clothier and the Fashion Originators Guild of America.

Q. Well, after you became divisional manager—strike that out. Before you became divisional manager were 3722
you familiar with the Fashion Originators Guild of America; did you know anything about it? A. No, sir. At the time I became divisional manager I did not know anything about the Fashion Originators Guild of America.

Q. When did you first become acquainted with its activities? A. Immediately—some time in the spring or summer of 1933.

Q. How did that come to your attention? A. My superiors by correspondence—I believe had correspondence with the Fashion Originators Guild of America, and they called me in to discuss certain matters pertaining to that organization.

By Mr. Haycraft. 3723

Q. I show you Commission's Exhibits 368 to 374 for Identification, both inclusive, and ask you if you can identify these papers? A. (Witness inspects papers.)

Q. The question is whether you can identify them. A. Yes.

Q. Yes? A. Yes.

Q. In what way can you identify them? A. What?

Q. What are they? A. They are letters which we received from manufacturers.

Q. Of dresses? A. Of dresses; yes, sir.

Q. On or about the dates indicated in each one? A. Yes, sir.

Q. Are they taken from the files of Strawbridge & Clothier Company? A. Yes, sir.

Q. They are? A. Yes, sir.

Q. Have you seen them before? A. Yes, sir.

Q. You have? A. Yes.

Q. When did you first see them? A. Shortly after the date which appears on these letters.

Mr. Haycraft: I offer in evidence at this time Commission's Exhibit 368, an original letter from
3725 Roth, Jackson & Immerman, Inc., New York, under date of June 29, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit 369 for Identification a letter from Bender & Hamburger, Inc., an original letter, 525 Seventh Avenue, New York, dated June 29, 1933, with no address upon it.

I offer in evidence as Commission's Exhibit 370 for Identification, an original letter from Myron Herbert & Chas. Cooper, Inc., 1412 Broadway, New York, under date of June 27, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No.
3726 371 a letter from Kallman & Cohn, Inc., 1412 Broadway at 39th Street, New York, under date of June 29, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No. 372 for Identification a letter from Cohn & Holt, 1412 Broadway, New York, under date of June 29, 1933, to Strawbridge & Clothier.

I offer in evidence as Commission's Exhibit No. 373 for Identification an original letter from Milgrim, 6 West 57th Street, New York, under date of June 29, 1933, to Mr. F. W. Smith, Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No. 374 for Identification an original letter from Ed. Gerrick Co., Inc., 550 Seventh Avenue, New York, under date of June 28, 1933.

Mr. Weisman: No objection to the receipt in evidence of any of these for the purposes for which they were offered.

(The letters referred to, heretofore marked for identification Commission's Exhibits 368, 369, 370, 371, 372, 373 and 374, were marked as exhibits and received in evidence.) 3727

By Mr. Haycraft.

Q. I show you Commission's Exhibit 362, which is a letter from Strawbridge & Clothier, Philadelphia, under date of June 30, 1933, to Fashion Originators Guild of America, 512 Seventh Avenue, New York City, and ask you if you are familiar with the letter; that is, have you ever seen it before? A. Yes, sir.

Q. Where did you first see that letter, or a copy of it?

Mr. Weisman: I object to that as immaterial; that is, the identification by this witness. It is already in evidence. Mr. Tily has testified to it, and that he wrote it and signed it, and that it was their original declaration of co-operation by Strawbridge & Clothier. He was asked if he had the ability to identify it, if he had sent it out, if he had seen it again, and as to what it was, and all that sort of thing. Now, if we are going to ask this 3729

fellow if he will identify it, if you ever received it, if you ever sent it back, if you ever saw it before, what it was, when it went out, what was done with it, all of those things, what useful purpose it could serve I have no idea, and I do not know why these questions are being asked unless it is just trying to waste time.

Examiner Bennett: What is the purport of it?

Mr. Haycraft: It is a foundation question.

Examiner Bennett: Do you want to further identify it?

Mr. Haycraft: This is merely a foundation ques-
3731 tion to fix the date as to what he did afterwards.

Mr. Weisman: He said when he first saw this.

Mr. Haycraft: I am just using this for the purpose of fixing the date.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I saw it a few days before the date on which—before the date which appears on this letter.

By Mr. Haycraft.

Q. I will ask you the question again. Subsequent to that date, what instructions, if any, did you give your buyers, or other employees with your department, with
3732 respect to the stamp warranty clause on all orders placed with garment manufacturers reading as follows: "This order is placed on the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted." A. I asked the buyers to see that that stamp was placed on all orders.

Q. Did you do anything else to carry out and co-operate with the Guild in its campaign against so-called "style

pirates" in conformance with Commission's Exhibit 362? A. I merely advised the buyers of the contents of this letter, and I asked them all to act in accordance with the agreement which our president had entered into.

Q. I call your attention to this language in the letter: "We, however, are to be the judges as to whether garments have been copied or pirated"—strike that out. "We do not and will not knowingly sell in our ladies' ready-to-wear departments any copies or pirated dresses of original garments created by any members of your Association." Do you remember calling the attention of your buyers to that clause? A. Yes.

Q. And, further: "We, however, are to be the judges 3734
as to whether garments have been copied or pirated." A. I called their attention to that.

Q. What steps did you take to determine whether or not the dresses which you returned to manufacturers were copies of garments created by members of the Fashion Originators Guild? A. At which time, Mr. Haycraft?

Q. At the time that you gave the instructions and subsequent thereto, and if there was a change, will you indicate the change, if possible? A. Well, I do not quite understand.

Q. Do you want the question read? A. Yes, sir.

Mr. Haycraft: I will ask the question be read.
(Question read.)

3735

By Mr. Haycraft.

Q. I will strike that out. Did you, as a matter of fact, subsequent to June, 1933, return garments to manufacturers pursuant to the understanding and agreement that you had with the Guild, and when I say "you," I mean the Fashion Originators Guild of America, Inc., as exemplified by Commission's Exhibit 362? A. What is that question?

Mr. Haycraft: Well, read the question to him. (Question read.)

A. We did return merchandise in accordance with that agreement.

Q. Did you——

Examiner Bennett: It is now 12.35. We will take a recess until 2 o'clock.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

3737

AFTERNOON SESSION.

Examiner Bennett: You may resume. Be in order, please.

Mr. Haycraft: What is the last question and answer?

(Question and answer were read.)

By Mr. Haycraft.

Q. Will you testify, Mr. Taylor, as to what the Guild did do to apprise you as to alleged—as to when a garment was to be returned to the manufacturer?

3738

Mr. Weisman: Just a moment. I believe Mr. Haycraft has perhaps forgotten that that testimony was directly covered on this witness' prior examination before lunch, and we had it in detail, and I object to the reiteration.

Mr. Haycraft: I do not so recall.

Mr. Weisman: I know. I imagined——

Examiner Bennett I will overrule the objection. Go ahead.

Mr. Weisman: Exception.

A. We received correspondence or letters from the Guild enclosing a form, and I believe at the early stages there a sketch of the style which the Guild claimed had been registered by one of its manufacturers of the members, and asking us to return merchandise, asking us to return any stock of that particular style we may have had on hand at that time.

Q. You identify that as letters from the Guild of the kind you just described? A. Yes.

Q. You received these, did you? A. Yes, sir.

Q. You saw them at the time, on or about the date of each exhibit? A. About that date, yes.

Mr. Haycraft: I offer these in evidence. 3740

Mr. Weisman: May I see them?

Mr. Haycraft: Commission's Exhibit No. 375 being an original letter from the Guild signed by Jack Goldston, dated January 24, 1934, and 376, being a letter from the same man, dated January 25, 1934.

Mr. Weisman: May it please your Honor, I object to the introduction of these letters into evidence on the ground that the sending of such letters has been entirely discontinued. Your Honor will notice that these letters are dated January 24 and January 25, 1934, respectively, and it merely shows what was done a matter of two and a half years ago. It is not the fact to-day. I so state for the 3741 record as an officer of this court.

May I hand the letters to you?

(The letters referred to were handed to the Examiner.)

Examiner Bennett: I thank you.

Mr. Weisman: You are welcome, sir.

May I further supplement my statement to the Court?

Examiner Bennett: Yes.

Mr. Weisman: Your Honor may recall on the direct testimony of the first witness tendered by the Commission, Mr. Post. He was queried on these forms of letters, and he stated that while that had been done from time to time, they had sent letters prior to his advent, that shortly after Mr. Post joined the Guild the practice of sending any such letters was completely abandoned. That was the Commission's own testimony. Under those circumstances I urge that as an additional reason that these exhibits should not go into evidence. They
3743 merely clutter up the record, and they are determinative of nothing, since it is something that happened and has long since ceased.

Examiner Bennett: Well, I think we will cover the whole field, tentatively, at least. I will overrule your objection and they may be received.

Mr. Weisman: Except on.

(The letters referred to, heretofore marked for identification Commission's Exhibits 375 and 376, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Now, I show you Commission's Exhibits Nos. 377-A and B and 378-A and B and ask you if you can identify
3744 that as correspondence with the Guild on the question that you have been discussing in your last answer? A. Yes, sir.

Mr. Haycraft: I offer these in evidence.

Mr. Weisman: May I see them?

Mr. Haycraft: Commission's Exhibits No. 377-A being a sketch numbered 134, sketch of a dress; No. 377-B being an original letter from the Guild to Strawbridge & Clothier, dated June 18, 1934; 378-A

being another letter from the Guild to Strawbridge & Clothier, dated June 21, 1934; and 378-B being a reply thereto from Strawbridge & Clothier, dated June 23, 1934.

(Exhibits referred to were handed to Mr. Weisman.)

Mr. Weisman: Thank you.

These are similar letters, and on the grounds urged before, to wit, the permanent discontinuance thereof and the testimony of Mr. Post, I likewise object.

Examiner Bennett: Overruled. The letters are received in evidence. 3746

(The letters referred to, heretofore marked Commission's Exhibits 377-A, 377-B, 378-A and 378-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you now Commission's Exhibits Nos. 379, 380-A and B, 381-A and B and ask you if you can identify this as correspondence between Strawbridge & Clothier and the Guild with respect to the same subject-matter, that is, the return of the garments? A. Yes, sir. Yes.

Mr. Haycraft: I offer in evidence as Commission's Exhibit No. 379 a letter from Fashion Originators Guild of America, Inc., New York City, dated August 1, 1934, to Strawbridge & Clothier, Philadelphia, Pa., attention Mr. Taylor, Merchandise Manager. 3747

I offer in evidence as Commission's Exhibit No. 380-A, being a letter from Fashion Originators Guild of America, Inc., New York City, dated August 28, 1934, and addressed to Strawbridge & Clothier, Philadelphia, Pa., attention Mr. Taylor.

3748 *Charles T. Taylor—For Commission—Direct.*

I offer in evidence as Commission's Exhibit No. 380-B copy of a letter from Strawbridge & Clothier, under date of September 14, 1934, to Fashion Originators Guild of America, 512 Seventh Avenue, New York City, attention of Mr. J. M. Golby, replying to the previous exhibit.

I offer in evidence as Commission's Exhibit No. 381-A original letter from the Fashion Originators Guild, dated January 24, 1935.

I offer in evidence as Commission's Exhibit No. 381-B carbon copy of a letter from Strawbridge & Clothier to the Fashion Originators Guild, Mr.
3749 Jack Goldston, dated February 1, 1935.

Mr. Weisman: Wait just a moment. I think I want to get this straight. What is Commission's Exhibit 381-A—what is 378-A and 378-B?

The Reporter: The letter from Strawbridge & Clothier is 378-A and the reply is 378-B.

Mr. Weisman: What is 377?

The Reporter: 377-A is a sketch No. 134, sketch of a dress; and 377-B being the original letter.

Mr. Weisman: These letters are of the same purport, and I assume your Honor will have the ruling as before. I make the same objection.

Examiner Bennett: Overruled. They will be received in evidence.

3750 (Letters referred to, heretofore marked for identification Commission's Exhibits 379, 380-A, 380-B, 381-A and 381-B, were marked as exhibits and received in evidence.)

Mr. Haycraft: I ask that these documents be marked Commission's Exhibits 382 to and including 385.

By Mr. Haycraft.

Q. I will ask you, Mr. Taylor, whether or not the Guild used any other method of apprising Strawbridge & Clothier of the fact that there were garments to be returned to manufacturers which were alleged to be copies of garments manufactured by members of the Guild? A. Yes.

Q. What other method did they use? A. They had a representative in Philadelphia who would come into our store and inform us of copies and request that we send these copies back. "Shopper," I believe, they called her.

Q. Who was the shopper? A. I believe her name was Miss Joyce.

Q. Did you know whether or not, or did you ascertain 3752
whether or not there were garments in the store of Strawbridge & Clothier that she—Miss Joyce—thought were a copy of garments manufactured by members of the Guild?

Mr. Weisman: I object to that question as incompetent, immaterial and irrelevant and calling for the conclusion of the witness. Certainly in view of the stipulation it is immaterial in this case, your Honor.

Examner Bennett: Overruled.

Mr. Weisman: Exception.

(Question read.)

The Witness: The answer is "yes."

By Mr. Haycraft. 3753

Q. Yes? A. Yes.

Q. How did she determine it?

Mr. Weisman: I submit that that is a question which you have to have the first question previously foundation, and if you will refer to the first question that has been asked you will see that there is no foundation now that permits a question of that type.

I ask that those questions and answers be read.

(Questions and answers were read.)

Mr. Weisman: I submit that that is certainly no basis in the prior question for such a question as this.

Examiner Bennett: Read the question now pending.

(Question read.)

Mr. Haycraft: Will you read that again?

(Question again read.)

By Mr. Haycraft.

3755 Q. My question that I intended to ask you—that does not seem to be the one that I intended to ask you, as I listen to it now—was whether you knew or ascertained the method used by Miss Joyce in determining whether or not there were copies of Guild garments in your stock?

Mr. Weisman: I certainly object to that as calling for an answer which would call, indeed, not only for the operation alone of this witness' mind, but now he wants to know how did this some other person arrive at a certain conclusion, and I submit that it is clearly incompetent.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: I further submit in addition to
3756 the basic objections which I have already urged upon your Honor, which I am continuing to urge and now urge, certainly in view of the stipulation it does not make any difference how she determined. We have come to a stipulation in order to shorten this record, and that stipulation was that we were not going into the question of copies.

Examiner Bennett: I will ask that counsel ask what the shopper did.

Mr. Haycraft: That is all I want to know.

Mr. Weisman: If he asks him what she did, I will have to withdraw my objection.

Examiner Bennett: And if she stated anything to him, he could tell what she said.

Mr. Weisman: Let us have the time, please, and where.

By Examiner Bennett.

Q. Answer the question. A. I knew and I did. The time was in our business hours and place was in Strawbridge & Clothier's, third floor.

3758

Mr. Weisman: That is the time of their business hours, but your business has run for a good many years, and I think we ought to be allowed to know the year.

Mr. Haycraft: I am conducting this examination.

Mr. Weisman: That does not answer. We have the right to have that. The Examiner said we might have that information.

By Mr. Weisman:

Q. What we wanted to know was when that happened was that one month or six months, and just when it was so we can fix it.

3759

Mr. Weisman: I am trying to help you.

Mr. Haycraft: I do not think the witness needs it. We can get along all right without any assistance.

Mr. Weisman: I do not have the slightest doubt of it from your viewpoint.

3760 *Charles T. Taylor—For Commission—Direct.*

By Mr. Weisman.

Q. May we have the answer to that? A. The time that she shopped our numbers and apprised us of them was from the time that she came to Philadelphia and shopped our store until the time that we were red carded.

By Mr. Haycraft.

Q. I want to ask you a question now. Do you know when she first came into your store? A. I do not know.
Q. Can you give us an approximate idea?

3761 Mr. Weisman: I object to that. The witness has just said that he did not know. Now, to ask him what he knows approximately is simply to cause him to speculate.

Examiner Bennett: There is a difference. He may answer. Overruled.

Mr. Weisman: Exception.

A. I believe it was in the fall of 1935.

By Mr. Haycraft.

Q. What did she do? A. She would review our stock and look for copies. If she found what she believed was copies, she would call our attention to them.

3762 Mr. Weisman: I ask that the words "she would review our stock, and if she"—I believe he said "she would review our stock and look for copies: If she found what she believed was copies, she would call our attention to them." I ask that that be stricken out as a statement or conclusion of this witness as to the mental operation of somebody else's mind.

Examiner Bennett: Well, so far as reviewing the stock, of course that is not a conclusion.

What she arrived at, what conclusion she arrived at I think can be told better by what she told the witness if she said anything to him, and what she said to him was, possibly, "This and this and this are copies," and if she made any statements to him he can testify as to the statements.

By Mr. Haycraft.

Q. I will ask you to testify as to what she did without stating in your answer any thoughts that might have been in her mind, but restrict yourself to what she did physically, and what she may have said to you orally. A. She shopped our stock. She would take up certain styles from 3764
our stock, she would compare our styles with certain sketches which she had in her possession. Then, she would ask us to return those particular dresses, those particular styles.

By Mr. Weisman.

Q. What do you mean when you say "those particular styles"? A. The ones she picked out.

Q. As being copies? A. Yes, sir.

Q. Then you would get the proof of that?

Mr. Haycraft: Just a moment. I am conducting this examination.

Mr. Weisman: I was just trying to save time. Excuse me. I will go into it on cross-examination 3765
and we can drag this thing out if you insist; I certainly do not want to.

By Mr. Haycraft.

Q. When she asked you to return them to the manufacturer, did you do so? A. We did at first.

Q. Did there later come a time when you did not? A. Yes, sir.

Q. When was that? A. That was later on after she started the shopping.

Q. Can you give us the approximate date that you did not return the garments called to your attention by Miss Joyce as being copies of Guild merchandise? A. That was some time in the year of 1935. That was when she called our attention to certain numbers and we doubted that they were copies of styles originated by members of the Fashion Originators Guild of America, Inc. We took them off sale and we shopped our competitors and we also apprised our New York office to ascertain certain facts—in other words we took the stand that we were going to judge as to
3767 whether or not there were copies and not merely take the word of some shopper or some association that they were copies.

Mr. Weisman: May your Honor please, I respectfully ask that all of this testimony be stricken out as clearly irresponsive to the testimony. As I recall the question, he was asked when, and he is now proceeding to give us a long explanation and telling us what he told the New York office, and what he intended to do, and what he did not intend to do, and what he did not intend to allow somebody else to do.

The Witness: Well, may I correct my answer?

Mr. Weisman: Wait a minute. When I am addressing the Court, that is a prerogative that I
3768 cherish most highly.

The Witness: Very well.

Examiner Bennett: The rest of it may be stricken out except that part of the answer which reads "That was some time in the fall of 1935." The remainder may be stricken out.

(Letters referred to, heretofore marked for identification Commission's Exhibits 382-A, 382-B, 382-C, 382-D, 382-E, 383, 384 and 385, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Why did you not return copies to which Miss Joyce directed your attention?

Mr. Weisman: I object to that as immaterial, your Honor. We are now once more on this question of copies.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Because in our original agreement we had reserved the right to determine whether or not they were copies,

By Mr. Haycraft. 3770

Q. Well, now, when you took that position what occurred with respect to the relations between you and the Guild? A. As a result of that, I had a meeting with Mr. Post in New York, discussed that particular matter.

Q. At this meeting with Mr. Post, will you state what you said and what Mr. Post said on this question?

Mr. Weisman: May we have the date and the place of this conference, Judge?

Examiner Bennett: Beg pardon?

Mr. Weisman: The date and the place of this conference?

Examiner Bennett: Well, as near as he can get it.

Mr. Weisman: Yes. 3771

A. I think I can get the date, your Honor, if you demand it. I think I have correspondence.

Examiner Bennett: Well, give it as close as you can.

The Witness: It was somewhere in the fall of 1935.

Examiner Bennett: Can you be more specific? What month?

The Witness: September, October or November; one of those three months, perhaps earlier, I am not sure.

Mr. Weisman: Well, the Court has also asked you to tell where the conference took place.

The Witness: At the Hotel Astor, New York, at luncheon.

By Mr. Haycraft.

Q. Who was present besides you and Mr. Post, if any-
3773 body? A. Mr. Vakchambers and—Mr. Vakchambers.

Q. Who is he? A. Vakchambers. He is connected with the Associated Merchandising Corporation.

Q. In New York? A. Yes, in New York.

Q. All right. Now proceed. A. Mr. Post wanted to know why we were not returning merchandise which their shopper asked us to return. I explained to him that we had found that we had been called upon to return certain styles which, in our judgment, we had not agreed to return. In our original agreement—that we found it necessary to more carefully go into the question of whether or not the garments which the Guild representative asked us to return should be returned. He felt that—he stated that we were the only store that took that position; that the
3774 rest of the retailers in the country were willing to return merchandise as long as their shopper asked, and he couldn't understand why we wished to ask or take an exception to the general procedure which was followed by the Guild and the stores. And then I told him of the experiences we had on certain styles, and he agreed that we follow a certain—follow a certain procedure before we made any further returns.

Q. What was the procedure? A. The procedure was that we take off sale any styles which his shopper asked

us to return; that we were to notify—that we were to notify the Guild why we did not think it should be returned instead of merely returning it as had been the custom.

Q. What should happen under the agreement? A. Well, in following that procedure—we had a right to say when a style was a copy and when it wasn't, or, at least, we had something to say as to what we would remove from sale and send back to manufacturers.

Q. Did you follow that procedure then for some time? A. Yes, sir.

Q. For how long? A. We followed that procedure right up to the time we were red carded. 3776

Q. When were you red carded? A. In February, 1936.

Q. Do you know the circumstances under which you were red carded; that is, from your standpoint? A. I do not.

Q. Do you know the transaction that was pending at the time that you were red carded? A. I do not.

Q. You were not in that department at that time? A. No, sir.

Q. I show you Commission's Exhibit No. 382-A to E for Identification and ask you if you can identify that as correspondence between the Guild and your store on this question of returns? A. Yes, sir.

By Mr. Haycraft.

Q. Mr. Taylor, I call your attention to Commission's 3777 Exhibits 393-A and B, 394 and 395. A. Yes.

Q. I call your attention to the use of the word "slips" in these exhibits, and ask you if that has reference to the use in the context of these letters to any particular type of slip, and if so, if you can explain what it is? A. I am sorry. I did not get the question.

Q. Referring to Commission's Exhibits 393-A and B, 394 and 395, I call those to your attention and therein to

the use of the word "slips" in these exhibits. I ask you what that word refers to as used in the context of these letters? A. It refers to a slip which was taken out of a book carried by the shopper, and these slips with the certain notations on them were made by the shopper, and in turn we were asked to sign it, and the other copy, a duplicate copy, remained in the book; that was another copy

By Mr. Haycraft:

Q. I show you Commission's Exhibit 359, and ask you if that is the slip, or a slip of the type of slip that you had reference to in your answer previously given? A.
3779 This is the same type of slip.

Mr. Weisman: Now, if your Honor please, the witness has now identified the slip as the slip that is already in evidence, and a good lawyer and any lawyer does not have to be a mind reader or a prestidigitator to know what was in evidence, and I move to strike it out, the answer of the witness, in which he attempts to describe the contents of a slip, on the ground that the slip itself is the best evidence, and the slip is in evidence.

Mr. Haycraft: The witness did not describe the contents of the slip. That is where you made your mistake again.

Mr. Weisman: His answer is one which would
3780 constitute that very thing.

Examiner Bennett: Read the answer.

(Answer read.)

Examiner Bennett: Denied. The rest of this discussion is off the record.)

(There was a discussion off the record.)

Examiner Bennett: The question was perfectly proper. The answer was also perfectly proper. He was asked concerning the slip, and his answer was

concerning the operations which took place in connection therewith.

Mr. Weisman: I am sorry to differ with your Honor but I must. I ask an exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. I will ask you what the fact is with respect to your knowledge of the relations between the Guild and Strawbridge & Clothier subsequent to January 1, 1936?

Mr. Weisman: I object as not proper direct examination, now having refreshed the witness' mind by an ex parte statement not made under oath, he now proceeds to go on and seeks to contradict something that he said before, and I submit it is highly improper and ask that the question be excluded. 3782

By Examiner Bennett.

Q. Is it your recollection? A. As to what?

Q. Has your recollection been refreshed so that you can testify on that proposition? A. Sir, I do not believe that I said January 1. I did say, and I believe I did say after January.

Mr. Haycraft: That is probably what my understanding should have been. I was a little confused about it, and I just wanted to clear it up.

Examiner Bennett: Yes. After January is what I recall. 3783

By Mr. Haycraft.

Q. In other words, you did have knowledge about the relations between the Guild and Strawbridge & Clothier during the month of January, 1936? A. Yes, sir.

Examiner Bennett: I think that is what he testified to in the beginning. That is the way I understood.

Mr. Weisman: I object.

Examiner Bennett: Now, I have no record of what was done with Commission's Exhibits 383, 384 and 385. What was done with them? Were they offered in evidence?

Mr. Haycraft: I think they are in the record, if your Honor please. I am not certain about it and I will check that matter up.

Examiner Bennett: You may do so. We will take a recess for ten minutes.

3785

(There was a short recess taken.)

Examiner Bennett: All right.

By Mr. Haycraft.

Q. From January 1, 1933, until February, 1936, who was your superior officer at Strawbridge & Clothier? A. Mr. Frank Smith.

Q. What is his title? A. He is the general merchandise manager of the store.

Q. Did you report to him what you did? A. Yes, sir.

Q. Did you report to anyone else in the organization? A. I took up all matters through Mr. Smith, with Mr. Smith.

Q. Did you have an assistant during that time? A. No, sir.

3786

Q. Do you recall the buyers that worked under your supervision during that period of time? A. Yes, sir.

Q. Will you name them and give the different departments that they represented in their activities? A. 331 Department, Women's Better Dresses, Miss Flynn.

Mr. Weisman: Who?

The Witness: Miss Flynn.

350 Department, Misses' Better Dresses, Miss Ransdell. In that department there was a change somewhere about January or February. I believe it was in January. And we had a new buyer there, a Miss- -ah, ah, ah——

Mr. Haycraft: May I suggest to the witness——

The Witness: I will come back to her in a minute.

Mr. Haycraft: May I suggest the name to the witness?

Mr. Weisman: Certainly.

By Mr. Haycraft.

Q. Miss MacAlney. A. Miss MacAlney. 3788

Mr. Weisman: Would you also suggest to him that he tell us whether January or February was 1936, or three or four or five?

Mr. Haycraft: No. I will let him testify to that himself.

Mr. Weisman: I said that you suggest that he tell us.

The Witness: '36.

By Mr. Haycraft.

Q. All right. Proceed. A. 338, Women's—Women's Inexpensive Dress Department. And 358, Misses' Inexpensive Dress Department, Mr. Cohn.

Mr. Weisman: Wait a minute. 338 and what? 3789

The Witness: And 358.

Mr. Weisman: What was the name?

The Witness: Mr. Cohn.

Mr. Weisman: C-o-l-e?

The Witness: C-o-h-n.

371 Department, Junior Miss Department, Miss Morgan.

Mr. Weisman: Morgan.

The Witness: 491 Department, Economy Dress Shop, Mr. March.

492 Department, Daytime Dress Department, Mr. Chance.

Mr. Weisman: Mr. who?

The Witness: Mr. Chance.

By Mr. Haycraft.

Q. I don't believe that you mentioned that before. What price range was that? A. That takes in the Daytime Dress Section in which we carry dresses up to no limit on price, but there are certain types of cotton dresses that we place
3791 in there. The business is principally done on the uniform house dress, cotton dress line of goods.

Q. Did Mr. Chance have any other duty besides? A. Just buyer of Departments 492 and 493. 493 is your uniform department, uniform and apron department.

Q. Who succeeded you when you left as the supervisor of that group? A. Mr. Chance.

Q. Mr. Chance succeeded you? A. Yes, sir.

Q. Is he now in charge of that department? A. Yes, sir.

Mr. Weisman: What department?

The Witness: He is in charge of the group of departments which were under my supervision up until about February 1, 1936.

3792

By Mr. Haycraft.

Q. Can you testify, or have you made any research so that you may testify as to the number of garments that were returned to manufacturers pursuant to the direction of the Guild?

Mr. Weisman: Oh, no. I submit that that question was entirely incompetent, immaterial and irrelevant, contrary to the facts. Both the eminent

Mr. Tily and this witness have testified that no dress was returned until they were proven to be copies. Now we are having this issue brought in by detail again. I again object both on the grounds that the stipulation doesn't permit it, and, furthermore, this witness has testified that he wouldn't return anything until it was proven that that was a copy, that that was the right that they reserved; and, second, Mr. Tily in his testimony was very explicit and direct on that point. And I submit that this question is entirely improper, and improperly framed.

Examiner Bennett: Overruled. 3794

Mr. Weisman: Exception.

The Witness: Will you repeat the question?

(Question read.)

A. I wouldn't know as to the number. I know there were dresses returned.

Mr. Weisman: I ask that the answer be stricken out as irresponsive.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Is there anyone in your organization that does know who would have that information? A. I believe there are records available, and Mr. Chance may know. 3795

Q. Well, now, directing your attention again to Commission's Exhibit No. 362, the letter of June 30, 1933, from Mr. Tily to the Guild, I will ask you whether or not you were consulted with respect to the sending of that letter, or one similar to it to the Guild?

Mr. Weisman: Objected to.

A. Yes, sir.

By Mr. Haycraft.

Q. Where did this conference take place?

Mr. Weisman: Objected to as being incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled.

Mr. Weisman: We weren't present. Exception.

A. Mr. Frank Smith's office.

By Mr. Haycraft.

Q. Can you give us the approximate date?

3797 Mr. Weisman: I object to it as incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Just a short time before the date which appears on that letter.

By Mr. Haycraft.

Q. Had you made an investigation with respect to the situation involved in that letter?

Mr. Weisman: I object to it as being incompetent, immaterial, calling for a conclusion of the witness.

3798 Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. What investigation did you make?

Mr. Weisman: Objected to as immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: Incompetent. Exception.

A. Investigated as to what volume of business the Guild members, the ten Guild members—I tried to estimate how much volume the members of the Guild at that time did, and then what priced merchandise they made, and what effect it would have on our business if we signed it, and if we didn't sign it.

By Mr. Haycraft.

Q. Now, then, as a result of the investigation that you made, did you report the conditions that you found to Mr. Tily? A. Yes, sir.

By Mr. Haycraft. 3800

Q. What did you find and what did you report, Mr. Taylor, as to the percentage of your business of purchases from Guild manufacturers at that time?

Mr. Weisman: Objected to on the ground that it is incompetent, immaterial and irrelevant, and the question is in improper form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I found that the volume of business which we did in the price ranges, and which the Guild members at that time were active in, was a very, very small percentage of our business.

3801

By Mr. Haycraft.

Q. Can you give us an estimate of the percentage? A. Well, it was no greater than 5 per cent. I believe that is about what it was.

Q. Now, since that time did the membership of the Guild— A. Yes, sir.

Q. First, I will ask you this: I show you Commission's Exhibits 399-A and 399-B and ask you if you can identify

that in any way? A. Well, I have seen this letterhead, and I have seen the various manufacturers on there, those manufacturers' names on this letter—letterhead.

Q. I call your attention to certain pencil marks striking out names on 399-B. Does that indicate anything to you? A. No.

Q. No? A. No.

Q. Have you had an occasion to make a study to determine what percentage of the business—dress business—was done with Guild manufacturers, say, on or about January, 1936? A. I did not make a study; no, sir.

Q. Do you know of anyone in your organization that has done so and could testify? A. Made in January.

3803

Q. On or about that time, January or February? A. Well, I do not know what study was made in February in regard to Guild manufacturers, sir. I do not recall of an investigation or study being made in those months of January or February.

Q. Going back, again, to the time in 1933 in the investigation that you made, did you consult with merchandise managers of other retail stores?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and no proper foundation laid. The question is obviously without meaning. He says that in 1933 the witness testified that he made a study. I do not know what it is—about which he tried to estimate the volume done in his own business, and now he is asking him if in making a study of his own business, did he speak to members of some other retail establishment, and I submit that I cannot see the relevancy or the competency of any of this testimony, and I must respectfully object to it.

3804

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. You may answer— A. I——

Mr. Weisman: I object.

Examiner Bennett: I sustained the objection.

By Mr. Haycraft.

Q. I will ask you this, Mr. Taylor: Were you advised that the Guild had taken in—strike that out. At the time in June, 1933, what was the price range of the garment manufacturers that were members of the Guild?

Mr. Weisman: If he knows. The question is asking for a fact and I want to say to your Honor 3806
that the witness does not know, and I will be prepared to show so.

Examiner Bennett: Yes. I think it would be well to lay a preliminary foundation for that, Mr. Haycraft. Sustained.

By Mr. Haycraft.

Q. Did you make any investigation to determine the price range of the manufacturers who were members of the Guild in 1933? A. Yes.

Q. Yes? A. Yes.

Q. What was that price range?

Mr. Weisman: I do not know what investigation he made. He may have made an investigation by 3807
trying to read the stars or reading a crystal, or going into a trance, or something of that kind.

By Examiner Bennett.

Q. I will find out what you know. Did you learn what the members did, and if so, how? A. It was a list of manufacturers who were listed as having been and were members of the Guild. I took that list and I reviewed that list

with our buyers and I asked each buyer what merchandise, what priced merchandise that he or she might be purchasing from those particular manufacturers, and from them I learned the price group of merchandise which they bought from the Guild was priced from $16.75 and up—from Guild members—with the exception of certain times in the year when those Guild members might have made lower priced merchandise.

By Mr. Haycraft.

Q. Since June, 1933, have you made any investigation, or have you attempted to find out whether that same price
3809 range is observed among the members of the Guild? A. Yes.

Q. What is the result of your investigation? A. That same price range is not observed in the Guild.

Q. Not? A. Not.

Q. What change has taken place? A. The Guild has increased its membership and taken in manufacturers who make—manufacture dresses in lower priced brackets.

Q. How low? A. I believe they take in all price ranges now.

Q. You believe they take in all price ranges now?

Mr. Weisman: I object to the witness stating what he believes; if he knows, let him state it. That is a matter of fact which may be determined with
3810 exact certainty, and I do not think we should have those speculations in the record. May we have the basis of that belief, your Honor, in the record? I think it is only fair.

Examiner Bennett: He stated in his opinion they took in all price ranges. I do not know whether it is correct or not.

By Mr. Haycraft.

Q. When did that change take place in your—strike that out. When did it come to your knowledge that they had lowered the brackets? A. During the fall of 1935.

Q. Fall of '35? A. Yes.

Q. Before the fall of 1935, what was the lowest wholesale price the dress manufacturers, who were Guild members, sold dresses, to your knowledge? A. Prior to the time when they took in all price ranges they went down to $6.75, either $6.75 or $7.75.

Q. Before that, what was the lowest? A. $10.75.

Q. During 1933 and during 1934, and up to the middle of 1935, what was the lowest wholesale price of Guild 3812
members? A. Up to what point, sir?

Q. Say the early summer of 1935. A. It may have been in the summer months when that evolution started taking place.

Q. Then, what was the price before this evolution took place; what was the lowest price? A. It was either $6.75 or $7.75.

Q. Now, what—strike that out. Did this change in the wholesale price, the price range of manufacturers that were members of the Guild, have any effect upon the dress departments that you had under your supervision?

Mr. Weisman: I object to that as incompetent, irrelevant and immaterial.

Mr. Haycraft: I will direct your attention to 3813
the fact that he answered the question as to the returns that were made pursuant to the request of the Guild.

Mr. Weisman: I still urge my objection. The witness a few moments ago stated that he did not know the number of returns that were made.

By Examiner Bennett.

Q. Do you know whether it had any effect? A. Yes, sir.

Q. You do know? A. Yes, sir.

Examiner Bennett: He may answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. Go ahead. A. Returns increased.

Q. Returns increased? A. Yes, sir.

3815 Q. Why was that true? A. Because it took in the price lines in which our store was more active in.

Q. I call your attention to Commission's Exhibit No. 399-A and also Exhibit No. 399-B and ask you if you can give me the date or the approximate date that you received that letter-form from the Guild? A. I cannot say.

Q. I direct your attention, to refresh your recollection on that, to the printed matter on the left-hand column of Commission's Exhibit No. 399-A. Does that refresh your memory? A. I cannot place the time. It may have been in the spring of 1935.

Q. You say it was in the spring of the year 1935? A. What?

Q. Would you say it was in the year of 1935?

3816 Mr. Weisman: I object to counsel quarreling with his witness. He says this does not refresh his recollection. I do not blame him. There is nothing on the exhibit from which he can refresh his recollection.

Mr. Haycraft: Oh, yes, there is, and he said he could refresh his recollection from it. He did state the time. He has just now testified that he did.

Mr. Weisman: I did not hear him. I have good ears. If you can hear that you are certainly hearing the sounds of mental operations rather than spoken words. This witness just looked at it and it does not refresh his recollection. He has looked at it and it does not refresh his recollection and he wants to be left alo.

By Examiner Bennett:

Q. Does it refresh your recollection or does it not? A. It does.

Q. It refreshes your recollection? A. Yes, sir.

Q. When? A. I believe I received this in the spring— 3818
in the early part of 1935.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: May I examine it? Here is a blank piece of paper. I ask your Honor's permission to examine on the voir dire.

Examiner Bennett: Granted.

By Mr. Weisman.

Q. Are you certain that you received that? A. Yes, sir.

Q. Where did you receive it? A. From the Fashion Originators Guild of America, Inc., at New York.

Q. It was enclosed in an envelope? A. Yes, sir.

3819

Mr. Weisman: All right. No objection.

Will your Honor take a look at it? It is nothing but a blank sheet of paper with nothing on either side of it. How on earth anybody could identify it as to any period of time is beyond me.

Why anybody should send it to anybody is further just as difficult for me to fathom.

3820 *Charles T. Taylor—For Commission—Direct.*

Examiner Bennett: He identified it. It will be received in evidence.

(The front of a letterhead and the back of the letterhead was marked Commission's Exhibits 399-A and 399-B and were received in evidence.)

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. I will ask you whether or not this increase in numbers of members of the Guild to include lower bracketed lines of dresses which you have indicated in your recent
3821 answers had anything to do with the co-operation that you were giving the Guild in returning dresses to manufacturers that they claimed to be copies of dresses manufactured by members of the Guild?

Mr. Weisman: I object. The question has already been answered. He said that they had made returns, and that the returns of dresses had increased since more dresses were involved. What is the use of simply encumbering the record and taking up unnecessary time? This appears to me to be not only iteration but reiteration and re-reiteration of the very worst type.

Examiner Bennett: No, I think not. There is a difference there. You may answer.

3822 Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer the question. A. What is the question?
Q. You do not remember it? A. No, sir.

Mr. Haycraft: I ask that the question be read.
(Question read.)

By Mr. Haycraft.

Q. Do you remember that question? A. Yes, it simply forced us to return more merchandise to the manufacturers.

Q. It simply forced you to return more merchandise to the manufacturers? A. Right.

Mr. Haycraft: That is all.

Mr. Weisman: No cross-examination.

Examiner Bennett: What? No cross-examination?

Mr. Weisman: No, your Honor.

3824

Examiner Bennett: You may be excused.

(Witness excused.)

Mr. Haycraft: May I have five minutes to get a new witness?

Mr. Weisman: Get a better one than this one for you.

Mr. Haycraft: No, I do not need a better witness than this one. He was a very good one.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for not more than five minutes in which to get another witness.

(There was a short recess taken.)

3825

SAMUEL J. CHANCE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Have you given your full name to the reporter? A. I have to the Examiner, sir. Did you hear it, sir?

Mr. Weisman: We all want to hear it.

The Witness: Samuel J. Chance, also known as Samuel J. Cianciarulo, C-i-a-n-c-i-a-r-u-l-o.

By Mr. Honeycraft.

Q. How long have you been known as Samuel J. Chance? A. For about eight years.

Q. Am I to understand that you had your name changed? A. No, sir; not legally, simply a name that I was asked to change in the matter of making it easier for my associates in business. My correct name is a little difficult to pronounce.

3827 Q. First I will ask you where you live? A. In Philadelphia.

Q. What is your occupation? A. I am employed by Strawbridge & Clothier as a divisional merchandise manager.

Q. How long have you been employed by Strawbridge & Clothier? A. Three years, seven months.

Q. When you were first employed by Strawbridge & Clothier, what were your duties? A. At that time I was employed or hired to buy for their house-dress department.

Q. How long did you stay in that position? A. Approximately three years.

Q. How long have you been in your present position?

3828 A. Officially, since February 1, 1936.

Q. Do you have charge at the present time of Departments 331, 350, 338, 358, 371, 491, 492 and 493? A. Yes, sir.

Q. Yes.

Mr. Weisman: Wait just a minute. This sort of examining by code numbers is rather difficult for me to follow. Would you repeat those numbers, please? Would you repeat the numbers?

The Witness: The numbers that Mr. Haycraft mentioned to me?

Mr. Weisman: No, the numbers of the departments of which you are in charge.

The Witness: 331, 350, 338, 358, 371, 491, 373, 382.

Mr. Weisman: Wait a minute. Yes.

The Witness: 382, 385.

Mr. Weisman: Yes.

The Witness: 491, 492, 493.

Mr. Weisman: All right.

By Mr. Haycraft. 3830

Q. Can you testify as to the sources of supply of dresses at the time you became divisional manager of Department 331?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Go ahead.

A. I cannot recall in my mind the sources of 331, the sources they used at that time.

By Mr. Haycraft.

Q. Have you prepared at the request of the Federal Trade Commission a statement giving that information? A. We have answered certain questions that were submitted to us by the Federal Trade Commission. 3831

Q. I ask you whether or not the paper I hand you will refresh your recollection on that point.

By Mr. Weisman.

Q. Did you personally prepare the answer that was sent to the Federal Trade Commission in reply to the questionnaire? A. No, sir.

Q. No. Thank you. That is sufficient. Now, did you see the answer that was sent to the Federal Trade Commission in the form that it was sent to the Federal Trade Commission immediately before it was so sent? A. Yes, sir.

Q. Where did you see it? A. In Mr.—in our attorney's office.

Q. When did you see it? A. I don't remember the date.

Q. How long ago would you say it was? A. I would say a couple of months.

Q. Would you say— A. Two or three months.

Q. Would you say it was last April? A. Possibly.

3833 Q. Do you know whether or not this is the original or a copy of any questionnaire that was sent? First, tell me whether you know it is an original or copy. A. It appears like an original, but the papers that were turned into the Federal Trade Commission had affidavits upon them.

Q. Do you know whether or not this is the original? A. I do not wish to testify if it is. I do not know.

Mr. Weisman: Now, I respectfully submit that the witness says he doesn't know what this is, and that he should not be shown this paper.

Examiner Bennett: Yes. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

3834 Q. Now, I will ask you— A. Now, what is the question?

(Question read.)

A. Yes. This appears like a list——

Mr. Weisman: No, no. I submit that the witness be directed to answer the question, not what it appears to be like.

A. These are sources that we use.

Mr. Weisman: Just a moment. You were asked whether or not this paper refreshes your recollection, and I submit that the answer to that is "yes" or "no."

The Witness: Yes.

Mr. Haycraft: He has answered.

Examiner Bennett: Please don't get in front of counsel. Will you take your place over there?

Mr. Weisman: I will take my place over there.

Examiner Bennett: Now, go ahead with the examination.

Mr. Weisman: May I move that the answer be stricken out as not responsive to the question? 3836
The question was——

Examiner Bennett: It may be stricken. Get a direct answer.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Does this paper refresh your recollection as to the names of your sources of supply for your Department No. 331 on or about February, 1936? A. These are some of the resources. There were others also.

Q. Are those the principal resources?

Mr. Weisman: I object to that as being incompetent, immaterial, irrelevant, calling for a conclusion of the witness and not basis therefor. 3837

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. These, I believe, appear to be resources used by that department at the time that they were members of the Fashion Originators Guild of America. Some of these resources I recognize as being very important ones.

Mr. Weisman: I ask that the latter part of that answer be stricken out.

By Mr. Haycraft.

Q. Will you read into the record from the paper which you have the names of the resources that you have of Department No. 331 at the time that Strawbridge & Clothier were members of the Fashion Originators Guild?

Mr. Weisman: Just a moment. Now, I submit that that isn't even a question. That is a direction. I ask that it be stricken out and excluded: "Will you do this and this" into the record. That is a new form. I have never been met with that kind of question, and I submit that he should not be permitted so to do.

3839

Examiner Bennett: All right. You may answer.

A. Herman Beispel, H. Gans, J. Greenberg, Baron Dress, C. H. D. Robbins, A. Goodman, Perles & Gilbert, Harry Frank, Dresden, Friedman Dress, Joseph Greenberg & Bettina, Julius Grossman & Greenberg, Joseph Halpert, Larue Dresses, Frank Starr-Friedlander, Dolces Dresses, Ed Gerrick Company, Max Heit, E. A. Jackson-Bienard, Rudolph Gowns, Matthew Kadetsky, Gardner Schwartz, Bernard Appel, Boston; Goldstein & Entin, Boston; Baron Dress, Boston; Robinson Brothers, Boston.

By Mr. Haycraft.

Q. The others were located where? A. What?

3840

Q. You did not indicate. A. No.

Q. You said that certain were in Boston. You said "Boston" for the l st few. A. Yes.

Q. Where were the others located? A. May I see that, please?

Mr. Weisman: May it please, your Honor, that the witness has been permitted to read into the record a paper which is not in evidence, so that I may

have an equal access to it with my adversary I ask that I either be given a copy of this paper or that this paper be marked in evidence. This is a queer procedure with a paper which the witness says he cannot identify, and when that list is placed before him by the attorney to look at, and he reads that paper into the record, and still says it is a paper he cannot identify, I submit the least that can be done for me is that I can have a copy of it so that I may look at it, or that it be placed—that piece of paper be marked into evidence so that I may have access to it.

Examiner Bennett: I think that is fair. You 3842
can have a copy made, or it may go into the record as you desire.

By Mr. Haycraft.

Q. Can you testify as to the price lines that were manufactured by these respective manufacturers that you have named? A. I cannot testify to the price lines that each of these manufacturers makes, but I can testify to——

Mr. Weisman: I think that that is the answer. He says he cannot.

Mr. Haycraft: I object to the witness not being permitted to give all of his answer. I insist that he be allowed to answer.

Examiner Bennett: I will overrule the objec- 3843
tion. You may answer your answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. I can testify to the cost price of the total sum, or the cost price that that particular department bought the merchandise in, which would naturally be the purchase price of goods purchased from all of these manufacturers.

3844 *Samuel J. Chance—For Commission—Direct.*

Mr. Weisman: I move that the answer be stricken out as vague, incomprehensible, incompetent, immaterial and irrelevant. A man can sell merchandise at six different prices and he might buy at one price. That would not be representative of the manufacturer, and would not be responsive to the question asked him.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Well, I think that is correct.

3845 *By Mr. Haycraft:*

Q. Will you give the price range of the garment manufacturers' products; in other words, the garments manufactured by this group of manufacturers?

Mr. Weisman: I object to that. He just stated he could not do that. He said he could not do that very thing. This witness could not possibly know at what purchase price these manufacturers sell their merchandise. He can only know the price at which he bought it. That is the vice of this question. That is why I objected to the last answer. It intimates that he knows the workings of other businesses that he could not possibly know.

3846 *By Mr. Haycraft.*

Q. I will amend the question to say price ranges of garments purchased from these various manufacturers.

Examiner Bennett: You may do that.

Mr. Weisman: Exception.

A. $10.75 and up.

By Mr. Haycraft.

Q. $10.75 and up? A. Yes.

Q. Can you testify as to the percentage of the orders placed by your No. 331 department that were placed with Guild manufacturers in February of —prior to February, 1936?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and not within the issues of this case; highly prejudicial to the rights of the respondents herein.

Examiner Bennett: He can ask him whether he can testify. Overruled.

3848

Mr. Weisman: Exception.

A. I cannot testify to that department.

By Mr. Haycraft.

Q. What? A. I cannot testify to that department.

Q. I will ask you whether or not your memory can be refreshed from the paper which I hand you; the same paper which you had before?

Examiner Bennett: I will let him refresh his recollection from that paper.

Mr. Weisman: Exception.

A. 75 per cent. of the orders for Department No. 331 —331 department, as stated on this paper. 3849

Mr. Weisman: I move to strike out the answer as not responsive, as calling for a conclusion of the witness, and as based upon something in the document which is not in evidence; it is merely reading from a document without any knowledge on the part of the witness; hearsay, incompetent, illegal, immaterial; not proper direct examination, and having no probative value whatsoever.

Mr. Haycraft: I do not think the objection even requires an answer.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Are you familiar with the red carding of Strawbridge & Clothier by the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. I show you Respondents' Exhibit 19 and ask you if you have ever seen it before? A. Yes, sir; I have.

Q. You have? A. Yes, sir.

3851 Q. When did you first see it? A. I beg your pardon?

Q. First, I will ask you where did you first see it? A. New York.

Q. New York City? A. New York City.

Q. Can you give us the date? A. I can give you the approximate date.

Q. Give us the approximate date. A. Early part of February, 1936.

Q. Early part of February, 1936? A. Yes, sir.

Q. In whose possession was it when you first saw it? A. It was in the possession of Baron Brothers of Boston, Mass.

Q. It was in the possession of Baron Brothers of Boston, Mass.? A. Yes, sir.

3852 Q. Do you know the individual who had the paper at the time that you saw it? A. Yes, sir.

Q. Who was he? A. Mr. Feldman, who was a representative of Baron Brothers.

Q. What was his first name? A. I do not know what Mr. Feldman's first name was.

Q. You saw, you say, Mr. Feldman, at the time? A. I did.

Q. Where was Mr. Feldman at the time you saw him with this document in his possession? A. You want to know the time that I saw Mr. Feldman when he had this paper with him?

Q. Yes. A. It was in the showroom.

Q. What was that? A. It was in the New York showroom that I saw Mr. Feldman when he had this paper in his possession.

Q. Did he give it to you at that time? A. I asked him for it and he did.

Q. Did he say anything to you at the time that he gave it to you? A. At the time he gave it to me; yes, sir; he did. He stated that we were red carded and he could not 3854
ship us any merchandise. I asked him what the reason for it was and he produced the card. I asked him whether I could have it, and he said, "Yes."

Q. This is the card that he referred to? A. Yes, sir; this is the card that he gave me at that time.

Q. Would he show you any merchandise at that time? A. No, sir.

Q. No? A. No, sir.

Q. Has he done so since? A. I believe he resigned from the Fashion Originators Guild since then and we have transacted business with him.

Q. How long ago? A. I do not know.

Q. You do not know? A. No.

Q. More than a month? A. I would not hazard a guess. 3855
It would only be a guess if I stated it.

Q. Well, what did you do after you were given this card by Mr. Feldman?

Mr. Weisman: I object.

By Mr. Haycraft.

Q. Strike that out. Did you attempt to get any dresses from any other of your sources of supply for your Department No. 331? A. Yes, sir.

Q. Do you know what manufacturers you attempted to get it from? A. C. H. D. Robbins was one particular manufacturer that I recall. And also I wrote to several others which I do not remember. Those were manufacturers that we took affidavits from; certain other ones.

Q. Do these papers refresh your recollection on that?

(Witness handed certain papers.)

A. No, sir; those are not the affidavits.

Q. I show you this same paper that I showed you a moment ago and ask you does that refresh your recollection? A. No, sir; it does not.

3857 Q. I call your attention to No. 9 at the bottom of the page. A. No, sir.

Mr. Weisman: He still says "No, sir."

By Mr. Haycraft.

Q. Who made the affidavits which you have in mind which would refresh your recollection? A. What?

Q. Who made the affidavits which you have in mind that would refresh your recollection?

Mr. Weisman: I object to that. He did not have any recollection. How can he refresh his recollection if he does not have any?

Mr. Haycraft: He said it was an affidavit. He tried to get affidavits, if I understood his question.

3858 Mr. Weisman: I do not remember him saying anything about having an affidavit. That is not what I recall him saying.

The Witness: I said we took affidavits.

By Mr. Haycraft.

Q. Is this the affidavit which you referred to? A. What?

Q. Is this the affidavit which you referred to? A. This one was taken in conjunction with Miss Flynn. It is not this one.

Q. Does this paper refresh your recollection (indicating)? A. No, sir. This is the affidavit of Miss Flynn.

Q. That does not? A. No, sir.

Q. Ah, ah. I see.

Mr. Weisman: Will you put that negative shake of my friend's head into the record showing his disappointment that the witness refuses to say that this refreshes his recollection?

By Mr. Haycraft. 3860

Q. Are those the papers that will refresh your recollection—the affidavits which you had in mind? A. These two are. These others are not.

Q. Which two are? A. These that you have in that hand. Not the ones that you have in the other hand.

Q. Now, refresh your recollection from the papers that you have in your hands, and having refreshed your recollection from the papers which I have just shown you, will you testify as to your attempts to get dresses, or other goods, from other Guild manufacturers or resources of your Department No. 331? A. Yes, sir. We have attempted to get dresses from C. H. D. Robbins as this affidavit——

Mr. Weisman: No, no. 3861

By Mr. Haycraft.

Q. I do not want to know anything about the affidavit.

Mr. Weisman: Never mind about the affidavit, Brother Chance.

Mr. Haycraft: Let me conduct my own examination.

A. (Continuing) We have also attempted to buy dresses from Robinson Brothers of 498 Seventh Avenue. I say "We." I accompanied a friend on a buying trip. This friend was buyer of 331 department.

By Mr. Haycraft.

Q. And with what success did you meet in your attempts to buy from Robinson Brothers? A. We were informed we were red carded, and they refused to show us, or sell us any merchandise.

Q. Now, did you make any further attempts to secure merchandise from manufacturers who were your sources
3863 of supply of Department 331? A. I personally did not.

Q. Did anyone in your department under your supervision do so? A. Yes. The buyers have attempted at various times.

Q. With what success? A. They were informed in the same manner it was red carded, and could not be shown, could not be sold, could not buy any merchandise.

Q. And for what reason? A. Because of the red card.

Mr. Weisman: May we know who said this so we can controvert it if it isn't the fact? I think it is entirely unfair to be met with this omnibus type of testimony.

Examiner Bennett: I will ask you to be specific.

Mr. Weisman: What?

3864 Examiner Bennett: I will ask him to be specific.

By Mr. Haycraft.

Q. I will ask you whether or not you made an attempt to buy through your buyers?

Mr. Weisman: No. Just a moment. Will your Honor ask him to be specific without Mr. Haycraft testifying?

Examiner Bennett: Yes. I think you should ask who they were.

Mr. Weisman: And may I have the last question and answer stricken out, with regard to those he will specifically identify as being those by whom this was said, because there will be a day when we will have our side in this case.

Examiner Bennett: All right. It may be stricken.

The Witness: Miss Flynn, Miss MacAlaney.

Mr. Weisman: No. No. You didn't understand.

The Witness: I am sorry. Can I hear the question again?

Mr. Weisman: The Court has asked you to be 3866
good enough to give us the names of those people who said that they wouldn't sell you or show you merchandise.

The Witness: I have given the names of people who I personally contacted.

Mr. Weisman: Well, now, do you know of any others specifically?

The Witness: Not by personal contact of my own.

Mr. Weisman: Well, do you know any others whom you can name even without personal contact?

The Witness: You mean through the experience of other buyers?

By Mr. Weisman.

3867

Q. Yes, provided you can give us the names of those people so that we may be in a position to controvert it if we don't think it is correct. A. Well, all members of the Guild to our buyers' approach.

Q. Well, we want to know who were the specific members of the Guild that your buyers approached? A. That is all in their affidavits. They had personally taken affidavits.

Q. Well, do you know it? A. I do not.

Mr. Weisman: May we have it from the people who know. Judge, instead of from this witness who is, I submit—he says he doesn't know, but somebody made an affidavit and that is the source of his knowledge.

Mr. Haycraft: I move, Mr. Examiner, that all of these questions improperly applied at this time by counsel for the respondent be stricken and I be allowed to continue the direct examination.

Mr. Weisman: I think it is perfectly apparent that I was acting as friend of the Court. The Court
3869 directed that they be particularized.

Now, I move that all of the testimony——

Mr. Haycraft: He didn't direct counsel for the respondent to do the particularizing. That is the point.

Mr. Weisman: Now I ask that with the exception of the testimony as applied to C. H. D. Robbins and Robinson Brothers, all statements about refusal to sell or show merchandise be stricken from the record, your Honor.

Mr. Haycraft: I have a motion pending, Mr. Examiner, to strike all of this examination, cross-examination, at this time from the record.

Examiner Bennett: Yes. I will now strike the
3870 cross-examination. Go ahead.

Mr. Weisman: Now, may I have a ruling on my motion, your Honor?

Examiner Bennett: Beg your pardon?

Mr. Weisman: I say, may I have a ruling on my ruling?

Examiner Bennett: Yes: I will deny the motion.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Now, Mr. Chance, did you give any instructions to your buyers with respect to attempting to get goods from your regular source of supply, members of the Guild after they were red carded? A. Yes, sir. The early part of February I instructed our buyers to visit as many Guild showrooms as they possible could within a day and attempt to buy merchandise.

Q. Did you get a report back from your instructions? A. I have, sir. The report was that they could not be shown or could purchase any merchandise from Guild resources.

Mr. Weisman: All right. Thank you. 3872

(Whereupon, at 4.50 o'clock P. M., August 3, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313,
U. S. Post Office Building.
Philadelphia, Pa.,
August 4, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

3873

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq. and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild or America, Inc.

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

I. I. JAMISON, of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Gentlemen, we will be in order, please.

3875 Mr. Haycraft, you may resume.

Mr. Haycraft: I will recall Mr. Chance to the stand to testify further on direct examination.

SAMUEL J. CHANCE resumed the stand and testified further as follows:

Direct examination (resumed) by Mr. Haycraft.

Q. I will ask the witness to testify as to what departments of this business, or what division of the dress department, whichever way that should be worded, were mostly affected by—strike that out. I will ask the wit-
3876 ness to testify as to what departments of dresses handled Guild merchandise? A. Departments 331, 338, 350 and 358.

Mr. Weisman: Wait a minute. 331.

The Witness: 350.

Mr. Weisman: Yes.

The Witness: 338.

Mr. Weisman: Yes.

The Witness: 358, 371, 373, 382.

By Mr. Haycraft.

Q. Now, you have already testified as to the percentage of Guild merchandise handled in 331, have you not?. A. I testified as to the percentage of outstanding orders from Guild manufacturers at that particular time.

Q. Well, from your experience can you testify as to the departments, can you testify as to the percentage of merchandise of the Guild manufacturers that were handled by each of these departments that you named, if you can? I am asking you if you can; that is, at the time the red carding took place? A. No, I cannot for each—for all of the departments, Mr. Haycraft.

Q. Can you testify as to which of those departments 3878
handled principally Guild merchandise? A. I have named all of the departments that have been purchasing from Guild houses.

Q. Can you testify as to which of those departments handled principally Guild merchandise?

Mr. Weisman: I object.

By Mr. Haycraft.

Q. As distinguished from other manufacturers at the time the red carding took place?

Mr. Weisman: Obviously such testimony is incompetent. "Principally." I mean, he has testified that they all handled them. We have no opportunity to cross-examine on what is the meaning of 3879
the word "principally." We have no opportunity to cross-examine what is in his mind. What is in his mind as "principal" might be different than in my mind. I think it is a very unreasonable question.

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. 350 department. In my estimation that is the department that would handle more Fashion merchandise, or merchandise that would be purchased from Fashion Originators Guild of American manufacturers, members of that group.

Mr. Weisman: Just a minute. I ask that the answer be stricken out as giving an opinion of this witness. The question was, does he know on or about February, 1936, which one did.

Examiner Bennett: You are giving your best information?

3881 The Witness: I am sorry. I didn't hear you.

Examiner Bennett: You are giving your best information?

The Witness: Yes, sir.

Examiner Bennett: All right. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What would be the second? A. The second would be in the total—in the large number of dollars, would be 358 department.

Q. 358? A. Yes, sir.

Q. And the next? A. 331.

Q. Well, now, referring back to 331 for the time being

3882 can you testify as to whether or not there were orders outstanding with Guild manufacturers at the time of the red carding, February, 1936, in that department? A. Are you referring to 331 department?

Q. 331. A. Yes, sir; I can.

Q. Can you testify as to what manufacturers the date of the orders were placed, the date when the orders were due, and the amount of the orders? A. Such a list was gotten up at the time.

Mr. Haycraft: Mark this for identification.

(The list referred to was marked for identification Commission's Exhibit 400.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 400 for Identification. Is that the statement you have in mind? A. Yes, sir.

Q. Was that prepared under your supervision? A. That was prepared by Miss Flynn and turned in to me.

Q. Are you satisfied it is correct? A. I am.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant whether he is satisfied it is correct. 3884

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: I object, no proper foundation laid.

Examiner Bennett: I will receive it.

Mr. Weisman: Exception.

(The list referred to, heretofore marked for identification Commission's Exhibit 400, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Were these orders ever filled? A. No, sir.

Mr. Weisman: May it also appear in the record that Mr. Freeman is assisting counsel for the Commission. I want that to appear in the record and I will make it the subject of a motion at the proper time. He is prompting him with questions and advice, telling him with regard to what should be done and said. 3885

Mr. Haycraft: I don't think that it is necessary to be in the record.

Mr. Weisman: I insist upon it.

Mr. Haycraft: Well, now, Mr. Examiner, does counsel have the right to insist upon such things going into the record?

Examiner Bennett: Well——

Mr. Haycraft: Are you ruling this hearing or is counsel for the respondents?

Mr. Weisman: I am not ruling the hearing.

Examiner Bennett: It is not necessary to put it in in that sort of form.

Mr. Haycraft: I ask that it be completely stricken from the record.

3887 Examiner Bennett: I think you jolly well know our rule here. I will, of course, decide as to these things. I see no harm in placing it in the record and I am going to let it stay in the record.

Mr. Weisman: Thank you.

Examiner Bennett: Not particularly because of the wish of the attorney for the respondent.

Mr. Weisman: Yes, sir.

Examiner Bennett: I take it this attorney is furnishing information to the other attorney. I see no particular crime in that.

Mr. Weisman: I see no particular crime; I—it was not my intent to impute to the Commission any crime. However, it may be that I may be mistaken—I believed the Government was investigating

3888 this situation. I say that when counsel for a particular firm such as this, which has had differences of opinion with us, and which we will prove, before this case is over, has been particularly vicious in its attempt upon us, that when and where counsel for such firm takes part so actively with counsel for the Commission that these proceedings lose their inquisitorial nature and become in effect and in fact a persecution, in which they seek to band themselves

together with the power of the Government for a purpose which is highly improper, and which I cannot condemn too strongly.

Examiner Bennett: You have your statement in the record.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. In view of the statement of counsel I will ask you this question: Are you sufficiently familiar with the type of garments handled by Department No. 331, testified to by you, so as to testify as to the characteristics of those garments? A. I do not understand. 3890

Q. In distinguishing them from the other departments? A. Yes.

Q. Yes. A. Yes.

Q. Will you testify as to the type of garments that are handled by Department 331? A. Department No. 331 confines its business to women's sizes, or dresses that are made in sizes from No. 38 to No. 52 and half sizes which will be comparable to those sizes.

Q. Now, as to the styling or tailoring of the dresses sold in that department, are you in position to testify as to that?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant for any purpose whatsoever. It is obviously without any bearing upon this 3891
case, if your Honor please.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. The styling of the merchandise that is handled in Department 331 is that which represents the highest style for women, in comparison with some of the other departments, and also dresses that are made in detail, in finish, in fabric, and everything else taken into consideration to make a finer type of garment.

By Mr. Haycraft.

Q. Now, then, I will ask you if you know what effect the red carding had upon your department?

Mr. Weisman: I object as incompetent, immaterial, and irrelevant, and I would like to draw the Court's attention to the statement that I made while we were in this case at the opening; it is obviously an unfair effort on the part of counsel for the Commission to go into and get into the testimony something which your Honor ruled out, and, furthermore, it is not a fair thing to put in evi-
3893 dence, in view of the fact that the witness has before him, and which I now see with my own eyes physically, and which is clearly visible, a statement showing the effect claimed by these people in regard to all of their business in the departments affected by Guild merchandising policies.

I submit to pick out one in this way is obviously unfair, totally unfair and unreasonable, and is directly and clearly and within knowledge of counsel and witness and everyone here present drawing an improper, untrue and incorrect picture of the situation to the substantive detriment of the vital interests of respondent in this case.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

3894 Mr. Haycraft: Shall I proceed?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. Go ahead. A. In analyzing our price lines, we have definitely noticed that there are certain price lines that we could not buy.

Mr. Weisman: I ask that the witness be directed to answer the question and not give us a long

speech about it. The question was entirely specific and now he is giving us a long story about it.

Mr. Haycraft: I move that counsel be instructed not to interrupt the witness until he has completed the answer.

Mr. Weisman: I wonder when we get to our case if you are going to be so kind, Mr. Haycraft, as to permit the witness to give a long answer.

Mr. Haycraft: Certainly. I do not ask anything I do not expect to give. Such a suggestion I think is entirely unwarranted.

Mr. Weisman: We will see. We will see.

May we have the question read so that your 3896
Honor will see how improper it is? This question calls for the witness' knowledge as to the matter and not what the matter is. He is asked if he knows what the effect of red carding was upon his department; he can answer that he does know or does not know.

Examiner Bennett: No, no. I wish you would not interrupt until the witness finishes his answer, then you can move to strike if the answer is not responsive. I wish to say to the witness that he will answer as to the effect of that department.

Mr. Weisman: I do not think that is the question, your Honor. I should like to have the question read.

Examiner Bennett: No. 3897

By Examiner Bennett.

Q. Start out and give the effect of the department, if you can give the facts, and do not go into your opinions about it at the present moment, at least. A. The effect of the red carding was a loss of sales.

By Mr. Haycraft.

Q. Will you explain? A. I——

Mr. Weisman: I object to the explanation on the ground it is obviously not a matter for testimony with regard to a fact. If the witness knows the fact, he knows it, and he has stated what apparently, in his opinion, is the fact. I submit that that is one thing, but to put this witness in a position where he testifies as to a fact upon which one, with the knowledge that we all have, can now know, is only the subject-matter of opinion, I respectfully
3899 submit, is incompetent, immaterial and irrelevant, and highly prejudicial to the substantive rights of the respondents.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Examiner Bennett.

Q. You may answer. Make it factual rather than opinionated. A. In analyzing our price lines, we noticed that in certain price lines we could not buy into it, and that they were manufactured by Guild houses, and that those lines showed a decrease in sales in the respective months of 1936 as compared with the same months in 1935.

Q. The facts upon which you base your statement you
3900 have stated? A. That is the fact that such papers were checked into and a report drawn up covering the entire situation for the store.

By Mr. Haycraft.

Q. Did you issue any instructions to your buyers with respect to those price lines that you had been buying from Guild houses that you were unable to get as the result of the red carding? A. Yes, sir.

Q. What were your instructions? A. My instructions were to attempt to build other manufacturers so we could replace Guild resources and go along with other resources in place thereof and not be shut out of business thereby.

Q. What did those buyers do with regard to that respect, pursuant to your instructions?

Mr. Weisman: I object to that as incompetent, immaterial, irrelevant, a matter of hearsay, calling for the operation of another person's mind, and for the operation of this person's mind as to the operation of another person's mind, thereby building vice upon iniquity. He can testify as to what he told his buyers, and they should testify as to what they 3902
did. I submit that this is going a little bit too far, your Honor, even for Mr. Haycraft.

Mr. Haycraft: The witness has knowledge of certain facts.

Mr. Weisman: I am addressing myself to the Court. I think that this is a legal argument, and that your statement does not add anything to the validity of the question or detract from the force of my objection, if there is any force in it.

By Examiner Bennett.

Q. Did the buyers report to you on their activities in the due course of business? A. Yes, sir.

Q. Can you testify as to what they reported to you in 3903
that respect? A. Yes, sir.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. The Examiner has instructed you to testify as to what your buyers reported to you.

The Witness: What is the previous question?

(Question read.)

A. The buyers reported to me that they spent a lot of time in the market attempting to locate proper manufacturers that could make garments comparable to those originally purchased from Guild members, and it was a very difficult job.

By Examiner Bennett.

Q. Did they succeed? A. No, sir.

Q. And they so reported to you? A. Yes, sir.

By Mr. Haycraft.

3905 Q. As I understood you to say, or as I understood you to testify, the buyer for that particular department was Miss Martha Flynn? A. Yes, sir.

Q. She will be here and will be able to testify as to what she herself actually did?

Mr. Weisman: She is in better position to state what she can testify to than this witness is. Counsel is now seeking to bolster up a witness who is not even here, and I submit it is highly improper. I object to it.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes, she will.

3906 *By Mr. Haycraft.*

Q. Returning to Department No. 350? A. Yes.

Q. Who is the buyer for Department No. 350? A. Miss McAllenny.

Q. How long has she been buyer for that department? A. She?

Q. Yes. A. Since some time in January, 1936.

Q. What is the name of that department? A. What?

Q. What garments are sold in that department? A. Misses' better dresses.

Q. Are you in a position to testify as to the resources of that department in January, 1936, just before the red carding took place? A. No, sir; I cannot do that.

Q. By that, you mean you have no knowledge or do not recall? A. I cannot recall.

Q. I will ask you whether or not this paper will refresh your recollection, either one of these papers? A. The names of those resources I recognize as resources used by that department.

Q. Now, having your memory refreshed, will you testify for the record the names of the manufacturers that you 3908
recognize as resources for the Department 350? A. Milton Altmark, Capri Frocks, Frank Star-Friedlander, Goldston & Entin, A. Goodman, Max Heit, Lipman, Parnas Levenson, Schulte Zuck.

Q. Can you testify as to the price range of the garments purchased from those manufacturers, the wholesale price? A. $10.75 and up.

Q. Can you testify as to the percentage of the garments sold in that department that were purchased fr.. m Guild manufacturers, Guild houses? A. No, sir; I cannot.

Mr. Freeman: I haven't discussed the matter with any witnesses who are to be called.

Examiner Bennett: I assume you haven't.

Mr. Weisman: And I assume you will not? 3909

Mr. Freeman: I make no remarks to you, sir.

Mr. Weisman: Well, then, I urge my motion that Mr. Freeman——

Examiner Bennett: It is denied.

Mr. Weisman: —be excluded, especially in view of Mr. Freeman's unwillingness to state for the purpose of the record that he will not discuss the testimony of this witness or the witnesses who went

before him with such witnesses as he may have access to.

Examiner Bennett: He is a member of the Bar and in good standing, and as such does not require any such pledge.

Mr. Weisman: I respectfully except.

Mr. Feldman: Your Honor, isn't there a method prescribed by the Commission for attorneys to intervene? Isn't there a form, a regular form that the Commission has for attorneys who wish to intervene with the Government in behalf of intervenors?

3911 Examiner Bennett: I do not think I want to go into a discussion of that right now.

Go ahead with the procedure here, with the examination.

By Mr. Haycraft.

Q. Mr. Chance, do you know whether or not at the time of the red carding there were any orders outstanding with Guild manufacturers for Department 350? A. Yes, sir; there were.

Q. Can you testify as to the names of those manufacturers and the amounts outstanding? A. A list was made up at the time. I do not recall in my mind who those manufacturers were, or what amounts were outstanding.

3912 Q. I will ask you whether or not this paper refreshes your recollection on that?

Examiner Bennett: I will ask you the same question as I did about the other list. Did you direct the preparation of that list, or have any part in the making of it?

The Witness: This list was made up in my office, Judge, in presence of the buyer.

Examiner Bennett: At your direction?

The Witness: Yes, sir.

Examiner Bennett: Do you know it to be correct? Did you know at the time that it was correct?

The Witness: I do, sir.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Having refreshed your recollection, will you testify as to what the paper is? A. This is the list that was prepared for me in my office.

Q. Will you give the name and the amount? A. A. Goodman, $538.75; Max Heit, $173.50; Capri Frocks, 3914
$193.

Mr. Weisman: May I see that?

(The paper referred to was handed to Mr. Weisman.)

By Mr. Haycraft.

Q. Were those goods ever received? A. No, sir.

Q. I notice that you gave the name of Lipman as one of the resources of supply of the Department 350 in January, 1936.

Mr. Weisman: Wait a minute. When was that?

Mr. Haycraft: He gave that testimony a while 3915
ago.

Mr. Weisman: Did he testify as to Lipman?

Mr. Haycraft: Altmark, Capri, and so on.

By Mr. Haycraft.

Q. Do you recall giving Lipman— A. I do, sir.

Q. Do you have an independent recollection of the type of garments sold by Lipman Brothers to that Department

350? A. I know one outstanding type of garment that we used from Lipman in Department 350 which consisted of a garment which was known on the market as a four-way suit.

Q. Had you been buying that garment from Lipman Brothers in January, 1936? A. There were such records; yes, sir.

Q. Were you able to buy it after the red carding? A. We were not.

Q. Are you in a position to testify as to the volume of business done with Lipman Brothers on that garment during January, 1936? A. Such a record was made.

3917 Mr. Weisman: Wait a minute, please. I object to that as incompetent, immaterial and irrelevant, picking out a manufacturer and saying, "Can you testify as to the volume of business done with that manufacturer?" It is obviously without weight in a suit such as this.

Examiner Bennett: Well, I think that is much more enlightening than attaches to a general statement.

Mr. Haycraft: I might explain, Mr. Examiner, perhaps for counsel for the respondents' benefit as well as our own, that as probably can be observed, it is my intention to give a general statement, and then follow it up by detailed statements in the

3918 various departments that have been affected by the Guild activities, and that is the purpose of this line of examination.

Examiner Bennett: Well, I am going to overrule the objection.

Mr. Weisman: Exception.

Examiner Bennett: If he has any real knowledge of that situation.

The Witness: May I have the question, please?

(Question and answer read.)

By Mr. Haycraft.

Q. I will show you a paper and ask you if that is the record you have in mind? A. Yes, sir.

Q. Was that made under your supervision? A. This was made in my presence, copied from the original orders.

Q. Under your supervision? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

(The list referred to was marked for identification Commission's Exhibit 401.)

By Mr. Haycraft.

Q. This exhibit which you just identified—strike that out. The prices indicated on this exhibit, which you have just identified, are those wholesale or retail prices? A. That gives the prices. 3920

Q. The prices you paid the manufacturer? A. Yes, sir.

Q. Cost prices? A. Cost prices.

By Mr. Weisman.

Q. You mean prices you would have paid the manufacturer? A. The prices we did pay.

Mr. Weisman: Did not he testify that he could not get them?

Examiner Bennett: In January.

By Examiner Bennett. 3921

Q. Was January an unusual month? A. I am sorry, sir.

Q. Was January an unusual month as to volume of business in that particular piece of goods? A. I would not say so, sir. On subsequent months following we would be expected to do greater than in January on that particular type garment.

Q. Your testimony is that it was not an unusually large month? A. It was not.

Q. It was not? A. No, sir.

By Mr. Haycraft.

Q. What is the custom as to the placing of re-orders? A. The custom of placing re-orders is judged by the activities, or selling activities of any particular style in stock.

Q. Do you know whether or not this was a re-order or an initial order, this January order? A. You have there an initial order and a subsequent re-order on that report.

3923 Q. And the initial order being January 14 for sixteen dresses? A. What is that?

Q. The initial order being under date of January 14 and for sixteen dresses? A. May I see it, please?

Q. Yes. A. This order was placed on 1-14-36, and is the original order for sixteen pieces of style No. 2900 and subsequent re-orders are the same style made out of different and in additional fabrics.

Q. Did you testify as to whether or not from that exhibit that was a popular number, or can you? A. I can.

Q. Will you testify as to whether or not, from that exhibit, that was a popular number? A. Yes, sir.

Mr. Weisman: I object to that as incompetent, irrelevant, and move to strike out the answer.

3924 Popular number assumes it was something—assuming it was or was not, what difference does it make?

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

A. Yes, sir. It was a very popular number. That was decided by the ready acceptance of that particular style in that price which is considered to be a fairly high-priced garment for that type, and in the manner in which it

sold and the subsequent re-orders that were placed in a very short time.

Mr. Weisman: I ask that all of the answer be stricken out except "Yes, sir."

Mr. Haycraft: The Examiner's question asked for it.

Examiner Bennett: I think it was worded in a little different manner. I will confine it to the first sentence. It may be stricken out except for the first sentence, the words, "Yes, sir. It was a very popular number."

By Mr. Haycraft. 3926

Q. How did you determine it was a very popular number?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant.

Examiner Bennett: I will let him answer.

Mr. Weisman: Exception.

A. That is determined by the "fast selling book" which each department keeps for its record to determine selling reported by a sub-system for the selling of each style in stock.

By Mr. Haycraft.

3927

Q. What basis do you have for selling— A. I beg your pardon?

Q. What basis do you have for saying that it was a fast selling garment? A. I——

Mr. Weisman: I object as already answered, incompetent, immaterial and irrelevant, the question was asked before and now he is asking the question again, and he is proceeding crabwise to subse-

quently explain the answer, and the answer is in already, and I object to this form of testimony and ask that the question be physically stricken from the record.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: This is a cross-examination of his own witness. You will recall that the statement was made by the witness—that the statement was stricken.

Mr. Haycraft: Certainly. You will recall that, if your Honor please, that the statement made by
3929 the witness was stricken, and I am trying to get it in in the proper way now.

Examiner Bennett: He has already answered that question. I will sustain the objection.

Mr. Haycraft: Pardon?

Examiner Bennett: I say, I will sustain the objection.

By Mr. Haycraft.

Q. Have you made your full explanation, Mr. Chance, of the reasons why you say this is a fast selling number?

Mr. Weisman: I object to it.

Examiner Bennett: I will sustain the objection. I think we are through with that.

3930 Mr. Haycraft: I respectfully request that the answer of the witness which was struck out be reinstated so that the record will show the information which I am trying to elicit.

Examiner Bennett: You have it physically in the record if you want to argue that it is proper evidence, why, all right.

By Mr. Haycraft.

Q. I will ask you first what you did to obtain new dresses—new sources of supply for garments sold in Department 350? A. I instructed Miss McAllenny to attempt to get new resources other than Guild members to study the market and to be more careful and to review the shopping sources that we had not used before in attempting to locate the type of merchandise that we had to have for that department.

Q. What did she report to you? A. She reported to me it was a very difficult job, and that it would require a lot of time, and—resources are not built up overnight.

3932

(Question read as follows: "Q. I will first ask you what she told you about that matter?")

A. Miss McAllenny reported that it was a difficult matter—that it was a difficult matter to replace Guild resources.

By Examiner Bennett.

Q. You have testified to that before? A. Yes, sir.

Mr. Weisman: That is my understanding.

By Mr. Haycraft.

Q. Did she make any report to you as to her ability to obtain a source of supply to replace the source of supply 3933
which she had been using in buying from Lipman Brothers?

Mr. Weisman: Same objection.
Examiner Bennett: Overruled.
Mr. Weisman: Exception.

A. Miss McAllenny purchased one number from another manufacturer which did not replace the garment which we had purchased from Lipman Brothers.

By Examiner Bennett.

Q. Was that part of the substitution? A. We had hoped that it would replace the garment purchased from Lipman Brothers but it did not.

By Mr. Haycraft.

Q. I will ask you whether or not you can testify as to the effect upon the volume of your sales in Department No. 350 as the result of the red carding? A. Yes, sir. Those records are available?

Q. Have you made any computation or compilation of such effect? A. Yes, sir; I have made a study as to the
3935 percentage increase for that department and an extensive study of the effect on price lines for that particular department.

Mr. Haycraft: I should like to have that answer read back.

(Answer read.)

The Witness: I said "decrease" and not "increase."

Mr. Haycraft: Yes, I understood it to be "decrease."

Mr. Weisman: I am sitting here more closely to the witness than you are, and the court reporter is sitting right next to him, and neither of us heard it that way.

3936 Mr. Haycraft: What did you hear?

Mr. Weisman: I did not hear anything, but I do say that I did not say I heard anything. I say this much that I did not hear anything and you obviously did not hear anything if I did not hear anything, because you are much further away than I am.

The Reporter: I am only trying to get the matter straight, that is my only interest.

The Witness: If I said "increase," Judge——

Mr. Weisman: It is perfectly obvious that the witness is trying to fix up his answer now and that the reporter had it correctly in the first place. I simply call it to your Honor's attention and ultimately will call it to the attention of the Commission as to the character of testimony that is being presented here.

Examiner Bennett: The witness has clarified his answer. Proceed.

By Mr. Haycraft.

Q. You testified as to the percentage that you have in mind? A. In a general way. 3938

Q. Can you testify as to the percentages that you have in mind in detail? A. I have made a copy of that particular operation.

Q. For this department? A. Yes, sir. This will show a comparative increase—or—decrease, I mean.

The Reporter: Did you say "increase" or "decrease"?

The Witness: I first said "increase" and then I changed it to "decrease."

Mr. Weisman: Now, let us get this straight because this witness seems to be switching around a little bit.

3939

By Mr. Weisman.

Q. Did you say "increase" that time? A. I said increase, I seem to have it in mind, but I meant decrease.

Q. And that is what you said before, too.

Mr. Weisman: What did you hear him say this time, Mr. Haycraft?

Mr. Haycraft: "Increase."

Mr. Weisman: I just wanted to make sure that you did not hear "decrease" this time.

By Mr. Haycraft.

Q. You can continue your answer. I will put it this way, then: The paper which you hold in your hand, was it prepared by you or under your supervision?

Mr. Weisman: Wait a minute. There are two questions there. Ask him one and then the other.

Mr. Haycraft: I think that is a proper question, Mr. Examiner.

Examiner Bennett: Well, you can——

3941

Mr. Haycraft: Either one is admissible, if he prepared it, or under his supervision.

Mr. Weisman: I want to know for the purpose of cross-examination.

Examiner Bennett: Well, let him say whether he prepared it himself or——

The Witness: This paper was prepared under my supervision, Judge.

By Mr. Haycraft.

Q. You are satisfied it is correct? A. Yes, sir.

Q. Prepared from the records of the Strawbridge & Clothier Company? A. Prepared from figures that are obtainable from Strawbridge & Clothier or from our

3942 records.

Examiner Bennett: Do you know them to be correct?

The Witness: Yes, sir. They were submitted to us by our auditing department.

Examiner Bennett: You are offering that as an exhibit?

Mr. Haycraft: Yes.

(The paper headed "Comparative Increase or Decrease for Dept. 350. Feb. 1 to June End 1936 as against 1935 for the same period" was marked Commission's Exhibit No. 402 and received in evidence.)

Mr. Haycraft: Mr. Reporter, will you get his previous answer?

(The previous answer referred to was read by the reporter.)

By Mr. Haycraft.

Q. Now, the exhibit which you just identified, Commission's Exhibit 402, is an exhibit indicating the effect upon the sales, and a decrease indicated in that exhibit is the decrease you had in mind in your reply a moment ago? A. Yes, sir. 3944

Q. Now, then, will you now direct your attention to your study of the effect upon the price lines in the departments? What is the result of your investigation in that respect? A. Well, I cannot recall to my mind what the effect was but such a list is available and has been made up.

Mr. Weisman: I ask that the answer be stricken out as not responsive except that he doesn't know.

Mr. Haycraft: Read the answer.

(The answer was read by the reporter.)

Examiner Bennett: Beginning with "what" may be stricken. We will have a recess of ten minutes. 3945

(There was a short recess taken.)

Examiner Bennett: Be in order, please.

Mr. Haycraft: Mark this the next exhibit.

(The paper headed "Retail Price Line Comparison, Dept. 350" was marked Commission's Exhibit No. 403 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 403 for Identification, and ask you what that is.

Mr. Weisman: Wait a minute before you ask him.

By Mr. Haycraft.

Q. I ask you if you can identify that? A. Yes, I can.

Q. What is it? A. It is a retail price line comparison for Department 350 for the months of February, March, April, May and June in 1935 and 1936, comparison of sales

3947 results.

Q. Who prepared it? A. This was prepared at my direction.

Mr. Weisman: I ask that the answer be stricken out.

Q. Did you check it? A. Yes, sir.

Q. Are you satisfied it is correct?

Mr. Weisman: Objected to as incompetent and immaterial as to his satisfaction.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I am satisfied this is correct.

3948 Mr. Haycraft: I offer it in evidence.

Examiner Bennett: Have you offered the other one?

Mr. Haycraft: I think you let it in.

The Reporter: It was offered but no formal ruling was made on it.

Examiner Bennett: Yes. Well, it is received.

(Referring to Commission's Exhibit No. 402.)

Mr. Weisman: (Referring to Commission's Exhibit No. 403.) Objected to as immaterial and irrelevant.

Examiner Bennett: Overruled. It may be received.

(The paper heretofore marked Commission's Exhibit No. 403 for Identification, was received in evidence.)

By Mr. Haycraft.

Q. Referring to Departments 371 and 373, Mr. Chance, just to make the record clear at this point——

3950

Mr. Weisman: Just a moment. I ask——

Q. (Continuing) —as to what merchandise, lines of merchandise, price lines were handled in those two departments.

Mr. Weisman: I ask that that part of the question which is an explanation and not a question be stricken out because I don't think it makes it clear. I think it makes it more muddled. This testimony has already been offered by Mr. Taylor who testified very fully. It is merely cumulative in its effect, if anything. If it is offered for the purpose of bolstering up Mr. Taylor's testimony, I object to it, and call the Court's attention to the 3951
fact that he wasn't even cross-examined on that though he doesn't—or anything, so he doesn't have to be bolstered up. If it is for the purpose of contradicting him, I object to it because he may not contradict his own witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

The Witness: May I have the question, please?

(The question was read.)

The Witness: $3.95 retail and up.

Mr. Weisman: Wait just a moment. May I have his answer?

(The answer was read.)

Examiner Bennett: We haven't had the answer yet, go ahead and answer.

The Witness: I did answer, Judge. $3.95 retail and up.

Mr. Weisman: In what department?

The Witness: 371 and 373.

By Mr. Haycraft.

3953 Q. Who was the buyer of that department at the time you took it over? A. Miss Morgan.

Q. Are those the same departments because of a change in the number, or are there two departments all the way through? A. There are two distinct departments.

Q. Will you describe just what the distinction is between the two departments? A. 371 department is the department which sells dresses. The 373 department is known as the "coat and suit department" for junior miss.

Q. And 371 is the Junior Miss? A. Junior Miss Dress Department.

Mr. Weisman: The witness——

Mr. Haycraft: Now——

Mr. Weisman: Wait just a minute. If you want
3954 to make his testimony intelligible. The witness said the price was $3.95 and up. Will you let us know whether or not that is retail or wholesale?

Mr. Haycraft: He said retail. The witness has said retail.

The Witness: I said retail.

Mr. Weisman: Oh, did you? All right. I apologize. I didn't hear.

By Mr. Haycraft.

Q. Did you buy any dresses from the Guild manufacturers to be sold by those departments? A. At what time?

Q. In January, 1936, prior to the red carding. A. Prior to the red card?

Q. Yes. A. Yes, we have.

Q. Can you testify as to the name of the manufacturer that sold dresses to Strawbridge & Clothier to be sold through those departments, which were sold to those departments? A. Referring to Guild members?

Q. Yes, to Guild members. A. I cannot remember them. Such a list was made up and is available.

Q. I ask you if this refreshes your recollection (indicating). 3956

Mr. Weisman: I didn't hear your answer. Will you please speak up? What did you just say?

The Witness: I asked him if he had any other record.

Mr. Weisman: I object to the witness asking questions. He was asked whether or not this paper refreshes his recollection.

The Witness: I will identify these resources as resources used by the Junior Miss Dress Department prior to our being red carded.

By Mr. Haycraft. 3957

Q. Then would you say that that paper did refresh your recollection? A. Yes, sir, it does.

Q. Then, are you testifying as to the resources of this particular department prior to the red carding with the members of the Guild; and, can you testify as to that from this document? A. Yes, sir.

By Examiner Bennett.

Q. Was that made up under your direction? A. Yes, sir.

Q. Did you know it to be correct at that time? A. It has been checked by me and our assistants at the time.

By Mr. Haycraft.

Q. Will you give those names, please? A. R. K. Junior Frocks, Ashley Frocks, Inc., Horowitz & Dubermann, Jane Junior Dresses, Inc., Jo-Anne Junior, Junior League Frocks, Silver Dresses, Will Steinman, Bon-Ray, Daniel
3959 Westheim, Junior Guild of Chicago, Rose-Anna Junior.

Q. And will you testify as to the price range, or can you testify as to the price range of garments purchased from those manufacturers? A. No, sir.

Q. Does this refresh your recollection? A. No, sir.

Q. Who, in your organization, can testify to that information?

Mr. Weisman: I object to it as immaterial.

Examiner Bennett: Sustained.

By Mr. Haycraft.

Q. Can you testify as to the percentage of garments handled through those two garments that were purchased from the Guild manufacturers? A. No.

3960 Q. No? A. I cannot.

Q. Do you know whether or not these manufacturers that you have named have sold any garments to the Strawbridge & Clothier Company since February—since the red carding went into effect in February, 1936? A. I could not answer that.

Q. Turning to Department No. 332, can you testify as to whether or not any of the Guild manufacturers—can you testify as to the names of Guild manufacturers that

were selling garments to Strawbridge & Clothier that were sold to that department? A. Only from the list which is available.

Q. I will ask you if this paper contains such a list (indicating)? A. Yes, sir.

Q. Does that paper refresh your recollection? A. Yes, sir.

Q. Can you testify from that? A. King & Weill, Star Maid, Banner Manufacturing Company, Davis, Adler & Adler, Mutual Rosenbloom, David Lowenstein, O. Noodleberg, Bernard Appel, Townley Frocks.

Q. Can you testify as to the price range of garments purchased from those manufacturers? A. No. 3962

Q. You cannot? A. No, sir.

Q. Does that refresh your recollection? A. I would not know if those are correct (inspecting the document).

Q. Can you testify as to the percentage of garments purchased and sold by your department, that department, rather, that were purchased from Guild manufacturers? A. No.

Q. Does this refresh your recollection (indicating)? A. No, sir; it does not.

Q. Turning to Departments 338 and 358, can you testify as to the names of Guild manufacturers that were selling Guild merchandise to Strawbridge & Clothier that was sold to that department prior to the red carding in February, 1936? A. From a list prepared I can.

Q. Is this such a list (indicating)? 3963

Mr. Haycraft: I ask that these documents be marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 404-A, 404-B, 405-A, 405-B, 406-A, 406-B, 407, 408 and 409.)

Mr. Weisman: May I see them, Mr. Haycraft?

Mr. Haycraft: No. You have no right to see this. It is simply marked for identification. It is not offered in evidence.

Mr. Weisman: May I have that question and the reply by Mr. Haycraft on the record?

Examiner Bennett: You will notice it is on the record. If there is no necessity for a disclosure of course when they are being marked counsel may properly decline at that time. If there is an offer, of course you will be permitted to see them, or if they are the part of any testimony given by a witness.

3965 *By Mr. Haycraft.*

Q. I will ask you to identify each one of these for the record. What is 404-A and B? A. As I recall, this is a copy of questions submitted to us by the Federal Trade Commission.

Mr. Weisman: Now, wait just a minute. Now that the witness has identified this I would like to see it.

Mr. Haycraft: No, you cannot see it.

Mr. Weisman: I appeal to your Honor.

Examiner Bennett: Yes, you may see it.

Mr. Weisman: Mr. Haycraft, the Court has said I may see it.

3966 Mr. Haycraft: No. It is not offered in evidence.

Mr. Weisman: It is the subject matter of testimony.

Examiner Bennett: There is a possibility of a question on identification as to its identification. If you are going into identification I think it is proper to let the attorney see it.

Mr. Haycraft: Is that your Honor's ruling?

Examiner Bennett: It is.

Mr. Haycraft: I take an exception.

Examiner Bennett: You may.

By Mr. Haycraft.

Q. What is 405-A and B? A. 405 is a copy of a reply to those same questions from Department No. 331 prepared by Miss Flynn and myself.

Mr. Weisman: That isn't even courteous. I said, "Wait a moment until I look at them," and then he said, "No, I won't." Will your Honor tell him that he ought to?

Examiner Bennett: Well, I will let him go ahead. 3968

By Mr. Haycraft.

Q. What is Exhibit 406? A. 406 is the reply to the same set of questions prepared by the buyer of Department 350.

Q. Who prepared it? A. Miss McAllenny.

Q. Did you have anything to do with it? A. I supervised the preparation.

Q. 407. A. The same thing, answer to the same set of questions submitted by the Federal Trade Commission and prepared by Miss Morgan in Department 371 and Department 373.

Q. Did you have anything to do with it? A. I checked the resources and answered the question form. 3969

Q. 408? A. 408 is a copy of the reply to the questions submitted by the Federal Trade Commission prepared by the buyer of Department 382.

Q. Who prepared it? A. Mrs. Ransdell.

Q. Did you have anything to do with it? A. I assisted in checking the resources.

Q. 409? A. 409 is a—are the replies to the same set of questions submitted by the Federal Trade Commission and prepared by Mr. March, 358 department.

3970 *Samuel J. Chance—For Commission—Direct.*

Q. Did you have anything to do with it? A. I checked the list of resources there.

Q. Now, will you please testify as to the resources of that department with the Guild purchases; that is, members of the Guild prior to February, 1936? A. May I check with that list which I prepared, helped to prepare?

Examiner Bennett: Now, if you have any questions, Mr. Weisman, as to the identification—oh, well, all right.

Mr. Weisman: At the proper time I will make the proper motions.

Examiner Bennett: All right.

3971

A. A—One Dress at 1400 Broadway; International Dress——

Mr. Weisman: Just a moment. It is perfectly obvious that the witness hasn't got a refreshed recollection. He has the ability to read English. He is just reading from it. If it is going to refresh his recollection let him look at it and have him put it down and tell us how his recollection is refreshed.

Examiner Bennett: Well, that is not necessary if he knows that the matter is correct, or did know that it was correct at the time that he made it.

3972 *By Mr. Haycraft.*

Q. Do you know that that was correct? A. I testified as to that, sir. I helped to prepare this list of resources.

Examiner Bennett: And you know it to be correct?

The Witness: Yes, sir.

Examiner Bennett: You did know it to be correct when you prepared it?

The Witness: International Dress, 1400 Broadway.

Mr. Weisman: What is that first one?

The Witness: Aywon Dress is the first one. Within & Schnider.

Mr. Weisman: What was the third one?

The Witness: Within & Schnider.

Mr. Weisman: Yes.

The Witness: I mentioned E. & M. Marcus Weinberg——

By Mr. Haycraft.

Q. Where are they located? A. E. & M. Marcus in 3974
Boston. Weinberg, Weinberg & Alpern, 1400 Broadway.

Q. That is New York City? A. New York City.

Q. Within & Schnider is in Philadelphia, is it not? A. Yes, sir. C. H. D. Robbins, 1375 Broadway; Rosen Brothers, 1400 Broadway; Bernard Appel, Boston; Lyttle Brothers, 1400 Broadway; George Hess, 1385 Broadway; Anderman & Bob Burns, 1385 Broadway; F. E. D. Dress, 1400 Broadway; Cecele Dance Frock, 1584 Broadway; Goldstein & Entin, 1410 Broadway; Schultze-Zuch, 1385 Broadway; Sheila-Lynn Dresses, 525 Seventh Avenue.

Examiner Bennett: That is a list of your sources of supply for what?

The Witness: Prior to our being red carded for Departments 338 and 358. 3975

Examiner Bennett: All right.

Mr. Weisman: I believe your Honor is slightly in error. He said right along that these were some of the sources. Your Honor has said the sources.

Examiner Bennett: Well, the sources of supply. They were sources of supply.

Mr. Weisman: That is right.

Examiner Bennett: I believe I said sources of supply.

Mr. Haycraft: With the Guild, from the Guild manufacturers.

Examiner Bennett: Well, they were sources of supply.

Mr. Weisman: Yes.

Examiner Bennett: Of the Guild manufacturers.

The Witness: That is right, sir.

Mr. Weisman: There is no doubt we sold the merchandise. If we didn't we wouldn't be interested in it.

By Mr. Haycraft.

3977 Q. Have you prepared—strike that out. Have you had prepared a statement showing the total volume of business done with the various sources of supply, members of the Guild prior to February, 1936, during the year 1935? A. Yes, sir; I have.

Mr. Haycraft: Mark that for identification.

(List of Guild manufacturers and amount of business transacted from February 1, 1935, to January 31, 1936, with Strawbridge & Clothier was marked for identification Commission's Exhibit 410.)

By Mr. Haycraft.

3978 Q. Is this paper I now hand you such a statement? A. Yes, sir. That is the list that was made by our accounts payable department.

Q. Who prepared it? A. Why, it was prepared by——

Mr. Weisman: I have no objection to its competency, if that is what you want.

Mr. Haycraft: Certainly. Thank you.

Mr. Weisman: Offer it and it is O.K. with me.

Mr. Haycraft: I offer this in evidence, Mr. Examiner.

Examiner Bennett: It will be received.

Mr. Weisman: No objection. What is its number?

The Reporter: Commission's Exhibit 410.

(The list referred to, heretofore marked for identification Commission's Exhibit 410, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Were the garments purchased from these sources of supply during 1935 and January, 1936, sold through the departments which you have referred to in your testimony here to-day? A. They were sold to the departments which 3980
I supervised.

Q. Would they include 331, 350, 371, 373, 382, 338 and 358? A. Yes, sir.

Mr. Weisman: Wait a minute, please. Don't answer. I object to that question, "would they include that." I mean, the question is perfectly immaterial. If he states would they include that —he stated that they would cover all of the departments that he supervised. Now, his testimony on the point of what departments he supervised were departments 491, 358, 338, 371, 331, 350, 492, 493, 491, 473, 382 and 358. I submit that the question "Would it include those?" is perfectly immaterial. 3981

Mr. Haycraft: Well, his testimony was as to the Guild merchandise and what departments they were sold in.

Examiner Bennett: Yes. All right. The objection is overruled.

Mr. Haycraft: Mark these for identification.

(Documents referred to were marked for identification Commission's Exhibits 411, 412, 413 and 414.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 411 to 414, both inclusive, and ask if you can identify them? A. I can.

Q. What are they? A. They are retail price line comparisons for various departments which I supervised for the year 1935 as against 1936, February to end of June—February 1, to end of June, inclusive.

Mr. Haycraft: I offer these.

By Mr. Haycraft.

Q. Did you give the department numbers? A. Yes, sir.

3983

Mr. Haycraft: I offer them in evidence.

The Witness: I said there were several departments which I supervised.

By Mr. Haycraft.

Q. Department 331, Commission's Exhibit 414; Department 338, Exhibit 412; Department 358, Commission's Exhibit 413; and Department 371, Exhibit 414. Is that correct? A. Yes, sir.

Mr. Haycraft: I offer those in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 411, 412, 413 and 414, were marked as exhibits and received

3984 in evidence.)

Mr. Haycraft: Mark this for identification.

(Document referred to was marked for identification Commission's Exhibit 415.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 415. I ask you whether you can identify it. A. Yes, sir.

Q. What is it? A. It is a comparison chart showing the increase or decrease——

Mr. Weisman: Just a moment. I object to the witness testifying as to what it is. If he wants to identify it and then it is going to be put in evidence, that is one thing, or how it was prepared, but not a description of what a document is. That is for the Court upon its examination to state.

Examiner Bennett: He may characterize it in a general way.

Mr. Weisman: I except.

A. It is a comparison chart showing the increase or de- 3986
crease in a breakdown of departments that have formerly purchased from Guild manufacturers under my supervision, and those other departments that did not purchase from Guild manufacturers.

By Mr. Hayeraft.

Q. Those other departments are under your supervision? A. Yes, sir.

Examiner Bennett: That is, in the same line of merchandise?

The Witness: Same line of merchandise; yes, sir.

By Mr. Hayeraft. 3987

Q. Now, for what period of time? A. It is February 1 to end of June, comparison of 1935 and 1936.

Q. Did you have anything to do with the preparation of this? A. This is prepared by our statistical department.

Q. Did you check it in any way? A. Checked it against our own figures, sir.

Q. The first column there under February, 1935——

Mr. Weisman: I object to all of this identification of the first column or the second column and all of this. I submit either the paper is competent or it isn't competent. If it is competent it should go into evidence and thereafter speak for itself; if it isn't competent I think we have passed the bounds of propriety with regard to a description of it.

Mr. Haycraft: I think, Mr. Examiner, that there should be certain explanations of the figures.

Mr. Weisman: Well, you can give the explanations after it goes into evidence, if it is competent.

3989 Mr. Haycraft: I met with that same objection last time. That is exactly what I did before.

Examiner Bennett: It is all right.

By Mr. Haycraft.

Q. The first column there under February, 1935.

Mr. Weisman: May I have an exception?

By Mr. Haycraft.

Q. (Continuing) There are certain typewritten figures. What do they represent? A. In February, 1935——

Q. What do they represent? That is dollars, cents? A. It represents the total dollar volume.

3990 Q. Expressed in units or dollars? A. Expressed in thousands.

Q. All right. In February, 1936, column, what do those typewritten figures represent? A. That represents total thousands of dollars of business, net sales for those departments for that particular period.

Q. All right. And the third column is Inc. Dec. What does that represent? A. That represents the increase or the decrease of the 1936 figure for the same period over the 1935 figure.

Q. If it is an increase what color is the type? A. Black.

Q. If it is a decrease what color is the type? A. Red.

Q. Does that same description apply to the balance of the exhibits and the other respective columns? A. Yes, sir.

Q. Now, on the right-hand, the lower right-hand column, there seems to be some totals drawn off. What do they represent? A. It represents the total of these figures above here for the period which this is drawn out for, five months.

Mr. Haycraft: That is offered in evidence, Mr. Examiner. 3992

Mr. Weisman: May I examine a moment on it?

By Mr. Weisman.

Q. Do you know where the rest of this charming piece of paper is, this part that was cut off here? A. No, sir.

Q. Do you know what was contained thereon before it was cut off? A. That is the way it was submitted to me.

Q. Can you give me any explanation for the present seeming mutilation? A. No, sir.

Mr. Haycraft: I object to the use of the word "mutilation."

Mr. Weisman: It is perfectly obvious that it is mutilated. Something was here that has been cut off. 3993

I have no objection.

Examiner Bennett: What?

Mr. Weisman: I say, I don't object to this going into evidence.

Examiner Bennett: All right. It will be received in evidence.

(The document referred to, heretofore marked for identification Commission's Exhibit 415, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. What departments have you included in this Commission's Exhibit 415, the departments buying from Guild?

Mr. Weisman: Wait a minute. Just a minute. What is that question?
(Question read.)

A. 331, 338, 350——

Mr. Weisman: Wait a minute. 331, 338?
The Witness: 350.
3995 Mr. Weisman: 350?
The Witness: 371.
Mr. Weisman: Yes?
The Witness: 373.
Mr. Weisman: Yes.
The Witness: 358. Have I mentioned that?
Mr. Weisman: No.
The Witness: 358. That is all.

Q. How about the 382? A. 382 is not in that figure.

Q. Why did you not include No. 352? A. Because the total sum of purchases from the Guild in that department was very insignificant.

Q. Very insignificant? A. Very insignificant.

3996 Q. The balance of the departments that you gave in your original testimony are included in the statement "No Guild Resources"? A. Yes.

Q. Yes? A. That is true.

Q. And——

Mr. Weisman (interposing): I ask—will you ask him why he did not include 491, Department 491?

By Mr. Haycraft.

Q. In which division did you include Department No. 491? A. Department No. 491 is included in the division which is specified as "Non-Guild Resources."

Q. Why did you include 491 in that division? A. Because no purchases were made from Guild resources for that particular department.

Q. Now, Mr. Chance, have you formed an opinion as to the effect of red carding by Guild manufacturers selling Strawbridge & Clothier upon the business of the respective departments to which you testified this morning aside from 350, which you have already testified to, those departments being Nos. 331, 371, 373, 382, 338, 358, from 3998 the standpoint of price lines—the effect upon price lines sold by these various departments?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

By Examiner Bennett.

Q. The question is: Have you an opinion, that is what Mr. Haycraft wants to know. A. Yes, sir, I have.

By Mr. Haycraft.

Q. Will you state it, please? A. Our comparison chart 3999 which we have made up definitely shows that certain price lines that were red carded with the Guild resources show a decrease upon a comparison of 1935.

There are certain type of dresses or types of dresses that we had difficulty in securing at the time we were red carded and subsequently caused loss of sales.

In addition to that the cost of sending out buyers to various markets to try to develop or buy merchandise to

replace our Guild resources was, in addition to our usual expenses, an addition to the expense or cost of doing business.

Mr. Weisman: I move that the answer be stricken out as irresponsive.

Examiner Bennett: I will let it stand.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Have you an opinion as to this red carding upon the good will of Strawbridge & Clothier with regard to Departments Nos. 331, 371, 350, 373, 382, 338, 358? A. Yes, sir, I have an opinion.

4001

Q. The question is just if you have an opinion. A. I do.

Q. Will you please state it? A. The Guild manufacturers represented the highest type of manufacturers in the United States, if not the world——

Mr. Weisman (interposing): I ask that the witness be directed to answer the question and not to give us a stump speech as to Guild manufacturers. He was asked a very simple question and I ask that he answer it. We all know that the Guild manufacturers are the best in the world, and that is the reason they are Guild manufacturers.

4002 *By Examiner Bennett.*

Q. Tell us your opinion and then you can make any explanation of it that you desire.

Mr. Weisman: I respectfully object to the Court's direction of the witness to give an explanation.

Examiner Bennett: All right. Overruled.

Mr. Weisman: Exception.

A. There are certain type of dresses that we had difficulty in securing——

Examiner Bennett: That is not an answer.

Mr. Weisman: I object.

By Mr. Haycraft.

Q. What was your opinion? I asked you to give your opinion as to the effect on the good will. A. It affected our good will.

Q. In what way did it affect your good will, adversely or favorably? A. Sir?

Q. Did it affect your good will adversely or favorably? 4004
A. Adversely.

Q. Explain how it did. A. The Guild resources represented the highest degree of styling and the better makers, all the better makers in the dress market. Our buyers had had a certain number of years' experience in conducting, contacting and buying from these same resources. They have, in turn, built up a certain following for certain type of dresses; customers have been over a period of years, in long period of years, accustomed to buying dresses of a certain calibre or character from the departments and from our store, and when they found that we did not carry that same type or class of merchandise in our stocks that has resulted in the loss of sales. When they found out that we did not carry in our stocks this same type of merchandise, we would lose the sales. 4005

Mr. Weisman: I ask that the answer be stricken out as irresponsive and showing no foundation.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I believe you testified in respect of—strike that out—I will ask you, do you have an opinion as to the effect

upon the good will of Strawbridge & Clothier in the divisions that you have under your supervision, or departments, as the result of the inability of Strawbridge & Clothier to place re-orders with Guild manufacturers for garments that they had had in stock at the time of the red carding; at the time the red carding took place?

Mr. Weisman: Objected to as incompetent, immaterial and improper in form; the question is hardly intelligible, and I do not believe it is understandable.

Examiner Bennett: I do not think so. Overruled. You may answer.

4007 Mr. Weisman: Exception.

By Mr. Haycraft.

Q. The question is, have you an opinion? A. Yes, sir, I have.

Q. The question was if you had an opinion. A. I said yes, sir.

Q. Will you state the opinion, and give an explanation of it? A. In the stocking of dresses——

Q. (Interposing) I believe I asked you first if you had an opinion and then to give an explanation for it. A. Well, may I have the question again, please? Maybe I did not understand the question.

(The question was read to the witness.)

4008

A. Yes, it has affected our sales.

By Examiner Bennett.

Q. First, have you got an opinion on that, Mr. Witness? A. Yes, sir, I have got an opinion on that, sir. It has an effect on our good will, adversely.

Q. Yes. Now, if you want to make an explanation, why— A. I would, sir. When a customer is in the habit

of securing a product or dresses from any particular store and suddenly that particular type cannot be procured for them, particularly an item that is fashionable as dresses, and people do not wish to wait for them as styles change frequently, they are undoubtedly—go to other stores to shop, and whether—and there is no question in my mind that the good will of our store certainly is affected in that way.

(Whereupon, at 12 noon, a recess was taken until 2 o'clock P. M.)

4010

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. I believe you have testified, Mr. Chance, that there were outstanding orders in some—with Guild manufacturers who were furnishing garments for some of your departments, I believe 350, if I remember correctly. I will ask you whether or not, as——

Mr. Weisman: Wait a minute. May the beginning of that question be stricken out?

By Mr. Haycraft. 4011

Q. As divisional——

Examiner Bennett: Well——

Mr. Haycraft: I would like to complete my question.

Examiner Bennett: I think it is all right. Let it stand. Overruled.

By Mr. Haycraft.

Q. —as divisional manager whether or not you attempted to obtain garments on orders placed with Guild manufacturers that were pending at the time of the red carding? A. Yes, sir; I have.

Q. Will you testify as to what efforts you made to have those orders filled?

Mr. Weisman: I submit that has already been answered.

Mr. Haycraft: No, it hasn't.

Mr. Weisman: This morning, unless you have something particular. I remember distinctly he

4013 testified that he told his buyers to go out and that they went out and found it very difficult, or words to that effect.

Mr. Haycraft: That was some specific department. Now, I am referring to his whole division, all the Guild manufacturers that are involved in this proceeding. That is the reason I prefaced my question with the remarks that I did.

Mr. Weisman: I submit the preface is wrong and the question is wrong, and I object to it in its form, and I ask that we have a proper question put on the record so that we may know what is what.

Examiner Bennett: Overruled. Go ahead.

Mr. Haycraft: Will you read the question, please?

4014 (Question read.)

A. We mailed letters to these manufacturers, registered letters indicating that we wished a return signature for the receipt of those particular letters urging the delivery of merchandise on order with Guild houses that we were red carded with.

By Mr. Haycraft.

Q. Will you testify as to the name of the manufacturers to whom you sent such letters?

Mr. Weisman: Objected to unless the letters are offered, and they are the best evidence. He has them before him.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 416 for Identification, Mr. Chance, and ask you if that is one referred to in your testimony a moment ago? A. This is a duplicate of a letter which I have dictated and sent to H. Robinson. 4016

Q. You sent the original of that? A. Yes, sir.

Q. Now, did you send letters in exactly the same language to other manufacturers?

Mr. Weisman: Objected to unless he specifies the manufacturers. He has got the list there. He is trying to make a general statement when he knows there was only a particular number of letters sent. That is another exhibition of the way counsel for the Commission is trying to put innuendo in this case instead of evidence. Now he has got the letters in his hand. Why aren't the letters offered and then we will know who they sent them to. The word "others" might mean everybody or nobody or somebody. I object to this form of pro- 4017 cedure.

Examiner Bennett: Yes. Please object and don't fill the record with a lot of harangue.

Mr. Haycraft: May I——

Examiner Bennett: Yes, go ahead.

Mr. Haycraft: What is the question?

(Question read.)

Mr. Weisman: Objected to.

Examiner Bennett: I will ask you to be specific. I wish you would say so and so, and so and so, and so and so.

By Mr. Haycraft.

Q. Did you send a letter in exactly the same language to Gardner Schwartz, New York City; Goldstein & Enten, Boston, Mass.; Harry Genz, Inc., New York City; Harry Frank, New York City; Robinson Brothers, Boston, Mass.; Frank Star-Friedlander, Inc., New York; Herman Bistel, New York City? A. May I see the letters, please?

4019 (The letters were handed to the witness.)

A. Yes, sir. These are duplicates of letters which I have sent.

Q. Do they name the individuals indicated? A. The individuals cited are upon each copy.

Mr. Haycraft: All right. I will offer in evidence Commission's Exhibit 416 for Identification, the first one which the witness identified.

By Mr. Haycraft.

Q. Did you receive any reply to those letters?

Mr. Weisman: I object to any reference to any letters not in evidence.

4020 Examiner Bennett: All right. I think probably your objection is good except as to that letter.

(The letter referred to, heretofore marked for identification Commission's Exhibit 416, was marked as an exhibit and received in evidence.)

Mr. Haycraft: Then I offer in evidence again Commission's Exhibits 417 to 423.

Examiner Bennett: All right. Received.

Mr. Weisman: No objection, if they are offered for the purpose of merely showing that he wrote to these people and requested merchandise, and without any offer that there is any truth of the statements therein contained, otherwise it would be merely hearsay what he wrote to somebody.

Mr. Haycraft: I am not restricting the offer in any respect.

Mr. Weisman: Then I object to them unless the offer is restricted to show a demand for the merchandise and nothing else. They are all the same, so if you read one, Judge, you have read them all.

Examiner Bennett: They may be received. If 4022
there is an objection it is overruled.

Mr. Weisman: May I ask whether or not they are received generally?

Examiner Bennett: They will be received for all purposes.

Mr. Weisman: Exception.

(The letters referred to, heretofore marked for identification Commission's Exhibits 417, 418, 419, 420, 421, 422 and 423, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Did you receive any replies to those letters? A. Did not. 4023

Q. Did you receive the goods from those manufacturers? A. I am sorry. I didn't get the question.

Q. Did you receive any of the goods that were on order from those manufacturers? A. We did not.

Mr. Haycraft: Your witness.

Mr. Weisman: I would like to have the exhibits in this case commencing with Exhibit No. 400 right down.

(The exhibits referred to were handed to Mr. Weisman.)

Cross-examination by Mr. Weisman.

Q. Now, Mr. Chance, what is your present position? A. Divisional merchandise manager for Strawbridge & Clothier.

Q. And I understand that you became divisional merchandise manager in February of this year? A. Yes, sir.

Q. In what part of February did you become divisional merchandise manager? A. Officially, February 1, 1936.

4025 Q. As such divisional merchandise manager, are you one of the executives of the Strawbridge & Clothier organization? A. I have not asked whether I am on the executive board or not. I am sorry. I misunderstood your question. May I have that again?

Q. Well, I understood that you said that you are not on the executive board. A. May I have your question?

Q. No. Answer that. Did you say you were not on the executive board?

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Just answer responsively. If so, say so.

A. I am so considered.

4026

By Mr. Weisman.

Q. By whom? A. By the firm, my business associates.

Q. When you say "by the firm," whom do you mean? Strawbridge & Clothier is a corporation. It is an inanimate thing. A. I mean the officers of that organization.

Q. Who are those officers who so consider you? A. Mr. Tily as the president.

Q. Yes. A. We have various other officers, general merchandise manager, divisional merchandise manager, managers.

Q. What is the executive board that you refer to? A. That was simply a statement. I can't go into it, sir, not a secret; it is a misstatement.

Q. I want to know from you; I am asking you what is the executive board? A. I can't answer your question.

Q. What do you mean by that? You don't want to answer? A. I don't know.

Q. Where did you hear that term? A. Well, I have heard that term quite often in life.

Q. Did you ever hear it as applied to Strawbridge & 4028
Clothier? A. No, sir.

Q. What did you mean when you said you weren't one of the executive board if you never heard of it in connection with Strawbridge & Clothier?

Mr. Haycraft: I don't see, Mr. Examiner—he didn't say that. I object to the question.

Mr. Weisman: Will you please stop interrupting me until my question is asked?

The Witness: I corrected my statement and I said I was sorry I misunderstood you.

By Mr. Weisman.

Q. Did you understand me to ask whether you were a member of the executive board when you made that reply? 4029
A. I thought I heard that; yes, sir.

Q. Shortly after, or in the same week that you became divisional merchandise manager, Strawbridge & Clothier had this difference with the Guild; isn't that right? A. What do you mean by difference?

Q. Well, the Guild arrived at a conclusion, correctly or incorrectly, that it was no longer your policy to correct style originations? A. We were red carded by the F.O.G.A. in that early part of February.

Q. And that is what you understood by it? A. Well, I wanted to make sure.

Q. You did? A. Yes.

Q. Well, do you not so now understand it? A. What?

Q. In other words, that the Guild has red carded you, or that the manufacturers have received notification by red card, or by other colored card that it is no longer your intention to protect style originations of its members?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, and not within the knowledge of this witness.

Mr. Weisman: This witness has suddenly be-
4031 come frightfully ignorant on his cross-examination, whereas on his direct examination his perspicacity was remarked to an extraordinary degree.

Examiner Bennett: Overruled.

A. That was at the discretion of the Guild that we were red carded. We took no part in red carding ourselves.

By Mr. Weisman.

Q. I did not say that you did. I did not say that you did. I say, did you not so understand that Guild members are now refusing to sell you merchandise because it is on the information, correctly or incorrectly, that it is no longer your policy to protect style piracy defenses; pro-
4032 tect against style piracy? A. I so assume. I would assume such.

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant as to what this witness understands.

Mr. Weisman: It is very important.

Mr. Haycraft: It is of no importance.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. The reason that the Guild may have had for red carding was known to you, was it not?

Mr. Haycraft: I object to that.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. The reason that the Guild may have for red carding this witness, or his firm, I think are most important.

Examiner Bennett: I sustained the objection on the theory that the question has been answered. I see now that it has not been answered. I will let him answer. 4034

A. I assume such.

Mr. Weisman: Thank you, your Honor.

Mr. Haycraft: I ask your Honor to instruct the witness that he is not to answer until I have had an opportunity to get in my objection.

Examiner Bennett: Please do so.

By Mr. Weisman.

Q. As a matter of fact, as an executive of Strawbridge & Clothier, do you not know at the present time that it is not the policy of Strawbridge & Clothier to protect style originations of members of the Guild? 4035

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

A. I do.

By Mr. Weisman.

Q. You do? A. Yes, sir.

Q. As a matter of fact, that change in policy has been in force ever since February of this year; is that so? A. Yes, sir.

Q. Prior to February, 1936, you know, and knew, did you not, that the firm of Strawbridge & Clothier caused all of its buyers to place on its orders the statement in word or substance that the seller warranted the goods as not being copies of originations originated or created by Fashion Originators Guild of America? A. Yes.

Q. Is that so? A. Yes.

4037 Q. And you also know that Strawbridge & Clothier, prior to the date last referred to, also, by its orders, reserved the right to return any merchandise which was not as warranted; is that so? A. Prior to February 1, 1936, I am not in touch with whatever conditions or clauses or arrangements with the Fashion Originators Guild of America there were except as others explained it to me; namely, as it was explained to me by the divisional merchandise manager at that time.

Mr. Weisman: May we have Commission's Exhibit 306?

Examiner Bennett: You may.

Mr. Weisman: Here it is. Thank you.

4038 *By Mr. Weisman.*

Q. That stamp in words and figures is as follows: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." Was it not in that form?

By Examiner Bennett.

Q. Did you not say you had no knowledge of the relations between the Guild and your employing firm prior to February 1, 1936? A. No, sir. I said I did not know what the exact detail of the conditions were, but I do know of the stamp that we were asked to use by the divisional manager. I have a copy of that stamp here in my pocket that I would like to show if I may be permitted to do so.

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. As a matter of fact, prior to that time you were a 4040
buyer, were you not? A. Yes, sir.

Q. In the course of the performance of your duties as buyer, were you not instructed to use this stamp? A. Yes, sir; I was.

Q. And did you use it? A. I did.

Mr. Haycraft: I object unless the witness is allowed to look at this copy, and the copy that he has of his own stamp to find out if the stamp was the same, the stamp that he was required to use was the same stamp that counsel is now referring to and reading from. I think that the witness has a right to compare the two in order to be certain that his stamp is the same as the other stamp. There is no indication here that it is the same. 4041

Mr. Weisman: It certainly goes to a test of his credibility, and to his knowledge for that matter, as to the knowledge that he had of the conduct of the business.

Examiner Bennett: One moment. Is that the same stamp used by this firm?

Mr. Weisman: No, I do not have a copy of the stamp but this was used generally.

By Mr. Weisman.

Q. Have you got a copy of that stamp with you? A. I have a copy of the one that we used. May I refer to that, your Honor?

Examiner Bennett: You may refer to it.

By Mr. Weisman.

Q. Will you do so? A. Yes, sir.

Q. Have you a copy of the stamp that Strawbridge & Clothier used prior to February 1, 1936? A. This is the stamp (indicating certain markings on a sheet of paper).

4043 Q. Have you produced it? A. The stamp?

Q. Yes. A. No, this is not the stamp.

Q. Have you produced the legend? A. Yes, this is it.

Q. This is it? A. Yes, sir.

Q. Will you let me see it? A. Yes, sir.

Q. May I have it? A. Here it is.

Mr. Weisman: May I offer this in evidence, if your Honor please?

Examiner Bennett: The objection is overruled. It will be received in evidence as Respondents' Exhibit 20.

(The legend referred to was marked for identification Respondents' Exhibit 20 and received in evidence.)

4044

By Mr. Weisman.

Q. At the time that you were using this stamp you were a buyer for Strawbridge & Clothier? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. You were not divisional merchandise manager? A. No.

Q. You were not? A. No.

Q. Now, are you sure about that? A. That is correct.

Q. That is correct? A. Yes, sir.

Q. What department were you a buyer for? A. The House Dress Department.

Q. House what? A. House dress.

Q. House department? A. No, House Dress Department.

Q. House Dress Department? A. Yes.

Q. What is the number of the House Dress Department? A. 492.

Q. Any other number? A. Yes, 493.

Q. 492 and 493? A. Yes.

Q. Prior to February 1, 1936, were you connected with Department No. 373? A. No, sir. 4046

Q. Prior to February 1, 1936, were you connected with Department No. 382? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 385? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 491? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 358? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 338? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 371? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 331? A. No. 4047

Q. Prior to February 1, 1936, were you connected with Department No. 350? A. No.

Q. Since you have become divisional merchandise manager have you, in the course of the performance of your duties had occasion to ascertain what was the general conduct of your particular departments, those particular departments which I have enumerated prior to February 1, 1936? A. Well——

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant, and no foundation, because this was not gone into on his direct testimony. So far as the direct testimony is concerned, he was asked about matters only during the time that he was divisional merchandise manager.

Examiner Bennett: The objection is overruled.

By Mr. Weisman.

Q. The Court said you may answer. A. I do not quite understand that question.

4049 Mr. Weisman: May I have it read to him? I will have it read to you if the Court so orders, and then say what there is you do not understand and I will try to explain it to you if you will tell me what it is that you do not understand.

Examiner Bennett: You may read the question. (Question read.)

By Mr. Weisman.

Q. What is there you do not understand about it? A. What do you mean by "general conduct"?

Q. Well, do you know, from your examination of the operation of those departments prior to February 1, 1936, whether or not each and every buyer of those departments upon placing an order, had a stamp placed upon it similar

4050 to—no, not similar but exactly identical with respondents' Exhibit 20 in evidence: "yes" or "no"? A. I do not know.

Mr. Haycraft: I object to that. That is what I was afraid would come up. I move to strike the answer.

Examiner Bennett: He says he does not know. That would seem to settle that.

By Mr. Weisman.

Q. Do you mean to say that you do not know whether or not prior to February 1, 1936, Strawbridge & Clothier attached to their orders for those departments, other than the one which you were buyer in, their so-called "warranty stamp"? A. No.

Mr. Haycraft: I object to that. I move the answer be stricken.

Examiner Bennett: Overruled.

A. I do not know.

By Mr. Weisman. 4052

Q. Did you, prior to testifying here, or upon your accession to the position of divisional merchandise manager, seek to ascertain whether or not such stamp had been affixed by the buyers to orders in the other departments?

Mr. Haycraft: Same objection, if your Honor please.

Examiner Bennett: Overruled.

A. That is not my responsibility—that was not my responsibility at that time, I mean.

By Mr. Weisman.

Q. What? A. That was not my responsibility at that 4053
time.

Q. I do not care whether it was your responsibility or not. I asked you if you found that out to be a fact?

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled.

A. I do not.

By Mr. Weisman.

Q. Did you,—strike that out. Did you not in the exercise of your duties as merchandise manager for Strawbridge & Clothier Company think that it was encumbent upon you to ascertain in some degree what had been the practice in these departments before you came there?

Mr. Haycraft: That is objected to on the same ground as incompetent, irrelevant, and immaterial, and not a part of the direct testimony.

Examiner Bennett: Overruled.

4055 A. That is one phase of the business that I did not check into and do not know and cannot answer.

By Mr. Weisman.

Q. Did you make any investigation of any kind, nature, or description as to what had occurred in these departments prior to the time that you got in there as divisional merchandise manager thereof? A. Examinations as to what?

Q. That is what I am trying to have; that is what I am trying to find out from you.

Q. When you became divisional merchandise manager on February 1, 1936, or at any time since then have you made any study or investigation with regard to the conduct of those various departments prior to your having
4056 become divisional merchandise manager, Mr. Chance? A. Is the word "conduct" left out. I do not quite understand. What is the meaning of the word "conduct"? What is meant by "conduct."

Q. No, the word "conduct" is not left out. Please answer it with the word "conduct" in it.

The Witness: Judge, I would like to know what is meant by the word "conduct."

Examiner Bennett: That has a meaning, a definite meaning, one or several of them, and one is the way in which the business was conducted.

Mr. Weisman: Yes.

Examiner Bennett: The routine and so on.

The Witness: I haven't made any, Judge, as to any specific routine as has been brought out in the way of the stamp, I mean, that is one specific instance that I can mention. The only thing that I was vitally interested in was reviewing at the time things came up, conduct, or the way sales fluctuated, price lines. I mean, that would generally interest me, that would be helpful in making my 4058 plans.

By Mr. Weisman.

Q. Well, let me ask you this: Do you know what was the budget of the Strawbridge & Clothier organization, the advertising budget for these departments for the months January 1, 1935, to June 1, 1935?

Mr. Haycraft: That is objected to as irrelevant, immaterial and improper cross-examination.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. Have you any knowledge of the number of promotional sales—— 4059

Mr. Haycraft: You did not make any offer of proof. I don't want to interrupt, but you didn't make any offer of proof.

Mr. Weisman: Oh, excuse me. Withdraw the question. I then make this offer of proof: If I had been permitted to query the witness along these lines, it would have developed, or I would have been

enabled to develop that this witness had no knowledge of the amount of advertising done by Strawbridge & Clothier in the particular period referred to.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know the number of promotional sales had by Strawbridge & Clothier during the period January 1, 1935, to June 30, 1935, in the departments of which you are now divisional manager? A. I don't understand your question as to promotional sales.

4061 Q. Do you mean to tell us that as a divisional merchandise manager you don't know what a promotional sale is? A. My opinion may be different than yours.

Q. Do you know what the term "promotional sales" means?

Mr. Haycraft: Objected to. There is no foundation laid for that.

A. Yes.

By Mr. Weisman.

Q. Did you get that information in the course of the performance of your duties as a person in charge of merchandising with Strawbridge & Clothier? A. It is a gen-

4062 eral term used in the business.

Q. And generally known to all who have dealings therein? A. Somewhat.

Q. Commonly known? A. Yes.

Q. Now, tell us what is meant by that commonly known term? A. My interpretation would be the purchasing of any amount of merchandise and promoting it for sales results.

Q. Yes. Well, that is, to—how do you differentiate from the ordinary purchases or ordinary transactions that you have in the store? A. It depends upon the amount of effort put behind an item.

Q. Tell us. We don't know anything about this and you do. Now, don't presume that we do know something. Tell us what you mean by the amount of effort put behind the item. A. Well, by an amount of effort——

Q. Speak up so we can all hear. A. By the amount of effort I mean advertising, selling effort placed behind it.

Q. What was that last? A. Selling effort. Display. Many things are taken into consideration.

Q. What do you mean by selling effort? A. By selling 4064
effort, that can be probably connected with advertising and display.

Q. You mean by that that stores holding promotional sales attempt to accelerate the sale of their merchandise by giving to the particular departments a greater amount of display space than they ordinarily have, a greater amount of advertising than their budget ordinarily carries, and generally pushing the department sales; isn't that so? A. I couldn't say that. That would depend upon the individuals.

Q. What do you do in your store when you want to promote the sales in a particular department as differentiated from your ordinary regular sale of merchandise?

Mr. Haycraft: That is objected to. No founda- 4065
tion was laid that he knows about any other store, or whether he ever put on any such promotional sales. You had better find out whether he ever put on any such promotional sale.

Examiner Bennett: I don't think there is any foundation for this at Strawbridge & Clothier. I don't think you have brought out that Strawbridge & Clothier has any promotional sales.

Mr. Weisman: All right. We will find out.

By Mr. Weisman.

Q. Have you ever, while you were connected with Strawbridge & Clothier, learned that Strawbridge & Clothier do engage in promotional sales?

Mr. Haycraft: That is objected to, unless it is confined to the time that he was divisional merchandise manager.

Mr. Weisman: Well, I am——

Mr. Haycraft: No. I am asking that he be restricted to that time.

Mr. Weisman: Exception.

4067 Examiner Bennett: There is a reason why I have been very liberal in this matter. This witness at your solicitation has made certain comparisons running back to the early part of 1935, as I remember. Now, those comparisons might be affected by this sort of cross-examination, and that is the reason that I am entertaining the cross-examination, and I am going to entertain it as long as it brings out facts that will help us.

Mr. Weisman: Thank you. May we have the question and the answer.

(Record read.)

Mr. Haycraft: I object to that unless it is confined to the period that the Examiner indicated. It should be restricted to beginning with January,
4068 1935.

Examiner Bennett: Of course, I expect you to to confine it to that time.

Mr. Weisman: All right.

Examiner Bennett: That this witness started.

Mr. Weisman: Yes.

Examiner Bennett: As I understand it, it was some time in 1935.

By Mr. Weisman.

Q. Do you know whether or not since January, 1935, in the dress departments, whether Strawbridge & Clothier have ever had any promotional sales? A. Yes, we have promotions in our departments from time to time.

Q. When you say you have such promotional sales in your departments from time to time, how frequently would you say that you have such promotional sales? A. I am not in a position to say.

Q. I want your best opinion. A. It would be a guess.

Q. I don't—what is your best guess? You are now divisional merchandise manager.

4070

Mr. Haycraft: I object to any guesses or opinions. I have no objection to the witness stating since he has been merchandise manager how many of those promotional sales they have had. If the question is restricted to that I am not objecting; otherwise, I do object.

Examiner Bennett: I will ask the witness to state what he knows about it.

The Witness: I can't judge. It is a question of carrying records around as to how many sales we have. If I stated one or ten, I may be wrong.

By Mr. Weisman:

Q. Let's see. Do I understand you to say that you have been divisional merchandise manager now for about six and a half months; isn't that so? A. That is right. 4071

Mr. Haycraft: That is objected to, as to the form of the question. I don't think we are interested in what counsel understands.

By Mr. Weisman.

Q. Didn't you testify that you were divisional merchandise manager for about six and a half months? A. I have.

Q. And isn't it a fact? A. Yes.

Q. Now, during those six and a half months, do I understand you to say in answer to the query given to you by the Court, that you don't know, and you couldn't say whether you had one promotional sale during that period in these departments, or ten promotional sales?

Mr. Haycraft: That is objected to as to the form. We aren't interested in what counsel for the respondent understands, and I don't think the Commission is interested in that.

Mr. Weisman: I think it is perfectly all right.

Examiner Bennett: I will let him answer.

4073 The Witness: That is a fact, Judge.

By Mr. Weisman.

Q. Well, how many did you have in the last six months? A. I don't know.

Q. Did you have fifty? A. I wouldn't guess.

Q. Weren't they made, if they were had, under your direction? A. They were made, but I have many departments, and I cannot remember.

Q. Well, let's see. Did you have any promotional sales in February, 1936? A. I don't remember.

Q. If you had them, wouldn't you be inclined to remember them?

Mr. Haycraft: That is objected to.

4074 The Witness: Anything unusual I might.

By Mr. Weisman.

Q. Isn't a promotional sale unusual? A. I don't recall any that were unusual that month.

Q. Well, now, let's go on. That month was February, was it, that we covered? A. I don't know.

Examiner Bennett: That was February.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. Now, what about March? Did you have any promotional sales in March, 1936? A. I don't recall.

Q. You don't recall any? A. No.

Mr. Haycraft: He didn't say that, Mr. Examiner.

The Witness: I said I didn't recall.

Mr. Haycraft: He didn't say "any."

By Mr. Weisman.

Q. Do you recall any?

Mr. Haycraft: I object to that, Mr. Examiner. If he doesn't recall, he can't recall specifically. 4076

Mr. Weisman: Oh, I don't know why—why don't you take the stand and testify. It would be a lot easier for all concerned.

Mr. Haycraft: You are doing very well for all of us.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you recall a single promotional sale in March, 1936? A. I do not.

Q. Coming now to April, 1936, do you recall a single promotional sale that you had in April in any one of these departments? A. I cannot remember that—when our promotions were in any month since I have been divisional 4077 manager.

Q. Well, let's bring you down to May. That is only two and a half months ago.

Mr. Haycraft: I object to that. He has already testified——

Mr. Weisman: I want a specific denial of this man who testified with such glibness to the way the

good will was affected of this $50,000,000 institution, who doesn't remember whether 20 days ago they had a promotional sale.

By Mr. Weisman.

Q. Now, let's see. By the way, aren't these promotional sales also indulged in for the purpose of promoting good will, or don't you know that, either? A. I don't.

Q. Good. Notwithstanding that you think you are in a position to pass upon good will; do you? A. Depends on just what purpose one has in mind in promoting.

Q. I see. Now, in May, 1936—I will withdraw that.
4079 You already testified you didn't remember about May; isn't that so? A. I testified I do not know how many promotions.

Q. What about June, 1936? Did you have any promotional sales in June, 1936?

Mr. Haycraft: Same objection.

Examiner Bennett: Same ruling. He may answer.

The Witness: We had a store—wide, promotion, if that may be considered.

By Mr. Weisman.

Q. You had a store-wide promotion? A. It is an anniversary sale.

4080 Q. Did that store-wide promotion indulged in in June, 1936, extend to the departments which came under your supervision and direction? A. Yes.

Q. So that you do remember in June, 1936, you did have a promotional sale? A. It is considered a store-wide sale and not a promotional sale of dresses, particularly.

Q. Well, in that store-wide sale, do you, as divisional merchandise manager, have a promotional sale in your dress departments? A. We take part in the store-wide sale.

By Mr. Weisman.

Q. Do you know of any facts upon which you can base a comparison of the number of promotional sales had in these dress departments during the period February 1, 1935, to June 30, 1935, as compared to the period February 1, 1936, to June 30, 1936?

The Witness: What is that question?

Q. (Question read.) A. Do I understand that to mean strictly promotional sales?

Q. Yes. A. I have none.

Q. Well, don't you know that promotional sales due accelerate the volume done in the departments? Don't you know that? A. You are telling me. 4082

Q. Well, do you know it? A. It depends upon the type of promotion and the effort placed behind it.

Q. Isn't the purpose of a promotional sale in a department for the purpose of increasing the sales in that department? A. It could mean almost anything.

Q. Well, no. What does it mean when you do it? Is that your purpose? A. No, it may have—it may have several meanings, so far as I am concerned, in promoting.

Q. Now, we would like to find out the several meanings that it would have so far as you are concerned. What are the several meanings? A. Well, we may want to promote a style——

Q. Not what "we may want." I want to know the purpose of your promotional sales, not what they might be, but what they are, or have been for. A. I may want to promote a specific style, I may want to promote a specific price line; I may want to promote a fashion item. It has many significances in the way of promotion. 4083

Q. Now, what is the purpose of seeking to promote these things? Is it not to accelerate the sale of them? A. There is no way that we can measure what the response is to any promotion.

Q. I don't ask you what the response is. I ask you what the purpose is. Are you trying to tell—I will withdraw that. Are you trying to tell us that a promotional sale is not for the purpose of increasing the sales volume? A. You are speaking of a definite time?

Q. I am speaking of what you do? A. At what time?

Q. At any time. A. The results in promotions are generally hoped to be sales.

Q. I am not asking you for the results. I am asking you for the purposes. A. They are the purpose we hope for them to give us sales.

Q. In other words, you indulge in promotional sales for
4085 the purpose of increasing your sales? A. We hope that they will.

Q. Isn't that so? Yes. And when you say you hope, that is your expression of purpose; isn't that so? A. Yes.

Q. What was the volume of your advertising in these departments during the period February 1, 1936, to June 30, 1936? A. I do not know.

Q. Did you ever seek to ascertain? A. I may have seen the figures.

Q. Do you have any recollection of them, if you have seen them? A. No, sir.

Q. Did you ever see the figures of the advertising done in the departments during the period February 1, 1935 to June 30, 1935? A. I may not have seen that particular figure.

4086 Q. I don't ask you what may or may not. I ask you: Do you have any recollection of ever having seen them? A. I do not have any recollection.

Q. Did you ever compare the amount of advertising done in these departments now under your supervision during the period February 1, 1935, to June 30, 1935, with the period February 1, 1936, to June 30, 1936? A. May I have that question, please?

Q. (Question read.) A. No, I have not seen that relation.

Q. Now, don't you know as divisional merchandise manager that the purpose is of advertising? A. The purpose of advertising is to sell our customers, or the public, or offer for sale that which we have to offer.

Q. Why do you do that—is there any help being given to you over in this corner (indicating)? A. Do you see any?

Q. Why do you constantly look over there? A. I am looking all over the room.

Q. Well, please look at me; won't you try? A. I will try, yes.

Examiner Bennett: Please don't make that sort of reflection on the witness. 4088

Mr. Weisman: Well, it has happened about ten times.

Mr. Haycraft: There is nothing to it at all.

Examiner Bennett: I wish you would refrain from that sort of reflection on the witness.

By Mr. Weisman:

Q. Will you answer the question? A. May I have the question, please?

Q. (Question read.) A. We hope to increase sales.

Q. You hope to increase sales. And haven't you found in your experience as a divisional merchandise manager that a larger amount of advertising is prone to increase the volume done in particular departments? A. Not always. 4089

Q. Not always, but I want to know what it does generally. A. I coulda't testify as to what it does generally.

Q. Well, do you mean to say that you don't know that the purpose of your advertising is to increase your sales? A. I do.

Q. Well, then, why don't you say so when I ask you?

Examiner Bennett: He spoke of the departments. You are asking him now exactly a question that even a technical advertising man wouldn't answer with any confidence.

Mr. Weisman: I don't know. I know some that would.

Examiner Bennett: You haven't qualified him.

By Mr. Weisman.

Q. To clear up the record, isn't it part of a merchandise manager's business to know the relation between advertising and sales? Isn't that part of your job? A. Yes.

4091 Q. Don't you know, as a part of that job, that in this business of merchandising dress departments, there is a generally accepted ratio between sales and advertising? A. Yes.

Q. Don't you know that the amount of advertising is generally supposed to reflect itself in the amount of sales? A. You say generally, but that is not a true fact.

Q. What do you mean by that? I want your help. A. I mean this: that a buyer sometime or other may promote merchandise which the public does not wish to accept.

Q. Yes. That is sometimes. But I am speaking about generally without the specific exceptions. I know that you might advertise a cat or something that isn't wanted, but I am speaking of the ordinary run of garden variety

4092 type of advertising and merchandising. Doesn't it in the increased volume of advertising, generally, tend to increase your sales? A. There is a question there as to whether it will or not.

Q. Why do you do any advertising if there is such a question. A. We advertise hoping that results will be obtainable or obtained.

Q. Don't you advertise because you believe the more you advertise the more you are likely to sell in the advertised

departments? A. My belief and my thoughts on that could be different than any one else's.

Q. Well, are they different from everybody else's? A. Sometimes in some instances.

Q. Well, on that particular question that I asked you, are your thoughts different from everybody else's? A. May I have the question?

Q. (Question read.) A. I have had differences of opinion.

Q. I didn't ask you that. I want to know whether you, as divisional merchandise manager of Strawbridge & Clothier, are of the opinion that the amount of your advertising bears no relation to the volume of your sales? 4094
Now, do you understand that question? A. I didn't say that it does.

Q. Well, now, I am asking you that. Does it bear some relation to the volume of your sales? A. There is a relation between those figures.

Q. Of course. And anybody knows that, don't they, in the merchandising business? A. I don't know whether they do or not.

Q. Well, is it generally known in the business? A. I couldn't answer.

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Well, don't you meet other buyers and other mer- 4095
chandise men? A. I do.

Q. And from them don't you know that this is a thought that is generally held by the people in the industry? A. I am—I never discuss that with any other manager.

Q. You never discussed that. Did you ever hear of the N.R.D.G.A.? A. I have.

Q. What is it? A. I don't know.

Q. You don't know? A. No. It is an association, in my estimation. I may not be given the complete——

Q. Isn't it the National Retail Dry Goods Association? A. Yes.

Q. And isn't your store a member of it? A. Yes.

Q. Why did you say a moment ago that you didn't know what it was? A. Well, you are asking me what it was and I am telling you that that is my——

Q. Now, don't they give you—do you receive monthly reports from them showing the relation generally throughout the country between advertising and volume of sales? A. I have never seen any such reports.

Q. You haven't seen them? A. No, sir.

Q. Did you ever see them from the A.M.C.—I will withdraw that. Do you know what the A.M.C. ? A. Yes, I
4097 do.

Q. What is the A.M.C.? A. The A.M.C. is a group of stores associated for various exchanges of information.

Q. And various co-operative action? A. I can't attest to that.

Q. Group buying? A. I don't know.

Q. Did you ever buy merchandise through A.M.C. with others? A. I have not personally.

Q. Have you ever known whether any was bought for your store? A. I don't know.

Q. Did you ever learn that your store, acting with others, had shipped—using Mr. Tily's term—money, had shipped money into a common pot for the purpose of getting some merchandise and they shipped that money
4098 into the A.M.C.? A. I happened to hear Mr. Tily's testimony.

Q. Is that the first you heard of it? A. That is the first I heard of that fact.

Q. Notwithstanding the fact that you are the divisional merchandise manager of all these departments, you never heard that that was done; is that so? A. That is right.

Q. That is the kind of divisional merchandise manager you are; is that right?

Mr. Hayeraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. During the period, February 1, 1936, to June, 1936, how much display space in the windows of Strawbridge & Clothier did your departments receive? A. I do not know.

Q. What? A. I do not know.

Q. Isn't your business to foster sales and to see that they should be increased and augmented? A. Now you are asking me a question.

Q. No. Is that your business? A. Yes. 4100

Q. Isn't it the purpose of the display of merchandise to aid in the sale and to foster the sale thereof? A. Yes.

Q. And notwithstanding that would you have us believe that since you have become divisional merchandise manager of these departments, you don't know how much display space your departments have obtained?

Examiner Bennett: If you can make an answer to it.

The Witness: I cannot answer that, Judge. I cannot answer it.

By Mr. Weisman.

Q. You cannot answer because you do not know? A. I do not know right at this moment. 4101

Q. You do not know at this moment? A. No.

Q. But you might have known at some other time? A. Yes.

Q. Did you know at any time how much display space these departments obtained in the period February 1, 1935, to June 30, 1935? A. I have seen the figures.

Q. You have seen the figures? A. Yes.

Q. Do you have the figures of the amount of the display space allocated to these departments? A. Figures are submitted to us, whether those figures check in that particular period I am not certain.

Q. You were at the head of the merchandising during the period I have asked you about—you were in charge as merchandise manager, and you— A. I beg your pardon?

Q. Let me ask you this first: You were, during the period I have just asked you about, you were in charge of the basement and how would you see the figures covering all of the other departments covered by that period of
4103 time? A. I believe you are wrong. I was not in charge of the basement.

Q. During the period that I have just asked you about you say you were not in charge of the basement, and that as such you would not see the figures covering all of the other departments covering that period? A. I have just said that I was not in charge of the basement.

Q. Were you not in charge of the basement in 1935? A. I have not said so.

Q. What? A. I have not said that.

Q. You have not said that? A. No.

Q. Did you testify that you became merchandise manager February 1, 1936? A. That is right.

Q. And before that what were you in charge of? A. Department 492 and——
4104

Q. Yes. A. —and 493.

Q. Departments 492 and 493? A. Yes.

Q. What were Departments 492 and 493? A. Generally known as the house dress department.

Q. All right. Then, excuse me. Were those located other than in the basement? A. Yes.

Q. Where are the departments located? A. Departments 492 and 493 are located on the third floor of Strawbridge & Clothier's.

Q. During that period you were in charge of this particular department? A. Yes, sir.

Q. How did you come to see the figures for all departments? A. I happened to review them with Mr. Taylor.

Q. What? A. I happened to review them with Mr. Taylor.

Q. When did you happen to review them with Mr. Taylor? A. I do not remember the particular day or date.

Q. How long ago? A. I do not recall.

Q. Was it done this year? A. No, it was prior to my taking over the position.

Q. (Question read as follows: "Q. In other words, prior to your taking over the divisional merchandise man- 4106
agership of all of these departments, you now state that you reviewed the figures showing the amount of display space given to all of these departments during the period February 1, 1935, to June 30, 1935?") A. Well——

By Mr. Weisman:

Q. Is that so? A. Yes, sir.

Q. What was the occasion for examining those figures? A. The examining of the figures was simply a matter that Mr. Taylor wanted to show me those figures.

Q. Did you ask him why he wanted to show you them? A. No.

Q. What happened? Mr. Taylor came in and said "Here are these figures"? A. No. Mr. Taylor would very 4107
often show me quite a few things.

Q. No. I want to know the occasion for his showing you these particular figures? A. There was no occasion. It was simply a matter of his showing them to me.

Q. Did he direct your attention to any particular matter generally in these figures? A. Not that I remember.

Q. Did you ask him why he showed them to you? A. No. I did not ask him.

Q. Did you make any copy of the figures? A. Sure.

Q. Sure? A. Sure.

Q. Do you know whether or not the paper he showed you is still in existence? A. I cannot answer that.

Q. Do you know when Mr. Taylor got those figures? A. I do not.

Q. Do you know where Mr. Taylor got those figures? A. No; I do not know that either.

Q. Did you ever ask him? A. No.

Q. No? A. No.

Q. What is your best recollection as to what those figures disclose? A. I have no recollection.

4109 Q. You have not? A. No.

Q. When did—I withdraw that—what is your personal recollection of when you first forgot?

Mr. Haycraft: I object.

Mr. Weisman: I think it is a fair question. I want to know when he forgot this. Maybe he forgot it just about ten seconds ago.

Mr. Haycraft: I object. It is utterly ridiculous and improper in every way possible.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know what was the relative amount of dis-
4110 play space allocated or given to these departments during the period February 1, 1935, to June 30, 1935, as against February 1, 1936, to June 30, 1936? A. I do not.

Q. You do not? A. No.

Q. Do you not know what the amount of display space given to these departments was, or would be, likely in some measure to be reflected in the volume of sales? A. Yes, it would.

Q. There is no question about that, is there? A. There is a question about it.

Q. There is a question about it? A. Yes, sir. It is a matter of opinion.

Q. What is your opinion? A. My opinion is that as far as its effect on sales was concerning—display space would have an effect on sales.

Q. State that again, so I can understand it. A. My opinion is that as far as it is concerned it does affect sales, display space does affect the sales.

Q. Now, tell me, do you not—I withdraw that question—as divisional merchandise manager, is it not your opinion that the volume of sales done in the dress department 4112
—I withdraw that question—I will not withdraw it—as affects—as it affects to some degree? A. I do not understand what you are talking about, I am sorry.

Q. I will restate it all over again. Now, tell me if you do not know, as divisional merchandise manager, whether or not it is a fact, in your opinion, that the volume of sales done in the dress department is affected to some degree by the mark-up which the store operates those departments upon? A. To some degree, yes, sir.

Q. In other words, all of the things I have called your attention to and that I have queried you about do, in some degree, affect the volume of sales? A. It depends on how intelligently it is done.

Q. Yes. A. Yes.

Q. If a poor job is done it has an adverse effect? A. 4113
Yes.

Q. Now, mark-up is a very important factor in the retail merchandising business, is it? A. That depends also, it is a matter of opinion.

Q. What is that that you say? A. That depends, it is a matter of opinion. Some people differ on that one opinion.

Q. I do not care what other people think about it. Do you not know as general merchandise manager and do you not concede as general merchandising manager—or rather as divisional merchandise manager, do you not concede that the matter of mark-up is very important in the merchandising of your departments? A. No. I would not concede that.

Q. Do you think that mark-up is unimportant? A. It is one phase of the business that has to be considered.

Q. Let us see. What do you think Strawbridge & Clothier are in business for? A. To make a profit.

Q. To make a profit. There can be no question about
4115 that, is there? A. That is right.

Q. You have not the slightest doubt but that they are in business to make a profit? A. That is correct.

Q. Now, is their profit in a large measure dependent on their mark-up? A. I do not know whether it is or not.

Q. Do you not know what the mark-up is—you said you were divisional merchandise manager of all of the departments? A. I know what mark-up is.

Q. What is mark-up? A. Mark-up is the difference between the cost and the selling price of merchandise.

Q. It is a fact—I withdraw that question—does the cost—difference between the cost of your merchandise and the selling price contribute in the largest degree to the profit factor of your business? A. I do not know whether it does
4116 or not.

Q. If you do not have any mark-up, can you tell us how there can be any profit? A. I do not say that we did not have any mark-up.

Q. I did not say that you did. A. No?

Q. I am asking you if mark-up is not one of the most important factors in your profit schedule. A. I will not say that it is. I do not know.

Q. Where can you make a profit in your business other than from mark-up? That is what I want to find out at

the moment. A. I do not know. I am not managing the business.

Q. I do not care whether you are managing the business or not. You are divisional merchandise manager, are you not? A. Yes, sir.

Q. That means you are manager of the division comprising the numbers of these departments that we have referred to here; is that so? A. Yes.

Q. That means that it is your duty within the realm or boundaries of proper ethical handling of your business to show a profit in these departments, is that so? A. Yes, sir.

Q. Are you able to tell us where your profits can come from in these departments except from the difference between the cost of the merchandise and the selling price; tell us that. A. Must I answer that question, Judge? 4118

Examiner Bennett: Well, I do not know. Can you answer it?

A. Those are business secrets and I would not answer that until I could speak to my counsel.

By Mr. Weisman.

Q. Do you mean that you have means of making profits other than through the difference between the purchase price and the sales price? A. I did not say that.

Q. I am asking you a very simple question. A. Well—— 4119

Q. I am asking you in these departments where you can make a profit other than through the difference between the cost of merchandise and the selling price.

The Witness: I cannot answer that, Judge, without consulting our counsel.

By Mr. Weisman.

Q. Why can you not answer it?

Mr. Weisman: I ask that the witness be directed to answer it.

By Mr. Weisman.

Q. You do not mean that you steal merchandise, do you?

Mr. Haycraft: I object to that.

Examiner Bennett: I am not going to insist on that because I do not see what difference it makes.

4121 If you are testing this witness as to his knowledge you have it in the record.

Mr. Weisman: Your Honor, I am going to prove in this case, and I hope to make a statement, I would like to make it privately to your Honor and in Mr. Haycraft's presence. This is not a matter of defense. This is a matter of cross-examination of this witness.

Examiner Bennett: We will take a short recess.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. I understand you have refused to answer my question which was: That Strawbridge & Clothier in these depart-

4122 ments makes a profit where other than by the difference between the cost of the merchandise and the selling price: is that so? A. That is right.

Q. And am I to understand that you persist in that refusal? A. That is right.

Mr. Weisman: I now move to strike out all of this witness' testimony which went to the effect, or the alleged effect of the Guild program upon the sales volume of Strawbridge & Clothier.

Mr. Haycraft: Those figures are in exhibits in evidence, in testimony and evidence also. He testified as to the good will orally.

Examiner Bennett: The motion is denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know what is the mark-up, the percentage of mark-up over cost in these particular departments during this period? A. Which period are you referring to?

Q. The latter period, namely, February 1, 1936, to June 30, 1936. A. I do not remember that.

Q. You do not remember that? A. No. 4124

Q. Did you say that? A. No.

Q. Did you ever know it? A. I have seen them.

Q. Do you not know that when you bring in merchandise to these departments what it cost, or what they cost? Not only that, but what your cost is and the price which you sell it at? A. I know what the average market price is, and I know what the average mark-up is.

Q. What is the average mark-up? A. I know what the average mark-up is.

Q. Is that what you mean to say; you know what the average mark-up is? A Yes.

Q. What is the average mark-up? A. At the time I had those in front of me on which they were shows, the papers, but I do not remember them now. 4125

Q. Do you mean, as divisional merchandising manager of these departments, you do not know what your mark-up is in these departments?

Mr. Haycraft: I think that is an unfair question. The witness said that he did not know now, but at the time he did.

By Mr. Weisman.

Q. Well, you are divisional merchandise manager now, are you? A. Yes.

Mr. Haycraft: I object to this question, anyhow. It has no connection with this case which we are now concerned with. Furthermore, the witness stated that he did not know now what it was, that he could not keep these things in his mind.

Mr. Weisman: This is becoming an absurdity. I do not desire to call upon the Examiner to direct counsel for the Commission not to make an objec-
4127 tion in which he incorporates long stump speeches to the witness and suggests to him the possible way out of his dilemma. If counsel has a proper objection to make upon legal grounds, or factual grounds, I think he should make them, but I do not think we should have these long speeches to the witness. How long are we going to have to tolerate conduct of that character on the part of Commission's counsel?

Examiner Bennett: You may proceed.

Mr. Weisman: I will have to start all over again. I will have to start and frame my question all over again.

Examiner Bennett: All right. Go ahead.

4128 *By Mr. Weisman.*

Q. What is your percentage of mark-ups during the—or what was your percentage of mark-up during the month of June, 1936, in Department No. 331?

Mr. Haycraft: That is objected to as the witness has already said that he did not recall, that he knew at the time but he does not recall now. I object to any further examination upon that as useless.

Examiner Bennett: I will let him answer, himself, if he can answer.

The Witness: I do not remember, Judge.

By Mr. Weisman.

Q. You mean you do not remember your mark-up in this department in the month of June, 1936? A. That is right.

Q. What was your mark-up during that period in Department No. 350? A. I do not remember.

Q. Did you know it? A. I have seen it.

Q. What was your mark-up during that period in Department No. 338? A. I do not remember.

Q. Did you know it? A. I did, yes. 4130

Q. What was your mark-up in Department 371? A. I do not remember.

Q. Did you know it? A. Yes.

Q. What was your mark-up in June, 1936, in Department 373? A. I do not remember.

Q. Did you know it? A. I do not remember whether I did or not.

Q. Did you ever know it at one time or another? A. I did.

Q. Have you got any way of fixing this mark-up that concerns you; do you have any hand in the fixing of this mark-up? A. Having a hand in fixing it does not always give you the mark-up after it is done.

Q. No. Answer my question: Did you have a hand in 4131 fixing this mark-up? A. Not necessarily.

Q. I do not care whether it was necessarily or unnecessarily, I want to know if at the present time if you had any hand in the fixing of the mark-up in these departments? A. I did have a hand in the fixing of the mark-ups in these departments.

Q. Notwithstanding the fact that as recently as 30 days or 35 days ago, you had a hand in fixing the mark-up in

these departments you say that to-day you do not recall what said mark-up was, or what such mark-up was? A. Yes.

Q. Is that correct? A. Yes, that is right, I do not know.

Q. Will you give us, or are you giving us an honest answer, or are you seeking, in order to evade answering the question, to hide under the cover of assumed ignorance?

Mr. Haycraft: I object.

The Witness: I am under oath.

Examiner Bennett: Sustained.

4133 Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you ever know the mark-up—I withdraw that—no, I will stand by it: Do you know the mark-up—that is, the price mark-up, in these departments? A. What is that?

Q. I have asked you this: do you know the price mark-up in these departments that I have mentioned? A. I do not. I do not know what it is.

Q. At any time? A. Well, I could not say.

Q. I will get at it this way: Do you know the mark-up, that is to say, the present mark-up in these departments? A. No.

Q. I want to ask you that again so there will not be any
4134 doubt about it: Do you know the present mark-up in these departments that I have enumerated a few moments ago by number? A. I do not know it in any of them.

Q. You do not know the mark-up in these departments that you are charged with to-day? A. That is right. I do not.

Q. Is that something that you have also forgotten? A. I do not know.

Q. Did you ever know? A. No.

Q. You mean that to-day you are the divisional merchandising manager operating that department, and you do not know the mark-up upon which they are being operated; those several departments? A. That is right.

Q. What are your duties as divisional manager, what do you understand your duties as divisional manager to be? A. I am responsible for the dress department in the way of sales and profit.

Q. How can you be responsible for profits and sales if you do not know the relation between the cost of your merchandise and its sale price? A. I am not expected to know that.

Q. You are not expected to bring in profits without 4136
knowing that, are you? A. I do not understand.

Q. You mean you are expected to bring in profits yet you tell me that you do not know what the merchandise costs in relation to what you sell it for? A. I am expected to remember that but not in detail. I only know it in the broad scope of it. I am not expected to remember that in detail.

Q. You mean you are not expected to remember what it is? A. No.

Q. Yet you are expected to bring in profits, yet you tell me, and let us get this perfectly clear, that you, as divisional merchandise manager, do not know what the merchandise costs in relation to what you sell it for? A. I am not expected to remember any detail, I repeat.

4137

Mr. Hayeraft: He has answered that once.

By Mr. Weisman.

Q. Have you got a fixed policy in that regard? A. No.

Q. If you purchase a dress or a lot of dresses for $10.75 per garment, have you a fixed policy as to what you are going to mark those dresses up for? A. No, we have not.

Q. Do you have a general policy in that regard? A. I do not know the exact policy in that regard.

Q. I did not say exact policy. Do you have a general policy? A. We have got——

Q. What? A. We have not a general arrangement for the handling of the business of the organization.

Q. That is not an answer to my question. Can you answer that question or can you not answer that question? A. That question cannot be answered.

Q. That question cannot be answered? A. It cannot.

Q. What do you usually mark them up to? A. That question cannot be answered, either.

Q. You mean you cannot tell us what you usually mark them up? A. No, that cannot be answered.

4139 Q. Well, let us see whether it can or not. You buy—take a specific instance: You bought a lot of dresses from Lipman Brothers, did you? A. Yes, sir.

Q. What did you pay for them? A. $12.75 each.

Q. When did you buy them? A. I did not buy them.

Q. When did your department buy them? A. What is that?

Q. When did your department buy them? A. Some time in January.

Q. Now, you remember that clearly; that some time in January you purchased this merchandise for $12.75 per unit? A. Yes.

Q. What was the sales price which they were marketed at? A. I do not remember.

Q. No? A. No, I do not remember.

4140 Q. Do you not recollect that they were sold at $19.75? A. I would not know because at that time Mr. Taylor was in charge of that division.

Q. Mr. Taylor: I thought you said you had charge of that from February 1, 1936. A. Yes. I said that we purchased these in January.

Q. When were they sold, that is what we are talking about? A. Later on.

Q. When those were sold you spoke about some reorders; when were they sold? A. I do not know. I could not attest to that.

Q. You said that this merchandise that you bought from Lipman Brothers was a very popular number; is that so? A. Yes.

Q. You remember it because of its popularity? A. Yes, that number was.

Q. And can you tell me—first, you had a long statement as to why it was popular and the reasons that gave it popularity? A. Yes, I remember.

Q. You remembered all of those things? A. Yes, sir.

Q. Notwithstanding that, you cannot remember what they sold for? A. I cannot remember what it was sold for. 4142

Q. You cannot remember what it was sold for? A. No.

Q. What is your best opinion?

Mr. Haycraft: I object to that.

A. I would not make an opinion on it.

Mr. Weisman: I submit we should have an opinion for it to test the witness' credibility.

Examiner Bennett: I do not think it is a matter of opinion. It is a fact, and if he does not know the fact, he does not know.

Mr. Weisman: Exception.

By Mr. Weisman. 4143

Q. Now, do you know the relative mark-up—I withdraw that. As divisional merchandise manager, is it part of your duties to maintain the general mark-up in each particular department? A. We have.

Q. No. Is it part of your duties to maintain a general mark-up? A. Yes.

Q. That is one of your duties, you say? A. Yes.

Q. Will you please explain to us how you can maintain that particular mark-up if you do not know the cost price or the selling price in its relation— A. I——

Mr. Haycraft: I object. The question is not intelligible.

Mr. Weisman: I will withdraw it, and I will restate the question.

By Mr. Weisman.

Q. Will you please explain to us how you can maintain a general mark-up if you do not know the cost price or the selling price in its relation to the selling price; if you do
4145 not know the cost price in its relation to the selling price? A. No one particular cost price or retail price will affect the mark-up; mark-up is affected by competition.

By Mr. Weisman.

Q. Is that the best answer you can give to that question? A. It is.

Q. And you say that no one particular cost price, or retail price, will affect the mark-up; mark-up is reflected by competition, is it? A. It is.

Q. When you say mark-up is affected by competition, you mean if you mark your merchandise at a certain price in relation to its cost, and your competitor marks it at a lesser price in relation to its cost, then your competition
4146 makes you bring down your mark-up; is that what you mean? A. That makes us bring down the selling price of that garment.

Q. I want to know before such a force commences to operate, what the relation between your cost and your selling price generally in department, say, No. 331, was? A. That question cannot be answered.

Q. Well, I want to know from you how it is possible for you to be responsible for the profits from Department No. 331 when you do not know your maintained general mark-up; explain that to me. A. Well, knowing the maintained general mark-up is not going to aid you on that.

Q. I do not care whether it gives you any aid or not, but I want to know how it is possible for you to be responsible for profits from Department No. 331 when you do not know your maintained general mark-up? A. I do not know it.

Q. You do not know it? A. I do not know.

Q. Have you got a particular policy in your department with reference to, or with regard to your mark-up? A. 4148
I do not quite understand your question—"the policy." What policy do you refer to?

Q. You do not seem to understand very much. A. No?

Q. Give me Mr. Taylor's testimony, or my notes on it; what is your Department No. 491? A. Well, Department No. 491 is known as the "Economy Dress Department."

Q. What prices do you maintain in that department, generally? A. Merchandise retailing at $6.95, at various times of the year that price may change.

Q. Now, without going beyond $6.95 one way or the other, but taking this thing generally, on that particular situation, and in that particular department, without getting $6.95 on each and every particular dress when you have a sale—in other words, eliminating the sale feature from it, what is your average price? A. I do not under- 4149
stand that question, I am afraid. In the first place, I do not understand what you mean by "average price."

Q. What is your general price in that department, that is what I am trying to get. A. What period do you refer to? What period? What period?

Q. General price. A. I do not know what the average price is for that department.

Q. What is your most prevalent price in that department? A. The price that we sell most merchandise is at $6.95 retail.

Q. $6.95 retail? A. Yes.

Q. Are you certain of that? A. Yes.

Q. You are? A. Yes.

Q. Do you want to change your mind about it now? A. No.

Q. You think you can stick to that? A. Yes.

Q. Would you change your opinion if I told you that Mr. Taylor, to the best of my recollection, testified that in the Economy Dress Shop you sold your merchandise at an

4151 average price of $12.95 per garment?

Mr. Haycraft: I do not recall that testimony about $12.95 per garment.

Mr. Weisman: I think Mr. Taylor does because he is smiling in acquiescence to it, and there is no dark frown of denial.

A. I would not change my opinion. It is my opinion you are asking for and you are not getting it; not Mr. Taylor's. You will have to ask him for his.

By Mr. Weisman.

Q. You say that the average sales price in that department on your dresses is $6.95? A. No.

4152 Mr. Haycraft: I object. It is merely repetition and quite useless.

By Mr. Weisman.

Q. No, it is not. Just tell me what that is?

Examiner Bennett: Overruled.

A. $6.95 is the price we feature in that department.

Q. $6.95? A. Yes.

Q. What do you pay for the merchandise generally that you feature at $6.95? A. It is from the $4.75 cost market.

Q. It is from the $4.75 cost market? A. Yes.

Q. When I asked you what is the cost of your merchandise, you cast your eyes up at the ceiling and figured it mentally to ascertain that, did you? A. No.

Q. No? A. No.

Q. How did you arrive at the $4.75? A. Because I know that that is the market that that particular buyer works in to obtain that merchandise.

Q. Now, do you not know what your market mark-up is in that department; do you not? A. I do not know. I have not figured.

4154

Q. You know that your average cost is $4.75, generally, and that your average sale price is $6.75 at retail? A. If you ask me for a comparison of the percentages I cannot give it to you; I would not be able to tell you that because I have not figured it up.

Q. Is that the difference between those two; the cost price and the selling price; your mark-up? A. Yes.

Q. Then, the difference between what you pay for the merchandise and what you sell it for represents your mark-up? A. It does.

Q. What is your average selling price in Department 350? A. I could not answer that.

Q. Why could you not answer that? A. There are so many prices of garments that are carried in that department, I would not know.

4155

Q. What are the price ranges in that department? A. From $19.75 and up.

Q. $19.75 what? A. Retail.

Q. Retail? A. Retail.

Q. Up to what? A. Oh, it can go up to $100 or $125.

Q. Are you sure you go as high as $100 and $125 for a single garment? A. Yes.

By Mr. Weisman.

Q. Do you know what was the average mark-up in these various departments under your supervision—now, under your supervision, during the time that they were under Mr. Taylor's supervision? A. I do not.

Q. Do you know whether or not the mark-up in these various departments during the period February 1, 1935, to June 30, 1935, was greater than or lesser than the mark-up in these departments during the period February 1, 1936, to June 30, 1936? A. I do not remember.

Q. What? A. I do not remember.

Q. You have no knowledge? A. No.

4157 Q. No? A. No, indeed.

Q. Do you know that such ratio of mark-up may, in some large degree, contribute to the volume of sales during those particular periods up or down? A. It might.

Q. Does it not, in general, Mr. Chance? A. You said it might.

Q. What do you say? A. It might.

Q. Does it not in general? A. Yes.

Q. In other words, where your mark-up is lesser, your volume has a better chance of being larger; is that so? A. Yes.

Q. When your mark-up is lower than ordinarily, your volume will go up ordinarily? A. Yes.

Q. Notwithstanding that, you made no comparison be-
4158 tween your general mark-up during those two respective periods in these various departments? A. I——.

Mr. Haycraft: He did not say so. I object to misquoting the witness in that manner.

Mr. Weisman: Oh, to save time I will withdraw it. We have got to get somewhere some time.

By Mr. Weisman.

Q. Did you at any time compare your mark-up, the mark-up obtained in these departments during the periods Feb-

ruary 1, 1936, to June 30, 1936, with the mark-up that was obtained in these departments during the period February 1, 1935, to June 30, 1935? A. I have reviewed the figures before.

Q. As a result of that review, how did they compare? A. I do not remember.

Q. You do not remember? A. No.

Q. How did you review them? What did you say? What did you do? What did you see? A. I reviewed them by actual figures submitted by our statistical department.

Q. You have such figures? A. What?

Q. You have such figures? A. Yes.

Q. Those figures are in the files of Strawbridge & Clothier? A. They are. 4160

Q. And are they there now? A. What is that?

Q. And they are there now? A. I think so.

Q. You think so? A. Yes.

Q. Were they at all times during this hearing there? A. I think they were, yes.

Q. Now, some of these departments—now, I withdraw that. As divisional merchandise manager would you say that the service rendered in a high-class dress department in some measure contributes to the volume of sales? A. Yes.

Q. Now, the service that is rendered in these departments consists of a number of sales people employed; is that so; among one of many other things; is that correct? A. Yes. It is one among many others. 4161

Q. The type and experience of the buyers? A. Yes.

Q. The comforts that are offered or conferred on prospective customers; is that so? A. It has a reflection in the sales; comforts.

Q. Yes. A. Yes, it has a reflection.

Q. Up or down? A. Accordingly.

Q. And the ability of your so-called—the experience of your so-called fitters and tailors; is that so? A. Yes, sir.

Q. That would most likely be the case in the women's better dress department, would it not; that is, No. 331? A. It would be the case in all of our departments.

Q. In all of your departments? A. Yes, sir.

Q. Let us commence with No. 331.

Mr. Weisman: That seems to have been the favorite with Mr. Haycraft and I will take it for that reason.

Mr. Haycraft: No. No. 350 is my favorite.

By Mr. Weisman.

4163 Q. Well, we will withdraw that and come to 350. I am anxious to please Mr. Haycraft in that regard. Now, in No. 351, first, how many sales people do you have there, and did you have there during the period February 1, 1936, to June 30, 1936? A. I do not remember.

Q. Did you ever know? A. We never had such a department.

Q. You never had what? A. You said 350. Then you said No. 351. You were addressing your remarks to No. 351. You said 351? We never had such a department as No. 351.

Mr. Haycraft: I said 350. I did not say 351.

By Mr. Weisman.

4164 Q. Well, I mean 350. If I said something else please do not fence with me. You understood what I meant. A. No. You could have meant No. 58.

Q. No, I said— A. You said No. 351.

Q. Did I? A. Yes, you did.

Q. Then, addressing yourself to department No. 350, how many sales people did you have in your department by that number during that period? A. I do not know. There would be an average——

Q. You say you do not know? A. Yes.

Q. You do not know? A. I do not know.

Q. Did you ever seek to find out? A. I know from day to day.

Q. How many did you have to-day? A. I do not know to-day.

Q. You said you knew from day to day; how many did you have yesterday? A. What?

Q. How many did you have yesterday? A. I do not know.

Q. What did you mean when you said you knew from day to day? A. I know from day to day at the end of the day, but as far as remembering all of that, I cannot remember that.

4166

Q. Did you know yesterday at the end of the day? A. I did not know yesterday.

Q. You did not know yesterday? A. No.

Q. You said you knew from day to day at the end of the day; why do you not know what it was yesterday? A. Well, we are taking in a period from February 1 to the end of June. We are speaking of that period.

Q. How many sales people did you have in that department yesterday? A. I do not know.

Q. No? A. No, I do not.

Q. How many sales people did you have in that department during the month of June, 1936? A. The figure varies from day to day and from time to time; I do not remember how many people that would be, the average number daily.

4167

Q. Did you know how many people, and do you know how many people were employed as sales people in that department during the period June, 1935? A. No.

Q. Did Mr. Taylor ever show you a little piece of paper with that on it? A. I do not know.

Q. You do not know? A. No.

Q. Did he or didn't he? A. I do not think so.

Q. Are you certain you never saw any record as to that? A. I never saw any record as to the number of people employed in there.

Q. That is not what I asked you. A. No.

Q. The answer is "no"? A. The answer is "no."

Q. You never had any knowledge as to the number of people employed there during the month of June, 1935? A. That is right.

Q. Did he ever show you a paper with the number of people thereon employed or therein employed thereon noted during the month of May, 1935? A. No.

Q. Did you ever see that? A. No.

4169 Q. Now, what about the month of April, 1935? A. I do not know.

Q. No? A. No.

Q. What about the month of March, 1935? A. I do not know.

Q. You do not? A. No.

Q. What about the month of February, 1935? A. I do not know.

Q. So you do not know how or what relation the sales force of your department, 350, during the period of February 1, 1935, to June 30, 1935, how that compared in relation to the same period during 1936? A. I do not know the number of people.

Q. Notwithstanding you do not know that relationship of the number of people employed in that department dur-
4170 ing that respective period, you do know and have testified that you know that the number of people therein employed would bear some relation to the total volume of sales done in the department; is that so? A. I said it has some reflection on it.

Q. You have testified with regard to your lack of knowledge of such comparative figures with regard to Department No. 350? A. Yes.

Q. Have you got the same lack of knowledge with regard to Department No. 331? A. All of the departments; I do not know anything about it.

Q. In other words, with regard to each and every one of these departments you have not any knowledge of the number of sales people therein employed during the period February 1, 1936, to June 30, 1936, as contrasted with the number of people therein employed during the like period in 1935? A. That is true.

Q. True? A. True.

Q. What about the number of fitters employed in Department No. 350? A. I would not know anything about fitters. That is entirely a different division. 4172

Q. You do not know anything about the number of fitters employed in any department in 1936; that is, from February 1, 1936, to June 30, 1936? A. That is right.

Q. Correct? A. Yes.

Q. You do not know how that number was, or how that number would compare with the number employed during the same period in 1935? A. I have no control over those figures.

Q. But you do know, in line with your previous testimony that the number of fitters, their skill and ability, would in some measure be reflected in the volume of sales in this department; is that so? A. It would fall under the head of service.

Q. It would be reflected in the volume of sales? A. Yes.

Q. Who is the buyer for department—I withdraw that 4173
—No. 350 during the period February 1, 1936, to June 30, 1936? A. Mrs. McAllenny.

Q. Who was the buyer in that department during the same period in 1935? A. Mrs. Ramsdell.

Q. Where is Mrs. Ramsdell now? A. Mrs. Ramsdell is now buyer for No. 382 department.

Q. What is the No. 382 department? A. The No. 382 department is the sportswear department.

Q. Do you know the reason why Mrs. Ramsdell—I withdraw that—was that a promotion or a demotion for Mrs. Ramsdell, if you know? A. Well, I could not answer that.

Q. What is your opinion? You are the divisional sales manager; these people are people that work under you? A. In my opinion it is a promotion. It is an opportunity for Mrs. Ramsdell.

Q. In your opinion it is a promotion? A. In my opinion it is a promotion.

Q. Why do you say that, again, now? A. It is an opportunity for Mrs. Ramsdell.

Q. Yes, what? We do not—you do not? A. Yes, I answered your question.

4175

Q. In other words, she was promoted because of the exceptional ability and efficiency that she displayed in the operation of Department 350; isn't that so? A. Right.

Q. When was she promoted? A. I didn't get the question. I am sorry.

Q. I say, when was she promoted? A. The change was made, I believe, some time in January, 1936.

Q. The latter part of January or the early part of January? A. I don't remember.

Q. What is your best recollection? What? A. That was prior to my taking over the division.

Q. What? A. What happened before I don't remember.

Q. Before McAllenny—is that what you called her? A. McAllenny.

4176

Q. Was promoted she was promoted, too, wasn't she before this? She was in a less important job; wasn't she? A. I don't know. I am not in a position to testify as to that.

Q. Well, let's see. Where was she? A. Where was who?

Q. Where was she before she came to be buyer of this department? What was she doing? A. Mr. Taylor made all arrangements for her appointment at the time.

Q. You mean she came from another store? A. Yes.

Q. Where did she come from? A. Lord & Taylor's.

Q. Where are they located? A. New York City.

Q. So that in February we had this new buyer come into this new department; isn't that so? A. Not in February.

Q. Early part of February or the latter part of January.

Mr. Haycraft: He didn't say that. Why put those words in his mouth?

Mr. Weisman: Well, wait a minute. That isn't so important. He said January, 1936.

By Mr. Weisman.

Q. Didn't you? A. Yes. 4178

Q. And it took her a little time to get broken in, as we say, in the business? A. I don't know.

Q. What do you think? She was working under you. A. I think she was a capable person.

Q. When she came there? A. Yes, sir.

Q. What other departments did she take over from Mrs. Ramsdell? A. What other departments?

Q. Yes. A. She took over what is known as the Misses Better Dress Department.

Q. Just 350? A. 350 only.

Q. And she just operates alone in 350? A. That is right.

Q. And she works under you? A. I supervised her operation.

Q. She is directly responsible to you? A. Yes, sir. 4179

Q. You see how she does and what she does; isn't that so? A. That is right.

Q. What about Mrs. Ramsdell? Does she also work— A. Likewise.

Q. —under you? Without giving me figures, what comparative salaries do these two people enjoy? A. I couldn't answer that.

Q. You mean to say that you don't know what each one of these buyers get, what you pay your buyers who work under you? A. I do not remember the figures.

Q. I didn't ask you for the figures. I don't want to be charged with attempting to disclose secrets. I asked you for their comparative—wait a minute. We can get at it this way: Who gets more? A. I don't think that should be answered, Judge.

Q. I don't care what you think.

Mr. Weisman: I submit that it is a perfectly proper answer to give and it is a perfectly proper question.

Examiner Bennett: Well, I will sustain an objection to it. I don't think it throws any light on these proceedings.

4181 Mr. Weisman: I make this offer of proof: That if the witness had been permitted to answer this question, he would have testified that Mrs.—Miss, is it, Ramsdell?

The Witness: Mrs.

Mr. Weisman: —Mrs. Ramsdell receives a proportionately higher salary than Miss McAllenny.

The Witness: Miss McAllenny.

Mr. Weisman: I have a hard time with that name.

Examiner Bennett: That is wholly irrelevant to the proceedings.

Mr. Haycraft: It has no basis in fact.

Mr. Weisman: I think it is entirely relevant in
4182 view of the fact that the witness has testified that as divisional manager, one of the things that enter into the volume of sales that are created in a particular department is the experience and ability of the buyer and it is indicative of the fact that at this particular period there was a change in buyers which in human experience and from the general knowledge we have, we know that that is likely to manifest itself in some reaction in the department.

I think it is particularly relevant when it is taken into consideration with the fact Mrs. Ramsdell is a much higher paid employee, having a longer experience, no doubt, and I think that for that reason it is relevant.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know the comparative length of experience in this particular business that Mrs. Ramsdell had against the other lady? A. I am not familiar with Miss McAllenny's previous responsibilities prior to joining our store. 4184

Q. How long had Mrs. Ramsdell been with your store? A. I couldn't name the number of years.

Q. Was she there long before you came? A. No, I doubt it.

Q. Would you say she was there for five years? A. I wouldn't say. It would be a guess.

Q. What is your best opinion? She works under you. You are her superior. Don't you know anything about her experience and her qualifications? A. I know what her qualifications are.

Q. Well, tell us what are her qualifications? Are they of the best? A. Well, that is comparative. What do you mean by the best?

Q. What do you think? A. I think she is an excellent person. 4185

Q. You think she is an excellent buyer? A. Yes.

Q. Do you think she is the best possible buyer that you could obtain? A. In her present position, yes.

Q. And when you wanted to replace her, you had to go out into the market and look for somebody else? A. I didn't do that.

Q. Your superior did that? A. I can't attest for what he has done.

Q. Didn't he ever tell you that? A. No.

Q. Did you ever discuss this woman with him? A. I have.

Q. Didn't he tell you what efforts he made to get a competent person in charge of this department? A. We have discussed Miss McAllenny.

Q. Now, as a result of that discussion, can't you answer my prior question? A. No, because the discussion does not pertain to your question.

Q. Well, what was the discussion pertaining to? A. May I have the question again, please?

(The question was read.)

4187

A. The discussion pertained to whether or not my opinion—what my opinion was of Miss McAllenny's capabilities in her new job.

Q. You told him you thought she was capable? A. Yes.

Q. What was the amount of merchandise, the average amount of merchandise that you had in all of these departments during the period February 1, 1936, to June 30, 1936? A. I don't recall the figures.

Q. What? A. I don't recall the figures.

Q. I don't want the figures. I want your best opinion at this time.

Mr. Haycraft: I object to the opinion.

The Witness: I won't guess.

4188

Mr. Haycraft: We want the facts developed.

Mr. Weisman: I submit——

Examiner Bennett: If he has any knowledge of it you may get his best recollection.

By Mr. Weisman.

Q. Can't you give us your best recollection? A. No, sir. I have seen the figures; I have reviewed them——

Q. What? A. I have seen the figures and reviewed the average stocks, but I do not remember what they were.

Q. Look. As divisional merchandise manager, do you know what was your average stock, let us say, in Mr. Haycraft's favorite department, No. 350, during this period? A. No.

Q. You have no recollection of it? A. No.

Q. Do you know what the average stock was in the Department 350 during the period, the like period, in 1933? A. No; I wouldn't know that.

Q. That you never knew about? A. No.

Q. Didn't Brother Taylor show you a paper with the average stock that you had during 1933 in that department? A. Not that I remember.

Q. If he had, wouldn't you remember it? A. If he had— 4190

Q. You remembered the other paper. A. I probably would.

Q. So if you don't remember, you say he never showed it to you? A. Probably never showed it to me.

Q. As merchandise manager of this department or as divisional merchandise manager of all of the departments, wouldn't you say that the amount of stock carried in a department has a great relation to the volume of sales that were made in that department? A. It depends on what that stock consists of.

Q. We will come to that later on. But first, we will ask you as to the amount of stock. Isn't there a relation between the volume of sales and the amount of stock?

Mr. Haycraft: He has answered that. 4191

Mr. Weisman: No, he hasn't. Please don't seek to help him. We are getting along fine this afternoon.

Mr. Haycraft: I think it is repetition. He has already answered it.

By Mr. Weisman.

Q. Will you answer it? A. Are you referring——

Mr. Haycraft: Wait a minute. I ask for a ruling on my objection.

Examiner Bennett: Now, what is the record on that?

(The record was read.)

Mr. Haycraft: It is the same.

Mr. Weisman: No, it isn't. I submit——

Examiner Bennett: I will let him answer and be more specific.

4193 The Witness: Let me have that question again. I am sorry.

Mr. Weisman: Well, I am sorry, too. I think it will be easier if I repeat it, Judge.

Examiner Bennett: All right.

By Mr. Weisman.

Q. I say to you, don't you know as divisional merchandise manager, exercising your functions, that the amount of stock that a store carries bears a relation to the volume of sales? A. Yes, it does.

Q. In other words, it is perfectly apparent that if you don't have a large stock of merchandise you can't make a large amount of sales; isn't that plain? A. It isn't apparent, no.

4194 Q. But it is a fact even if it isn't apparent? A. It is not.

Q. Is it your statement that when you have a slim stock that aids you in having a large volume of sales? A. If that is—if that slim stock consists of merchandise which is totally desirable as against a large stock of merchandise.

Q. I don't mean that. A. Which——

Q. Let me ask you——

Examiner Bennett: Just let him finish.

Mr. Haycraft: Let him finish his answer.

Mr. Weisman: He can finish it.

The Witness: As against a large stock, which is partly desirable, and the major part undesirable, I would say I would prefer a small stock that is totally desirable.

By Mr. Weisman.

Q. As between two stocks, both of desirable merchandise, one which is very slim and one which is large, which of those two would you prefer? A. I don't follow you. I am sorry. 4196

(The question was read by the reporter.)

A. I naturally would prefer the larger stock providing the ratio of sales demanded that large stock.

Q. All right. And I assume that—you say that you naturally would prefer the larger stock because a larger stock of fresh, seasonable merchandise is more conducive to a large sales volume than is a smaller stock of the same kind of merchandise; isn't that so? A. I didn't say that.

Q. Well, if you didn't say it, is that a fact? A. No, sir.

Q. In other words, you now say that a large stock of seasonable merchandise is not more conducive to a large volume of sales than is a slim, narrow stock of seasonable merchandise; is that what you say? A. May I have that question, please? 4197

(The question was read.)

A. I mean by relation——

Q. No. I want to know whether you say that latter thing? A. I did not.

Q. Well—let us start off again, then, because you say neither the one nor the other is the fact. I want to find out what the fact is.

Examiner Bennett: Now, Mr. Weisman, if you can get to a place where you can shut it off, we will——

Mr. Weisman: We will adjourn?

Examiner Bennett: We will adjourn.

Mr. Weisman: I think——

Examiner Bennett: To to-morrow morning.

Mr. Weisman: I think this is as good a place as any. I will ask him one or two questions, maybe, because this thing is going on for some time.

Examiner Bennett: All right.

By Mr. Weisman.

4199 Q. Isn't it your opinion that a large stock of seasonable merchandise in a store such as Strawbridge & Clothier is more conducive to a large volume of sales than is a slim stock? A. No, sir. There is a relation to the demand of desirable merchandise at the time.

Q. That is your best answer? A. That is my answer.

Q. Now, do you know what was the——

Mr. Weisman: Judge, we are getting into rather deep water at this point with this witness. I think maybe we had better adjourn.

Examiner Bennett: We will adjourn until 9 o'clock Eastern Standard time, to-morrow morning.

(Whereupon at 4.45 o'clock P. M., August 4, 1936,
4200 the hearing in the above-entitled matter was adjourned.)

BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC.; MICHIGAN AVENUE GUILD OF CHICAGO; MINNEAPOLIS FASHION GUILD; LADIES' READY-TO-WEAR GUILD OF BALTIMORE; NATIONAL FEDERATION OF TEXTILES, INC.; their respective officers, directors, and members.	Docket No. 2769.

4202

Court Room No. 313,
U. S. Post Office Building,
Philadelphia, Pa.,
August 5, 1936.

(Met pursuant to adjournment, 9. A M.)

Before: HON. JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

4203

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge & Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Gentlemen, we will be in order, please. You may resume.

4205 Mr. Weisman: Mr. Chance, will you come around, please.

SAMUEL J. CHANCE resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Chance, by the way, are you here subject to the service of a subpoena? Was a subpoena served upon you in this proceeding? A. It was not.

Q. Do you know whether or not a subpoena was served upon Mr. Taylor? A. I believe there was.

4206 Q. You do? A. Yes.

Q. Did you ever see the subpoena? A. No.

Q. Do you know whether or not a subpoena was served upon Mr. Tily? A. Mr. Tily?

Q. Yes. A. I heard something in reference to that, too.

Mr. Weisman: Mr. Haycraft, will you make a statement for the record whether or not Mr. Tily was served with a subpoena, and whether or not Mr. Taylor was served with a subpoena?

Mr. Haycraft: If the Examiner wishes it.

Examiner Bennett: I have no wish whatsoever, one way or the other. You may make the statement or you may not.

Mr. Weisman: Are you trying to conceal something, Mr. Haycraft?

Mr. Haycraft: No. Both Mr. Tily and Mr. Taylor were subpoenaed.

By Mr. Weisman.

Q. When we adjourned last night I had concluded asking you a series of questions concerning your knowledge of certain matters and you stated you had not remembered. 4208
Then, I believe at the time we were discussing the size of the—strike that out—or the amount of stock carried in the departments which came under your supervision in February of this year? Do you recall that? A. There was some discussion about stocks.

Q. Have you, during the interval between yesterday's testimony and your appearance here to-day refreshed your recollection with regard thereto? A. I made no attempt to do so whatsoever.

Q. No attempt at all? A. No.

Q. You knew that we were going to continue along that line of inquiry to-day? A. I did not know what your plan was.

Q. Did you not expect us when we had unfinished questions to have the finish to-day; to continue and finish up 4209
the query to-day?

Mr. Haycraft: That is objected to. We cannot expect the witness to be a mind reader.

Mr. Weisman: Exception—did your Honor sustain that?

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

May we strike from the record "We cannot expect the witness to be a mind reader?" I also want to make a formal further objection at this time to these constant statements by Mr. Haycraft as to what we can expect or what we cannot expect. It is perfectly manifest that it is highly improper. It is, and must be apparent to the Court as it is to anyone who shall hereafter read the record that one does not have to be a mind reader to do that, but only has—that is, one who can exercise ordinary common sense and judgment that God gives everyone who is not an animal below mankind to know that
4211 when I started an inquiry along a certain line that it may be expected to be continued if it is not completed, and I resent the statement that he is not expected to be a mind reader.

I ask that it be stricken from the record and that counsel be reprimanded severely by the Examiner for his manifestly improper and grossly discourteous conduct.

I want in the record that I am utterly fed up with that type of interruption which can have for its only purpose the throwing of dust in the eyes of those who may have to consider this matter at some time or another.

Examiner Bennett: Motion denied.

Mr. Weisman: He is an experienced lawyer, and
4212 his only purpose is and can be to annoy, harass, and clutter up the record with irrelevant matter.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, in the performance of your duties as divisional merchandise manager, have you any opinion as to the size, comparative size of seasonal stock of merchandise in rela-

tion to the volume—or, we will put it this way to make it a little more simple for you—have you any opinion as to whether or not the size, comparative size of seasonable stock of merchandise has any relation to the volume of sales that you will do ordinarily in those departments? A. It has a relation.

Q. Would you say that if you have a reasonably large stock of seasonable merchandise in one of your departments, then you are more likely to do a large volume of business in those departments than if you had a smaller or narrower stock of the same kind of merchandise in those departments? A. Not necessarily.

Q. I did not ask you whether it was necessarily so or not. I asked you whether or not it was not generally so. 4214
A. No.

Q. No? A. No.

Q. In other words, it is your testimony that the amount of seasonable stock, whether or not the same be large or small, does not affect the volume of sales in those departments? A. It depends upon the traffic.

Q. Does it or does it not in Strawbridge & Clothier, under the circumstances that you have observed to exist there, have a relation to the volume of sales? Now, I want to call your attention to the fact you said no, and I asked you if you really meant "no," and you answered "no" again. I want you to think this over carefully, and in view of the fact that you have answered this twice "no" state if it does or does not. A. Well—well—well, it does. 4215

Q. Well, you finally got to it. A. It does.

Q. Now, do you know the comparative conditions of stock of Strawbridge & Clothier in these departments during the time they were under your supervision, to-wit, February 1, 1936, to June 30, 1936, as compared to the time when they were not under your supervision, to-wit, February 1, 1935, to June 30, 1935? A. Those figures are submitted——

Q. No, I did not ask you about these figures. Will you please pay attention to my question and give me an answer to it? A. Well, what is the question?

Mr. Weisman: I shall ask the Examiner to permit the question to be read.

By Mr. Weisman.

Q. Now, listen carefully, the reporter is going to read the question and I am going to ask you to follow it very carefully and give us an answer to it.

(Question read.)

4217 Examiner Bennett: "Do you know" is the question.

The Witness: I do not know it now.

By Mr. Weisman.

Q. Did you know it yesterday? A. No.

Q. Do you know—I will withdraw that. Did you know yesterday whether or not the stock of fresh, seasonable merchandise in the department of Strawbridge & Clothier, under your supervision, was larger or smaller in the time that it was under your supervision and as contrasted with the period in 1935 immediately before referred to? A. I do not remember.

Q. I asked you, did you remember it yesterday? A. No.

Q. Did you know it yesterday? A. No.

4218 Q. You stated in answer to one of my queries yesterday that another matter which would have a bearing on the volume of sales was the seasonableness of the stock and its freshness; is that correct? A. I don't remember making any such statement.

Q. If you don't remember making such a statement I will now ask you: Would the seasonableness or the freshness of the stock have a relation to the volume of sales of those departments? A. Yes, it would.

Q. Now, did Mr. Taylor at any time show you any paper as he did concerning some other matters which advised you with regard to the freshness and seasonableness of the stock of the departments now under your supervision during the period which they were not under your supervision, to-wit, February 1, 1935, to June 30, 1935? A. He has not.

Q. Did anybody else? A. Not for that period.

Q. Do you know what was the condition of the stocks of those departments during that period with regard to their freshness and seasonability? A. You are referring to 1935?

Q. I certainly do. A. No, I don't. 4220

Q. So if you don't know, did you know it yesterday? A. I did not.

Q. Did you know how the freshness or the seasonability of the stocks in those departments under your supervision were comparatively during the period 1935, that we have referred to, and the period 1936? A. I did not.

Q. Did you know it yesterday? A. No.

Mr. Weisman: May I have just a moment?

(A short pause was had.)

By Mr. Weisman.

Q. What priced merchandise do you handle in Department 331? A. Our line price that we buy into begins from $19.75 up. There are types—— 4221

Q. What is that? A. $19.75 and up. There are certain——

Q. Well——

Mr. Haycraft: Just a moment. Let him answer.

A. There are certain months in the year when we may bring in cheaper merchandise depending upon the season.

Q. Is that the wholesale price or the retail price? A. Retail price.

Q. What is the wholesale price? A. The wholesale price would be from $10.75 up, and a lower cost in the months which that merchandise would be in demand.

Q. What would that lower cost be wholesale? A. Could be as low as $3.75 for a certain type of cottons.

Q. I don't want to know what it could be. I want to know what it generally is. A. $3.75 and up.

Q. In other words, then, I take it, in this Department 331 you purchased merchandise from $10.75 up regularly, and in certain off season periods, or when you have certain types of sales you purchase dresses for sale there as low as $3.75? A. That is correct.

4223 Q. From how many firms would you say you purchase the merchandise that goes into this department? A. I couldn't say how many.

Q. What would be your best guess? A. I wouldn't guess.

Q. Would you say that you purchase it from more than 100 firms during the year? A. Different firms?

Q. Yes. A. That is possible.

Q. Would you say that you purchase it from more than 150 firms during the year? A. I wouldn't say.

Q. Do you think that the total number of firms with which 331 department does business is less than 150 firms? A. I believe it is.

Q. Would you say that it is between 125 and 150? A. I would rather stick to my hundred as being the best guess.

4224 Q. In other words, you deem it that the number of firms that you do business with in this particular department during the period of a year is about 100? A. Yes. There are certain firms we purchase more from than others, we consider regular resources.

Q. Well, what is your recollection of the total annual volume of business done in this department? A. 331?

Q. Yes. A. Approximately $100,000.

Q. Have you any idea or opinion with regard to the number of manufacturers in the City of New York who

are engaged in the business of making merchandise, dresses, selling at the wholesale price of $10.75 and up?

Mr. Haycraft: That is objected to, Mr. Examiner, as irrelevant and immaterial and not proper cross-examination, not the subject-matter of opinion.

Examiner Bennett: Well, it is not a matter of opinion. You may get his best recollection, if he has any, or knowledge.

The Witness: I have no knowledge, sir.

By Mr. Weisman.

Q. Do you know whether or not there are a thousand such manufacturers? A. I have not. 4226

Q. Did you in February, 1936, seek to inform yourself with regard thereto? A. The total number of dresses manufactured——

Q. No, I asked you, did you seek to inform yourself as to what number there was? A. I did not.

Q. Did you in the practice of your duties as divisional merchandise manager know that there were and are regularly issued a large number of directories setting forth the names and addresses and price lines of various manufacturers? Did you ever hear of that?

Mr. Haycraft: I interpose the same objection, if your Honor please, that I interposed to the previous question.

4227

Examiner Bennett: Overruled.

Mr. Haycraft: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. You may answer the question. A. Yes, sir.

Q. Did you examine any such directories? A. I have quite a few directories that I went through—I went through quite a number of directories, yes.

Q. In going through those directories, did you not observe that there were at least in excess of 1,000 of such manufacturers located in the City of New York? A. I did not notice that.

Q. Did you notice that there were a large number of them listed there? A. Yes, sir.

Q. What is your best opinion as to what that large number was?

Mr. Haycraft: I object to his giving an opinion. That is a matter of fact.

Examiner Bennett: Yes, that is a matter of fact. I do not think his opinion would be advisable there.

4229

By Mr. Weisman.

Q. What is your recollection as to what that large number was? A. I do not know.

Q. You do not know? A. I do not.

Q. Would you deny that it was in excess of 1,000? A. No.

Q. So, you would not deny that which you do not know? A. I beg your pardon?

Q. So, you would not deny that which you do not know? A. No. I do not know it to be a fact. I did not check it.

Q. Did you think it was important? A. The total number is not important, no.

Q. The total number is not important? A. Absolutely

4230 not. It is quite immaterial.

Q. Oh, you say it is quite immaterial? A. I certainly do.

Q. Very well. This is quite interesting. Did you ever hear of the Ace Dance Modes? A. I, personally, did not.

Q. Did you know that they make $10.75 dresses? A. No.

Q. Do you know that they make dresses of the same general style as do the members of the Fashion Originators Guild of America, Inc.? A. I do not.

Q. You do not know that? A. I certainly do not.

Q. Well, this is most extraordinary. Did you seek to ascertain whether or not they did on or about the month of February, 1936? A. I, personally, did not.

Q. Did you direct anybody to do so? A. Not that particular line; no, sir.

Q. Did you do so with regard to Ace-High Dresses, Inc.? A. I did not do anything with regard to any particular man.

Q. Do you know, or have you any idea—I withdraw that. Do you know the total volume of dress sales at wholesale in the City of New York made to sell at the price of $10.75 and up? 4232

Mr. Haycraft: The same objection as to the previous question.

Examiner Bennett: I think I will let him answer that. Overruled.

Mr. Haycraft: Exception.

A. I do not know the total volume of dresses sold at wholesale in New York City at $10.75 and up, no.

By Mr. Weisman.

Q. Do you know whether or not the total volume of dress manufacturers engaged in the business of manufacturing dresses at $10.75 and up in the New York market is in excess of $175,000,000 annually? A. I do not know. 4233

Q. You do not know that? A. I certainly do not.

Q. How far are you from New York? A. Just from Philadelphia to New York.

Q. I see. Do you have any idea on that subject? A. I have not.

Q. You have no idea whatsoever? A. No.

Q. Just a blank. Do you know what was the total volume done by members of the Fashion Originators

Guild of America, Inc., annual volume of its members who were members of the Guild in February, 1936? A. I do not.

Q. Well, do you know that it was less than $20,000,000? A. No.

Q. If that were the fact, would that in any wise affect your testimony given yesterday? A. My testimony given yesterday is my experience——

Q. No, no, I am asking you if that were a fact if it would in any wise affect your testimony given yesterday? A. It would not.

Examiner Bennett: Off the record.

4235 (There was a discussion off the record.)

Examiner Bennett: Back on the record. You may proceed, Mr. Weisman.

By Mr. Weisman.

Q. I asked you whether or not if these figures I have given you were true whether or not that knowledge would affect your testimony that you rendered yesterday? A. No.

Q. No? A. No.

Q. It would not. Very well. A. No.

Q. Now, is the early part of the year, that is, the first six months of the year, a period during which a larger or a lesser volume of sales is done in your department than

4236 the latter six months?

Mr. Haycraft: Objected to, Mr. Examiner, unless it is confined to the five months about which the witness testified.

Examiner Bennett: Well, I ask that——

Mr. Weisman: What?

Examiner Bennett: I will ask that you designate the comparison.

Mr. Weisman: Well, I want to—may it please your Honor, this is a foundation question. I will withdraw that question, first.

By Mr. Weisman.

Q. Would you give us a statement of your opinion as to how the month of July compares in volume to the month of June? A. The month of July is considerably less than the month of June.

Q. Considerably less? A. Yes.

Q. When you say "considerably," what do you mean by that? What percentage? What does that mean? A. I don't remember per cent. It is much less in total sales. 4238

Q. How would you compare it with February? A. I don't recall.

Q. What is your best opinion, as the divisional merchandise— A. I am sorry.

Q. —manager? A. I won't guess. If—the figure of February against that of July.

Q. Well, what is your opinion as to the first five months of the year as compared to the last five months?

The Witness: The first six months as against the latter six months?

By Mr. Weisman.

Q. Yes. A. Our total sales were about equal.

Q. How does January compare with February? 4239

Mr. Haycraft: That is objected to as not being the month within the period.

Mr. Weisman: It is a foundation question, your Honor.

Examiner Bennett: Well, I will let you answer that.

The Witness: I don't recall the comparisons.

By Mr. Weisman.

Q. Don't you remember testifying in answer to a question by his Honor that January was a very good month?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Do you remember so testifying?

Examiner Bennett: Sustained. Sustained as far as that is concerned. The record shows it.

By Mr. Weisman.

4241

Q. Do you remember?

Mr. Haycraft: The same objection.

Examiner Bennett: Sustained.

Mr. Weisman: I submit on the matter of credibility I should be permitted to ask him what happened yesterday.

Examiner Bennett: Yes. Well——

Mr. Haycraft: Apparently you can't remember what happened yesterday.

Examiner Bennett: You may test his memory very thoroughly.

Mr. Weisman: I am going to ask this question again, your Honor. I want to get it clear on the record.

4242

By Mr. Weisman.

Q. Do you or do you not remember that yesterday you were asked by his Honor, Judge Bennett, as to whether or not January was a good month?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection as I did before. I think that the purpose that is

being served by this question has been worn threadbare, as it were.

Mr. Weisman: I think—I take it, then, your Honor feels that I don't need to further show that his recollection is of the worst? It has been worn threadbare.

Examiner Bennett: I can't make anything more specific than I said.

By Mr. Weisman.

Q. Well, I want to find out from you what is your opinion as to the volume of business done in January as compared to the balance of the first six months of the year. 4244

Mr. Haycraft: Same objection.

By Mr. Weisman.

Q. In other words, if you did $50,000 in the five months, February to June 30, is it fair to say that you ought to do an equal one-fifth, or $60,000 for the six months?

Mr. Haycraft: I object to that as unintelligible.

Examiner Bennett: Well, I will overrule the objection if you can answer it.

The Witness: May I have that question again, please?

(The question was read.)

The Witness: I can't answer that as a matter of comparing one month to another. I do not recall those—those figures are submitted to us and used at the time that they are submitted. 4245

By Mr. Weisman.

Q. I don't care what is submitted. I want to find out your opinion as divisional merchandise manager here tendered to me as an expert as to the amount of business

that you relatively do in the month of January as compared to the other five months of the year. Now, isn't that plain to you?

Mr. Haycraft: Objected to. It has already been answered twice.

Mr. Weisman: I think we can pursue this inquiry. It is rather important.

Examiner Bennett: Yes. Well, I will sustain an objection to any further repetition of that particular question. He has answered that he doesn't know. What is the use in asking him any further?

Mr. Weisman: May I have Commission's Exhibit
4247 No. 411?

(Commission's Exhibit 411 was handed to Mr. Weisman.)

By Mr. Weisman.

Q. I show you Commission's Exhibit No. 411 and ask you whether or not that is not a statement setting forth the units of merchandise sold in Department 331 during the period of February 1st to June 30th, 1936?

(Exhibit 411 was handed to the witness.)

Mr. Haycraft: It speaks for itself.

A. Yes, that is.

4248 *By Mr. Weisman.*

Q. Now, I will ask you to take a pencil and paper and ascertain whether or not if you extend the units by the price shown it will not appear that during the first—during that five-month period the total volume of business was $37,873? Just take a pencil and paper and see if you can figure that out.

Mr. Haycraft: I object to that, Mr. Examiner, as assuming some more facts which, apparently, are not in the record.

Mr. Weisman: That is in evidence.

Mr. Haycraft: Wait until I get through with my objection. I know of no evidence in this case showing the value of the garments sold other than the exhibit itself. If that is true, why, then, the exhibit will speak for itself. It is not necessary to conduct this cross-examination.

Mr. Weisman: I think I can test him on his statement that they do $100,000 when five months shows $73,873. It is entirely illuminating on the worth of his entire testimony. 4250

The Witness: I said approximately, Judge. That may vary.

By Mr. Weisman.

Q. It may vary another $100,000? A. I didn't say that. I said approximately. That is my reason for not wanting to state any particular figure to you that I am not sure of.

Q. Would you say approximately $300,000? A. I said approximately $100,000.

Q. Well, now that your attention is called to the fact in five months, that is, the first six months of the year, exclusive of January, by your own exhibit you did approximately $74,000 in this business; in this department, do you want to change that statement of $100,000? A. I don't want to change any statement, no. 4251

Q. Do you still say that it is your best opinion that you do $100,000 a year in this department? A. I said it is approximately $100,000.

Q. Well, now, with this— A. That is not a definite figure.

Q. Now, with this information—it is what? A. It is not a definite figure. I said it is an approximate figure.

Q. Let me ask you this: Don't you think that $180,000 would be a much fairer approximate figure in view of what is now called to your attention? A. I don't know whether that would be or not.

Q. Well, we will have to see how your mind operates. This is five months, isn't that so (indicating)? A. That is right.

Q. You are sure of that? A. Yes.

Q. Now, it is approximately $75,000—$73,873. A. I am taking your word for it.

Q. All right. Now, how much is one fifth of $75,000? A. $15,000.

4253 Q. So, then, is it fair to say that your average monthly sales during the five-month period is $15,000 a month in that department? A. I wouldn't say.

Q. In spite of this exhibit you wouldn't say? A. According——

Q. You understand— A. According to your figure which you have told me, that is the figure.

Q. This isn't my figure. I am saying that this is your figure. You produced this exhibit. A. Well, I produced it, but you extended it.

Q. Yes. A. If that is the figure, that is so according to the percentage and average.

Q. Assuming that my extensions were correct? A. Yes.

4254 Q. Then will you say that the average monthly business during this five-month period was $15,000 a month? A. According to that paper, yes.

Q. Yes. And then would it be fair to say that if you did an average of $15,000 a month during such months as February, March, April, May and June, that you would do approximately $15,000 during January? A. According to that, possibly, yes.

Q. Yes. So that would give you $90,000 for the first six-months; isn't that so? A. That is right.

Q. With that knowledge and with your statement that the second half of the year is approximately the same as the first half of the year, would you not say that in this Department 331 a fairer statement of your total annual business is $180,000 or twice $90,000? A. That figure I know is not correct.

Q. Well, do you mean that this is incorrect? A. No, the figure you mention, $180,000, I know for certain that is not correct. It is around $100,000, which would be a fairer figure.

Q. How do you square that with this exhibit?

(A short pause.)

4256

Q. What? A. Well, now, there is a difference there as I have stated.

Q. There is a difference of $80,000? A. Yes.

Q. Let me see. How do you know? You have only been in this department since February; haven't you? A. That is right.

Q. Before you got in the department did they show you what had been done in the previous year in that department? A. I recall seeing those figures.

Q. What did they tell you was done in that department the previous year? A. I don't remember the exact figures.

Q. I don't ask you about the exact figure. I want the approximate figure. A. I had my guess to you as $100,000. 4257
I based that on last year's performance.

Q. In other words, it is your best guess that prior to that, during the year 1935, the total volume of business done in this department was approximately $100,000? A. That is what I said.

Q. And notwithstanding that, that since February 1st of this year since you have had this trouble with the Guild, in the first five months your total volume done in

that department is, if my extensions are correct, $73,873; is that correct? A. According to your extensions, yes.

Q. Yes. On your direct testimony you yesterday gave a list of Guild houses which sold merchandise to this department; isn't that so? A. I have.

Q. And you stated, referring to these Guild houses, that they appeared to be resources used by that department. Do you remember saying that? A. No, I don't.

Q. Do you deny that you said it? A. You are referring to the paper which was read off in the record?

Q. No, I am referring to your testimony. A. I read off names from a paper into the record as resources used
4259 by that department.

Q. Do you mean to say that aside from the fact that you read it off from the paper, you didn't know in truth or in fact whether or not they were resources used by that department? A. At the time I read them I said they were resources used by that department.

Q. I know what you said, but I wanted to know what you knew. Did you know it, or did you merely read from the paper? A. I said I knew it.

Q. Well, did you know it? A. Yes.

Q. All right. Then you did say that they appeared to be resources used by that department; isn't that so? A. I may have said that.

Q. When you said they appeared to be resources you referred to the fact, did you not, that they appeared on
4260 that paper to be resources? A. If that is the paper that is being referred to, yes.

Q. Well, when you said that they appeared to be resources, did you mean that they were the total resources of that department? A. No. If I recall correctly, they are the resources that we were purchasing merchandising from Guild houses only.

Q. In other words, you gave us a list of houses from which during the past year, 1935, this department had

purchased merchandise; is that not correct? A. Some of them, yes.

Q. Didn't you give all of them? A. I say, some of the resources which that department used.

Q. You mean that the Guild was only some of the resources? A. That is right.

Q. What other resources did you have? A. There were others that I do not know.

Q. Would you say that there were approximately seventy-five other resources? A. In the course of a year there may be seventy-five resources that purchases are made from.

Q. No. I said seventy-five other resources. A. I say, 4262
in the course of the year there may be seventy-five others that the department purchases from.

Q. In other words, this list you gave us was only some of your resources of this department? A. They were the Guild resources only.

Q. Yes. And the Guild resources only of this department amounted to about 25 per cent. in number of your resources, according to your testimony; isn't that so? A. Yes.

Q. In other words—I will withdraw that "in other words." I don't need it in other words. It is sufficient in those words. In this Department 331 what is your main retail price line? A. Total units sold?

Q. Yes, the biggest—what do you do your biggest business in? A. $19.75 retail is an important price line with 4263
us.

Q. What would you say is the most important price line? A. Well, now, that depends, from a standpoint of prestige or sales?

Q. Sales we are talking of, volume of sales here. A. I would include $19.75 to $29.95.

Q. I see. Your merchandise that you sell at retail for $19.75, what is the wholesale price of that? A. I would say the average wholesale price would be around $12.75.

Q. Well, you do a lot of buying you just said at $10.75; don't you? A. I said the average. There could be some that costs us more.

Q. I see. What do you sell your $10.75 merchandise for? A. $19.75.

Q. You testified that you tried to get merchandise from Robinson Brothers at Boston; do you remember that? A. I believe that that is in the affidavit which I have taken.

Q. No. Didn't you testify to that yesterday? A. I read it off a paper.

Q. Your testimony, your statement yesterday, was that
4265 you read off a paper? A. That particular statement, I believe.

Q. Yes. Well, now, let me ask you, what price merchandise does Herman Beispel make? A. I am not familiar with his price lines

Q. What type of merchandise does he make? A. He makes a finer type of garment.

Q. What do you mean by "finer"? Finer than someone else? A. Finer by comparison to other makers.

By Mr. Weisman.

Q. Do you mean that Herman Beispel at $10.75 would give you a finer garment than somebody else at $12.75? A. No. My remark was directed at possibly the manu-
4266 facturer making a cheaper garment.

Q. You mean if you pay Mr. Beispel $10.75 for a garment you will get a garment that is better than the garment you would get if you pay less than $10.75 for a copy of it; is that so? A. I did not say that.

Q. I am trying to find out what you mean by that statement. A. Possibly at $6.75.

Q. In other words, you can get a better garment for $10.75 from Mr. Herman Beispel than you can get from somebody else for $6.75? A. Yes.

Q. You are quite sure you do not know what price line he makes? A. That is right.

Q. You are quite sure, are you, that you do not know the type of garment that he makes? A. No. I am not quite sure. I am sure that he makes a finer garment.

Q. In any event, I mean—I am speaking of quality, you do not know the difference between quality and type? A. I do.

Q. Well, then, you do know the difference between quality and type? A. Yes.

Q. Do you know the type of garment that he makes? A. I do not.

Q. Do you? A. No. 4268

Q. Well, if you do not know the quality—I withdraw that—well, if you do not know the type, how can you know—if you do not know the type and you do not know the price, what is there that enables you to say that he makes a finer garment; tell us what your reasoning is by which you come to that conclusion? A. I come to that conclusion from the contact that I have had with the buyers.

Q. In other words, from what somebody else told you? A. Yes, sir.

Q. Not from what you know yourself? A. Oh, no, from what they told me.

Q. Did they tell you whom he makes a better garment than? A. They told me—what do you mean—did they tell me whom he makes a better garment than?

Q. Or, more grammatically speaking, than whom does 4269
he make a better garment? A. No. They did not tell me that.

Q. Do you know the price range of the dresses manufactured by H. Gans? A. I do not.

Q. You do not? A. No.

Q. No? A. No.

Q. Let us be sure about it? A. I am sure.

Q. Do you know the type of garment that he makes? A. I do not.

Q. No? A. No.

Q. Pretty sure? A. Pretty sure.

Q. Positive? A. Positive.

Q. Would you also say that Mr. H. Gans makes a finer garment? A. Of course, due to the fact that both of those garments were used in that shop, I would say yes. He makes better than the cheaper garments.

Q. Do you know the price range of Mr. J. Greenberg? A. No.

Q. You do not? A. No.

4271 Q. Do you know the type of garments that Mr. J. Greenberg makes? A. No.

Q. You do not? A. No.

Q. Do you know the price, and by that I mean the wholesale price of the garments manufactured by Baron Dress Company? A. Yes, I do.

Q. You do? A. Yes.

Q. Now we have something. A. Do we?

Q. Yes. What is their price range? A. $10.75 and up.

Q. What type of dress do they make? A. The women's type.

Q What is that? A. The women's type.

Q. The women's type? A. Yes.

Q. Now, is that the best answer you can give—the women's type? A. Yes.

4272 Q. Well, well, well, it is the women's type of dress. Do you know the various types of dresses in the dress industry? A. You mean daytime or evening or dance dresses, or what?

Q. I want to know what you think about it. A. If that is what you refer to—just what do you refer to?

Q. What do you have reference to? It is not what I refer to, it is what you have reference to. So what you have reference to, that is the only way you can qualify

Baron's dresses, namely, into a type, is that they are a women's type dress? A. Well, I know that he specialized in that particular type of dress.

Q. He specializes in a women's type of dress? A. Yes.

Q. Do you know C. H. D. Robbins? A. C. H. D. Robbins is a finer maker.

Q. No, no, no. I ask you if you know his price range? A. $10.75 and up.

Q. $10.75 and up? A. Yes.

Q. What type dress does he make? A. He specializes in women's type.

Q. Women's type? A. Yes.

Q. What is Mr. A. Goodman's price range? A. I am not 4274
familiar with his price range.

Q. You are not? A. No.

Q. No? A. No.

Q. Sure of that? A. Sure of that.

Q. Do you know the price range of the Perlas & Gilbert? A. What is that?

Q. Do you know the price range of Perlas & Gilbert? A. No.

Q. You do not? A. No.

Q. Do you know the type of dress that they make? A. No.

Q. No? A. No.

Q. I just want to be sure. A. Well, you are.

Q. I do not know whether I am or not. Do you know the range of prices of dresses made by Harry Frank? A. 4275
No.

Q. You do not? A. No.

Q. Do you know the type of dresses that he makes? A. No.

Q. Do you know whether or not Harry Frank is a dress manufacturer or a coat and suit manufacturer? A. I do not know that.

Q. You do not even know that? A. No.

Q. Well, well. A. I do not.

Q. Do you know the Dresden Dress Company? A. I have heard of them.

Q. You have heard of them? A. Yes.

Q. Do you know what price garment they make? A. I do not.

Q. Do you know what type of garment they make? A. I do not know that.

Q. You do not know that, either? A. No.

Q. No? A. No.

Q. Do you know the Friedman Dress Company? A. Yes.

4277 Q. You do? A. Yes.

Q. Here is one you do know. A. Well, I know of them.

Q. Do you know what price dress—what price garment they make? A. I do not know.

Q. You do not know that? Do you know what type of garment they make? A. What question do you want me to answer?

Q. First, do you know what price garment they make? A. I do not know that.

Q. Next, do you know what type of garment they make? A. No.

Q. Did you ever hear of Joseph Greenberg & Bettina? A. I read that yesterday.

Q. You read it? A. I heard of them, yes.

4278 Q. You just said you read it yesterday. When and where did you read it? A. From the paper that I have had in my mind here.

Q. As a result of reading it from a paper that you had in your hand, you got the knowledge which enabled you to testify concerning that; is that it? A. It was a——

Q. Is that it or is that not it? A. Yes.

Q. Yes? A. Yes.

Q. Stick to the questions and we will get along better. Now, what price dress do they make? A. I do not know.

Q. You do not know? A. I do not.

Q. Do you know whether or not they make daytime or dance frocks? A. I do not know.

Q. You do not know the type of dress, then, either? A. No.

Q. Then, you do not know the price of the dress or the type of the dress that they make? A. I do not.

Q. Or even that they make a dress? A. I know that they are in the business.

Q. Do you know whether or not—I withdraw that. You do not know what type of dress they make? A. No. 4280

Q. What about Charles—we will come to that later What about Julius Grossman and Greenberg? A. I do not know.

Q. You do not know what price dress they make? A. No.

Q. You do not know what type dress they make? A. No.

Q. Do you know if they make dresses at all? A. They are in that line.

Q. How do you know that? A. I know that because they were on that list.

Q. You only know what was on that list what you read yesterday; is that it? A. It was compiled by the buyers, buyers who are better qualified than I am to testify to that. 4281

Q. The buyers are much better qualified about that than you are? A. Yes.

Q. Much better qualified? A. Yes, much better qualified than I am because of their experience in the department.

Q. Now, we come to Joseph Halpert. How about him?—as to whom do you know what price line he manufactures?

Mr. Haycraft: I object to that.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I offer to prove if the witness had been permitted to answer he would have testified that he does not know and that he did not know, and that he never did know.

Examiner Bennett: That is already in the record and it is of no consequence except to take up time in view of the concession.

Mr. Weisman: Do you mean it is in the record? There is in the record a concession that he does not
4283 know any of these people? We do not want to waste time, your Honor.

Examiner Bennett: Yes. As I understand it there is in the record a concession that he does not know any of these people. Why should you want to waste time in view of that.

Mr. Weisman: Well, your Honor, I am a little surprised at that. Then, do I understand that counsel for the Commission will stipulate that this witness does not know the price range of garments manufactured, or the type of garments manufactured by the following firms: Herman Beispel, H. Gans, J. Greenberg, Baron Dress, C. H. D. Robbins, A. Goodman, Perlas & Gilbert, Harry Frank, Dresden Frocks, Friedman Dress, Joseph Greenberg &
4284 Bettina, Julius Grossman & Greenberg, Joseph Halpert, LaRue Dresses, Frank Starr-Friedlander, Dolces Dresses, Ed Gerrick Company, Max Heit, E. A. Jackson-Bienard, Rudolph Gowns, Matthew Kadetsky, Gardner Schwartz, Bernard Appel, Boston; Goldstein & Entin, Boston; Baron Dress, Boston, and Robinson Brothers, Boston;

Mr. Haycraft: No. Certainly not.

Examiner Bennett: Well, that is what I understood.

Mr. Haycraft: Just a moment. My concession related to the balance of the testimony, not the ones to which he has testified for the witness has already testified with respect to two of those that he knew something about them, and he gave testimony, as I remember it, as to them; my concession related to the testimony of the remainder to which he has not as yet testified. I think as to C. H. D. Robbins and one other concern, Baron Dress, he said he did know that; he had some knowledge as to that, but as to the rest of them the concession goes, yes. 4286

Mr. Weisman: Then, all right, I will take your stipulation as to the rest of them.

Examiner Bennett: I think it is clear now.

Mr. Weisman: I will take it, Judge.

I assume the stipulation also goes to the fact that he did not know it yesterday.

Mr. Haycraft: Oh, yes.

Mr. Weisman: Mr. Haycraft says, "Oh, yes."

And that he did not know, he did not even know that until his mind had been refreshed?

Mr. Haycraft: Certainly. He did not even know who they were yesterday until his memory was refreshed.

Mr. Weisman: I will take that as a part of the stipulation, and with that understanding will proceed. 4287

Examiner Bennett: That will be the understanding.

By Mr. Weisman.

Q. What did you have to do with Department 331 prior to February 1, 1936? A. Nothing.

Q. I cannot hear you. A. I say nothing.

Q. Nothing? A. Nothing.

Q. When you say "nothing," do you mean "nothing"? A. Yes. I had absolutely no responsibility with regard to it or anything to do with it.

Q. Did you learn—I withdraw that— Did you ever go over the list of the people that that department did business with prior to February 1, 1936? A. Did I review the list prior to February, or did I review it before February?

Q. Let us make it all inclusive. Did you review it at any time? A. Yes, I have.

Q. You did? A. Yes.

Q. When and where did you review it? A. Where?

4289 Q. Yes. First. A. I reviewed it with Miss Flynn in my department.

Q. Now, when? A. When?

Q. Yes. A. I cannot attest as to the exact time.

Q. Now, do you know what percentage of your orders for that—of the orders for that department were placed with Guild manufacturers during the year 1935?

Mr. Haycraft: Objected to as indefinite as to what he means by volume or unit: I think it should be specified.

Examiner Bennett: You may add that to it if you desire, otherwise it will be sustained.

Mr. Weisman: I am glad to.

4290 *By Mr. Weisman.*

Q. What percentage of the orders, of the total number of orders? A. I do not know.

Q. Then, you do not know what percentage of the orders for that department were placed with Guild manufacturers during the year 1935 of the total number of orders? A. I do not know.

Q. Do you know what number of orders were placed by that department for that period? A. I do not.

Q. Do you know what number of orders were placed by Guild manufacturers, or with Guild manufacturers by that department for the year 1935? A. I do not know.

Q. Did you ever obtain any information on that point? A. No, I have not.

By Mr. Weisman.

Q. Did you ever make up a list showing the value of orders placed by that department during the year 1935 with all manufacturers? A. No, I did not.

Q. Did you ever make up a list showing the volume of orders placed by that department during the year 1935 with all manufacturers with whom they did business? 4292
A. No, I did not.

Q. Did you ever see such a list, or either of them? A. I never saw such a list.

Q. You never saw one on value? A. No.

Q. You never saw one on volume? A. No.

Q. Do you know whether or not such a list was ever made up? A. Not to my knowledge.

Q. What did you say? A. Not to my knowledge.

Q. Did you ever see a list setting forth the number of manufacturers that you did business with, or with whom business was done during that period in 1935 in that department? A. I do not catch the question. I have no—I am sorry. May I have that question again, please?

Q. Did you ever see a list setting forth the number of 4293
manufacturers that you did business with, or with whom business was done during that period of 1935 in that department? A. I have seen a list of resources for the No. 331 department.

Q. For the year 1935? A. Whether it took in the entire year I cannot attest to that, but I have seen a list of resources that we used.

Q. With regard to the volume of purchases by that department during the year 1935, what percentage was

placed with Guild manufacturers? A. I do not recall. I do not know.

Q. Did you ever know? A. I never knew.

Q. You never knew? A. No.

Q. Prior to February 1 did you know, without regard to the dollar volume, the number of orders that were placed with Guild manufacturers as compared with the number of orders placed with non-Guild manufacturers? A. I have a recollection of approximately 75 per cent.

By Mr. Weisman.

Q. What is your recollection based on? A. It is based
4295 on a paper which I had here—which we had here yesterday in—on information produced by Miss Flynn which I helped her to prepare.

Q. Did that refer to the volume—dollar volume or number of orders? A. That I believe had reference to dollar volume.

Q. What has led you to believe that it referred to dollar volume rather than the number of orders? A. Well, dollar volume, I think that would be the figure which the buyer could possibly know rather than the number of orders. I do not believe they keep account in anywise of the number of orders placed.

Q. Are you referring to the paper that Mr. Haycraft showed you yesterday? A. I am.

Q. Now, aside from that paper you stated before that
4296 you had—that you never saw any other compilation; is that correct, with regard to this subject matter of this present inquiry? A. I am sorry. May I have that question again?

Q. I will reframe it: Now, aside from that paper you stated before that you never saw any compilation; is that correct; with regard to this subject matter of this present inquiry?

Mr. Haycraft: Are you referring to Department 331?

Mr. Weisman: Yes.

The Witness: Now, I do not know just what the question includes.

By Mr. Weisman.

Q. I will ask the question again and include everything. Now, aside from that paper you stated before that you never saw any other compilation with regard to Department 331; is that correct; with regard to this subject matter of the present inquiry? A. That is right.

Q. That is right? A. That is right. 4298

Examiner Bennett: We will have a recess now for ten minutes.

Mr. Weisman: Thank you, Judge.

Examiner Bennett: We are now in recess.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

Mr. Weisman: May we have the last question read?

(Record read.)

By Mr. Weisman.

Q. You have learned, have you not, that Strawbridge & Clothier, in 1933, made it a policy not to purchase copies of original merchandise of members of the Fashion Originators Guild? 4299

Mr. Haycraft: Objected to as not proper cross-examination.

Mr. Weisman: It is entirely proper. I am going to prove the basis of cross-examination on numerous of these statements as to difficulty and so forth, and so on.

Examiner Bennett: Read the question, please.

(Question read.)

Examiner Bennett: I will sustain the objection to that.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not prior to February 1, 1936, Strawbridge & Clothier had made it a practice not to purchase copies of original creations originated by members of the Fashion Originators Guild?

Mr. Haycraft: Don't answer that yet. In the first place, I think you have misspoken as to the date. The same objection as to the previous ques-
4301 tion.

Examiner Bennett: You are asking about 1936?

Mr. Haycraft: Prior to that.

Examiner Bennett: Prior to that. I am going to let him answer as to that, whether he knows.

The Witness: There was some sort of agreement that our store had with the Fashion Originators Guild to that effect.

By Mr. Weisman.

Q. And as a result of that agreement Strawbridge & Clothier didn't, while that agreement was in effect—sought not to buy copies; isn't that so? A. We attempted not to buy them. We tried to live up to the agreement.

4302 Q. To the agreement? A. That was outlined.

Q. You are a subordinate of Mr. Tily's, are you not? A. Yes.

Q. Are you one of the subordinates that he relied upon when he stated that he was giving his testimony in reliance upon information furnished him by subordinates?

Mr. Haycraft: That is objected to as not within this witness' knowledge.

Mr. Weisman: Well, maybe he knows. I am asking him if he knows.

Examiner Bennett: Well, I will sustain the objection.

Mr. Haycraft: That is Mr. Tily's testimony.

Mr. Weisman: Exception.

I make this offer of proof——

Examiner Bennett: You may ask Mr. Tily, not this witness.

Mr. Weisman: I didn't know we were going to get this kind of subordinate, Judge. All right.

By Mr. Weisman.

Q. As a matter of fact, during the period while this agreement was in existence, in the House Dress Department, they adhered to that refusal to buy copies, knowingly buy copies? A. That is right. 4304

Q. I assume that was because of their agreement? A. Yes.

Q. And I assume that as a subordinate executive in this concern, you adhered to the statement of policy as fixed by your superiors?

Mr. Haycraft: Wait a minute. I object to that.

By Mr. Weisman.

Q. Is that so?

Examiner Bennett: Is there an objection?

Mr. Haycraft: Yes.

Examiner Bennett: Overruled. You may answer. 4305

The Witness: Yes.

By Mr. Weisman.

Q. You were in the court room while Mr. Tily testified; were you not?

Mr. Haycraft: That is objected to.

Examiner Bennett: He may answer.

A. I was here; yes, sir.

By Mr. Weisman.

Q. Did you hear Mr. Tily testify in words or substance that he felt that this policy, when adopted by them, was in his opinion to the benefit of the public, to the manufacturer and to the store?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Yes. Well, I want to see whether he knows anything about that. Now, you may ask him very simply—I will ask him myself and see. There is no use of haggling about this all
4307 day. Did you have any buyers buying goods for any of the departments of Strawbridge & Clothier prior to February, 1936?

The Witness: I took charge of the division February 1, 1936, Judge.

Examiner Bennett: Well, answer my question, please. Did you have any buyers buying goods under your instructions or direction for the firm prior to that time?

The Witness: I did not.

Examiner Bennett: Or any of those departments?

The Witness: I did not.

Examiner Bennett: You did not.

4308 Mr. Weisman: Now, may I pursue——

Examiner Bennett: All right. I don't see what we can get from this witness.

Mr. Weisman: May I pursue the inquiry further?

By Mr. Weisman.

Q. Now, since you took charge of this department, have you, under your supervision, buyers who were engaged in

buying merchandise for the firm of Strawbridge & Clothier, and who, during the period prior to your becoming divisional merchandise manager, placed orders with the Fashion Originators Guild of America? A. Yes.

Q. Members. Now, as to those particular buyers who so placed their orders, did you ever discuss with them the reason that led them to place their orders with members of the Fashion Originators Guild of America? A. Yes.

Q. Now, in these discussions, did they ever tell you in words or substance that the reason they placed their orders when they did with members of the Fashion Originators Guild was, among other things, that they felt they were less likely to obtain copies of merchandise from members 4310
of the Fashion Originators Guild? A. I don't remember any such statement from any of them.

Q. Well, do you think now, with the knowledge that you have obtained as the divisional merchandise manager, that that was one of the reasons? A. I couldn't attest as to what their thoughts were.

Q. You have no thought on that now? A. No.

Q. Did you testify, or did you not, that there were a certain amount of returns? A. Returns to whom?

Q. Non-Guild members. A. Not that I recall.

Q. I guess you are right. I think it was Mr. Taylor.

Examiner Bennett: Mr. Taylor.

By Mr. Weisman. 4311

Q. Well, do you know, as divisional merchandise manager, that returns that are made in a department due to some degree affect the efficiency of that department? A. They do.

Mr. Haycraft: That is objected to, Mr. Examiner, not proper cross-examination.

Examiner Bennett: Well, it is answered and I will let it stand.

Mr. Weisman: What? Thank you.

Examiner Bennett: I will let it stand.

By Mr. Weisman.

Q. As a divisional merchandise manager you have under your control these buyers; isn't that so; of these various departments? A. That is right.

Q. And it is within the buyers' province, is it not, to buy merchandise which will be readily salable; isn't that so? A. Yes.

Q. Now, in your opinion, assuming that an original model is carried by one of your departments at $19.75, and
4313 a copy appears in another store at, let us say, $19.75; does that affect the salability of the original?

Mr. Haycraft: Objected to; irrelevant, immaterial, and not proper cross-examination.

Examiner Bennett: You may answer. Overruled.

The Witness: May I have the question?

(Question read.).

Mr. Haycraft: I offer a further objection, Mr. Examiner, at this time. It assumes a statement of fact which is not in the record.

Mr. Weisman: It doesn't have to be in the record. It is cross-examination. Will you answer? The Court had directed you to answer.

4314 Mr. Haycraft: I would like to have a ruling on my additional objection.

Examiner Bennett: I will let him answer.

A. It might have some influence.

By Mr. Weisman.

Q. I don't care whether it might or whether it might not. You and I know that anything might happen. I am

asking whether or not, with your experience, you believe that it would have a very direct influence. A. Yes, I have known occasions where it has.

Q. Would you then say that the buyers seeking to maintain the sale of their garments would be most likely to go to houses where they knew they could get originals?

Mr. Haycraft: Same objection, Mr. Examiner.

Examiner Bennett: Same ruling.

Mr. Weisman: The Court says you may answer.

A. I don't know what they would be inclined to do in that particular case.

4316

By Mr. Weisman.

Q. Notwithstanding the fact that you are divisional merchandise manager in charge of these departments and responsible for their operations to some degree, that you say that under such circumstances that you don't know what they would be likely to do; is that so? A. That is right.

Q. Now, I understood you to say that the buyers in seeking to replace the Guild houses experienced some difficulty. You remember using those words? A. Yes, I do.

Q. Was that a fact? A. It was, according to their report.

Q. It was only according to their report? Is that the limitation that you want to place on your answer? A. I 4317
am sorry, I didn't get that question.

Q. You answered me that it was according to their report. A. Yes.

Q. And I asked you if you now want to limit your testimony to state that the difficulty was only according to their report, that you had no personal knowledge thereof? A. I stated that my testimony yesterday, that it was according to their report. It was their report back to me.

Q. I see. Now, other than their report did this difficulty manifest itself in any way? A. Only in the way of comparison of figures.

Q. Well, would you say that that difficulty has now been eradicated? A. Not entirely.

Q. Well, almost entirely? A. No.

Q. Well, I call your attention to Commission's Exhibit No. 402, which is a comparative decrease for Department 350.

Mr. Haycraft: I object to it.

By Mr. Weisman.

4319 Q. (Continuing) February 1 to June end, 1936, as against '35, for the same period, and I call your attention to the fact that the claimed decrease for February appears as some 9 per cent. and for March as some 10 per cent., and for April as some 11 per cent., and for May as some 6 per cent., and for June as some 1 per cent., and ask you whether or not the steadily declining decrease isn't some indication to you that the difficulty of replacing the Guild has almost disappeared? A. Well, I wouldn't say one month would be any particular time to compare that.

Q. Now, no, but don't you notice that it starts at 19 and gradually goes down to 1? Now, you stated in answer to my question a moment ago that these figures indicated the difficulty to you? A. That is right.

4320 Q. Now, I say the fact of the steadily declining situation with regard to the figures, or to the amount of the decrease, does not that indicate to you that as time goes on, and as it has gone on, this difficulty has been overcome? A. We have suffered more earlier, I concede that.

Q. And that now— A. That now——

Q. You are straightening it out? A. We are in a certain measure—in a certain measure we are in a better position now than we were at the time that we were red carded.

Q. Yes. And given a reasonable opportunity I assume that you will replace all these Guild manufacturers with non-Guild manufacturers; isn't that so? A. In the meantime we suffer.

Q. No.

Mr. Weisman: I ask that that be stricken out.

By Mr. Weisman.

Q. I said, given a reasonable time you will replace them? A. We don't know whether we will be able to replace them totally or not.

Q. Isn't this some indication to you it is likely that they will be entirely replaced? A. No, it isn't, because—— 4322

Q. All right. That is enough.

Mr. Haycraft: I submit, Mr. Examiner, that the witness ought to be allowed to explain his answer.

Mr. Weisman: I submit that you let me alone while I am examining and stop interrupting me in my examination.

Mr. Haycraft: My objection is an interruption in a proper, legal way, Mr. Examiner.

Examiner Bennett: Have you finished your answer?

The Witness: I have not, sir.

Examiner Bennett: You may finish.

The Witness: May I have the question and part of the answer that I started. 4323

Q. (Record read.) A. —because without interference we may be showing large increases rather than decreases in proportion to the rest of the volume on the floor.

By Mr. Weisman.

Q. In other words, you are now seeking to guess as to what might happen? A. Well, it is problematical in so far as your statement as to the low decrease.

Q. Do you say now that your buyers acting under you have been able to locate proper manufacturers who can make garments comparable to those that you used to purchase from the Guild members? A. I said it was a difficult job.

Q. Well, now, I heard you say that. Now, I am asking you whether or not at this time you state that you cannot get manufacturers to make garments comparable to those originally purchased from Guild members? A. We are having difficulty, yes.

Q. I am not asking you whether you are having difficulty. I am asking you whether you are getting the mer-
4325 chandise that is comparable to that you used to buy from Guild manufacturers? A. Not in the proportion that we would like to buy.

Q. Well, are you getting it? A. We are getting some.

Q. In other words, you now state that these Guild merchants make such good merchandise that during the past six months you have been unable to replace them with other merchants who make good merchandise; is that it? A. That is right.

Q. What does the goodness of this merchandise consist of? A. It consists of an element of fashion, finish, high degree of styling, and the fact that we have been doing business with these houses and have built up a certain following of trade that would expect to find that type of
4326 merchandise in our store at any time they came in to seek such merchandise.

Q. Do you know how dresses are made? A. I don't quite understand you.

Q. Do you know how dresses are made? A. I am not a manufacturer.

Q. Neither am I; neither is the Court. I am asking you, do you know how dresses are made? A. I never watched their operation.

Q. Have you got anything in your mind which operates to tell you how a dress is made? A. No.

Q. In other words, your mind is a complete and total blank on the method of manufacturing dresses?

Mr. Haycraft: That is objected to.

Mr. Weisman: I submit it is a perfectly proper question.

Examiner Bennett: All right. I will let him answer.

By Mr. Weisman:

Q. The Court says you may answer. A. I do not know how dresses are made. 4328

Q. Do you state the Guild manufacturers, aside from the fashion and styling, do make a better dress than anybody else? A. By comparison, they do.

Q. Is this better manufacture in the making of the garment? A. That is one important phase, the detail.

Q. Do these manufacturers, when they send in a garment to you, have their name in the garment? A. I don't quite understand the question. May I have the question?

Q. Well, is there anything in the garment which identifies the maker of the garments when it is placed on sale with your department store? A. Sometimes there is.

Q. Never mind about the sometimes. You mean to say that your garments carry the name in them of the manufacturer? A. No, not at all. 4329

Q. How would a woman know how the garment was manufactured? A. She——

Q. Or by whom? A. She wouldn't know, only by comparison.

Q. Comparison with what? A. With her experience in purchasing dresses.

Q. In other words, the Guild manufacturers do a good job, you say, in their manufacture? A. Yes, that is an important thing.

Q. And they do such a good job that the woman has become used to that good job? A. Yes.

Q. And you are anxious to see that your customers get the best possible job in the dresses they purchase from you? A. That and other things are considered.

Q. What other things are considered? A. The fit of the garment.

Q. Well, do the Guild manufacturers give you a good fit? A. Yes.

Q. What else? A. Finish.

Q. Do they give you good finish? A. They do.

Q. What else? A. Fabric.

4331 Q. They give you good fabric? A. Good fabric and new fabrics.

Q. Do they give you those? A. Yes.

Q. These are all things that are highly desirable? A. Yes, they are.

Q. And they are things that you are constantly seeking to give to your customers? A Yes.

Q. Well, if that is so, will you tell us why in this department, out of the hundreds of people you did business with, you only did business with twenty-six Guild manufacturers. A. Well, the Guild manufacturers that we purchased from, possibly.

Q. Not possibly, what is the fact? A. May have been in proportion to the sales—the purchases may have been greater than the total of the other 75 per cent. purchased

4332 from other manufacturers on the market.

Q. You say that may have been. I want to know why you did not buy all of your merchandise from people making such good stuff? A. We cannot possibly, that may have been a different thing. We could not possibly, they may have not made a certain type that we would want to sell. There are also good makers who are not members of the Guild.

Q. What is the ratio, three to one? A. No, it is not to my knowledge, I do not think so.

Q. What do you say about the ratio? A. I do not know.

Q. You honestly do not know? A. I honestly do not know.

Q. Now, let us come to this matter of fashion. You used the word fashion and you said that the things that went into it were, first, fashion; and then you said finish and then you said high degree of styling; do you differentiate between fashion and high degree of styling? A. No.

Q. They are one and the same? A. Yes.

Q. What do you mean by high degree of styling? A. High degree of styling is that particular styling that has 4334
or which has, I would say, new ideas, new lines that are put into a garment, the designer's thoughts on one particular model.

Q. You mean, do you not, that the members of the Guild made available to you more style originals; is that what you mean? A. No, not necessarily originals.

Q. What do you mean when you say "newer." A. Newer—new touches in my estimation would be something new, possibly new trimmings, the adaptation of some creation.

Q. Now, how much—now, how do these Guild manufacturers, in your opinion, get this high degree of styling, is it when they join the Guild that they get it; is it something the Guild gives them? A. No, I do not think so.

Q. What do you think? A. I think that they get it 4335
through the form of their designers and the members of their designing staffs, I think that is where they get it from, those designing staffs.

Q. In other words, it is your opinion that these designing staffs maintained by the Guild members are better designing staffs than those which are maintained by people who are without of the Guild? A. In many instances I

would say that the designers that the Guild manufacturers employ do interpret fashions and create numbers or reconvert adaptations in a more salable way, yes.

Q. Do you know whether or not that list of manufacturers who are not in the Guild do not employ—well, let's make it more general than that. Do you know whether or not lots of manufacturers who are not in the Guild do not employ designers at all; did you ever hear of that? A. Yes, I have.

Q. Then from time to time they go around the market and copy what looks like a hot number; did you ever hear of that? A. Yes.

4337 Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant and not proper cross-examination.

Mr. Weisman: I submit it is entirely proper in view of his previous testimony.

Mr. Haycraft: It may be on a cross-examination, but it certainly is not on his direct.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to prove that the answer would have been in the affirmative.

Examiner Bennett: We ought to have—I think there should be a limit on this.

Mr. Weisman: The limit should be that the witness should not have been put on if he does not

4338 know anything.

By Mr. Weisman.

Q. Now, what is the total volume that will be done—that was done in Department No. 30—Department No. 350 for the year 1935? A. I beg your pardon.

Q. Do you know that? A. Oh, I do not recall.

Q. Did you ever know? A. I have seen the figures.

Q. What is your idea; what is your best recollection? A. I do not know. I would not even guess.

Q. Now, how many manufacturers would you say you do business with in Department No. 350 during the year 1935? A. I do not know offhand.

Q. You do not know? A. No.

Q. Now, I know you do not know e[illegible], but will you give us your best opinion, A. I will not guess.

Q. You will not guess? A. No.

Q. I want your best opinion, you are in charge of this department.

Mr. Haycraft: I object to his best opinion.

Mr. Weisman: Well, we will get away from that, and I will ask for his best opinion, and we will have 4340
to take it, I suppose.

Mr. Haycraft: I object to his opinion.

Mr. Weisman: Your Honor, I think we should be allowed to have that.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Is Department 350 comparable to Department 331? Perhaps we can get at it this way. A. In which way?

Q. In the number of manufacturers that you dealt with in that department.

Mr. Haycraft: That is objected to. 4341

Examiner Bennett: I will let the witness answer that.

A. I would say that the number of resources that that department used would be less in comparison to No. 331.

By Mr. Weisman.

Q. How much less would you say? A. I have no idea.

Q. You have no idea? A. No.

Q. Would you say that you only do business with about seventy-five manufacturers.

Mr. Haycraft: I object to that.

A. I do not know.

Mr. Haycraft: I object. He said he did not know.

Examiner Bennett: I will sustain it. It is too indefinite. You are not getting out anything that has any relevancy in the record.

Mr. Weisman: I submit if I am not permitted to examine him, of course I cannot get it out.

4343

Examiner Bennett: It has already been demonstrated that you are not getting anything that is at all tangible out of this witness on that particular point. Why clutter up the record with a lot of stuff of that character.

Mr. Weisman: I want to prove that this witness does not know whether they do business in that Department with seventy-five or 750 manufacturers.

Examiner Bennett: It appears already that he does not know the number. There is no need of that exaggeration.

Mr. Weisman: I do not know that it is exaggeration. I would not be surprised if they did business with 250.

4344

Examiner Bennett: 250 is not 750.

Mr. Weisman: I will amend that to the figure of 250.

Examiner Bennett: I have ruled, and I am going to sustain that ruling. There is no use of further discussion on this matter.

Mr. Weisman: May I have an exception? May I——

Examiner Bennett: You may do anything you choose within the rules of practice.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Did you see a list of the manufacturers that you did business with during the year 1935 in Department No. 350? A. I have seen a list at one time or other.

Q. You have seen such a list? A. I have.

Q. Where did you see that list? A. In my office.

Q. In your office? A. Yes.

Q. Who gave you that list? A. It was furnished by the buyer. 4346

Q. By the buyer? A. Yes.

Q. Under what circumstances was it furnished by the buyer? A. To extract the information which was placed on this paper that you presented—that was presented in evidence yesterday.

Q. Where is that list? A. I do not know where it is now.

Q. Did you destroy it? A. What?

Q. Did you ever destroy it? A. I do not know whether it is destroyed or not.

Q. Did you have any reason for destroying it? A. Absolutely none.

Q. You were not afraid to keep it? A. No.

Q. Will you during the lunch hour make a search to see if you can locate that list? A. I will. I will promise to do that. 4347

Q. If you locate it then will you look at it and see how many manufacturers in total you did business with in that department? A. I will do so. I would like to make a note of it so I will not forget it.

Q. Why, certainly, I will do that, and I will not only do that, but I will give you a piece of paper on which to

make the notation. A. That is all right. I have something here on which I can make that notation.

Q. But, in any event, you are certain that at this particular time you have no present knowledge as to the number, the total number of manufacturers that you had done business with in the year 1935, in this Department No. 350? A. May I have that question again?

Mr. Haycraft: Yes, I think the witness should be allowed to hear the question.

Mr. Weisman: Certainly. Will your Honor permit it to be read?

4349 Examiner Bennett: The question may be read.

Q. (Question read.) A. I will promise to look that record up for you. I have promised to do that.

By Mr. Weisman.

Q. I did not ask you that. I asked you if at the present time you had any such knowledge? A. I would tell you if I did.

Q. The answer is "No"? A. "No."

Q. Well, say so. A. No.

Mr. Haycraft: He said that once before.

Mr. Weisman: Now, Mr. Haycraft——

By Mr. Weisman.

4350 Q. Now, what priced merchandise do you sell in that department? A. What department?

Q. 350? A. 350.

Q. Yes. A. We buy merchandise to retail at $10.75 and up.

Q. What do you pay for it? A. $10.75 and up.

Q. You gave us yesterday a statement of people who were members of the Guild from whom that department

purchased merchandise prior to your advent as divisional merchandise manager; do you remember that? A. At the time of the red carding?

Q. Yes. A. Yes.

Q. That is true? A. Yes.

Q. How long back did you go when you got that list of names up? A. I do not remember. It was a list that at that time we were using.

Q. As a matter of fact, you covered a three-year period, did you not?

Mr. Haycraft: One year.

A. I do not know whether that would take in three years 4352
or not. I am not certain.

By Mr. Weisman.

Q. What did it take in? You were asked if, having refreshed your recollection, will you testify for the record the names of the manufacturers that you recognize as resources for Department 350. You may look at the piece of paper and you then looked at the piece of paper that Mr. Haycraft handed you, and then you gave some names. A. Yes.

Q. Do you know whether those names covered the period from June, 1933, to February, 1936? A. I do not. That, again, that question, if I remember it, pertained to the time of the red carding. 4353

Q. What? A. That question pertaining to the time of the red carding.

Q. You mean at that time that you had orders outstanding with those people that you gave? A. I do not believe with all of them, but they were resources that that department was using in purchasing merchandise from at one particular time.

Q. What particular time? A. That particular time I do not believe that all of them were, but they were resources that that department was using in purchasing merchandise from at that time, particular time. Let me make that clear: At that particular time those departments were purchasing—that department was purchasing merchandise from those particular resources at that time. At that time is what I am referring to.

Q. Oh, I see. How recently to that time had they purchased merchandise; that is what I want to know? A. How recently?

Q. Yes. A. I do not know.

4355 Q. You do not know? A. Yes.

Q. Do you know when was the last time that your store purchased merchandise from Milton Altmark? A. No.

Q. Do you know whether—did you know yesterday when you testified? A. At the time of the red carding we were using that resource.

Q. When you say you were using that resource, what do you mean? A. What is that?

Q. When you say you were using that resource, what did you mean? A. I believe the list that we submitted will show——

Q. I do not care about the list that you submitted. I want you to listen to my question. I want to know from you when you say you were using those resources exactly what you mean? A. I will attest to the fact that in 1935

4356 in reference to this remark——

Q. What is that? A. I am attesting to the fact in 1935 in reference to that remark.

Q. In other words, you say that some time during the year 1935 you purchased merchandise from Milton Altmark, Inc.; is that it? A. That is right.

Q. Is that right? A. Yes.

Q. That some time during the year 1935 there was purchased from Capri Frocks some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Frank Starr-Friedman some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Weinstein & Entin some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from A. Goodman some merchandise? A. Yes, sir.

Q. That some time during the year 1935 there was purchased from Max Heit some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Lipman Brothers some merchandise? A. Yes, sir.

4358

Q. That some time during the year 1935 there was purchased from Perlas Levenson some merchandise? A. Yes, sir.

Q. That some time during the year 1935 there was purchased from Schultz & Zucker some merchandise? A. Yes, sir.

Q. During the year 1935 this department only purchased merchandise from the ten Guild manufacturers altogether? A. That is all that I have a record of at the time.

Q. If that is a record of all you have; is that correct? A. That is all—we will say.

Q. That is all that were used as resources; that you purchased merchandise from; is that so? A. Yes, sir.

Q. During that time do you know how many non-Guild manufacturers you purchased merchandise from? A. No. 4359

Q. Do you know the type of garments——

Mr. Weisman: Off the record. Maybe we can save a little time by working up a stipulation here.

Mr. Haycraft: I am glad to entertain such a proposition.

(There was a discussion off the record.)

Examiner Bennett: Back on the record.

Mr. Weisman: It is stipulated by the Attorney for the Commission, that with regard to the names of the resources given by this witness, Samuel J. Chance, as being resources of Department No. 350, as set forth by him on page 2096 of the record, being Milton Altmark, Capri Frocks, Frank Starr-Friedlander, Goldston & Entin, A. Goodman, Max Heit, Lipman Brothers, Perlas Levenson, Schulte Zucker, that this witness does not know the type of merchandise manufactured by some firms, nor the price range at which their merchandise is sold except in so far as Lipman Brothers is concerned with regard

4361 to that manufacturer, he does know that they do make a four-way suit which sells at a wholesale price of $10.75.

The Witness: That is right.

Mr. Haycraft: I agree to that stipulation.

Examiner Bennett: The stipulation is received.

By Mr. Weisman.

Q. That is your knowledge, is it? A. Yes, sir.

Q. Have you any idea of the total business done in Department 350 during the period February 1, 1936, to June 30, 1936? A. I do not.

Q. This department is under your supervision; and was within the time that you actually are in control of it?. A.

4362 I do not understand your question.

Q. This department is under your supervision; and this is within the time that you have been actively in control of it; is that true? A. That is true.

Q. Notwithstanding that, you would say to us that you would have no idea whatsoever as to the volume that you do in that department? A. I have not the slightest idea as to that.

Q. Give us your opinion? A. I would not even have an opinion.

Mr. Haycraft: I object to an opinion.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to show that the witness has no idea whatever.

Examiner Bennett: You may ask him the facts. You are asking him something else which is not material, in my opinion.

Mr. Weisman: May I call for his recollection, then?

Examiner Bennett: Yes, you may call for his recollection. 4364

By Mr. Weisman.

Q. Have you any recollection? A. I have not.

Q. You have not? A. I have not.

Q. Did you ever know what the volume was that you were doing in that department? A. Yes, sir; I have seen figures constantly.

Q. You have seen them constantly. When did you last see the figures? A. I may have—the last that I recall is possibly around the end of that period.

Q. That is, the June 30, 1936, you say you saw some figures showing the total that you did in that department, or that you had done in that department? A. It may have been June 30, it may have been the early part of July. 4365

Q. The early part of July? A. Yes, sir.

Q. Did you see any in the early part of August? A. Yes, sir.

Q. Do you not get monthly figures of that department? A. I do.

Q. You do? A. Yes.

Q. And you, as divisional merchandise manager—when did you see those figures in August, how recently—how re-

cently? A. I am sorry. I have not seen any figures for August yet. The figures have not been submitted to me as yet.

Q. Have you any idea what the Department No. 350 did in the period February 1, 1935—between February 1, 1935, and June 30, 1935? A. I do not know.

Q. Did you ever see any figures as to that? A. Yes. I saw the comparative figures.

Q. Do you have any recollection whatsoever? A. None whatsoever.

Q. And as to the immediate period; that is, February 1, 1936 to June 30, 1936, you are likewise without any recol-

4367 lection as to the volume of business done therein? A. I saw the figures in order to prepare the slip which I had; but I do not remember the total dollar volume.

Q. What is the slip that you refer to?. A. To the decrease that that department had for this year in comparison with 1935.

Q. You mean, Exhibit No. 402? A. That is right.

Q. Right? A. Right.

Q. If you never have seen the figures for 1935, as you have just testified, as you have just testified you have not, how can you testify as to the comparative decrease; will you tell me that?

Mr. Haycraft: That is objected to as contrary to the witness' testimony.

4368 Mr. Weisman: Let us see whether it is or not. I ask that that question and that answer be read containing that so that I may have those facts before your Honor in passing upon this matter.

Examiner Bennett: The witness testified that he has seen the figures.

Mr. Haycraft: He did not say that he had not seen them.

Mr. Weisman: I think it would be better to have those particular questions read.

(Questions and answers read as follows: "Q. Have you any idea what the Department No. 350 did in the period February 1, 1935—between February 1, 1935, and June 30, 1935? A. I do not know. Q. Did you ever see any figures as to that? A. Yes, I saw the comparative figures. Q. Do you have any recollection whatsoever? A. None whatsoever.")

Examiner Bennett: You will see from that that he has some information with regard to that. Furthermore, the witness has systematically disclosed that he does not remember figures. We are fed up on that. We have demonstrated beyond any 4370
possible doubt that he does not remember figures even for a month or for a few days. But he has testified that he has seen the figures and has used them in certain calculations. What else can you get from him on that?

Mr. Weisman: We will have to see, your Honor.

By Mr. Weisman.

Q. What is your opinion as to the volume done by Strawbridge & Clothier in Department 350 during the month of June, 1936?

Mr. Haycraft: I object to any opinion.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that 4371
he has absolutely no opinion whatsoever.

Examiner Bennett: There is no foundation for the opinion.

Mr. Weisman: He has testified on direct testimony that that department is under his supervision.

Examiner Bennett: You are asking for a different kind of thing now.

By Mr. Weisman.

Q. Is Department 350 under your direct supervision? A. Yes.

Q. That is one of the departments for which you are responsible for its sales and its profits? A. That is right.

Examiner Bennett: I will sustain the objection, and I may state for your information I am sustaining the objection because of your failure, technically, as a lawyer, to make the proper foundation for the question you are asking.

Mr. Weisman: I am making it now.

4373 Examiner Bennett: It is now 12.35. We will take an adjournment until 2 o'clock. Please be on hand promptly.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

Examiner Bennett: You may resume.

Mr. Weisman: Thank you. May I have the last question?

(The last question was read.)

4374 *By Mr. Weisman.*

Q. Is it not? A. Yes.

Q. Notwithstanding that, you state that you don't know the total volume of business done during the elapsed five months commencing February of this year? A. That is right. I don't remember.

Q. Now, I asked you before lunch to make a list of the total number of manufacturers with whom Department 350 did business.

Mr. Haycraft: That is objected to, if your Honor please.

Q. (Continuing) And you stated to me that you have brought such a list with you; did you not? A. Yes.

Mr. Haycraft: Just a minute.

Q. And have you got it with you? A. Yes.

Q. Will you please look at—will that list refresh your recollection as to the number of resources in total that were availed of by that department prior to February 1, 1936?

Mr. Haycraft: Objected to unless it is confined 4376
to the year 1935.

Examiner Bennett: That is in February, 1936?

Mr. Weisman: Prior to February, 1936.

Examiner Bennett: All right.

Mr. Weisman: You may answer.

Examiner Bennett: You may answer. It is understood that it covers '35?

Mr. Weisman: This is the——

The Witness: Yes. May I say something? I understood that Mr. Weisman wished a list stating the total number of non-Guild resources and the total number of Guild resources that this department used in the year 1935; is that correct?

4377

By Mr. Weisman.

Q. I asked you for the total number of non-Guild resources that you used in the year 1935. Now, have you got that? A. I have that on here, in with the information of the Guild resources.

Q. Wait a minute. What is that number? A. 30.

Q. 30. Yesterday you testified as to the number of Guild resources that were used; did you not? A. At the time of the red carding?

Q. Yes. A. That is right.

Q. How many was that total? A. Whatever number appeared on that sheet.

Q. Ten? A. Whatever they were.

Q. Have you no recollection of what you testified to yesterday? A. I read it fron. a sheet of paper.

Q. In other words, you weren't testifying to anything other than that which you were able to read; is that correct? A. That is right.

Q. Now, by the way, what is a four-way suit? A. A four-way suit is a suit consisting of four individual pieces or garments that can be utilized and interchanged to make
4379 up four different distinct types, whether in color or fabric.

Q. Do you know how many manufacturers were engaged in the manufacture of four-way suits in the month of February, 1936? A. No.

Q. Don't you know that the four-way suit was a very popular suit and was made by a great number of manufacturers during that period? A. I have heard of some manufacturers making that same suit.

Q. As a matter of fact, the four-way suit in February, 1936, had a great popularity; didn't it? A. Yes, it did.

Q. And in response to that great popularity a large number of manufacturers commenced to manufacture suits of that kind; isn't that so? A. Yes.

Q. As a matter of fact, there was a glut on the market of four-way suits in the month of March, 1936; isn't that
4380 so? A. I didn't get your question. I am sorry.

Q. Do you know the meaning of the word "glut"? A. No.

Q. Well, maybe that is why you didn't get my question. As a matter of fact, the popularity of this four-way suit during the months of January and February, 1936, was so great that a great number of manufacturers proceeded to make up and sell, make up for sale four-way suits; isn't that so?

Mr. Haycraft: Objected to as too indefinite, this great number.

Mr. Weisman: Well, he has testified all the time to great numbers.

Mr. Haycraft: I object to the question.

Examiner Bennett: Overruled.

Mr. Weisman: I submit it is a perfectly proper question.

Examiner Bennett: Overruled. Go ahead.

By Mr. Weisman.

Q. The Judge says you shall answer. A. Yes.

Q. Don't you know that as a result of a large number of 4382
people who engaged in the manufacture of that four-way suit that there was an overproduction of four-way suits so that the market or the sale of them are greatly depressed by the overproduction; isn't that so? A. I don't know that.

Q. What do you mean when you say you don't know? A. Of course, we had difficulty getting a suit which to our estimation was comparable to the original model which was denied us in February.

Q. Do you mean that the four-way suit produced by Lipman Brothers was of a particular design? A. No, but it sold because of the suit itself.

Q. In other words, it happened that Lipman Brothers made up a good suit? A. That is right.

Q. There wasn't anything particularly new about a four- 4383
way suit; was there? A. Well, there are many four-way suits made.

Q. Yes. And there wasn't any particular monopoly of design in the making of four-way suits; was there? A. It depends on what you consider monopoly of design.

Q. I mean anybody was free to make four-way suits? There was no patent or patent right or closing of the right to make four-way suits? A. Not to my knowledge.

Q. And if there were, it would certainly be to your knowledge in the performance of your duties; wouldn't it? A. I have seen many of them shown to me.

Q. Certainly. That is what I wanted to bring out. A. Yes.

Q. I want your best testimony on that. Now, when this four-way suit came out, was the delivery of it, the time of the delivery of it important? A. Yes.

Q. If you didn't get it when ordered, would you take it? A. It depended on how long after the date of delivery was specified on the order.

Q. Well, the ready-to-wear market is a quickly changing
4385 market in ladies' dresses; isn't it? A. Yes.

Q. In other words, if you don't get things in timely, generally, not particularly, you don't want them? You want them when you can sell them; isn't that so? A. That is right.

Q. This four-way suit had a particular vogue or demand for it during the month of January, 1936, isn't that so? A. That is right.

Q. Now, if Lipman Brothers offered to deliver that suit to you at a date subsequent to the time that your order called for delivery, would that be good delivery under the orders? A. It depended upon the particular garment and the buyer's judgment whether that could be sold at the time they specified delivery for it.

Q. Well, now, as a matter of fact, did not Lipman
4386 Brothers deliver all of the four-way suits that you ordered? A. They delivered those on order prior to our red carding.

Q. Well, let us see. These orders—did you place them subsequent to the red carding or before? A. We could not place any orders subsequent to our red carding.

Q. So, as a matter of fact, Lipman Brothers did deliver all of the suits that you had ordered? A. That is right.

Mr. Weisman: May I have Exhibit No.—it is right here.

By Mr. Weisman.

Q. Now, you identified an exhibit, namely, No. 401, Commission's Exhibit 401, which referred to Lipman Brothers; is that so? A. May I see it, please?

Q. Yes. I hand it to you now. Is that the one? A. Yes.

Q. Now, this refers to a number of garments particularly about seventy-one garments, I believe it is 8, 16, 22, and 18; as a matter of fact, when you testified yesterday did you intend to give the impression that Lipman 4388
Brothers refused to deliver any of those garments? A. I do not believe I did.

Q. As a matter of fact, did not Lipman Brothers deliver every one of the garments referred to on that exhibit?

Mr. Haycraft: That is what the witness testified on his previous examination.

Mr. Weisman: I object to this constant interjection on the part of Commission's counsel. I believe it is highly improper.

Examiner Bennett: Do you want to check the record in that regard?

Mr. Weisman: No. I will get it from the witness now. I believe it will be more readily obtained in that manner. 4389

By Mr. Weisman.

Q. As a matter of fact, did not Lipman Brothers deliver every one of the garments referred to in Commission's Exhibit No. 401? A. I did say that yesterday.

Q. Are you sure you told us that yestrday? A. I am.

Q. Well, let us see whether you did or you did not.

(Mr. Taylor picked up the exhibit from the desk.)

Mr. Weisman: Mr. Taylor, may I have the exhibits here that you have just taken away? I want to use it in interrogating the witness.

Mr. Taylor: Yes. Here it is (handing the document to counsel).

Mr. Weisman: Well, I do not seem to be able to find the place in the testimony right now. In order to save time I will continue with the examination.

By Mr. Weisman.

Q. Irrespective of that, there is no doubt, is there, that
4391 as to each and every garment shown on Commission's Exhibit 401, Lipman Brothers did deliver them and you did receive them? A. That is right.

Q. How many numbers of an average garment do you carry in stock in Department No. 350? A. I do not quite get the question. I would like for you to read that, if you please.

Mr. Weisman: I request that the reporter read the question.

Examiner Bennett: You may read it.

Q. (Question read.) A. You mean by that, single pieces of the garment?

Q. Yes. A. That depends upon the time of the year and
4392 the type of garment.

Q. Take the month of January. A. What type of garment or dress, a daytime dress, an evening dress, a wedding gown, or what?

Q. Let us say a four-way suit. You knew what I was getting at, did you not? A. Right. That would be based on the experience we have had in the previous years with that particular type of garment.

Q. Well, now, let us see. Did you have any experience in purchasing this four-way suit? A. I, personally, did not, but the buyer did have experience in the purchasing of four-way suits, the buyer in that department.

Q. Well, now, some of this merchandise was brought in in February, of these four-way suits? A. I do not know what they were.

Q. What do you mean you do not know what they were? A. I do not know whether they were brought in in January or February.

Q. Look at Commission's Exhibit 401 and see if that will refresh your recollection. A. It does not have any statement here as to the receipt of the merchandise. It 4394
states the date the order was placed and the date of delivery.

Q. When the date of delivery is fixed, what is your experience; are they delivered generally within a reasonable time? A. Yes, generally.

Q. So that if the date of delivery is fixed as January 31, that will ordinarily mean that the merchandise will be delivered either on January 31 or within four or five days thereafter; is that so? A. It could be sooner.

Q. Is it your statement that these were delivered sooner? A. It is not my statement. I am not certain as to the date of the receipt of the merchandise.

Q. If you got these pieces in about January 1, you do not want us to believe—January 31, you do not want us to 4395
believe they moved out the same day that they got in, do you? A. I did not say that.

Q. So, you must have had them in your place of business around February 1? A. Some suits were in stock around February 1; the date they were received from the manufacturer, however, I do not know.

Q. What I want to know is, in the conduct of this business, what is the average number of a particular type of garment that you generally carry in stock? A. The gar-

ment generally stocked, that type of garment, I would say that the average for that department might be about six to eight pieces.

Q. Six to eight pieces? A. Yes, sir.

Q. Suppose you had more than six to eight pieces, would you deem yourself overstocked? A. Not necessarily.

Q. I know all about "not necessarily." I want generally. A. What?

Q. I want generally. A. It depended upon the demand at the time for that particular type of dress.

Q. You have a great recollection about this particular four-way suit, do you? A. Yes.

4397 Q. How many of those do you think you ought to carry in stock? A. It depended upon the selling activities of that number.

Q. Did that particular number have a great selling activity? A. I should think that if it were re-ordered——

Q. No, no, no, no. Did that number have a great selling activity? A. Yes. It did.

Q. Now, bearing in mind the selling activity that that number had, the popularity that you ascribed to it, what is your opinion of the number of pieces that you normally ought to have in stock, or should have in stock? A. Well, that could vary.

Q. We all know it could vary. Anything can vary, almost. We want your opinion as to the number that you

4398 normally should, or ought to have in stock, with all of your knowledge as you testified to concerning this particular garment both on your direct examination and upon your cross-examination. A. If I had a fast selling book to determine that, on the experience of selling, I could state the figure, but I am not certain and I cannot state as to that particular garment in the absence of that fast selling book.

Q. In other words, you said, and you now state, as division merchandise manager of this department, Depart-

ment No. 350, that, notwithstanding the fact that you testified it was a fast selling number, that it had some popularity, you do not at this time know, or will not say, as to the number of pieces you should have in stock normally? A. I have stated the facts that I do know.

Q. You do not know? A. I have stated the facts that I do know.

Q. I want to know whether or not you know what the average amount of pieces you ought to have in stock of a fast selling popular number——

Mr. Haycraft: I object.

A. There is no determinative figure. 4400

By Mr. Weisman.

Q. What is the best opinion you have as to that? A. I would not want—I will not give you an opinion on that.

Q. Oh, you will not? A. No.

Examiner Bennett: The objection is overruled. The witness should wait until the Examiner has ruled.

Mr. Weisman: I think so myself, your Honor.

By Mr. Weisman.

Q. Do you not, in the practice of your business as divisional merchandise manager of the 350 Department, take charge of the merchandising of this department? A. I do, yes. 4401

Q. As part of the merchandising of the department, is it a part of your duties to see if you are not overstocked with a particular number? A. Yes.

Q. In order to see if you are not overstocked do you not have to know what is the fair and usual and normal stock for that number? A. Yes.

Q. I am asking you with regard to such a number as that, what was the fair and normal stock that you should have on hand? A. Yes, you are asking me a general question, now.

Q. Not a general question, but as to this particular item. A. I cannot answer as to that particular item. You are asking me generally.

Q. Can you answer as to any particular garment? A. I would have to know the selling activities of that number to determine the number——

Q. (Interposing) And do you——

4403 Mr. Haycraft (interposing): I object to counsel interrupting the witness before he has completed his answer.

A. —number to re-order——

Mr. Haycraft: I insist that the witness be allowed to answer the question.

Mr. Weisman: I did not think I had interrupted him. I have no desire to do so.

Examiner Bennett: Go ahead.

A. —number to re-order or the number that should be on hand and in stock.

By Mr. Weisman.

4404 Q. Yesterday, on your direct examination, both in answer to questions propounded to you by Mr. Haycraft, counsel for the Commission, and in answer to some questions propounded to you by the Judge in charge of the proceedings, didn't you state that you knew of the selling activity of this four-way suit? A. I said I knew of the selling activity according to the orders placed.

Q. All right. Now, with the knowledge of that selling activity, with your knowledge of its popularity, what I

want to know from you is, what, in your present opinion, is the normal amount of garments of that particular type that you would regularly carry in stock in the operation of this department? A. I couldn't answer that question.

Q. What is that? A. I couldn't answer that question.

Q. You mean, you can't answer it because you don't know what the proper answer is? A. No, because I have nothing to guide me by.

Q. But you have to be guided by your statement made yesterday that you knew it was a popular and fair selling number? A. Yes, that is the statement I made.

Q. Now, in view of the fact that you knew about this being a popular and fast selling number, could you tell 4406
us what is the fair number of items or pieces of a popular or fast-selling number that you carry in stock? A. I couldn't tell you that.

Q. All right. Have you any idea of the comparative volume of sales as between Departments 331 and 350? A. I am sorry. May I have that question?

Q. (Question read.) A. What do you mean by comparative sales?

Q. Well, do you sell more in 350 than you do in 331, or do they run about the same, or do they run less? A. 350, to my recollection, is a little less than 331.

Q. What is that? A. Is a little less than 331.

Q. When you say a little less, what do you mean by a little less? A. I don't know the exact figure.

Q. Why don't you say a great deal less? A. Because I 4407
know it is a little less.

Q. Well, the testimony that you have given, or that is in the record, is that the approximate amount of business averaged, if the extensions made are correct, was $15,000 per month in Department 331 for the period February 1, 1936, to June 30. Now, if that is so, when you say a little less in 350, would you say it is $14,000 a month? A. I wouldn't say.

Q. What do you mean by a little? How little or how much? A. I don't recall.

Q. Do you mean that—I don't care whether you recall it. I want to get your best opinion as a manager. A. I won't give you my best opinion.

Mr. Haycraft: I object.

By Mr. Weisman.

Q. What?

Mr. Haycraft: I object to opinions, Mr. Examiner.

4409

By Mr. Weisman.

Q. Do you mean to say that with both of these——

Mr. Haycraft: I ask for a ruling on that objection.

Examiner Bennett: Well, he isn't giving his opinion. He said he wouldn't.

By Mr. Weisman.

Q. Do you mean to say that as manager of both of these departments, with both of them under your direct supervision and control, you cannot give us any opinion as to the comparative volume of sales between those two departments? A. I have given you my opinion.

4410

Q. What is that? A. A little less.

Q. Well, now, when you say a little less, you mean about $500 less per month? A. I don't know how much in dollars or thousands or any other figure.

Q. I see. By the way, can you give me any idea of your turnover in your various departments, 331? A. I have seen the figures, but I don't recall them.

Q. Well, let's see. When you merchandise a department, part of your duty as merchandising manager is to see that your stock turns-over? A. That is right.

Q. By turnover of stock we mean that if you get in a certain number of thousands of dollars per month, that you have got to move that out within a certain reasonable time? A. (Witness nods head affirmatively.)

Q. Is that not so? A. That is correct.

Q. Now, as merchandising manager of your various departments, it is part of your duty, is it not, to watch your turnover; isn't that so? A. Yes.

Q. Because lack of turnover results in mark-downs; isn't that so? A. That is right. 4412

Q. In other words, if a garment comes in on the first of the month, and it isn't sold within a certain period thereafter, then you take a mark-down on it in an effort to move it out; isn't that so? A. Depends upon the method the store uses to operate.

Q. I don't mean—I mean your store. A. Well, any particular time—I refuse to state. I don't think that is a method of operation—that operation could vary at different times of the year. You mentioned a specific time.

Q. I didn't mention any specific time. A. You did say a month.

Q. Well, within any period of time. A. There is a determinative figure.

Q. What is that determinative figure? A. As to the 4413
particular types.

Q. Let us suggest the Department 350. In the Department 350 what is your turn-over? A. The actual turnover we get, I do not remember.

Q. What is your best recollection? A. I wouldn't hazard a guess.

Q. You mean to say that as merchandising manager you do not know the turnover in this department? A. That is right, as it is to-day, I do not know it.

Q. Do you know as it was any time? A. I do not remember it.

Q. Well, did you ever know it? A. I have seen the figures, yes.

Q. I don't care about the exact figures. You are merchandising this department and I want to know from you what is your opinion as to its turnover.

Mr. Haycraft: I object to the opinion.

Mr. Weisman: He told me he can't give me the figures. Now, I am entitled to his opinion.

Examiner Bennett: He is entitled to the best recollection, if he has any. You haven't laid any
4415 foundation for an opinion. I will sustain the objection.

Mr. Weisman: I am now going to try to make a foundation for an opinion.

By Mr. Weisman.

Q. In the course of the performance of your duty as merchandise manager, you are in charge of the turnover of this department; isn't that so? A. Yes, sir.

Q. And you are responsible to see that your turnover is such that it will be commensurate with profit earning; isn't that so? A. I don't quite understand that question. I am sorry.

Q. Perhaps you don't. I will try it in a more simple
4416 fashion. A. Thank you.

Q. To some degree the profits of your department is dependent upon your ability to turn over your stock? A. That is one factor, yes.

Q. And in the performance of your duties, you do keep track and record in some fashion of the turnover of this department? A. Those figures are submitted to us.

Q. And you constantly see them from time to time as they are submitted? A. From time to time; yes, sir.

Q. When, in your opinion, there isn't sufficient speed in the turnover, you examine the facts with regard to that lack of speed, don't you? A. They are investigated; yes, sir.

Q. And they are investigated under your supervision and direction? A. That is right.

Q. And the reasons are brought to you? A. That is right.

Q. And it is part of your duty to seek to obviate or dissipate or remove the reasons which tend to slow up the turnover? A. That is correct.

Q. You have been engaged in this position since February 1, 1936? A. That is right. 4418

Q. Now, basing your answer upon the experience that you have gathered and just testified, will you tell us what is your best opinion as to the turnover in Department 350?

By Mr. Weisman.

Q. The Court has directed you to give us your best opinion. A. I have no opinion as the best opinion.

Q. You mean you haven't any opinion? A. I don't remember the turnover.

Q. I didn't ask you whether you remembered. I asked you what your best opinion is.

By Mr. Weisman.

Q. Now, in the light of your experience as you have testified to, and in the light of the performance of your duties, have you any opinion as to what the turnover in this department is? 4419

The Witness: May I hear that question again?

(Question read.)

A. I attested that I saw fit——

Q. No. That calls for an answer "yes" or "no." Have you any opinion? A. No.

Q. Now, let me ask you this question: In the light of your experience, as testified, have you any opinion as to what the turnover in this department 350 should normally be? A. Your turnover——

Q. No. Have you an opinion as to what it should normally be?

Examiner Bennett: Have you or haven't you an opinion?

The Witness: I haven't.

4421 *By Mr. Weisman.*

Q. What? A. I haven't.

Q. You haven't any opinion? A. No.

Q. Will you please tell us, then, how you can come to a conclusion with regard to this department as to whether the turnover is sufficient or speedy to make a profit when you don't know what the normal turnover should be? A. I can. That figure is a comparison figure using generally the figure of the year before.

Q. In other words— A. It is a matter of experience.

Q. Your total ability as merchandise manager is that your turnover in this department should be at least as much as the year before? A. If the operation has been good, yes.

4422 Q. And if it isn't good, and if it isn't as much as the year before, then the operation is bad? A. I would consider it such, yes.

Q. Tell me what was your turnover in the Department 350 during the five months' period in 1936 as compared to the five months' period we have before referred to in 1935? A. I do not remember it.

Q. Did you ever know it? A. I have seen it; yes, sir.

Q. I don't ask you whether you have seen it. I asked you if you ever knew it? A. I knew it.

Q. But you have completely forgotten it? A. Like I have other figures.

Q. Lots of other figures you have completely forgotten? A. That is right. I review figures constantly.

Q. I see. When you say you review them, you mean you look at them? A. That is right.

Q. After you see them they make no impression in your mind? A. Some do, others don't.

Q. But the matter of the turnover is some that don't? A. It is a matter that must be applied at the time that they are reviewed.

Q. And then immediately forgotten? A. I don't know as it does any good to remember it. 4424

Q. Well, you and I may differ on that. A. Well, that is my opinion.

Q. What I want to know is, whether you remember it? A. I do not remember them.

Q. Let me ask you this: Have you an opinion of the amount of stock that a department ought to normally carry in relation to the sale, is volume of sales? A. There is a relationship, yes.

Q. No. I didn't ask you if there is a relationship. I want to ask you if you have an opinion on such relationship? A. Depending upon the department, the time of the year. I have an opinion as to that, yes.

Q. What is your opinion as to the relation between the volume of sales and the stock on hand in Department 350 for the month of February, 1936? A. I don't remember. 4425

Q. I didn't ask you whether you remembered. I asked you for your opinion as to what the ratio ought to be. This doesn't call for figures, Mr. Chance. A. It does call for figures.

Q. Do you think that the stock on hand of Department 350 in February, 1936, should have been ten times the amount of the monthly sales? A. That's a matter of store policy, and a matter of——

Q. What was your store policy in February, 1936? A. I do not remember it.

Q. Well, what was your store policy in March, 1936? A. I don't know. I don't remember.

Q. What was your store policy in April, 1936? A. I do not remember.

Q. What was your store policy in May, 1936? A. I don't remember.

Q. What was your store policy in June, 1936? A. Referring to the matter of turnover; is that correct in all of these questions you are asking?

Q. I am asking you questions; you are not asking me.

4427 A. Well, I want to be enlightened.

Q. If you don't remember the question I will repeat it for you. A. Please.

Mr. Weisman: Now, may we have the question, Mr. Reporter?

(Question read as follows: "Q. Do you think that the stock on hand of Department 350 in February, 1936, should have been ten times the amount of the monthly sales? A. That's a matter of store policy, and a matter of"——)

Mr. Haycraft: I submit that the witness should have been permitted to answer the question. He said "It is a matter of store policy," and something else.

4428 Mr. Weisman: You can bring that in on redirect.

Mr. Haycraft: I think the witness should be allowed to complete his answer.

Mr. Weisman: I don't care what you think. Make your objections and be seated.

Examiner Bennett: Well, do you have anything to add to that?

The Witness: I did have, sir, and the condition of sales at the time or demand.

By Mr. Weisman.

Q. Well, let's see.

Examiner Bennett: Now, can you answer the question which has been asked of you?

By Mr. Weisman.

Q. Now, will you answer the last question? A. May I have the last question, please?

(Question read.)

A. I do not remember.

Q. You remember the month of the year we are now in? A. Yes. 4430

Q. What month are we in? A. August.

Q. What was the month immediately preceding this? A. July.

Q. Now, what was your policy in July with regard to the amount of stock that you ought to carry on hand with regard to your volume of sales? A. I would have to review figures in order to determine that question.

Q. You didn't have any policy? A. There is a policy that——

Q. What was the policy? A. Your policy is always compared by your stock on hand in your sales, your ratio.

Q. Well, what was that ratio? A. I do not remember it.

Q. What is the present ratio? A. I do not remember it.

Q. Was February a particularly good month in Department 350? A. In comparison to what? 4431

Q. In comparison to January? A. My recollection—if my recollections are correct, it is about the same total.

Q. Did you ever hear of a strike in the wholesale dress business, or a threatened strike in the month of February? A. There was some discussion, quite a lot of news in the trade journals concerning it.

Q. Did that in any way curtail your stock on hand? A. I have not been notified by the buyers, or I don't remember.

Q. What? A. I do not remember of any particular incident which would refer to an abnormal shortage of merchandise.

Q. Was there a shortage of merchandise abnormal, or otherwise? A. If my recollection is right, the strike that was threatened at the time we are discussing, referred to the cheaper market rather than to the higher-priced market.

Q. Now, will you listen to my question and answer it again or try again to answer it? A. May I have the question again, please?

4433

Examiner Bennett: Yes.

Mr. Weisman: I should like to have it read.

(Question read.)

The Witness: Do you refer to the No. 350 department?

By Mr. Weisman.

Q. Yes. A. None that I know of.

Q. What was the total amount of business that you did in January in Department No. 350? A. I do not recall. What month and what year?

Q. That was for January, 1936, that we are talking about. A. I do not recall.

4434 Q. What did you do in that department in February? A. I do not recall the figures.

Q. What did you do in March? A. I do not recall that.

Q. What did you do in April? A. I do not recall.

Q. Are not February and March and April better months than January in the ready-to-wear business? A. Yes. You have the Easter season to influence your February and March figures.

Q. When did Easter come in this year, 1936? A. I believe April 12.

Q. There was no Easter in February, was there? A. No.

Q. There was no Easter in March? A. No.

Q. Would you say that February and March were better months than January? A. I think by comparison there is a difference, if I recall correctly.

Q. Do you mean a difference in favor of February and of March? A. I believe so.

Q. A difference in favor of January? A. A difference in favor of February, I believe.

Q. What was that difference? A. I do not know.

Q. I show you Commission's Exhibit No. 415. When is the first time you saw that? One moment. I withdraw 4436
that question. First, you did see that before that to-day, did you? A. What is that?

Q. You did see that Commission's Exhibit 415 before to-day, did you? A. Yes.

Q. You did see it before yesterday, did you? A. I did.

Q. When was the first time before yesterday that you saw it? A. It may have been a week.

Q. Who showed it to you? A. It was sent to me in the usual procedure of the store correspondence from our statistical department.

Q. In other words, your statistical department sent this ahead to you? A. Yes.

Q. Was that the first you heard of it? A. Of this set of figures, yes.

Q. Who, from the statistical department, sent it to you? 4437
A. I do not know who sent it to me from the statistical department.

Q. Was it accompanied by any letter? A. No. This was drawn up at my direction.

Q. Whom did you give the direction to? A. Somebody, someone answered the telephone in our statistical department and I directed that this be made up.

Q. When did you first give the direction? A. That may have been the day prior to my receiving it.

Q. When did you receive it? A. I do not know the exact date.

Q. Well, what is your best recollection as to that? A. Well, it could be almost any day last week.

Q. Would—what did you call up the statistical department and ask them to prepare for you? A. I asked them to prepare these figures because I wanted to see them.

Q. What figures did you ask them to prepare? A. I asked them to prepare the figures for these departments which are on here.

Q. What departments are on there? A. The departments designated on there. May I see that again, please?

4439 Q. Yes.

(The document was shown to the witness.)

A. These departments buying from the Guild, namely, 331, 350, 338, 358, 371 and 373.

Q. Did you tell them what departments to include in under the category of departments buying from the Guild? A. I did.

Q. What did you say? A. I told them to include those departments that should go in under that heading.

Q. Did you tell them to leave out any department? A. No, I told them to give me the total figures for that division and give me the totals for it.

Q. Did you tell them to leave out Department 338? A. No, that is included.

4440 Q. What department did you tell them to leave out, if any? A. In each particular figure?

Q. No. In departments buying from the Guild. A. I asked them to include No. 491, 492, 493, 382, 385, in the next figure which is denominated "Departments not buying from the Guild."

Q. What did you do about 371 and 373? A. They are included in the first figures mentioned.

Q. In the departments buying from the Guild? A. That is right, sir.

Q. By the way, when you received this was this in this fashion or shape? A. Yes, sir.

Q. Did it strike you as strange that your statistical department should send along a piece of paper of that kind here; is that the customary procedure in your statistical department? A. It is not customary, but I have received papers from them which were similar. It may be some information was on there which pertained to some other department or departments, and it may have been that they just cut it off. It may have been simply because the space was not used and they cut it off. I am not certain 4442
just why they cut this off.

Q. In the departments buying from the Guild, did you include Department No. 491? A. No, sir.

Q. Did you include Department No. 382? A. I did not.

Q. Did you include Department No. 352? A. 352?

Q. Yes. A. There is no such department.

Q. There is no such department? A. No.

Q. On page 2157 of the record there appears this question: "Q. Why did you not include No. 352? A. Because the total sum of purchases from the Guild in that department was very insignificant."

Mr. Haycraft: That is apparently a typographical error. That should have been 382.

The Witness: Oh, 382. What was your question 4443
now?

By Mr. Weisman.

Q. That should be 382? A. 382.

Q. So, we have it that you did not include in the Guild buying departments the 382 department? A. That is correct.

Q. What is the No. 382 department? A. 382 is the sportswear department.

Q. Did you not buy—did you not formerly do business in the sportswear department with Guild houses? A. Very little.

Q. No. I did not ask you whether it was very little or very much, because I do not know what you mean by "little," so I certainly would not know what you mean by "very little" or "very much." I asked you if you formerly did business with Guild houses in Department 382? A. Yes. The record shows that we have done business.

Q. That is why—then, why did you not throw in the department buying from Guild this Department 382 along with the other departments? A. Not for any specific rea-
4445 son, just I did not think I wanted to. I decided which ones I would put in.

Q. Did you not think that if you were going to be fair about this thing that you had better put it in? A. I did not think of that.

Q. Then, did you not think, and this is what really happened, is it not, that you could make out a little better case against the Guild if you left that department out? A. I do not think so.

Q. You are not certain? A. I am fairly sure.

Q. Did you not try a little bit to make it appear that because you could not get Guild merchandise you had suffered somewhat? A. Not particularly. I included——

Q. "Not particularly," but to some degree? A. I included one department that probably has not bought any
4446 merchandise from the Guild in the last year; namely, 373, that figure is included in the last year. There is no discrimination; I simply tried to keep the type of garments rather than to look for any particular increase or decrease or favorable showing or unfavorable showing.

Q. Now, I notice that your department which did business with the Guild did, as a whole—speaking of the departments as a whole— A. What is that?

Q. Now, I notice that your departments which did business with the Guild did, as a whole, show an increase of 13.3 per cent. in the amount of business that they did over the total amount of business that they did for the same months in 1935.

Mr. Haycraft: What month?
Mr. Weisman: March.
The Witness: Guild houses?
Mr. Weisman: Yes.
The Witness: If that is true, that is correct.

Q. Well, in view of the fact that your business went ahead 13.3 per cent. over the year before, do you still think in March, 1936, that buyers had had any difficulty in replacing Guild merchandise? A. Yes, I do. 4448

By Mr. Weisman.

Q. Now, I notice that although you testified that Department No. 350 receded in its sales in February, 1936, as against 1935 to the extent of 19.52 per cent., that the total recession in all departments was only 8.5 per cent. That is so, is it? A. I testified that that department was most affected.

Q. Yes? A. Yes.

Q. Notwithstanding the fact that you testified that department was most affected, the total of all departments, you stated, in all, only took in, in February, 8.5 per cent., or went back in February 8.5 per cent.? A. What is that? 4449

Q. Notwithstanding the fact that you testified that department was most affected, the total of all departments, you stated only went back in February 8.5 per cent.? A. If it is on that sheet of paper I think that is so. Yes.

Q. That is also your statement, that notwithstanding the fact that if there were any shortage in merchandise in the month of February because of a threatened strike, it

would affect the lower-priced departments, rather than the Department No. 350? A. By my "lower-priced departments" I had reference to $4.75 cost merchandise.

Q. $4.75 cost? A. Yes.

Q. $4.75—what do you mean that sold for? A. $6.95 retail.

Q. What else? A. That is all.

Q. Flat? A. Yes.

Q. Now, I also notice that in April your total decrease over April, 1935, was only 1.9. In other words, that in April, 1935, the total business done in all departments dealing with the Guild was eight—I had better be sure
4451 about this (showing document to the witness) $83,800? A. That is the 1935 figure?

Q. Yes. A. Yes.

Q. Was $83,500——

(There was a discussion off the record.)

Q. Was $83,800—well, in April, 1936——

Examiner Bennett: I think you had better connect that up a little better there so the witness can get a clear picture of it, Mr. Weisman.

Mr. Weisman: I shall be glad to do so, your Honor.

By Mr. Weisman.

4452 Q. Now, I also notice that in April your total decrease over April, 1935, was 1.9 per cent. In other words, that in April, 1935, the total business done in all departments dealing with Guild merchandise was $83,800, while in April, 1936, it was $82,200. A. A decrease.

Q. What? A. A decrease.

Q. A decrease of 1.9 per cent. Do you think that shows some evidence of the fact that your buyers had overcome this "difficulty" that you told us about on your direct examination? A. No; I do not believe it does.

Q. Now, I notice that in May, 1935, your total sales in the Guild departments was $75,300, while in 1936 your total sales in those departments was $77,700; in other words, an increase of over 3 per cent. Would that seem evident to you that your buyers had overcome this "difficulty" that you told us about? A. No, sir.

Q. Now, I notice that in June, 1935, your total dress sales in the department affected by the Guild was $88,200, while in June, 1936, this mounted to $91,700, an increase of 4 per cent.; would that seem some evidence to you that your buyers had overcome this "great difficulty" that you told us about? A. No, sir.

Q. It would not? A. No, sir. 4454

Q. Now, I notice that the total business done in all dress departments for the five months of February, 1936, through June, 1936, was $934,400; is that so? A. May I see it?

Q. You may (indicating). A. That is right.

Q. Now, yesterday, or the day before, Mr. Tily testified, or stated to us, that he believed the total volume in the dress business was approximately $3,000,000, or approximately three times that. Were you present when he so testified? A. I believe I heard some figure like that.

Q. In view of that testimony as given by Mr. Tily, your superior, would you not say that the last six months of the year are much better than the first six months of the year?

4455

Mr. Haycraft: That is objected to as comparing Mr. Tily's testimony.

Mr. Weisman: I am not comparing it. I want to refresh his recollection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. Mr. Tily also stated that last year they did approximately $3,600,000; do you remember that? A. I do not, exactly.

Q. Now, I notice that in the first five months of 1935—that is, commencing with February—the total volume done in all departments, all dress departments, was $850,400—

Mr. Haycraft (interposing): I object to that. I object to that.

Mr. Weisman: You might be courteous enough to let me finish with my question before you interrupt in that very discourteous way.

4457

Examiner Bennett: Had you completed your question?

Mr. Weisman: No, your Honor.

Examiner Bennett: Proceed to complete the question.

By Mr. Weisman:

Q. Well—I have forgotten what I said now. He simply interrupts me for that purpose, to throw me off on my thought. I think it is certainly discourteous in the extreme.

Examiner Bennett: The question may be read, so far as it has been given.

4458

(Question read.)

By Mr. Weisman:

Q. —now, is it your opinion that the total volume done in 1935 was $3,000,000?

Mr. Haycraft: I object to that on the further ground, or, the further objection is, Mr. Examiner, that the record shows in this case that there should be no comparison made because this department

does not include all of the dresses sold by the store of Strawbridge & Clothier. The testimony of Mr. Tily is that there is a basement store, which did not come within these figures shown on this exhibit.

Mr. Weisman: Let's see.

Examiner Bennett: Well, it doesn't make any difference whether there was or not. This witness is not responsible for what Mr. Tily testified to.

Mr. Weisman: I am not making him responsible.

Examiner Bennett: I don't see why——

Mr. Weisman: I want to get his opinion.

Mr. Haycraft: I have an additional objection. 4460

Examiner Bennett: I think that is a matter for argument when you come to that phase of it. I don't see why we should clutter up the record with it now.

By Mr. Weisman.

Q. Did you tell them to leave the basement out of these non-Guild resources? A. I have no access to other figures but those of the departments that I am directly responsible for.

Q. Do these figures "No Guild Resource"—have you excluded the sale of dresses in the basement? A. They are departments that I have supervision over and which I have enumerated to you.

4461

Q. Oh. Well, you know we don't know as much about these code numbers as you do, nor does the Commission. I want to know from you whether or not when these figures were made up under the heading "No Guild Resource" you left out the basement figures.

Mr. Haycraft: I object to that question, Mr. Examiner.

Mr. Weisman: You have offered this in evidence. I want to know.

Mr. Haycraft: The record shows——

Mr. Weisman: What this contains.

Mr. Haycraft: The record shows very clearly what it contains and the basement was not mentioned. It has nothing to do with this exhibit, and nothing to do with the testimony of this exhibit.

Mr. Weisman: Now I see the point of your running in numbers instead of names.

Examiner Bennett: Just a moment.

Mr. Haycraft: There is nothing mysterious about it. The witness testified as to what his departments were and what these figures referred to. There is no exclusion.

4463

Examiner Bennett: Just a moment. I am going to ask a few questions to clear it up in my own mind. Are the departments covered by that statement in the upper store or in the basement?

The Witness: In the upper store, sir.

Examiner Bennett: Are there any of the departments covered by that statement in the basement?

The Witness: There are not. My testimony is about my departments that I have charge over.

Examiner Bennett: You have given, as I understand it, the departments over which you have supervision?

The Witness: That is right, sir.

Examiner Bennett: And only those?

4464

The Witness: Only those in my testimony throughout.

Examiner Bennett: I see. Do you know, as a matter of fact, whether the basement stores get, or the basement store goes to Guild members for its supplies, for its source of supply?

The Witness: No, Mr. Taylor is in a better position to answer that question.

Examiner Bennett: You wouldn't know?

The Witness: I wouldn't know.

Examiner Bennett: All right. That clears it up with me.

Mr. Haycraft: There is an objection pending.

Examiner Bennett: Well, I don't know just what the force of it is. If you will just indicate what it is.

(The record was read.)

Examiner Bennett: That disposes of Mr. Haycraft's objection. I overrule it, as far as that is concerned, because the matter has been disposed of, as far as I can see.

Mr. Weisman: All right, Judge. 4466

By Mr. Weisman.

Q. What priced merchandise do you handle in Department 371? A. Dresses retailing at $3.95 and up.

Q. Was that included as a Guild— A. Yes, sir.

Q. —resource Now, what price do you pay for dresses that retail at $3.95 and up? A. Those dresses are purchased in a $2.50 or $2.75 cost market.

Q. Have you any figures which would show us how Department 371 did during the five months of 1936? A. Simply a comparison by price line which I submitted yesterday during the testimony.

Examiner Bennett: We will take a recess of ten minutes. 4467

(A short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Weisman.

Q. Now, I think just as we were recessing you told us that in Department 371 your retail price was $6.95; is that correct? A. I don't believe I did.

Q. Didn't you tell us that your price started at $4.75 wholesale? A. I did not.

Q. What did you want to tell us? A. I did tell you what I wanted to tell you.

Q. Well, tell us again. A. I told you they started at $3.95 retail.

Q. At $3.95 retail? And what is your next price? A. I don't know what the next price is. A list of prices which occurred in that department, experience in selling for five comparative months has been submitted yesterday.

Q. Well, let me see.

Mr. Weisman: Will you read my last few questions and answers?

(The record was read.)

4469 The Witness: Perhaps I can help you, Judge.

By Mr. Weisman.

Q. Sure. Go ahead. A. It was pertaining to another department that you asked me.

Examiner Bennett: That is what I thought.

By Mr. Weisman.

Q. What was the other departments? A. The 491 department, economy dress department.

Q. You say that I asked you about 491?

Examiner Bennett: It is my recollection that you asked him about a different department which

4470 had a wholesale price of $4.75, or something like that.

The Witness: That is right, sir.

By Mr. Weisman.

Q. Did you give us a summary of your Department 491? A. I did not.

Q. Why didn't you give us a summary of that department? A. I gave you the summary of the department that we were buying from Guild resources only.

Q. Well, Department 471 buys from the Guild resources; doesn't it? A. 371?

Q. Yes. A. Yes.

Q. Now, do you know of any Guild houses who sold merchandise during the five months' period in 1936 which retail in your store at $3.95? A. I do not.

Q. Do you know of any Guild houses that sold merchandise during that period which retailed in your store at $5.95? A. I do not.

Q. Do you know of any Guild houses which sold you any merchandise during that same five months' period which retailed at $7.95? A. No.

Q. Do you know of any Guild houses that sold you any 4472
merchandise during that same five months' period which retailed at $8.95? A. No.

Q. Do you know of any Guild houses that ever sold you merchandise during the five months' period in 1935 which retailed in your store at $3.95? A. I wouldn't know that, sir.

Q. Well, do you know of any Guild houses which during that five months' period in 1935 sold merchandise which retailed at $5.95? A. I do not know of any houses or Guild houses prior to February 1st, 1936, that is——

Q. Will you tell me what was the purpose of including in Commission's Exhibit No. 414 price lines at $3.95, $5.95, $7.95 and $8.95? A. Yes, to show a true picture in order to make it clear that there wasn't any particular price discriminated. They are the price lines carried in that de- 4473
partment and that is our selling experience.

Q. Well, let's see. I see from here that your $7.95 price line in February, 1935, you sold 139 garments, while in February, 1936, you sold almost three times as many garments, 383; is that correct? A. May I see it, please?

(Commission's Exhibit No. 414 was handed to the witness.)

By Mr. Weisman.

Q. Did you see that? A. Yes, I do.

Q. Is that true? A. That is true.

Q. I also see that in March, 1935, at that price you sold 255 garments, but in March, 1936, you sold 388 garments, an increase of almost 50 per cent? A. That is right.

Q. I notice that in April, 1935, in that department you sold 295 garments, while in 1936 you sold 614 garments, an increase in excess of 100 per cent. A. That is correct.

Q. I notice that in May at that price line, May, 1935, you sold 257 garments, while in May, 1936, you sold 454 gar-
4475 ments. A. That is correct.

Q. In June, 1935, you sold 435 garments, yet in 1936 you sold 672 garments. A. I have 425 garments on my sheet here.

Q. 425 for June? A. June, 1935.

Q. Yes. A. Yes. The '36 figure is still a better percentage of increase.

Q. In June, 1936, you sold 672 garments. A. Yes, sir.

Q. Now, certainly, then, you would not urge that at that price range the Guild policy has injured you one iota? A. I don't know whether that price range was purchased from the Guild resources in 1935.

Q. Whether it was purchased or not, the activities of the Guild haven't injured you; have they? A. They have
4476 injured us in other price lines.

Q. Oh. I say, at that price line. A. Our sales there are better for 1936 than 1935.

Q. Yes. Isn't that so? A. We do have other prices that we were affected in.

Q. I didn't ask you that. I said at that price range you certainly weren't affected? A. Well, we had to put our weight on that price line in order to keep up our sales.

Q. So that you weren't affected? A. In that particular price line, no.

Q. That is right. You are not afraid to answer my questions: are you? A. No, I am answering you.

Q. There may be two opinions on that. A. Possibly.

Q. You say that you were affected in your price line at $5.95 retail injuriously? A. According to the figures here, taking the total for five months, we haven't.

Q. All right. Now, let's see the price line at $12.95. In February, 1935, at $12.95 you sold seventy-two garments; is that right? A. That is right.

Q. February, 1936, you were red carded, you sold eighty-one garments? A. That is right.

Q. In March, 1935, you sold 153 garments? A. That is correct.

4478

Q. In March, 1936, there was a recession. You only sold 151 garments? A. That is right.

Q. You had a difference of two garments? A. Two garments, yes.

Q. Do you think that was a very serious thing? A. Well, that is a matter of opinion.

Q. I want your opinion. A. I haven't—I don't know how many more we would have sold had we had Guild merchandise.

Q. Do you think that was a serious recession in that month? A. Well, taking into consideration our total increase for my division, I would say it is.

Q. I see. I want to get your opinion. Now, I do notice that in April, 1935, you sold 197 garments, but in 1936 you only sold 141 garments at that price; is that correct? A. Yes, sir.

4479

Q. So you have a recession there, but I notice also that in May, 1935, you only sold 131 garments at that price. A. That is right. That is correct.

Q. Yet, in 1936, for the same month, you went up to 154 garments? A. That is correct.

Q. In June, 1935, you sold 104 garments, but in June, 1936, you increased those sales by almost 50 per cent.; isn't that so? A. That is correct.

Q. Isn't that some indicia that at that price line your buyers had been enabled to overcome this great difficulty that you told us about? A. It is conclusive that we were injured in several months there.

Q. No, that isn't what I asked you.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: It may be stricken.

By Mr. Weisman.

Q. Now——

4481 The Witness: May I have the question again, please?

Mr. Weisman: We will give it to you again. Will you please try to answer it?

The Witness: Sure.

Mr. Weisman: Will you give him the question?

(The question was read.)

Mr. Haycraft: I wish to interpose an objection, Mr. Examiner, as the question is not proper in the form it is in as it includes a statement of fact which is not in the record. The witness did not testify that the buyers in this department had to overcome great difficulty. It was in the Departments 331 and 350 to which the witness referred to in such a matter.

4482 Mr. Weisman: In view of the statement of counsel for the Commission, I will withdraw the question.

Examiner Bennett: All right.

Mr. Weisman: May we have the exhibit now, please?

The Witness: Surely.

(Commission's Exhibit 414 was handed to Mr. Weisman.)

By Mr. Weisman.

Q. You constantly, in your testimony, referred to "resources" of a particular department; what do you mean by the word "resources"—first, have you made that statement? A. I have mentioned resources from time to time.

Q. When you use the word "Resources"; what do you mean? A. I mean by that the source of supply.

Q. You mean those are sources to whom you may go to get your merchandise; is that so? A. In a general term, yes.

Q. You mean, and you merely mean, as a general term, that in the practice of your business these people whom you denominate as "resources" were some of the people 4484
from whom your buyers elected to purchase merchandise? A. In which particular line of resources are you now referring to, or to which?

Q. When you use the word "resources" in your testimony is that not what you mean? A. Yes, people from whom we may buy goods if we want to.

Q. You do not mean to give the impression, do you, that by "resources" you mean they are the only available resources? A. No. I do not.

Q. All right. I just wanted to clear that up. A. No. I do not.

Q. Now, you gave the names of some people from whom this Department No. 371 purchased merchandise; do you remember that? A. I remember reading such a list, yes. 4485

Q. In other words, you state that you read such a list into the record? A. That is correct.

Q. Now, do you know anything about the price lines of those particular names that you read? A. May I have the names, please?

Q. Well, one of them was R. K. Junior Frocks. A. I do not know the price lines of those resources.

Mr. Haycraft: Does not my stipulation cover all of that, Mr. Examiner?

Examiner Bennett: I do not know what he is getting at, yet. I thought it was broad enough.

Mr. Weisman: Suppose we discuss this off of the record—are you willing to stipulate as to all of these people——

Examiner Bennett: Off of the record until you get the thing straightened out, if you can.

(There was a discussion off the record.)

Mr. Weisman: In lieu of cross-examination in regard to the following list of people from whom this witness testified that he bought—that the department bought merchandise; to-wit: R. K. Junior Frocks, Ashley Frocks, Inc., Horowitz & Dubermann, Jane Junior Dresses, Inc., Jo-Anne Junior, Junior League Frocks, Silver Dresses, Will Steinman, Bon-Ray, Daniel Westheim, Junior Guild of Chicago, and Rose-Anna Junior, counsel for the Commission stipulates that if the witness were asked as to the price ranges at which these particular merchants and manufacturers sold their merchandise, he would answer that he was unaware thereof and that he did not know it when he gave the names yesterday, nor before, and that he would so likewise testify that he was unaware now and was unaware yesterday or before of the type of merchandise that they made.

4487

Mr. Haycraft: Is that correct?

The Witness: Yes, sir.

4488

Mr. Haycraft: Very well, the witness says it is a fact and I will so stipulate.

Examiner Bennett: The stipulation is received.

By Mr. Weisman.

Q. Do you know the volume of business that these houses did? A. No.

Q. When you testified that prior to February 1, 1936, Department No. 371 did business with these houses, how long a period did you mean to include therein? A. I meant to include only at the time of the red carding.

Q. Well, now, will you state that at the time of the red carding and you are certain that at the time of the red carding you were actually doing business with these houses? A. I can through the records——

Q. (Interposing) Wait a minute. I want you to answer my question. A. I can attest through the records to include the year 1935.

Q. Do you? A. I do.

Q. You mean at some time during the year 1935 it is 4490
your belief that your firm through its—this department did business with the names that we just enumerated? A. Yes, and up to the time of the red carding.

Q. That is for a period of thirteen months? A. Whatever that time is.

Q. During that time how many non-Guild houses did your firm or had your firm done business with through this department? A. I do not know.

Q. What is your best guess on that? A. I would not guess.

Q. What is your opinion—first, have you an opinion? A. I have no opinion.

Q. You have no opinion? A. No.

Q. Do you know in this Department No. 371 with this wide range of prices you do business with a great many 4491
other manufacturers than in Department No. 331? A. It is possible.

Q. Is it more than possible, is it not really a fact? A. I do not know whether it is or not.

Q. Have you an opinion as to whether or not it is? A. I do not have an opinion to-day.

Q. What, you do not have an opinion to-day? A. I would not have any opinion on it.

Q. Are you in charge of this department? A. Yes, sir.

Q. Would you deny that in this department you do business with at least 150 manufacturers? A. I am not taking any guess.

Q. Is that a fact? A. I do not know whether it is or not.

Q. Do you deny that it is a fact?

Mr. Haycraft: I object to any further interrogation on that point.

Mr. Weisman: I think it is rather enlightening a subject to inquire into at this time, Judge. It is certainly illuminating to see how the witness will

4493 testify on direct examination and then on cross-examination.

Examiner Bennett: It seems to me that we have been over that.

Mr. Weisman: No, not as to that department. All of these departments were introduced separately and I regret the necessity of going over them separately, but I do not want to be confronted with some later date as to "Oh, as to that department, you did not inquire."

Examiner Bennett: I will let you go on for a reasonable time. Go ahead.

By Mr. Weisman.

4494 Q. Would you give it as your opinion that Department No. 331—that in Department No. 371 you do business with at least as many firms as you do business with in Department No. 331?

Mr. Haycraft: I object. He said he had no opinion.

Examiner Bennett: Sustained on the basis of the technical defect in the question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you any opinion as to the number of firms that you do business with in Department No. 371, as compared to Department No. 331?

Mr. Haycraft: I object.

The Witness: I said I did not.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Have you any opinion as to whether or not you do business with more than the firms or less than the firms with regard to Department 371; that is, that you do with regard to Department No. 331? 4496

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I am going to let him answer it.

The Witness: I cannot answer that, Judge. I do not know.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Did you ever make up a list of the manufacturers with whom Department No. 371 did business? A. Such a list is available.

Q. Where is it available? A. In the records here, sir.

Q. Are those records open to you as divisional merchandise manager? A. Yes, sir, they are. 4497

Q. Will you to-morrow morning when you resume the witness stand, bring with you a list showing the number of manufacturers with whom you did business who were not members of the Guild, or, rather with whom Department No. 371 did business, who were not members of the Guild, for the thirteen months preceding February 1, 1936?

Mr. Haycraft: The witness will not.

A. I will not.

Mr. Haycraft: I object. I object to counsel directing the witness to do anything.

Examiner Bennett: The witness has declined.

By Mr. Weisman.

Q. Why will you not? A. I would like to include all the rest of that department, all of the resources of that department, both Guild and non-Guild for that year.

Q. Do you know that you gave us a list—you gave us
4499 a list of the Guild resources? A. At the time of being red carded. There may have been others prior to that.

Q. Let us see what you want to do. Maybe we can agree upon it. You say that you want to bring in tomorrow a list setting forth—setting forth all of the reasons—all of the manufacturers with whom you did business during the thirteen months preceding February 1, 1936?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Is that so?

Mr. Haycraft: I object. He did not say that.
4500 He said he would not.

By Mr. Weisman.

Q. You said a while ago that you were willing to do that, did you not? A. I said I will not.

Mr. Weisman: You do very nicely after Mr. Haycraft gives you the idea.

Mr. Haycraft: I resent that.

Mr. Weisman: Oh, be quiet.

By Mr. Weisman.

Q. Will you bring us a list showing the number of non-Guild manufacturers with whom you did business during the period, while you did business with Guild manufacturers, so that we may have the relative number thereof of both Guild and non-Guild manufacturers? A. I would like to refer that to my superior to-night at our conference.

Q. Who is your superior? A. Mr. Frank Smith.

Q. The gentleman who has been sitting here in the court room throughout all of this proceeding? A. Yes, sir.

Q. Will you ask him now and see if he will answer you as to what you may do?

4502

Mr. Weisman: Will you please make a note in the record that Mr. Frank Smith is now in conference with Mr. Freeman, his attorney.

By Examiner Bennett.

Q. Will you do that? A. I would prefer to confer with my superiors before I do so.

Q. You want to confer with them to-night? A. I do, sir.

Q. Do you decline to do so now? A. I decline to do so until I confer with my superiors.

Examiner Bennett: He declines to go into it at this time, but he will do so this evening.

The Witness: Yes, Judge, I will do so this evening. 4503

Mr. Weisman: I now move to strike out all the testimony appearing on page 2134 of the record with regard to Guild houses that he did business with during the thirteen months prior to February 1, 1936, in view of this refusal.

Examiner Bennett: I deny the motion.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, have you any idea, or have you an opinion as to the volume of business that was done in the five months of 1936, that we have had reference to, in this Department No. 371?

Mr. Haycraft: I object.

Examiner Bennett: You are calling for his opinion?

Mr. Weisman: I am asking him for his opinion.

Examiner Bennett: You are asking for a fact.

Mr. Weisman: I am trying to take a short-cut. He never knows the fact.

4505

Examiner Bennett: An opinion is not the proper thing to give upon a fact.

By Mr. Weisman.

Q. Do you know the volume of business done by Strawbridge & Clothier in Department No. 371 from the period February 1, 1936, to June 30, 1937? A. 1937?

Q. 1936. A. No.

Q. Have you an opinion thereon? A. I have no opinion.

Q. Now, I show you Commission's Exhibit No. 414. I ask you to take Commission's Exhibit 414 with regard to Department No. 371, and take a pencil and paper and extend the figures thereon and see whether or not upon such an extension it will not appear to you that the volume

4506 of business done during the first five months; February 1, 1936, to June 30, 1936, amounts to $67,178? A. Have you extended?

Q. Yes. A. Did you get that extension and do you assure me that is correct?

Q. Yes. A. Correct, I will take your word for it.

Q. Thank you. You also testified—now, will you tell us in that department whether or not the total volume that you did in the first five months and for the same pe-

riod in 1935, namely, the period from February 1, 1935, to June 30, 1935, was less than the amount of business that you did for the same period of time in 1936, namely, February 1, 1936 to June 30, 1936, being about the sum of $63,000? A. I am sorry. I do not get that question.

The Witness: I am sorry. I didn't get that question. May I have it?

(Question read.)

Mr. Weisman: I will reframe the question.

By Mr. Weisman.

Q. Do you know the volume of business that you did, that was done in that department in February 1, 1935, to 4508
June 30, 1935? A. I do not.

Q. Have you any opinion thereon? A. I have not.

Q. Have you any opinion whether such volume was greater or lesser than you did in that period during 1936? A. I have a recollection there was a slight gain this year over last year's figures.

Q. Thank you. Now, in this department of 371 your price range goes, I see from your Exhibit 414, to $3.95 to $65 retail; that is correct, isn't it? A. May I see the exhibit, please? Is that the one we have just referred to?

Q. Yes, that is the one we have just referred to. A. If it is on there it is correct, yes.

Q. Where the price range is from $3.95, retail, to $65, retail, what wholesale price range would you say that in- 4509
cludes? A. From $2.50 cost, possibly as high as $39.75.

Q. From $2.50 cost to what? A. To $39.75.

Q. By the way, in all of these wholesale figures, you are giving us what we call gross figures, aren't you? A. That is right.

Q. In other words, these figures are subject to either 8 or 10 per cent. discount? A. Usual discount.

Q. Yes. A. Yes.

Q. Have you any idea of the number of manufacturers engaged in manufacturing dresses in the City of New York wholesaling at the price ranges between $2.50 and $39.75? A. I do not.

Mr. Haycraft: The same objection as to the previous line of questioning.

By Mr. Weisman.

Q. Don't you know that there were approximately 3,000 manufacturers during the period of 1935 engaged in the business of selling dresses at prices, wholesale prices, varying from $2.50 to $39.75?

4511

Mr. Haycraft: That is objected to as including facts not in the record.

By Mr. Weisman.

Q. Don't you know that as a fact?

Mr. Haycraft: I object to that question.

A. I don't know.

Examiner Bennett: Just a moment.

By Mr. Weisman.

Q. What is your——

4512

Examiner Bennett: Just a moment. That is disposed of, really. He has answered.

Mr. Haycraft: Move it be stricken.

By Mr. Weisman.

Q. I show you a booklet entitled "Buyers Informant," and ask you whether you ever saw that before? A. It is the first time I saw this book.

Mr. Haycraft: Mr. Examiner, we are going over the same thing we went over this morning on these books.

Examiner Bennett: What?

Mr. Haycraft: I say, we are going over the same territory we covered this morning in respect to these books. I object to any further interrogation along that line.

By Mr. Weisman.

Q. When you said that was the first time you ever saw this book, did you mean by the word "this" the one I held in my hand? A. Yes. 4514

Q. Oh. Did you see another one? A. I may have seen books similar to that.

Q. And that was your idea of an honest answer to me, when I asked you if you ever saw this book before? A. Why, you asked whether I saw that book and I answered you.

Q. Oh, I see. Well, now, let me ask you: Did you ever see a book like this before, or— A. I have seen certain books, Fairchild's publications and others pertaining to the market.

Q. Have you seen another issue of this (indicating)? A. I wouldn't say I have. It is a specific date, a specific issue, spring and summer, 1936.

Q. You didn't see that one? A. I don't know whether I have seen it or not. 4515

Q. Did you see the one that was issued during 1935? A. I don't believe I have.

Q. Now, you mentioned the Fairchild publication. Have you on your desk a copy of that? A. They are available for our use.

Q. They are available for your use? A. They are.

Q. Did you, from time to time, use this? A. Yes, I have referred to it quite often.

Q. Did you, in February, 1935, refer to it? A. May I see it again?

(Book referred to was handed to the witness.)

A. I may have referred to the book of that type in February, 1935.

Q. And what about February, 1936? A. I possibly have.

Q. Does this book give a list of manufacturers engaged in the manufacture of ladies' dresses? A. It does.

Q. And is it generally used in the retail ready-to-wear trade for the purpose of obtaining a ready available list of the various manufacturers at the various price lines?

4517 A. It is used for many reasons, not alone that.

Q. Is that one of the reasons? A. It possibly is.

Q. Is that the reason that you used it for? A. Not necessarily.

Q. I don't ask about necessarily, I ask you what you used it for? A. I personally use it to look up telephone numbers.

Q. Telephone numbers of whom? A. Of people whom I have occasion to call.

Q. Well, why don't you use the telephone directory? A. That was handier.

Q. Is that the use you made of it? A. It is easier to look up any particular man because they are specified and classified in a particular sense.

Q. In what particular sense are they specified and classi-

4518 fied? A. By price line.

Q. By price line? A. Types.

Q. So that by examining that— A. They are indexed.

Q. So that by examining this book you could readily find a list of the various manufacturers in the City of New York engaged in the manufacture of dresses at the various price lines? A. Yes, but it wouldn't help us in experience.

Q. I didn't ask you whether it would help you or not. I asked you whether that was a fact? A. The names can be looked up there and the list made, yes, whatever purpose it can be used for, I don't know.

Q. Do you know how many, roughly speaking, names are listed in this book?

Mr. Haycraft: That is objected to, Mr. Examiner, unless some foundation is laid to show that he ever used the book.

Mr. Weisman: I think I have shown plenty of it now.

Mr. Haycraft: For the purpose of looking up manufacturers who are sources of supply. 4520

Examiner Bennett: Well, he can say whether he knows.

The Witness: No, I do not, Judge.

By Mr. Weisman.

Q. Will you now look at it, and after so looking give me your opinion as to the number of dress manufacturers engaged as therein listed in the business of manufacturing and selling ladies' dresses between the wholesale prices of $2.95 and $39.75?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. 4521

I now offer this book in evidence.

Mr. Haycraft: That is objected to.

Examiner Bennett: I am not going to receive it. You may mark it if you want to.

Mr. Weisman: Will you mark this?

(Book referred to was marked for identification Respondents' Exhibit 21.)

By Mr. Weisman:

Q. Did you ever hear of a directory known as the "Dress Buyers' Directory"? A. May I see it?

Q. I am asking you whether or not you ever heard of such a directory? A. Not to my recollection.

Q. Well, when I show you this book, does that refresh your recollection as to whether or not you heard or saw of such a book before? A. This is the first I have seen of any of this kind of book.

Q. You don't say as to this one that it is the first you saw of this book, do you? A. No, I said, "any."

Q. I see. When you said to me before that you didn't
4523 see this one, were you trying to fool me? A. I don't understand what you mean by that.

Q. I see. Well, now— A. Do I appear to be fooling you?

Q. Now, I show you this book, "Buyers' Informant," the one that you said before that you hadn't seen this one, meaning the one that I had in my possession. Did you ever see one like this before? A. I have.

Q. And is one of those on your desk? A. It is available in the institution.

Q. And it is the use that you put to this book that of looking up telephone numbers, likewise? A. That is right, the same use.

Q. That is the purpose for which you use this? A. That
4524 is right.

Q. You do not consult this book for the purpose of finding the names and addresses of manufacturers engaged in the business of manufacturing dresses? A. The buyers may do that, but I do not.

Q. Have you ever done it? A. I have; yes, sir.

Q. When you were a buyer? A. Yes, sir.

Q. And when you were a buyer you used such a book as this? A. I may have referred to it in several instances.

Q. When you became a divisional merchandise manager over all of these departments, did you forget the sources of information which you had when you were a buyer, or did that continue to remain in your mind? A. That continued to remain.

Q. Well, then, when you became the divisional merchandise manager, you knew of such a source of information as this which I now show you, didn't you? A. Yes.

Mr. Weisman: I wish to have that marked for identification so that I may refer to it.

Examiner Bennett: It may be so marked.

(The book referred to was marked Respondents' Exhibit 22 for Identification.) 4526

By Mr. Weisman.

Q. Now, when you found out that your buyers in reporting to you that they had difficulty in replacing Guild merchandise, did you examine a directory similar to Respondents' Exhibit 22 to see what other—Respondents' Exhibit 22 for Identification—to see what other sources might be available?

Mr. Haycraft: Objected to.

Examiner Bennett: I think this objection, as I understand it, was acquiesced in by respondent and by the Commission.

(There was a discussion off the record.) 4527

Mr. Weisman: May I have a ruling on the question?

Examiner Bennett: Yes. I sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: You may put that in at the proper time.

Mr. Weisman: Thank you. I take it that you mean on our direct.

4528 *Samuel J. Chance—For Commission—Cross.*

By Mr. Weisman.

Q. Assuming that your store sells in the ready-to-wear departments annually $3,000,000 of merchandise at retail, $3,000,000 worth of merchandise at retail, as divisional merchandise manager of these various departments, have you any opinion as to what the wholesale cost of the merchandise it sells in similar round figures?

Mr. Haycraft: That is objected to, Mr. Examiner, as not being in accordance with the record. There is no testimony to the effect that this witness' departments' total sales amounted to $3,000,000. $3,000,000 includes the basement figures.

4529 Mr. Weisman: I have included everything.

Mr. Haycraft: Mr. Examiner, may I please be allowed to continue my objection and not be interrupted?

Examiner Bennett: All right. Go ahead.

Mr. Haycraft: I appeal to you because of your position in this hearing room.

(There was a discussion off the record.)

Mr. Haycraft: Will you read my objection up to the point I was interrupted?

(The objection was read.)

Mr. Haycraft: Therefore, I object to the question as a concluding statement of fact which is not correct.

4530 Examiner Bennett: I will sustain the objection.

Mr. Weisman: May it please your Honor, I have had nothing to do with—I didn't say anything about the basement.

Examiner Bennett: This witness very evidently would not be able to make any such statement.

Mr. Weisman: I asked him whether he had an opinion.

Examiner Bennett: He would make a wild statement. It would be a perfectly wild statement.

Mr. Weisman: I don't think so. It is generally known among merchandising people what mark-up is, that if merchandise in a certain number of departments sells——

Examiner Bennett: You went over matters of figures that the witness handled specifically a few months ago. There is no indication that he ever handled figures of this kind. No one has testified that he has. It is just a rather wild fishing expedition and please don't encumber the record with that sort of stuff. We have had it extended enough already.

Mr. Weisman: I deem this rather important. 4532

Examiner Bennett: Yes.

Mr. Weisman: And I wish——

Examiner Bennett: Yes, if it is so important, then I will shut it out right now.

Mr. Weisman: All right. That is within your Honor's province.

Examiner Bennett: It has been objected to and I sustain the objection.

Mr. Weisman: May I point out to your Honor that a merchandise manager——

Mr. Haycraft: I object to statements going into the record after a ruling.

Mr. Weisman: Your Honor ruled permitting me to make an argument.

Examiner Bennett: I have made my ruling and 4533
I don't care about further argument. If you want to except to it, or if you want——

Mr. Weisman: I further wish to make this offer of proof: That if the witness had been enabled to answer, I believe he would have an opinion. I thereupon would have asked him the further questions as to what that opinion is, and I believe that he would have answered that the merchandise at

cost exceeded the sum of $1,500,000. I don't believe that any merchants obtain more than 100 per cent. mark-up on their cost price.

Mr. Haycraft: Ha.

Mr. Weisman: And I believe that that figure is entirely germane to the fact that there has been offered in evidence here figures showing the total purchases made of Guild members, and I believe that the total purchases of Guild members are material only when compared with the total purchases made in the entire store.

Examiner Bennett: All right.

4535 Mr. Haycraft: I move to strike the offer of proof.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

Examiner Bennett: The statement of offer of proof on the face of it shows its incompetency.

By Mr. Weisman.

Q. Now, with regard to Department 371, where you have a retail price line at $3.95, what is the wholesale price of that garment that retails at that price line?

Mr. Haycraft: Objected to, mere repetition. It is already in the record.

Examiner Bennett: That is in the record. Why

4536 go over that?

Mr. Weisman: Your Honor, I am trying to show what these are so that I may use them as a basis for further information.

Examiner Bennett: It is already in the record. Do you want to make an assumption in regard to that? If you do so desire you may interrogate the witness in that regard.

By Mr. Weisman.

Q. Did I understand you to say that the cost of that merchandise that retails for $3.95 is $2.50 per unit? A. What?

Q. $2.50 per unit? A. I did say that.

Q. You did say that garments which retail at $3.95 cost at wholesale $2.50 per unit? A. I did say that, yes.

Q. What is the wholesale cost of your $5.95 merchandise at retail? A. $3.75.

Q. $3.75? A. Yes.

Q. What is the wholesale cost of your $7.95 retail merchandise? A. $4.75 at wholesale.

Q. What is the wholesale cost of your $8.95 merchandise at retail? A. $5.75. 4538

Q. What? A. $5.75.

Q. $5.75? A. Yes.

Q. What is the wholesale cost of your retail garments at retail at $10.95? A. Generally $6.95—$6.75 cost, I should say.

Q. Which is it? A. $6.75.

Q. And of those that retail at $12.95? A. Well, they would be $7.75—it could be $7.75 or it could be within the $8.75 market.

Q. What about those garments which retail at $14.95? A. $7.75 or $8.75 market.

Q. And what would be the fact as to those which retail at $16.95? A. Generally, $16.95 market—or it could be $8.95 or $8.75, rather. 4539

Q. You mean $16.75? A. Oh, no, no. $10.75 market, although it could be, as I said before, $8.95 or $8.75, rather.

Q. What about those garments which retail at $19.95? A. $10.75 to $14.75, inclusive.

Q. What about those that retail at $25? A. That could be $14.75 to $16.75 market.

Q. What about those that retail at $29.75? A. That could be the $19.75 cost market.

Q. What about those that retail at $39.75?

The Witness: Judge, I want it understood here that I am simply giving these figures as the general or average of the entire department.

Examiner Bennett: Yes.

By Mr. Weisman:

Q. We understand that. Now, give us the answer to that question, please. A. What?

Q. $39.75? A. Oh, that could be—$39.75—that could
4541 be $22.75.

Q. $49.75? A. $49.75?

Q. Yes. A. $35 market.

Q. $65? A. Possibly $39.75.

Q. Now, I notice that in your Department No. 338, as contrasted with your Department No. 371, your prices are generally in the .75 cents rather than in the 95 cents market; for example, your price range in Department No. 371 for $10.95 is reflected in your Department No. 338 as $10.75; I further notice that in your Department No. 371 your price range of $12.95 appears, whereas in your Department No. 338 you show a price of $12.75. In your Department No. 371 for your price range you show $16.95, whereas in your Department No. 338 you show $16.75. I
4542 also notice that you have in your Department No. 371 the $19.95 price while in Department No. 338 it is $19.75. Would you say that generally that those departments—that in Department No. 338 your prices of the garments which you sell have the ending $.75 rather than $.95, but that the garments are the same? A. You mean they are bought in the same cost market?

Q. Yes. A. Yes.

Q. Now, from what cost market do you obtain the garments that retail at $125? A. Retail?

Q. $125. A. Well, that could be within any market from $75 possibly to $89.50 cost.

Q. $75 to $89.50 cost? A. Yes.

Q. What about your garments that retail at $115? A. Probably $79.50 cost market.

Q. What about the garments that retail at $100? A. $70 to $75.

Q. What about the garments that retail at $89? A. Probably the $69.50 or $65 to the $59.50 garments.

Q. That would vary from $59.50 to $69.50? A. Yes.

Q. What about the $79.95? A. Probably $59.50 or $52.50 market.

Q. What about the $69.95? A. Around $49.75, it could 4544
be a little more or a little less.

Q. What about the garments that retail at $35? A. $19.75 or $22.50 market.

Q. What about the garments that retail at $22.75? A. They could cost $12.75, $15, or $16.75.

Q. What about the garments that retail at $15? A. $8.75 market.

Q. Now, do you know of any retail prices at which dresses are sold at, in your store, other than the prices I have just recently given you?

Mr. Haycraft: I object to that unless it is confined to this department.

Mr. Weisman: I want to know whether he knows anything else about the store; if so, I want to know what he does know about the store. I think 4545
it has an important bearing upon the weight, credit, faith and value which may be given to his testimony.

Examiner Bennett: I will sustain the objection unless it applies to his department.

By Mr. Weisman.

Q. Do you not, as part of your duties, know as to what is going on as to prices in other departments? A. My duties and my activities are confined to my department, but I have some sort of an idea of what priced garments are handled in other parts of the store.

By Mr. Weisman.

Q. Of course. Do not price lines of dresses in other parts of the store, to some extent, affect you in your departments? A. Yes, sir.

4547 Q. And your store is one comprehensive whole; is that correct? A. Yes.

Q. The same woman that buys a dress in Department 331 may and frequently does visit other departments in your store; is that so? A. Yes.

Q. So, in the course of your duties you generally know the price ranges that your store handles and sells its merchandise at; is that so? A. Not specifically, but I have an idea.

Q. Yes. Will you tell us, based upon that idea of yours, whether or not the various price ranges which I have given you, which go from $3.95 to $125, generally embrace all of the price ranges that are used in your store? A. There are some other price ranges also.

Q. What are the others? A. Dresses can be purchased
4548 as low as $1, dresses which are commonly known as a house dress.

Q. That is a cotton dress, is it? A. Yes, it is a house dress.

Q. Yes, I know what it is. Aside from those cotton dresses, which we all know about, a sort of Mother Hubbard, you mean? A. Well, you seem to know the term correctly.

Q. Now, aside from that type of dress, I am not concerned with those, what have you? A. There are times when we have reductions in prices and those times—at those times we would have a sale and sell the dresses for less.

Q. Aside from reductions, I want to get whether or not this includes your general average? A. I would have to add $2.95 and up.

Q. We have covered only $3.95, we commenced with that? A. Yes.

Q. As to $2.95, what do you say is your average wholesale cost? A. The average wholesale cost of $2.95 merchandise would be $1.87½. 4550

Q. $1.87½? A. $1.87½.

Q. And when you said up to—"and up", you meant $125 retail? A. Yes, to $125 retail.

Q. That covers the range, does it? A. It does.

(The witness was temporarily excused.)

Mr. Weisman: May we adjourn at this time, your Honor?

Examiner Bennett: We will adjourn now to resume to-morrow morning at 9 o'clock A. M., Eastern Standard Time, in this same room.

Mr. Freeman: May it please your Honor, I should like to make a statement on the record before you adjourn. 4551

Examiner Bennett: The adjournment is set aside. Mr. Freeman, you may proceed.

Mr. Freeman: On behalf of Strawbridge & Clothier, I understand that counsel for the respondent herein has requested Mr. Chance, the witness now on the witness stand, to produce certain data and information with reference to the sources of supply or resources as Mr. Chance has called them.

I have stated to Mr. Chance's superior that if that information is so confidential that its disclosure would seriously or might seriously injure or impair his business or the business of his employer, namely, Strawbridge & Clothier, he need not disclose it at this time.

Examiner Bennett: Very well.

Mr. Weisman: May it appear also, with regard to this statement made by Mr. Freeman, that I did not ask for the names of any of the resources. I merely asked for the number of the people with whom he did business during that particular period of time.

4553

I also wish to refer Mr. Freeman to Section 10 of the Federal Trade Commerce Act and I wish to advise him and his client that with regard to all papers that they may refuse to produce or the production of which may be refused by any witness which has taken the stand that I shall move duly before the Commission for an order pursuant to Section 10 to punish the witness or fine him because—as the case may be, because of his failure to produce the papers.

Mr. Haycraft: I move that the last statement be stricken from the record because it is not properly made by counsel and may be only made by the Court.

4554

Mr. Weisman: That is your opinion. My opinion is different.

Mr. Haycraft: I am right and you are wrong.

Mr. Weisman: You are wrong and I am right. That is where we differ.

Examiner Bennett: This matter is physically in the record and I see no object in striking it formally.

Mr. Haycraft: I wish also to call attention, Mr. Examiner, to the fact that in the record the original request made by counsel was for the list of the resources and that this amendment is now made.

Mr. Weisman: I do not recall making any request other than this. I do not care to have a list of the people. I want the number of people with whom they did business as against and including therein all the people that they did business with through that period in order that we may compare the number of Guild houses with whom they did business with the number of non-Guild houses with whom they did business. 4556

The reasonableness, the pertinency and the desirability of this evidence I do not think can be questioned. I am surprised that any fair-minded person would object to its being received in evidence. As to others, I cannot say that I am surprised at anything they might do.

Examiner Bennett: Let it be so understood that this is the request and I will advise the witness, as I have advised other witnesses, that while he is under no obligation to do so; that is, that while he is under no obligation, as far as the Examiner is concerned, to do so, the Examiner has no objection to his doing so.

The Witness: Thank you, your Honor. I appreciate your advice on that point. 4557

Examiner Bennett: Have you anything further to state, Mr. Freeman?

Mr. Freeman: No.

Examiner Bennett: And Mr. Haycraft?

Mr. Haycraft: No.

Examiner Bennett: And you, Mr. Weisman?

Mr. Weisman: That is all, your Honor.

Examiner Bennett: Very well. We will now take an adjournment in this case to resume to-morrow morning at 9 o'clock A. M. Eastern Standard Time, in Room 313, Federal Building, Philadelphia, Pennsylvania.

(Whereupon at 3.45 o'clock P. M., August 5, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313,
4559 U. S. Post Office Building,
Philadelphia, Pa.,
August 6, 1936.

Met pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON S. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

4560

ALLEN S. OLMSTED, 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge & Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Mr. Weisman: May it please your Honor, I wish to call your Honor's attention to the fact that yesterday I had failed to note in the record that Mr. Freeman, personal counsel for Strawbridge & Clothier, sat at the counsel table with counsel for the Government, assisting in the presentation of this case. I wish to make such notation in the record.

I also wish to make the same notation as to Mr. Freeman's present attendance at the counsel table and advising with counsel for the Government as to the state of the record. I wish to note the respondents' objection thereto. 4562

I further wish to note in the record an objection to the attitude of counsel for the Commission in seeking to keep from respondents and from the Commission a full statement of all of the matters that are pertinent. I wish to take exception to the matter of the presentation of this matter. We saw it in New York, we saw it in Boston and we have it here. Matter is produced which is only part of the matter. An example of this is when I asked the witness concerning the total number of manufacturers with whom they did business, "There is such a list, but it isn't here." The only thing that has been produced is the list of Guild manufacturers. I give this as an example. It is my belief from a reading of the cases and the law applicable to these proceedings that it is the duty of counsel for the Commission to present to the Commission and to your Honor all relevant matter tending on the issues, and that from that the Court may make such inferences as are proper. 4563

Examiner Bennett: What is the function of the attorney for the Commission in a case of this sort? Don't you think counsel is competent to present his side of the case?

Mr. Weisman: No. I think it is the duty of counsel for the Commission to present all evidence that comes

from these witnesses, not merely part of the evidence. I think from all the evidence and such additional evidence as counsel for the respondent may introduce the Commission is then to draw such inferences as are proper.

I also wish to call the attention of your Honor to this fact, that this type of proceeding, wherein I am not or there isn't put before the Commission all of the evidence on a particular matter such as I adverted to, will just duplicate the time, effort and money that has got to be spent in this case by the respondents and by the Government. In other words, by reason of this procedure we must now, after going around this circuit of cities at the
4565 behest and direction of counsel for the Commission, we have got to do it all over again on our own case to adduce and subpoena and by subpoena from witnesses the very thing that they could have produced in the first instance.

Examiner Bennett: How long is this statement going to be?

Mr. Weisman: Beg your pardon?

Examiner Bennett: How long is this statement going to be?

Mr. Weisman: I am almost finished.

Examiner Bennett: I am not going to entertain a long argument because this argument should be presented to the Commission. According to the rules of procedure, the rules follow in a general way the rules of procedure of all
4566 judicial bodies; that is, it is assumed that the person presenting the affirmative case presents such a case as he thinks will be useful to him. He doesn't assume to advise and present the case of the other side if they have counsel. If they haven't counsel, they will do differently; but if they have counsel, counsel knows what he wants to present and they have a chance to present their case and are given a full opportunity. So that I think that is the procedure.

Now, as to the attorney who is here for Strawbridge & Clothier, he appears here for the witnesses which have

been furnished from that organization. I think he has a right to watch the procedure and see that their rights are protected, so that I don't see—it is all right to call attention to it. I am perfectly willing to have it in the record. I doubt that any adverse conclusion can be drawn from it.

Mr. Weisman: All right, your Honor. I have finished my statement.

SAMUEL J. CHANCE resumed the stand and testified further as follows: 4568

Cross-examination (continued) by Mr. Weisman.

Q. I show you Commission's Exhibit 415 and call your attention to the figure in the first, second, third, fourth column next to the last, showing the total of business done in the Guild departments in the five months in 1935. Do you notice that (indicating)? A. Is this the figure you have reference to (indicating)?

Q. Yes. A. Yes, sir.

Q. And I notice from that the total business that you did in the Guild departments during the five months was $366,000— A. $500.

Q. —$500. That is approximately $72,000 a month; is that not so? A. Yes. 4569

Q. Now, assuming that the month of January is an average month, as the other months are, or that you would do the same in that month, that would then bring the total up for the first six months to what sum? A. You are basing your figure on an assumption?

Q. Yes, taking—dividing those months by five. A. About $445,000—$440,000.

Q. About $445,000. And I do believe that you said yesterday that the first six months of the year in volume.

without trying to be exact, was substantially equal to the last six months? There wasn't any great difference one way or the other; is that so? A. I did say that.

Q. So that, based on that assumption, would you say that a fair figure as a round number the Guild departments in the year 1935, twice $445,000, or approximately $900,000, or thereabouts? A. That is your estimated figure.

Q. Isn't that a fair estimated figure on the basis of these exhibits and your testimony? A. Well, I will accept that as an estimate.

Q. Fair? A. Yes.

Q. That is all. May I have that back? A. Surely.

4571 Mr. Haycraft: May I see it just a moment?

Mr. Weisman: Yes, surely. Do you want me to stop while you look at it?

Mr. Haycraft: Just a moment.

Mr. Weisman: All right.

By Mr. Weisman.

Q. I remember that you—I withdraw that—the merchandise that you purchased for these various departments is subject to a trade discount, I think you testified yesterday? A. I do not quite understand the question.

Q. I will reframe it. When you have a purchase price of merchandise from a manufacturer, the amount of that bill is subject to a discount? A. That is correct.

4572 Q. What is that discount? A. Well, that depends upon the arrangement made at the time of the purchase. It varies with each purchase. Each purchaser's discount may be different.

Q. What else is likely to make it vary in any way? A. I do not know.

Q. Did you ever hear of group buying by the A.M.C.? A. I have.

Q. Have you ever heard that through such group buying the discount is made to vary? A. I have so stated that discounts vary.

Q. I know what you so stated generally; now I am asking you that direct question. A. Yes, I have known it to be.

Q. As the buyer of the House Dress Department, have you from time to time made your purchases through the A.M.C.? A. I personally have not.

Q. Has the department or has anyone acting under your instructions or with your knowledge or under your directions so done? A. Not to my knowledge.

Q. Or under the direction of the house itself? A. No.

Q. Do you mean to tell us that you do not know of any 4574
time while you were connected with Strawbridge & Clothier where your orders—where the orders of Strawbridge & Clothier for merchandise in the Dress Department was placed through the A.M.C.? A. That is a fact and I have so stated.

Q. That you do not know it? A. That I do not know it.

Q. What do you mean by that when you say "I do not know it"? Do you mean that you do not see it or did not see it personally done, are you hiding behind the exact knowledge, or do you mean that you never heard of its being done in the usual and ordinary course of your business?

Mr. Haycraft: I object to that.

Examiner Bennett: Do you want his hearsay? 4575

Mr. Weisman: No, I do not want his hearsay.

Mr. Haycraft: That is what he is asking for. Why ask for it?

Mr. Weisman: Is that nice? I want to demonstrate how cleverly this witness can fence when he does not want to answer as contrasted with how little he knows when he is under cross-examination.

Mr. Haycraft: I move to strike that statement.

Mr. Weisman: I am entitled to reply to the Court and give my reasons.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. What did you mean when you said you did not know it? A. You had asked me a question prior to that which had a relation, if you are going to take that—if you will go back to your question, that will probably be clearer to you.

Q. I will state it again. I will start all over with you.
4577 I want to assure you of my utmost patience on this subject. A. Thank you.

Q. Do you know what the A.M.C. is? A. Yes, I have so stated in my testimony.

Q. Have you heard that your store is a member of the A.M.C.? A. I know that as a fact.

Q. That is one thing that you really do know? A. Yes.

Q. As such member, do you know whether or not it frequently—I withdraw the word "frequently"—that it ever engaged in purchases of dresses with the A.M.C.? A. I believe it has engaged in some purchases. I have heard of some things, but, personally, have not entered into any such arrangement with them, or any such purchases.

Q. I see. Now, when you heard about these purchases
4578 being made by the firm of Strawbridge & Clothier through the A.M.C., did you also hear as to what was the purpose of using the A.M.C. in these purchases? A. I have heard of no specific reason.

Q. What general reason? A. The general reason would be to make a more advantageous purchase.

Q. What do you understand by the words "more advantageous purchase"? A. Advantageous to the purchaser. In the form of a saving that can be effected because of a large commitment that would enable the manufacturer

in turn to purchase his goods at a price concession, the basis of that saving being that, and, based upon that saving, passing that saving on to the stores that participated in any such buying.

Q. Did you ever hear that that advantageous purchase would take the form of an extra discount?

Mr. Haycraft: That is objected to.

Examiner Bennett: That is merely conjecture or hearsay, is it not?

Mr. Weisman: No, it is not conjecture. I am asking him if he ever heard of it in his business.

Mr. Haycraft: It is hearsay and should not be admitted. 4580

Mr. Weisman: Suppose you let the Examiner pass upon that.

Examiner Bennett: I will sustain an objection to the question in that form.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. When you say you heard these things, do you mean that you heard them in the performance of your duties? Is that where you heard them?

Mr. Haycraft: I object.

The Witness: Do you sustain the objection, Judge? I am sorry, I thought I heard that. That is why I did not answer. 4581

Examiner Bennett: You may have an answer to that question. If he heard it in the ordinary and regular course of business you may have an answer.

Mr. Weisman: I think that is correct. I think the question incorporates that, if the question can be read.

Examiner Bennett: The question may be read.

(Question read.)

By Mr. Weisman.

Q. I will ask you that in the regular and ordinary course of your business. A. In the regular and ordinary course of business I have heard the expression used quite frequently.

Q. Quite frequently. Now, just one other question, one other statement on the record——

Mr. Weisman: I understand that as I asked the last question Mr. Freeman motioned to the witness. I do not wish to imply that he motioned to the witness to what the answer should be or what it should not be, or anything of that kind, but he did
4583 motion to the witness, and I ask that he be requested to refrain from motioning to the witness during the time when I am interrogating the witness.

Examiner Bennett: I will request that there be no communication with the witness by anybody other than the cross-examining or examining counsel while the witness is on the witness stand and in the presence of the Examiner. No communication of any kind whatsoever by any method should be indulged in. I will request that it be refrained from from now on. if there has been any.

By Mr. Weisman.

Q. You observed that motion that Mr. Freeman made to
4584 you a moment ago? A. Yes, I did.

Q. You saw him motion to you? A. I saw him motion to me.

Q. What did you understand by that motion that Mr. Freeman made to you? A. I understood that motion was for me to consult the Examiner on that particular answer before I answered your question.

Q. I see. Before you answered my question. As divisional merchandise manager of these departments of

Strawbridge & Clothier, have you or has anyone under your direction used any aid or used any instrumentality from the A.M.C. during the past, during the period from February 1 to date, in connection with its placement of orders for that department or any of these departments?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant and not proper cross-examination.

Examiner Bennett: I think it is hearsay and repetitious. I will sustain the objection.

Mr. Weisman: Exception. I offer to prove that if the witness has been permitted to answer, that the answer would have been in the affirmative. 4586

Mr. Haycraft: I ask that that statement be stricken.

Examiner Bennett: No.

By Mr. Weisman.

Q. With regard to the dress business generally, is there not, to your knowledge, a well-defined and generally known trade discount in the New York market? A. Yes, that is so.

Q. What is that generally well-defined and well-known trade discount? A. 8 per cent. discount.

Q. When you say "8 per cent. discount," do you mean 8 per cent. from the face of the bill? A. That is right.

Q. In connection with Commission's Exhibit No. 410, which I now show you, will you tell me whether or not 4587 this was made up after or before the deduction of the discount? A. This is made up before the deduction of the discount.

Q. In other words, that 169,000-odd dollars is actually about $12,000 more than you actually paid; is that so? A. That is right, which has no reference to the retail price.

Q. I did not ask you whether or not it had any reference to the retail price, did I? A. No.

Q. You just threw in another bone; is that right? A. Well, I suppose you might call it that.

Q. I asked you whether or not this had any relation to the amount actually paid, and you said, I understood, no, that that was the total amount of the bill. A. Subject to the 8 per cent. discount.

Q. Subject to the 8 per cent. discount. You did not tell us, when you offered this in evidence, that the $169,000 was subject to an 8 per cent. discount, did you? A. I was not asked that.

Q. And you felt that you should keep it a secret until counsel for the other side would find it out if he were
4589 astute enough to do so, or fortunate enough to do so?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant.

By Mr. Weisman.

Q. Is that what you thought?

Examiner Bennett: Objection overruled.

Mr. Haycraft: Your Honor, I think that is highly objectionable.

Examiner Bennett: No. You may answer.

By Mr. Weisman.

Q. Is that what you thought? A. No, sir.

4590 Q. Well, when you give this exhibit as $169,000, without regard to the amount that was actually paid, you were seeking to make it appear that you did more business in dollars and cents with the Guild houses than you did actually do; is that so? A. No.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Is it a fact that under no circumstances did you pay the Guild houses during the period February 1, 1935 to January 31, 1936, $169,798.14? A. Did I? No. And I never tried to make that out.

Q. Does this exhibit not state that is the amount of such purchases? A. Those are the purchases we had made with the Guild houses for that period.

Q. That is the "amount of business transacted from February 1, 1935 to January 31, 1936." As a matter of fact, that figure of $169,798.14 was taken from the face of the bills, was it? A. That is right.

Q. And is subject to an 8 per cent. discount? A. That 4592
is correct.

Q. Which would bring it down by approximately $13,000; is that not so? A. That is right.

Q. So that the total amount of business at most that was done, according to that exhibit, would be about $155,000?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Is that not so?

Mr. Haycraft: The exhibit speaks for itself.

Mr. Weisman: The exhibit does not speak for itself. 4593

Mr. Haycraft: Why, certainly it does.

Mr. Weisman: If it does, it speaks untruthfully.

Mr. Haycraft: It does not speak untruthfully. That is a correct statement of the transactions.

Mr. Weisman: Well, now, we are going to see. May we have an answer to this question?

Examiner Bennett: I will overrule the objection.

Mr. Weisman: May we have the question?

Q. (Question read.) A. That is correct.

Examiner Bennett: Let us have that clear. Those figures were gross figures?

The Witness: That is right, sir.

Examiner Bennett: Yes, I see.

The Witness: It is a regular term that we use in all our——

By Mr. Weisman.

Q. Let me ask you this question: Do you know from what this was made up (indicating)? A. Our accounts payable department made that particular paper up for me.

4595 Q. I don't ask you who made it up. I ask you, do you know from what it was made up? A. No. I couldn't attest to that, whether it was made up from invoices or records or books of any kind.

Q. Isn't it important to know whether or not it was made up from invoices or whether it was made up from records? A. It was made up from records which are accurate and I assume are such that when I call upon the accounts payable department to give me a record of that kind, that they will, in all fairness and truthfulness, submit to me a record which is correct.

Q. I see. Now, what did you ask them to give you? A. I asked them to give me the amount of business transacted with the particular resources which I submitted to

4596 them on a paper.

Q. In other words, as I understand you, yesterday you said you called up somebody in the statistical department, the name of the person you didn't know——

Mr. Weisman (to Mr. Freeman): Will you stop interrupting my examination, Mr. Freeman?

Mr. Freeman: I am not interrupting.

Mr. Weisman: Yes, you are, when you jump up and grab a paper. Will your Honor please request

this man not to persist in such gross misconduct? May I have the question read?

(Question read.)

By Mr. Weisman.

Q. (Continuing) —and you told them that you wanted this made up; is that so? A. No, sir, I did not.

Q. Well, let's see. Whom did you ask to make up Commission's Exhibit 440 for you? A. I put a requisition through the mail.

Q. Where is your statistical department? A. It is in the store and any mail that I wish addressed that I wish to reach that department, all I need to do is to address 4598
an envelope it is carried to them in the regular store mail.

Q. Have you got a copy of what you asked them to make up for you, a copy of the letter that you sent them? A. No, I haven't.

Q. Did you make a copy of the letter that you sent them? A. I don't recall.

Q. Well, how is it that you recall what you asked them but you can't recall whether you had a copy of it? A. I have a girl taking care of that for me, a stenographer that will do as I wish.

Q. I don't care what you wish. Don't you wish right now you had a copy of what you asked them for? A. Not necessarily.

Q. In other words, you are quite content to rest on your 4599
memory. A. I don't quite understand you.

Q. Well, let me ask you this: Don't you know that there would be a great difference if this list had been made up from invoices as against the fact if it were made up from the amounts you actually paid to the people? A. There would be a difference, yes.

Q. Now, where would that difference come up from, what would it arise from? A. From the difference of discount.

Q. Is that all? A. That is all that I know of.

Q. Well, think a moment and see if you cannot think of another difference that might arise under those circumstances. A. Well, I know of no others.

Q. Well, just stop a moment and think and we will time you for three minutes. I want to see whether in three minutes you can think of another reason why these figures would be different if made up from the invoices than if made up from the amounts you actually paid?

Mr. Haycraft: That is objected to.

Examiner Bennett: I am going to let him answer.

4601 Mr. Weisman: What?

Examiner Bennett: I am going to let him answer that question.

A. I have no answer to it, Judge. I have no answer to it.

By Mr. Weisman.

Q. In other words, you don't know. Now, let me ask you this: If you made up this list from invoices, the amounts shown here would be shown before returns, wouldn't they? A. In which? I am sorry. I didn't hear you.

Mr. Weisman: We will read it again to you.

4602 The Witness: All right.

Q. (Question read.) A. Well, frankly I don't know whether returns are deducted from the invoices because I do recall of a particular place on the invoice to make notes of any returns that go back from the receiving room.

By Mr. Weisman.

Q. Don't you know that in your business, that when a return is made a credit memorandum is issued the invoice

is kept intact; isn't that so? A. We have made returns directly on invoices.

Mr. Haycraft: If you know.

By Mr. Weisman.

Q. I don't ask you what you have done. I ask you what is your practice in this great institution of Strawbridge & Clothier? A. I have told you that I had made returns directly on invoices.

Q. And I didn't ask you that. I asked you what is the practice generally, not what you may or may not have done. A. That is a question of bookkeeping. I am not interested in that. 4604

Q. No. No. You don't know, is that it? A. Assume it as such, yes.

Q. I don't want to assume it such. I want to find the facts from you. A. I have told you that that is a list which I asked to be submitted as——

Q. No. No. A. —as a corrected list.

Q. Look. You are going to have to answer my question as long as the Court sustains me and it won't do you any good fencing around with me. A. I am not fencing. I beg your pardon.

Mr. Weisman: May we have the last question; and I am going to get an answer from you if you know.

4605

Q. (Question read.) A. If I recall——

Q. No. I want to know whether you know that to be a fact. A. Yes, that is a fact.

Q. All right. A. All right. I will concede it.

Q. Why didn't you concede it in the first instance, instead of wasting ten minutes on it? You knew that all the time, did you not? A. I did not.

Q. Did you just find it out? A. I am conceding that to you. I still don't know, but if that will satisfy you, all right.

Q. If that is a fact, then this total that we now have down in fact to about $155.000 would be further reduced by the amount of such returns as were actually made during the year; isn't that a fair statement? A. I recall now in sending——

Q. No. No. Well— A. Yes.

Q. Yes. Now, I also notice here that in some cases— I will withdraw that question. Do you have any reason why the same name should appear twice on this list? A.
4607 No, I have not.

Q. Well, assume that the same name does appear twice, would that in your mind indicate that there has been a duplication? A. Not necessarily. It may be taken off a different ledger from different departments. I don't know.

Q. What is your best explanation of the fact that one or two names might appear twice on this list? A. I can't explain that. I did not make up the list.

Q. You testified as to the accuracy of this list. A. I still testify to it on the strength of our accounts payable department.

Q. And that is the limit of your endorsement of this list, that somebody, in answer to a letter, sent it to you? A. That is right.

4608 Q. Your statistical department? A. (Witness nods head affirmatively.)

Q. What is your best opinion of your total percentage of returns during the year as against the total that you do business with a manufacturer on? A. I have no opinion as to that. Frankly, for 1935 I have never seen any such figure. I have never gone into any discussion with anyone on that.

Q. Do you think it is 50 per cent. of your purchases? A. No, I do not think it is as great as that.

Q. Do you think it is 25 per cent. of your purchases? A. I doubt very much.

Q. Well, do you think it is 10 per cent. of your purchases? A. That is questionable. I mean, I have a——

Q. Well, do you think it is 5 per cent. of your purchases? A. I would say possibly between 5 and 10.

Q. So that if this list, Commission's Exhibit 410, was made up from invoices, and those invoices do not show the returns, the amount shown hereon would then be a fair assumption to say might be reduced by a further sum between 5 and 10 per cent., isn't that so? A. You are 4610
assuming that it is made up from invoices.

Q. Yes. Yes. A. Assuming that it is made up from invoices, since I learned from you that the memorandum is gone through, I would say yes.

Q. Well, look: If it were made up from anything but invoices, it wouldn't show the gross amount, but it would have shown the net amount; isn't that so? A. That is correct.

Q. So that is a fairly good indication that it was made up from invoices? A. Not necessarily. I won't attest to that.

Q. Now, I know that it isn't necessarily. I didn't say it was necessarily so. But I said it is a pretty good indication; isn't that fair? A. No, sir.

Q. All right. Yesterday I asked you certain questions 4611
about the comparative amount of advertising done in a certain department, 331, during a particular period, 1935 and 1936. Do you remember those questions, the tenor of them? A. I remember something with reference to that advertising and a few other things.

Q. And I asked you about the relation of the volume of goods, seasonable merchandise on hand, to sales? A. I recall.

Q. And I asked you about the space allotment; do you remember that? A. The advertising?

Q. And display. A. And display, yes.

Q. Allotment? A. Yes.

Q. Now, if I had asked you those same questions with regard to each and every one of the departments which you enumerated, would your answer be the same? A. It would; yes, sir.

Mr. Weisman: Will you so stipulate? I don't want to take up the time of going over with this witness each department. I think there are nine of them, Judge. We will be here for a long time.

4613 Examiner Bennett: Yes.

Mr. Weisman: It is stipulated, in lieu of the examination of this witness thereon, that if I had interrogated him with regard to departments——

The Witness: May I recall them for you?

Mr. Weisman: I would rather have them as they were testified to.

The Witness: All right. Thank you.

Mr. Weisman: I have no doubt that you would give them to me correctly, and you correct me if I am not right.

By Mr. Weisman.

Q. Department 419? A. That is right.

4614 Q. 373? A. Yes.

Q. 382? A. Yes.

Q. 385? A. That is correct.

Q. 491? A. You repeated that, didn't you?

Q. Did I mention it before? Thank you. 358? A. That is right.

Q. 338? A. That is correct.

Q. 371? A. You mentioned that once before, I believe.

Q. No, I didn't. A. I am sorry. 371 is correct.

Q. 331? A. That is correct.

Q. 350? A. Yes, sir.

Q. 492? A. (Witness nods head affirmatively.)

Q. And 493? A. That is right.

Q. I haven't left out any that came under your direction? A. No. Does that total eleven?

Mr. Weisman: Now read me what I have there.

(Record read as follows: "Mr. Weisman: It is stipulated, in lieu of the examination of this witness thereon, that if I had interrogated him with regard to departments Nos.——")

Mr. Weisman: 491, 373, 382, 385, 358, 338, 371, 331, 350, 492, 493, as I have with regard to departments Nos. 331 and 350, referring to his knowledge, 4616
or lack of knowledge, of the various matters queried for a comparison between the periods comprising of February 1, 1936 to June 30, 1936, as against February 1, 1935 to June 30, 1935, his answers would have been the same as they were with relation to the departments specifically mentioned. Is that all right?

Mr. Haycraft: If that is correct.

The Witness: Yes.

Mr. Weisman: Yes. That saves us a lot of time, Judge.

By Mr. Weisman.

Q. What do you understand by the meaning of the words 4617
"good will"? A. Good will, as I understand, is something that a store sells other than merchandise.

Q. What is that? A. It is something that a store attempts to sell other than merchandise.

Q. You say that your understanding of the term "good will" is that it is something that a store attempts to sell other than its merchandise? A. That is right.

Q. Well, let me see. A store attempts to sell things for the making of a profit? A. That is correct.

Q. Do you say that it attempts to make a profit on its sale of good will? A. Well, that could reflect in a profit over a period of years, whether that customer is satisfied with trading in that store and returns as a satisfied customer.

Q. Now, can you see good will? A. Can you do which?

Q. Can you see it? A. Yes, it can be shown.

Q. Can you measure it? A. I do not know as it ever has been measured in any way.

Q. Can you weigh it? A. It can be weighed.

Q. Yes. You mean you can ascribe to it a weight as a certain number of pounds? A. No.

4619 Q. And your best definition of good will is that it is something that the store sells besides its merchandise? A. That is correct.

Q. Is there a market where you can buy it for resale? A. No, sir.

Q. Where does the store get the good will—and what does it usually charge for the good will that you say it sells? A. It does not charge anything.

Q. Selling implies charging; do you mean that it is something that the store gives to its customers? A. Yes, sir.

Q. You are sure of that? A. I am.

Q. Do you not know that good will is something that the store gets from its customers; did you not ever know that? A. I said it gets good will and receives good will

4620 also.

Q. It gets good will and it receives good will also. When did you ever say it receives good will also? A. There is a connection there. The opinion of a customer as to the store.

Q. Now, wait a minute, let me understand what you mean. A. Yes.

Q. When you testified concerning the good will of certain departments were you testifying about the good will

that the store gave or the good will that it received? A. The good will that it received at that particular time.

Q. Also you testified about good will— A. Yes.

Q. —what did you understand by "good will" which it receives? A. By the good will it receives I—ah—ah—feel that it is the opportunity of that store to serve the customer so that it would like the store and feel that it should trade with the store because of the various co-operations and various other reasons.

Mr. Weisman: May I have that answer again? The witness dropped his voice and I could not understand it.

(The reporter read the answer as above set forth.) 4622

The Witness: That is not what I said.

Mr. Weisman: That is not what you said? Do you want to change it around now?

The Witness: It does not sound so good to me.

By Mr. Weisman.

Q. Oh, it does not sound good to you. A. It is not what I said there just at the end.

Q. Well, it is what I heard, but perhaps it is not what Mr. Haycraft would hear.

Mr. Haycraft: I did not say I heard anything.

The Witness: Judge, that is not what I said just at the end. 4623

By Examiner Bennett.

Q. Just what did you intend to say or do you think you did say? A. Because of its various co-operations and various reasons.

By Mr. Weisman.

Q. Now, that is exactly the same words you used in your previous answer because I wrote them down at the

time. Do you mean to tell me now that you cannot remember from one second to the split part of another second what you testified? A. Well, I do not know what you mean by that.

Q. We will pass it. We will pass it. Now, is that the best explanation you can give to us of what you understood and what you now understand by good will? A. That is my best explanation of good will.

Q. From the—let me ask you this: Strawbridge & Clothier have been in business a good many years, haven't they? A. Yes, sir, they have.

Q. What is your best—what is your knowledge or what
4625 knowledge have you as to that? A. As to what?

Q. How long do you think they have been in business? A. They have been in business some fifty odd years.

Q. Do you think that it had as much good will when they opened their store as they have to-day: Strawbridge & Clothier? A. You mean by comparison?

Q. I mean any way that you can think of. A. Well, they have grown to a large store so I believe that they have more good will to-day, because they are serving more patrons.

Q. You believe that they have more good will to-day because they are selling more patrons? A. More patrons and more customers and more business.

Q. Your idea of good will is the degree of size the store has is a test of the good will it has? A. Oh, yes.

4626 Q. That is the prime consideration? A. I do not understand what you mean by "prime".

Q. Do you know what the word "prime" means? A. Yes, sir.

Q. What does it mean? A. It means fine, utmost.

Q. No. Prime means "first". A. Yes, I am sorry.

Q. Is that the first consideration of your mind? A. You mean good will?

Q. No, no, no. Now, listen to the question, please. I will try to help you. You said a moment ago that you felt that the good will of a store would depend upon the size and the business that it did; is that what you said? A. No, I did not.

Q. What did you mean when you said it must have more good will to-day than it did before because it does more business? A. It has more patrons and good will is spread over many more people.

Q. Do you think that its good will with this particular people is greater now than when it commenced to do business? A. I do not understand the question.

Mr. Weisman: May the question be read? 4628
Examiner Bennett: Yes.

Q. (The question was read.) A. Yes.

By Mr. Weisman.

Q. Do you not really believe that good will is a matter that is built up through the years? A. I have so stated, yes.

Q. I do not care whether you have so stated or not, because you have stated a variety of things, but I want to know what you think now. A. Yes.

Q. Yes? A. Yes.

Q. Without regard to what you have so stated? A. Yes.

Q. The answer is "yes"? A. The answer is "yes." 4629

Q. Did it ever strike you that good will was synonymous with reputation? A. There is a connection.

Q. Would you say that the good will of a store was dependent upon the feeling of security and reliability of the store held by the customer, and a sense that he or she had that the store was trading fairly and honorably with the customer? A. That, among other things, yes.

Q. Well, now, I have given you those things and you have said "among other things"; give me some of the other things that are in your mind. A. One particular thing in my mind is service.

Q. Well, does not—is service included in what I have told you? A. May I hear that question again? What was that before that?

(The question was read.)

By Mr. Weisman.

Q. If you do not remember it—the question has been read to you, do you remember it now? A. Well, would
4631 you mind reading it again?

Q. Oh, my. If you do not remember it now, we will withdraw the question to save time. Now, let me ask you this: Is not good will, the good will of a store, dependent upon the belief in the customer's mind that the store gives her or him honest value for money spent? A. Yes, that is one of the things.

Q. Do you think that is one of the prime things, most important in the building of good will? A. Yes, sir, fair trade.

Q. What? A. Fair trade; that is one of the things.

Q. What would you believe is more important than that? A. Service is an important factor.

Q. No, no, no, no, no. I know there are many impor-
4632 tant factors. I am trying to find out what you believe is the most important factor. A. It is a question there as to the importance of one thing above another.

Q. Do you think that if you can give a woman plenty of service in the dress department you can give her poor value; is that what you want us to understand? A. I did not say so.

Q. Is not the prime consideration in the building up of good will in the dress business, or any other business,

the giving to the customer of good value for money spent; do you not know that? A. I said that is one of the things.

Q. Now, I am asking if, in your opinion, is that not the most important thing? A. I do not think it is.

Q. What, in your opinion, is the most important thing? A. I said there is no such thing as placing one thing above the other in the order of importance.

Q. Let me ask you this: Do you believe that manufacturers have good will? A. Some have.

Q. As a class are they susceptible of enjoying or possessing a good will? A. Naturally.

Q. Do you think that it is important to a retail merchant to possess good will? A. It certainly is important 4634
to anyone that wishes to remain in business.

Q. Do you think it is important to a manufacturer if he wants to remain in business to maintain his good will?

Mr. Haycraft: Objected to as incompetent, immaterial and irrelevant.

Mr. Weisman: He is testifying here—and he said naturally.

Examiner Bennett: Yes; I understand.

Mr. Weisman: He testified as to good will. I think it is very important for us to look into that.

Examiner Bennett: I know he testified to that, but that does not mean that it ought to be torn to rags and pulled all to pieces.

Mr. Weisman: I want to show that he does not 4635
know what he is talking about.

Examiner Bennett: That has been demonstrated —or not been demonstrated by this time. I think we have it now. I will sustain any objection as to questions about good will of the type you have been asking.

Mr. Weisman: I will ask him just one more question.

By Mr. Weisman.

Q. Do you not know, or do you know, whether or not women buying dresses like to have individuality in connection with those dresses? A. Yes. There are many woman who prefer that.

By Mr. Weisman.

Q. Do you know whether or not does she—let us say you have a $19.75 original style and you sell that for $19.75, that when there is a copy in the market it appears at a generally lesser price, does it not?

4637 Mr. Haycraft: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: I will let him answer.

A. Not always. Some manufacturers will copy for the same retail price.

By Mr. Weisman.

Q. I did not say "not always." Generally, not always. I did not ask you what happened always. You and I know that copying is copying down. A. How can I attest to what somebody else does?

Q. You have bought copies, have you not?

4638 Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, Mr. Examiner.

Examiner Bennett: Overruled.

A. I have bought copies in my experience.

By Mr. Weisman.

Q. When you buy copies of an original, you bought it because you wanted to get something selling at a lesser price, otherwise you would have bought the original? A.

Not always. There were times when I could not buy the original from the original maker, and had to buy the copy from somebody else.

Q. What about generally?

Mr. Haycraft: I object to that.

A. I cannot attest to generalities.

By Mr. Weisman.

Q. I mean——

Examiner Bennett: Overruled.

4640

Q. I mean in a general way. A. You are asking me to attest to generalities, and I cannot possibly do so.

Mr. Haycraft: I object to that, if your Honor please. The witness has stated that he could not answer the question in that form, and I do not think it is proper for you to interrogate him further along that line.

Mr. Weisman: Let us see what the Examiner thinks about it.

The Witness: I do not understand what he is driving at.

Mr. Weisman: I have lots of time. I want an answer to my question.

Mr. Haycraft: I object.

4641

Examiner Bennett: The objection is overruled.

The Witness: May I have that question again, please?

Mr. Haycraft: I object to that.

(Question read.)

Mr. Haycraft: I object to that. The witness has indicated that he cannot answer that question in his previous answer.

By Mr. Weisman.

Q. If you cannot answer that as divisional merchandise manager, I should like to know it. A. I cannot.

Examiner Bennett: What is your answer?

The Witness: I cannot answer that, Judge. It is too general a statement.

By Mr. Weisman.

Q. Let me ask you this question: Assume that a woman buys a dress in your dress Department 331, and she paid for that dress $19.75, and she saw a copy of that dress in
4643 a competitor's shop for $10.75. Have you any opinion as to what the effect of that copy would have on the good will of your store with that woman?

Mr. Haycraft: I object to that question as improper, incompetent, immaterial and irrelevant, and ask that it be stricken physically.

Examiner Bennett: Overruled.

You may answer. The question is, have you an opinion?

The Witness: Yes, I have an opinion, Judge, that is in the records, and I have attested to that, but I would hesitate to give it here.

By Mr. Weisman.

4644 Q. What is your opinion?

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

A. It may have some effect upon the good will in some cases, and in other cases it would not.

By Mr. Weisman.

Q. What effect would it have on the good will? A. It would have an adverse effect until we were able to convince the customer that there is a difference between both garments.

Q. What do you mean, you can convince the customer that there is a difference between both garments; what do you mean by that? A. I have in this business—I have been in this business long enough to know that there is no woman, or no man, that can give you for less money what another man will charge you for more money.

Q. In other words, you say that while these goods, that while they look alike to the layman on first inspection, you 4646
can show to that customer that there is a difference between those garments? A. Yes, sir. I have done so many times.

Q. You have? A. I have demonstrated by having both garments alongside of one another, and had many customers purchase the original in preference to the copy.

Q. To show that the copy while merely giving the appearance of being the same was usually inferior? A. That is right.

Q. Yesterday I asked you this question: "Q. Did you, in the practice of your duties as divisional merchandise manager, know there were and are regularly issued a large number of directories setting forth the names and addresses and the price lines of the various manufacturers; 4647
did you ever hear of that?" To which you answered as follows: "A. Yes, sir." I then asked you this question: "Q. Did you examine any such directories?" To which you answered as follows: "A. I have quite a few directories that I went through. I went through quite a number of directories, yes." Do you remember hearing those questions and do you remember making those answers? A. Yes.

Q. I now show you Respondents' Exhibit No. 21 for Identification, and ask you whether or not in that particular one—not this particular book which I am showing you, but whether or not the Fairchild's Women Wear Directory of New York City is one of the directories that you went through? A. Yes, sir.

Mr. Haycraft: That is objected to, Mr. Examiner, and I move to strike the answer as repetitious.

Mr. Weisman: There is no repetition there, if your Honor please.

Examiner Bennett: I will sustain the objection.

4649 That is repetition of what we went over yesterday.

Mr. Weisman: We did not ask him whether he went through that directory or not.

Examiner Bennett: I think you did. All of those directories he said that they were available, and he used them for certain purposes, getting telephone numbers and so forth.

Mr. Weisman: I am not going to press the examination of the directories any further because I understand that your Honor has ruled that we may, on our case, tender the directories.

Examiner Bennett: Yes, you may tender them if they are properly identified, of course, by you. The motion is granted.

4650 Mr. Weisman: I except and offer to prove that if the witness were permitted to answer the answer would have been in the affirmative.

By Mr. Weisman.

Q Yesterday when I queried you about the numbers—the people and the concerns that made dresses, you were aware of the wholesale price—the Guild members, I mean—you stated that you knew the Baron Dress Company

price? A. What is that question again, please? I did not understand it.

Q. Well, perhaps it was a bit mixed up. Yesterday, when I queried you about the Guild members' prices of dresses, you were aware of the wholesale price, you stated, of the Baron Dress Company price; is that so? A. Yes, sir; I believe I did.

Q. You also said, told us, that you knew the wholesale price on garments manufactured by the Baron Dress Company, did you not? A. Yes, sir.

Q. What was the wholesale price of the Baron Dress Company at about February 1, 1936?

Mr. Haycraft: I object. That is already in the record. 4652

Mr. Weisman: I do not believe it is.

Examiner Bennett: I think you are going over the same ground again.

Mr. Weisman: This is just a foundation question. I will promise to finish quickly with this witness, your Honor please.

Examiner Bennett: Overruled.

A. I do not remember attesting to any particular price, or to any particular month. I mentioned that $10.75 and up was the cost price of my experience with that manufacturer—that my experience was with the manufacturer, I should say. 4653

By Mr. Weisman.

Q. Was $10.75 the cost price at February 1, 1936, at the time the Guild houses stopped doing business with you? A. No. I do not think so. I do not know that it was.

Q. Do you not know that it was not? A. I do not know. I simply do not know.

Q. How did you learn the cost price or the wholesale price of the Baron Dress Company merchandise, and you

do not know anybody else except C. H. D. Robbins out of that whole group of manufacturers? A. They are the only two that I remember definitely making inquiries to, or either visiting their particular showrooms.

Q. Did you visit their particular showrooms since February 1, 1936? A. No.

Q. How did you know— A. I am sorry. I have since February 1; yes, sir.

Q. Whose showrooms have you visited out of that group since February 1, 1936? A. I have visited the Baron Dress and C. H. D. Robbins.

Q. When did you visit C. H. D. Robbins? A. C. H. D.
4655 Robbins I visited some time in the early part of February.

Q. Is it a fact that you are getting all the merchandise that you want now from the Baron Dress Company? A. You asked me whether I visited the showroom.

Q. No, no, no, no, no. Listen to the question I have just asked you and look at me. I know I am pretty hard to look at but I will not motion to you as to how to answer the question, anyhow. A. Yes, sir; we are getting all of the merchandise that we want now from the Baron Dress Company.

Q. As a matter of fact, you have been getting all the merchandise that you wanted from the Baron Dress Company ever since February, 1936, have you not?

Mr. Haycraft: February 1 or what? What date
4656 in February?

Mr. Weisman: I would like to find out from the witness. He can tell us the date.

Mr. Haycraft: I object. It is too indefinite.

Examiner Bennett: Sustained. Make it definite.

By Mr. Weisman.

Q. From February 15, 1936? A. I do not know.

Q. From February 28, 1936? A. I do not know what time the Baron Dress Company resigned from the Guild.

Q. Do you know the circumstances under which they resigned from the Guild? A. I am not acquainted with that, no.

Q. Did you ever discuss it with them? A. No, sir.

Q. Do you remember that at the time that Strawbridge & Clothier severed relations with the Guild that the Baron Dress Company formed another subsidiary dress company? A. I am not acquainted with what they formed.

Q. Or with any other company with the same principals as the Baron Dress Company? A. What do you mean by principals?

Q. Who are the members of the Baron Dress Company? A. I know Mr. Baron only. 4658

Q. Is that all? A. And Mr. Feldman.

Q. Mr. Feldman? A. Yes.

Q. If you know Mr. Feldman why did you so glibly say you knew Mr. Baron only? A. I am sorry. I know both of them.

Q. Think a little longer and see if you can correct this again. A. Mr. Baron and Mr. Feldman, that is all.

Q. I would like to ask you a few questions. I couldn't help observing that when the recess was declared you immediately went into conference with Mr. Freeman; is that right? A. That is correct.

Q. Did you discuss with Mr. Freeman the testimony you were going to give when you returned to the stand? A. We did discuss something. I wish to state what we discussed, but since you wish it to wait, I am quite willing. 4659

Q. Without any implication to Mr. Freeman, who is a respected member of the bar, may I take it, then, that your discussion was directed solely to a correction of your previous testimony that you sought to make? A. No.

Q. Was it directed to guiding you along the lines that your subsequent testimony should take? A. You requested something——

Q. No. No. Was it along that line? A. No, sir.

Q. Well, now, was it merely with regard to the papers that Mr.—or the names that Mr. Freeman made a speech on in the record, concerning which Mr. Freeman made a speech on the record last night? A. That is right.

Q. And was it limited wholly to that? A. Yes.

Q. Did you bring with you the list of manufacturers, the total list, that was requested of you last night?

Mr. Haycraft: Objected to, Mr. Examiner. The witness was not requested to bring a list of manufacturers.

Mr. Weisman: He was requested.

Mr. Haycraft: He was requested to bring the
4661 total number.

Examiner Bennett: He was requested to bring the total number.

Mr. Weisman: Yes. Well, all right.

Examiner Bennett: Of course, he is protected by statute against disclosing his customers if he doesn't choose.

Mr. Weisman: I didn't ask him to disclose his customers.

Examiner Bennett: Well, I understood you were simply asking him——

Mr. Weisman: For the number.

Examiner Bennett: —for the number.

By Mr. Weisman.

4662 Q. You remember last night that I said to you that I would like a total number, I would like to have you ascertain the total number of manufacturers with whom the Department 350 did business during the thirteen months preceding February 1, 1936? Do you remember me asking you that? A. Was that at the close of the session last night?

Q. Yes. A. I think you are confusing the department number.

Q. Did you understand that it was 331? A. No, sir.

Q. 371? A. 371, yes.

Q. All right. Now, then, do you remember my making that request with regard to Department 371? A. That is correct.

Q. Did you find out the total number of manufacturers with whom the Department 371 did business during the thirteen months preceding February 1, 1936? A. You want the thirteen months preceding February 1?. Yes.

Q. Well, now, what was the total number of people with whom—of these manufacturers—with whom this department did business during that period? A. Seventy-three.

Mr. Haycraft: That is the total number of the 4664
Guild and non-Guild?

The Witness: That is correct.

Mr. Haycraft: Let the record show that the witness' memory was better than counsel for the respondents' on one occasion at least.

Mr. Weisman: Let the record also show that I haven't been tendered as a witness in this proceeding, that I am not under oath and testifying ad lib, but I am only asking questions. If you want the record to show something, Brother Haycraft.

By Mr. Weisman.

Q. Did you, by any chance, ascertain the number of manufacturers that Department 350 did business with 4665
during that same period?

Mr. Haycraft: He testified to that yesterday.

A. I have testified to the certain number. You asked me to get that particular report. In the questioning later on you simply took one figure and the total

By Mr. Weisman.

Q. No. No. You didn't understand me. Overnight you did look up your records and you ascertained that the total number of manufacturers with whom Department 371 did business during that thirteen-month period immediately preceding February 1, 1936, was seventy-three, I understood you to say. Is that correct? A. I didn't personally look it up. I had that figure made up for me while I was on the stand to-day.

Q. Yes. A. Yes.

Q. Did you find out the same information with regard to Department 350? A. I had it here for you yesterday.
4667 I do not remember what it was. I had a notation which I read to you, and part of that notation was accepted in your cross-examination.

Q. You say that yesterday you knew? A. Yes, I did know yesterday, but I answered your questions as you put them to me.

Q. Do you still know to-day? A. I don't remember what that question was.

Mr. Haycraft: I will hand the witness a paper that he had yesterday.

Mr. Weisman: He had this with him all the time?

The Witness: I had it in my hand reading, but you questioned me about certain phases of it.

4668

By Mr. Weisman.

Q. Do you know the total number of manufacturers with whom you did business during that period with regard to Department 350? A. Which period?

Q. The thirteen months preceding February 1, 1936. A. Yes, seventy-two.

Q. Seventy-two. Now, what about Department 331? A. I did not look that up.

Q. Can you look that up during the recess at lunch? A. I can have that done; yes, sir.

Q. And give us the total number? A. Sure.

Q. Will you do that with regard to 373? No. Look at me; will you do that? With regard to 373 department? A. I can, yes.

Q. Will you do that with regard to Department 382? A. There isn't anything in my testimony, I think, that refers to 382 as to resources.

Q. No, but I just would like to know. A. If the Examiner so rules, I will.

Examiner Bennett: Well, I have already advised you. I have already advised you that it is a matter 4670
of discretion, but so far as I am concerned, I will be glad to have the figures.

The Witness: I would rather consult with our counsel during recess.

By Mr. Weisman.

Q. All right. A. And determine what should be done in this particular course.

Q. Well, that is a fair statement. Would you, when you consult with your counsel, likewise consult with him and tell him subject to his advice to you, and if it meets with his conclusions, I would like you, during the recess, to make up a list as to each department that is under your supervision setting forth the total number of manufac- 4671
turers that you do business with in that department, or did business during the thirteen months immediately prior to February, 1936. Will you do that? A. Which department do you have reference to?

Q. All of them. A. All of my departments?

Q. Yes. A. I certainly shall consult with him.

Q. Yes, consult with him and let us know whether or not, after such consultation, you will produce them or not.

Mr. Haycraft: I object to this, Mr. Examiner, to that being done other than Guild departments. The departments which handle Guild merchandise. Irrelevant, immaterial and not proper cross-examination.

Mr. Weisman: All right.

Examiner Bennett: I will overrule the objection, as far as that is concerned, but the discretion is still with him.

Mr. Haycraft: I have no objection to information as to Guild departments.

Mr. Weisman: All right.

4673 That is all, Mr. Chance.

Examiner Bennett: All right.

Redirect examination by Mr. Haycraft.

Q. You were asked, Mr. Chance, as to how it happened that you were familiar with the price lines of two of the manufacturers, C. H. D. Robbins and Baron, and were not familiar with the other Guild manufacturers, familiar with their lines, prices, and so on. I will ask you whether or not you were ever given an opportunity to become familiar with those lines?

Mr. Weisman: Objected to. I object to that. Incompetent, irrelevant, immaterial; not proper redirect examination; calling for a conclusion.

4674 Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: You may answer.

A. I was never given an opportunity to become familiar with these particular manufacturers.

By Mr. Haycraft.

Q. And why? A. Because of the red carding of our store with these same resources.

Q. You were asked certain questions yesterday, or the day before, with respect to comparative figures on advertising and window display for five months, 1935 compared with 1936. I will ask you whether or not such figures are gotten up in your department and under your supervision?

Mr. Weisman: Objected to as incompetent, immaterial.

A. No, sir.

Q. Is it part of your duties to know what those figures are? A. I don't quite understand the question. May I have the question? 4676

(Question read.)

A. Yes, we do have figures submitted to us, and it is part of my duty and responsibility to know what our advertising costs are.

Q. As at the time that they are made? A. No, after they are submitted to us as a matter of comparison.

Q. I see. Did you, in 1936, have any knowledge, in February, 1936, as to the budget for the five months under consideration, from February to June, as compared with 1935?

Mr. Weisman: Objected to as immaterial. That has already been answered.

Examiner Bennett: Overruled. 4677

The Witness: May I have that question?

Mr. Haycraft: I asked him if he knew in February, 1936.

The Witness: May I have the question?

(Question read.)

A. I did not at that time; no, sir.

By Mr. Haycraft.

Q. How are those budgets made up?

Mr. Weisman: Objected to as immaterial, incompetent, no proper foundation.

By Mr. Haycraft.

Q. Did you know?

Mr. Weisman: No foundation laid.

A. There is a tentative plan.

4679 Examiner Bennett: I will overrule the objection.

A. There is a tentative plan made.

By Mr. Haycraft.

Q. Plan? A. At the beginning of each period.

Q. What length of period? A. Possibly for three months.

Q. Three months? What time of the year? A. Spring, summer, fall and winter.

Q. Then when was the winter budget made up? A. Which winter are you referring to?

Q. Well, take 1936, for instance. When was that taken into consideration? A. That had been made up prior to my entering or taking over the division.

4680 Q. When was the spring budget made up? A. The spring budgets were made up subsequent to my taking over the division.

Q. What month? A. I don't recall the exact month.

Q. Did you at that time take part in the making up of that budget in the spring of 1936? A. Yes, I submitted an estimate on what the approximate advertising cost would be.

Q. Was there any comparison made at that time with—by you or any of your subordinates with respect to the spring budget for advertising with the same period of time in 1935? A. May I have the question again?

Q. (Question read.) A. No.

Q. Did you see at that time such a comparison? A. I don't remember seeing any comparison.

Q. You testified on cross-examination that the Baron Dress Company had been selling Strawbridge & Clothier since February 1, 1936? A. That is right, sir.

Q. I believe you also testified that you understood that they had resigned from the Guild, but you didn't know when; is that correct? A. I have. 4682

Q. I will ask you whether or not there are any other Guild resources that are now a source of supply for Strawbridge & Clothier?

Mr. Weisman: If he knows

Mr. Haycraft: Yes, if he knows.

A. I cannot mention any particular name, but I know there are some that have resigned.

By Mr. Haycraft.

Q. I will ask you about Lipman Brothers. A. Yes, Lipman Brothers have resigned since the time of the red carding.

Q. Do you have any knowledge as to when they resigned? A. No, I do not. 4683

Q. Do you know how long you have been getting merchandise from Lipman Brothers since the red carding took place? A. Possibly around the early part of March or the latter part of February.

Q. I see. In what departments do you handle Lipman Brothers' merchandise? A. 350 department is one department, and I know it definitely handles Lipman Brothers' merchandise.

Q. Do you know of any other Guild manufacturers that has resigned from the Guild? A. No, I don't recall any to my mind at this time.

Q. You were questioned with respect to the volume of sales in January, February and March, 1936, as to comparative volume. A. That is right, sir.

Q. Of these various departments under your supervision. You said that Easter, you understood, came on April 12 this year, 1936. A. That is right.

Q. Is that correct? How long before Easter are the retail sales affected by the Easter buying on the part of the public?

4685 Mr. Weisman: I object to that as improper redirect. We are going to open all of this up again.

Examiner Bennett: Overruled.

Mr. Weisman: Exception. Further, that the question is incompetent in form. It calls for a conclusion, an opinion, or something or other.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I would say six to eight weeks prior to Easter, retail business is affected by that particular holiday.

By Mr. Haycraft.

Q. I will ask you to testify whether or not in your opin-
4686 ion the ability or inability of Strawbridge & Clothier to get dresses from members of the Guild would affect the volume of sales in March, 1935, as compared with March, 1936? A. Yes. There is—certainly would make a difference as to the sales results.

Q. On cross-examination you were asked certain questions with respect to Commission's Exhibit No. 414, particularly with reference to the price lines of the lower brackets. I will ask you to testify, if you will, as to which

of the price lines in this exhibit, from your knowledge of the business, would include Guild merchandise, that is manufactured by Guild manufacturers? A. I am safe in saying $16.95 and up.

Q. $16.95? A. Yes, sir. There may be some other prices but I am certain of this and I am not certain of the others and I would rather not state them.

Q. On cross-examination you were asked concerning—you were asked certain questions with respect to the price range of garments sold by Strawbridge & Clothier of ladies' dresses other than those described in these various exhibits, 414, 412, and so forth, and in your answer you made mention of cotton dresses. I will ask you whether 4688
or not the Guild manufacturers, any of them, ever manufactured cotton dresses to your knowledge? A. I have no knowledge on that, sir.

Q. No knowledge? A. Yes, sir. I have no knowledge.

Q. I will ask you this question: Whether or not the dress departments over which you now have supervision have had dresses since February, 1936—— A. I am sorry. I do not get that question.

Q. I will ask you this question: Whether or not the dress departments over which you now have had supervision since February, 1936, handle cotton dresses? A. Yes, sir. We do.

Q. In what price ranges would that be? A. $1.95 retail inclusive up to $10.75 retail.

Q. I will ask you whether or not to your knowledge any 4689
cotton dresses are sold by Department No. 371? A. Yes, sir. Department No. 371 does sell cotton dresses.

Q. In what price ranges? A. We buy from the $3.95 price range and possibly to $5.95 and a few at $7.95.

Q. Is that the retail price? A. Retail price. Yes, sir.

Q. What were your instructions to the statistical department in the preparing of Commission's Exhibit No. 410?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant and not the best evidence. The best evidence is the written document. He has already testified fully on this. Your Honor remembers on cross-examination that he testified what his instructions were and how they were gotten up.

Mr. Haycraft: He was not allowed to fully.

Mr. Weisman: I submit that this is not proper redirect examination. I have refrained from objecting, feeling that it would simply lose time, but now I must object to this type of redirect examination.

Examiner Bennett: I think it is not the best
4691 evidence in view of the testimony of the witness that he had something in writing. Unless you desire to produce it, I think this had better go out.

By Mr. Haycraft.

Q. Do you have those instructions with you? A. No, sir. I do not have them.

Q. To whom were they given? A. They were placed in the mail and addressed to Mrs. Knipe of our Accounts Payable Department.

Q. In the noon recess I should be glad to have you get a copy of those instructions, if possible to do so, and present them at the afternoon session. A. Yes, sir.

Mr. Weisman: Will your Honor advise this wit-
4692 ness that he can use his own discretion and consult with counsel regarding the production of this paper as your Honor did with regard to the production of the papers that I have asked for?

Examiner Bennett: He has his instructions. They apply to all counsel.

The Witness: It is understood.

By Mr. Haycraft.

Q. On cross-examination you made an estimation of the volume of sales in Department No. 331 for the year 1935, I believe.

Mr. Weisman: I object to that—if you have finished your question—I do not want to interrupt you.

Mr. Haycraft: No. I have not finished my question.

Mr. Weisman: Excuse me.

By Mr. Haycraft.

4694

Q. I will ask you whether or not the records of Strawbridge & Clothier will disclose that information?

Mr. Weisman: I object to the form of the question. As a matter of fact that was one of the things that the witness did not testify to and that I sought to elicit from him.

Mr. Haycraft: You are wrong on that. He made an estimate or gave an opinion of the approximate volume of sales for Department 331.

Mr. Weisman: For the year 1936 and not for 1935. He said $100,000 and I produced a script showing it was $170,000 and——

Mr. Haycraft (interposing): There is no use of arguing this. I know what the witness said and I 4695
am willing to pit my memory against his any time.

Examiner Bennett: I overrule the objection. You may answer.

The Witness: May I have the question again, please?

(The reporter read the question as follows: "Q. On cross-examination you made an estimation of the volume of sales in Department No. 331 for the

year 1935, I believe. I will ask you whether or not the records of Strawbridge & Clothier will disclose that information?"

A. The records of Strawbridge & Clothier will disclose the volume of sales done, I believe, in any department of that store.

Mr. Haycraft: I should be glad to have you consult your attorney, and, if he has no objection under the circumstances to producing it, produce it at the afternoon session in the form of a statement showing the total volume of sales done by that de-
4697 partment for the year 1935.

The Witness: I shall be glad to do so, Judge.

By Mr. Haycraft.

Q. I will ask you to testify as to the character of the merchandise that Strawbridge & Clothier bought from Guild manufacturers from season to season. A. I cannot attest the character of merchandise prior to my taking over the division. But since February 1, 1936, there is a high calibre type of merchandise in several departments that were remains of the original shipments. One particular item that I remember particularly was costume suits. Costume suits were an item that was desirable at the time and were being manufactured by concerns that were Guild
4698 members that we had difficulty in replacing.

Mr. Weisman: Now I ask that the answer be stricken out as not responsive, if your Honor please.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. The garments which you referred to were sold in what period of time? A. At that particular time it was considered a spring item.

Q. Spring item? A. Yes.

Q. Following the spring season of the year, is there a different type of garment——

Mr. Weisman (interposing): I object.

By Mr. Haycraft.

Q. —or the same type of garment——

Mr. Weisman: As not proper redirect examination.

By Mr. Haycraft.

Q. —as sold in the summer time? A. There is a different type of garment sold later in the year than what I had reference to as a costume suit. 4700

Q. I will ask you whether or not the dresses sold by your department in the summer time, in June, in the month of June, particularly, were of such a type or character or the same type or character that were handled during the earlier months of the year?

Mr. Weisman: Objected to as incompetent and immaterial, not proper redirect examination.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. There is quite a lot of cheaper merchandise brought in, wash dresses and cotton dresses in the summer months in those departments. 4701

By Mr. Haycraft.

Q. Would that have any effect upon your volume of sales during the summer months? A. Well, you have a larger market for those particular things. I think it would, yes.

Q. Directing your attention to Commission's Exhibit No. 415, would the explanation you have given account in any way for the apparent increase in the volume of sales in the departments which had been buying from the Guild? A. I am sorry. I do not quite understand that question. May I have that question again, please?

Q. (Question read.) Can you answer that now? A. That, I believe, is the explanation.

Q. Now, then, I will ask you whether or not—strike that out. When do you enter the market to buy garments for fall and winter trade?

Mr. Weisman: I object as incompetent, immate-
4703 rial and irrelevant, and not proper redirect examination.

Mr. Haycraft: This is on the question of the subsiding of the difficulty in buying garments.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

A. Our buyers have been in the market for the past few weeks buying fall merchandise.

Mr. Weisman: I ask that the answer be stricken out as irresponsive. He asked him when he bought his garments and the answer is something about buyers going out.

Mr. Haycraft: You are entirely mistaken about
4704 that. I ask that the question and answer be read, and I am sure you will see it.

Examiner Bennett: The question and answer may be read.

(Question and answer read.)

Mr. Weisman: I withdraw the objection.

Examiner Bennett: The objection is overruled anyhow.

By Mr. Haycraft.

Q. I will ask you if the difficulty to which you testified on direct examination, and to which you were, or about which you were cross-examined in connection with Commission's Exhibit No. 415, is still apparent in your attempts to buy fall merchandise? A. The buyers so report; yes, sir.

Examiner Bennett: You may examine.

Recross-examination by Mr. Weisman.

Q. Let me ask you a few questions. A. Yes.

Q. Were you—just sit back in your chair. Do not sit 4706
on the edge there. A. Oh, very well.

Q. Take it easy, you are not going to lose anything by it. A. Very well. I have sat back now.

Q. When did the order—in the year 1935—first, let me ask you about this: When did Easter come in the year 1935? A. I believe one week later than it occurred in 1936.

Q. When did it take place in 1936? A. April 12.

Q. When was it in 1935? A. Offhand, I should say April 19.

Q. No, I will tell you it was April 21. A. You may be right.

Q. Now that I have mentioned the date, April 21, does that refresh your recollection? A. Well, I assume it is 4707
correct.

Q. I assure you it is. A. Thank you.

Q. We looked it up. A. Very well.

Q. You stated on your redirect examination that the advent of Easter would tend to accelerate sales or increase the volume of sales during the period from eight to ten weeks before; did you?

Mr. Haycraft: I object. He did not make any statement to that effect.

By Mr. Weisman.

Q. Now just be calm. Did you say it had no effect on sales? A. I did say that it had an effect upon sales, but not for the period of time that you mentioned.

Q. What period of time did you mention? A. I said six to eight weeks.

Q. You said six to eight weeks? A. Yes.

Q. Not eight to ten weeks? A. No, sir.

Q. Now, say this—so, then, what were the six to eight weeks prior to April 12? A. That would be practically, or approximately two months prior to that time.

Q. That would be February 12, would it not? A. Yes,
4709 sir.

Q. Isn't that so? A. That is right.

Q. Now, what is six weeks prior to April 21? A. Would that be February 19 or 21?

Q. February 19 or February 21 would be eight weeks. And what would be six weeks? A. Two weeks subsequent to that.

Q. Now, don't you know— A. The first of March.

Q. —that Commission's Exhibit 415 shows that in March, 1936, you did in your Guild departments $10,000 more business than you did in March, 1935? Didn't you know that when you answered Mr. Haycraft? A. That wouldn't make any difference in my answer whether I knew that or not. I stated the facts to Mr. Haycraft.

4710 Q. Well, now, that you stated the facts and the facts are that in March, 1935, you did $75,700, while in March, 1936, you did $85,800, in those Guild departments; doesn't that affect your answer? A. I don't believe it does.

Q. In other words, you still stand by that answer? A. Well, Mr. Haycraft——

Q. No, no. Do you still stand by the answer now that I have called your attention to these facts? A. Well, that wouldn't make me change my mind.

Q. That is what I want to know. You still stand by your answer? A. I certainly do.

Q. O.K. You stated to Mr. Haycraft—by the way, when did you become buyer—or, I will withdraw that. When did you become divisional merchandise manager? A. Officially, February 1, 1936.

Q. Now, listen to my question again. When did you commence to exercise the functions of divisional merchandise manager? A. February 1, 1936.

Q. You reiterated on four occasions when I asked you that question the words you officially became divisional merchandise manager on a certain day. What was the significance of your answer using the word "officially"? 4712

Mr. Haycraft: Objected to as irrelevant and immaterial; not proper recross-examination.

Examiner Bennett: Overruled.

A. It is a term applied, I believe, to a change of position to which I have taken.

By Mr. Weisman.

Q. Well, before February 1, 1936, were you generally acting with Mr. Taylor as unofficial assistant to him? A. No, sir. I was buyer for 492 and 493 departments.

Q. And solely and absolutely— A. That is right.

Q. And that is all that you did? A. That is right.

Q. And you didn't know anything about what was going on in these other departments? A. I may have known as much as any other person by contact with other buyers and seeing what is going on, but aside from—— 4713

Q. Well, that is what I want to find out. A. Aside from getting——

Q. How much did you see?

Mr. Haycraft: Let him complete his answer.

Mr. Weisman: Excuse me. Excuse me.

A. Aside from going into any technical details to determine any particular thing, I have never made that my business. Mr. Taylor was my superior, and I respected him as such, and I confined my activities to my own job.

By Mr. Weisman.

Q. You made quite a discussion yesterday of the necessity for your getting Lipman Brothers' merchandise, didn't you? A. Yes, sir.

Q. And you stated that you couldn't get it, didn't you? A. We could not get those numbers on reorders at the time we were red carded, yes.

4715 Q. You shortly thereafter got them, didn't you? A. There was a period there that we were without any receipts of merchandise from Lipman Brothers.

Q. How long? A. I do not know exactly how long.

Q. No, but how long without being exact? A. I would say approximately a month.

Q. Wasn't it approximately eleven days? A. I don't know whether that was or not.

Q. Why do you say a month if you don't know? A. You asked me about eleven days.

Q. As a matter of fact, within eleven days after you were red carded didn't Lipman resume relations with you and resign from the Guild? A. He may have resigned from the Guild at that time, but whether he resumed relations with Strawbridge & Clothier at that particular
4716 time I am not certain and I do not know.

Q. Didn't you on your direct examination seek to give the opinion—I withdraw the word "opinion"—seek to give the inference that you were unable at all times thereafter to get the goods from Lipman Brothers? A. No, I don't believe there was a statement to the effect that we did receive some after we were red carded, but I state that there was a lapse of time between the original shipments and the time we were red carded, and some time after that. How long I do not know.

Q. In other words, you now state that on your direct examination you stated that you were getting goods from Lipman Brothers? A. Since we have been red carded we have received merchandise from Lipman Brothers.

Q. No. I want to know whether or not you so stated on your direct examination? A. Well, I don't quite understand the way you frame your words. If you will please read them back to me I will tell you.

(Record read.)

A. I believe I have.

Q. That is your best recollection of your testimony? A. Yes. 4718

Examiner Bennett: Have you arrived at some point where we can stop?

Mr. Weisman: I think it is well to have a recess for lunch.

Examiner Bennett: All right. We wil recess for lunch and we will come back at 2 o'clock.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. 4719

By Mr. Weisman.

Q. What is a costume suit? A. A costume suit is a skirt and a jacket and a waist. Sometimes that waist may be attached to the skirt and at other times it may not. It may be a dress and a coat. Generally termed in a way as a fur-trimmed costume suit, could be plain or tailored.

Q. Now, these costume suits, who are they generally made by, what branch of the industry? A. I don't quite understand you, by branches.

Q. Did you ever hear of various branches of the needle industry? A. You mean in the way of coats and suits?

Q. That is right. A. And dresses? Yes.

Q. That is right. A. Yes.

Q. Now, you know there is a well-defined distinction between the dress houses and the coat and suit houses, don't you? A. There is.

Q. These costume suits that you refer to, who were they generally made by? A. I recall in discussing——

4721 Q. No, no, no, I didn't ask you what you recall in discussing. I asked you as to those two branches of the industry, by which branch were those costume suits generally made by? A. They are made by both branches, the dress and suits.

Q. Do you say that they were made equally by the dress houses as they were by the coat and suit houses? A. I have no opinion on that.

Q. Don't you know that the costume suit was a promotion of the coat and suit people as distinguished from the dress people? A. You are telling me it is.

Q. Well, don't you know it? A. I said I had no opinion to that.

Q. Did you ever have an opinion on it? A. Not on that one thing, no.

4722 Q. That is what I want to find out. Now, you referred to these costume suits in the early part of this year, in January and February, and even in December. There was a great vogue, wasn't there, for these costume suits? A. I understand there was.

Q. Didn't the coat and suit manufacturers generally go into the manufacture of these costume suits to satisfy this vogue o' demand? A. I stated before——

Q. No, no. A. I do not know.

Q. What? A. I stated I do not know.

Q. Do you still not know? A. I do not know whether coat and suit manufacturers go in on that vogue.

Q. Do you know who made them? A. I have memorandums. I do not know who made them.

Q. Well, let's see. You were very much perturbed, weren't you, over your difficulty in getting merchandise for the departments under your divisional merchandise managership? Were you or were you not disturbed? A. Yes, we were.

Q. Well, as a result of that disturbance, from which you suffered so grievously, didn't you seek to ascertain who was making these costume suits generally? A. The buyers 4724
have attempted——

Q. No. No. Did you? A. I personally did not, although I did through my buyers.

Q. In other words, you just continued to suffer; is that so?

Mr. Hayeraft: Objected to.

Examiner Bennett: You don't expect him to answer that question, do you?

Mr. Weisman: I do. I want to know.

Examiner Bennett: Well, I will sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman. 4725

Q. Do you know how many members of the industry are generally engaged in the cloak and suit business? A. I do not.

Q. Have you any idea at all? A. None.

Q. Not the slightest? A. No.

By Mr. Weisman.

Q. Do you know how many members of the Fashion Originators Guild of America are in the cloak and suit business? A. I do not.

Q. Did you ever seek to investigate? A. I did not.

Q. In the course of this great difficulty that you had that you have testified that you had, I mean, did you deem it incumbent upon you to see whether or not you could get a good costume suit from one of the members of the industry that wasn't a member of the Guild?

Mr. Haycraft: That is objected to on the same ground, that it has been gone over yesterday. It is not proper recross-examination.

Examiner Bennett: Well, I will let him answer. Overruled.

4727 A. We have attempted to, and we did get some.

By Mr. Weisman.

Q. You did get some? A. Yes.

Q. With regard to this costume suit that you told us about on your redirect, who made that costume suit? A. I said costume suits in general terms.

Q. Oh. A. Mentioning as an item.

Q. Well, all right. Who made those costume suits which you referred to in general terms? A. If my recollections are correct, according to the buyers of that particular department, I have two manufacturers, I am pretty certain were mentioned to me as makers of costume suits at that time.

4728 Q. No. That isn't what I asked you. Makers of costume suits, I can give you 698 others. I mean— A. I mean those that we bought from.

Q. I want to know—you testified that you had a certain costume suit that was in great vogue. A. I didn't say a certain costume suit. I beg your pardon.

Q. Didn't you testify on your redirect that after you ascended to the position of divisional merchandise manager, you learned that there was in stock, that had been

carried over from the period before, a particular costume suit? A. No, I meant generally. I think that is my testimony.

Q. You meant that generally in the stock there were some costume suits? A. That were being used from the Guild houses at the time, yes.

Q. What were the Guild houses that had made those costume suits? A. Max Heit is one, and Goldstein-Entin is another at that particular time. There may have been others. That is all I recall to my mind.

Q. Didn't you subsequently fill in your stock with other costume suits? A. We bought some but we had great difficulty getting them, and it was necessary for us to go 4730
to Chicago in order to replace those costume suits that we ordinarily would buy in New York.

Q. Didn't you buy costume suits in the New York market? A. There may have been some bought but I do not remember. The buyer is better able to testify to that.

Q. How many of these costume suits had you bought from Max Heit? A. I don't remember figures. I am not the person who buys them. The buyer——

Q. What is the wholesale price of the costume suits that you refer to? A. My testimony will refer to that particular suit coming in the stock prior to my taking over the division. I do not recall.

Q. In other words, I have it that you do not remember the price of this costume suit? A. I wouldn't know.

Q. What was the style of the costume suit? A. I 4731
wouldn't recall.

Q. Well, you just stated that you had great trouble in replacing another costume suit. Didn't you know the price of the suit that you wished to replace? A. I don't know it at the time, to-day. I do not recall.

Q. You have since forgotten? A. Yes.

Q. And you have even since forgotten the type of it? A. I have mentioned types that were stocked, fur-trimmed costume suits.

Q. I see. Now, on your redirect by Mr. Haycraft you were asked about your buyers going into the market. Now, isn't it a fact that your buyers regularly go into the market all through the year? A. I don't recall any particular incident in the redirect or that Mr. Haycraft asked me that question.

Q. All right, if you don't, that is too bad. But you have your buyers? A. That is right.

Q. Now, what is the duty of these buyers with regard to the New York market? A. It is their duty to buy and resell merchandise for profit.

Q. How frequently do they go into the New York mar-
4733 ket? A. I would say on the average of once a week.

Q. You would say on an average of once a week? A. Yes, I would.

Q. So you would say that from February 1 down to the present time your buyers for your various departments have visited the New York market once a week? A. Yes.

Q. They visited that market for the purpose of making purchases and to place commitments and seeing what is going on? A. Yes.

Q. The trend of style? A. Yes.

Q. What is now? A. Yes.

Q. What is seasonable? A. Yes.

Q. To ascertain the things that are merchantable? A. Yes, sir.

4734 Q. You also stated that on their last most recent trip for fall merchandise they reported to you that they had difficulty? A. That is correct.

Q. When you said that they reported to you that they had difficulty, do you mean that they reported that they had difficulty in getting merchandise from Guild houses? A. No, in an endeavor to replace those particular types. They said difficulty in an endeavor to replace those particular types.

Q. Well, do you want it understood, then, that your store, Strawbridge & Clothier, has, up to the present time in the departments under your supervision, been able to replace merchandise therein of the same type as they therefore bought from members of the Fashion Originators Guild? A. I said——

Q. No, no. Is that your answer? A. No, it is not.

Q. Then they have not had. They have succeeded in replacing it; is that so? A. Your statement that you mentioned to us that that was complete——

Q. No, I did not ask you that.

By Examiner Bennett. 4736

Q. Can you answer that question? A. Your statement that you mentioned to us that we have been completely unable to replace that merchandise is not what I wish in the record. I wish to state that we are partially, or in some part, not able to replace that particular merchandise.

By Mr. Weisman.

Q. Well, generally, have you been able to replace it?

Mr. Haycraft: Well, I object as too indefinite to have any probative value, an answer of that sort to a question of that type.

Examiner Bennett: I will let him answer. 4737

A. I cannot answer anything further than I have on that, Judge. That is the same thing.

Examiner Bennett: All right. That is your answer.

By Mr. Weisman.

Q. Well, let us see whether or not that is your best answer. Do you consider that Strawbridge & Clothier, in

the Department No. 331, during the month of June, had a good, complete, seasonable stock of merchandise on hand?

Mr. Haycraft: I object.

Examiner Bennett: I will let him answer.

A. Our stock in that particular department, in measure, I would say, was seasonable.

By Mr. Weisman.

Q. Would you say that you had a sufficient amount of it on hand to satisfy the consumer demand? A. Are you
4739 talking about seasonable or type?

Mr. Weisman: I ask that the question be read so that the witness may be able to answer it.

(Question read.)

A. If you insert the word "seasonable" there, I can answer you better and clearer.

Q. I want you to answer it the way that I have propounded it. A. Not as I—we have had sufficiently seasonable merchandise to take care of our demands of certain types, those types that we have on hand in our stock.

Q. Well, let us see. A. Yes.

Q. You have a department known as Department 331? A. Yes.

4740 Q. Is that so? A. That is correct.

Q. What is Department No. 331, Mr. Chance, if you please? A. 331 is known as the Women's Better Dress Department.

Q. In the Women's Better Dress Department in the month of June, 1936, did you have a sufficient stock of seasonable, stylish merchandise to adequately supply the consumer demand that was made upon that department?

The Witness: May I have that question again, please?

(Question read.)

The Witness: I am sorry. May I have the question again, please?

Mr. Weisman: Give it to him again. Give it to him as many times as he wants it.

(Question again read.)

A. The amount of stock we had was, I believe, seasonable. To satisfy the consumer demand is problematical.

By Mr. Weisman.

4742

Q. What is that based upon? What is your opinion based on in that regard? A. I have no opinion.

Q. What is your best opinion on that; surely, you have some opinion. A. I have no opinion whatever.

Q. Do you mean to tell us you have no opinion whatever? A. No.

Q. You, as head of this department, would tell us whether you had enough stock on hand to satisfy the consumer demand? A. I made——

Q. No, no, no, no. Give us an answer to my question, please. I will make it the question I want you to answer now. A. No.

Q. No? A. That is what I said.

Q. What do you mean by "no"? You did not or you did? A. Because we lacked certain types of merchandise that we purchased from Guild houses. 4743

Q. Would you say that the same was true of Department No. 350? A. I would.

Q. You would? A. Unquestionably.

Q. That is certainly a very direct statement for you to make. A. Oh, yes?

Q. In other words, you now state— A. What?

Q. When you say "certain types of merchandise," what do you mean by that? A. I mean this, that we have had a following on certain type merchandise.

Q. Certain types does not convey anything to us. Explain, if you please? A. Well, I cannot be specific. I am telling you just what it is, it is "certain types."

Q. What are certain types? A. Certain types may mean a daytime dress or an evening dress or an evening wrap that Guild manufacturers make.

Q. Do not other people make daytime dresses or evening dresses and other type dresses of certain types also? A. Yes, they do.

4745 Q. Wherein did the Guild type dress differ from the non-Guild type dress? A. It differed, as I have explained prior to this, in the construction of the garment, the styling, and many other features.

Q. What do you mean by the "styling"?

Mr. Haycraft: The witness has already gone into this in great detail. It seems to me that this is a useless repetition.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to show that the witness does not have the remotest idea about what he is talking about.

Examiner Bennett: You have your exception. Proceed.

4746 *By Mr. Weisman.*

Q. Do you know the volume of the costume suits that were bought in the Chicago market? A. I do not recollect.

Q. Do you know the volume of the costume suits that were bought in the New York market? A. No. I do not have any idea.

Q. Do you know the dollar value of the costume suits that were bought in the Chicago market? A. No. I do not.

Q. Do you know the dollar value of the costume suits that were bought in the New York market? A. Have no idea.

Q. Have you any idea of the ratio between the two as to volume? A. No.

Q. Have you any idea of the ratio between the two as to value? A. No.

Q. Dollar? A. No.

Q. Did you ever have any knowledge thereof? A. Not to my knowledge.

Q. Did I understand you to say on redirect examination that the Guild houses did not make cotton dresses?

Mr. Haycraft: I object. That has all been gone over. 4748

Examiner Bennett: You may answer the question.

A. Not that I recall. I said certain prices.

By Mr. Weisman.

Q. Do you not know that the Guild houses do engage in the manufacture of cotton dresses? A. As far as fabric is concerned, I know that they can use cotton fabric as well as any other fabric just as well, I suppose, if they decide to do so.

Q. Do you not know that they do it; not that they can do it; they can do a lot of things—but that they do do it, have done it in the past, are doing it now, and probably will do so in the future? A. Not to my knowledge. 4749

Q. Do you mean to deny now that the Guild houses make cotton dresses?

Mr. Haycraft: I object to that.

Mr. Weisman: You brought it out on redirect examination.

Mr. Haycraft: It is incompetent, immaterial and irrelevant, and not proper recross-examination.

What is the use of going all over this. He says he does not know, Mr. Examiner. What is the use of keeping rehashing this all the time. He just keeps reiterating the thing time and time again. In the first place, he has not been able to get into the Guild houses. How can he testify to that?

Mr. Weisman: May the reporter show on the record, and may the record be plain, that Mr. Haycraft is shouting to such a degree that my ear drums are ringing? Furthermore, Mr. Haycraft is
4751 very successfully, no doubt, prompting the witness as to what his answer should be in that regard. I think that that is quite improper and ask your Honor to instruct him not to do so.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. You know that the Guild houses do make cotton dresses? A. No.

Q. You do not know that they make cotton dresses? A. I do not.

Q. You would not seek to deny it, would you? A. How can I know what they are doing when I cannot even get into their houses?

4752 Q. Will you deny it?

Mr. Haycraft: I object.

Examiner Bennett: Just a moment. I will sustain the objection to that. This has become just argumentative.

By Mr. Weisman.

Q. Do you remember on your redirect examination that Mr. Haycraft showed you this exhibit? A. Yes, sir; he did.

Q. Do you remember whether or not he asked you in connection with that exhibit what price ranges shown thereon are members of the Guild price ranges? A. I remember something pertaining to that.

Q. What do you remember pertaining to that? It was only shortly before our adjournment. What do you remember prior to the adjournment as to what was said about that? What do you remember pertaining to that? A. I remember telling him that the price line of $16.95 and up included purchases from different Guild houses.

Q. Do you not know that the Guild houses extend the way down to $4.75 price lines? A. I made that statement.

4754

Mr. Haycraft: That is objected to as not proper recross-examination.

Examiner Bennett: I will permit it.

A. I said there may be prices lower than that, but I would rather confine my statement as a fact to $16.75 and up.

By Mr. Weisman.

Q. $16.75, you have changed that again. In other words, it is a purport of your statement, or would the purport of your statement be that you know that the $16.75 or—really, you said before $16.95 is the Guild price range, but as to what your price ranges below that are you are not certain; is that so? A. That is right. 4755

Mr. Haycraft: I will recall Mr. Tily.

4756 *Herbert J. Tily—For Commission—Recalled—Redirect.*

HERBERT J. TILY, was thereupon recalled as a witness for the Commission, and having been previously sworn, testified further as follows:

Mr. Haycraft: I want to state that Mr. Tily is being recalled for one question.

Direct examination by Mr. Haycraft.

Q. Will you testify—you are the same Mr. Tily that testified here heretofore in this proceeding?

Mr. Weisman: We all recognize him.

4757 *By Mr. Haycraft.*

Q. I would like at this time to have you testify to the ratio of increase or decrease in the volume of sales sustained by the Strawbridge & Clothier Store for its entire store business for the months of February, March, April, May and June compared 1935 as against 1936?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, and not proper redirect examination, and I submit, if your Honor please, if we are going to open up this case again I think I have a whole lot of questions that I want to ask Mr. Tily.

Examiner Bennett: This is not redirect examination. I do not understand that this is redirect

4758 examination.

Mr. Weisman: Then I respectfully ask that if this practice is to be indulged in I should be permitted to ask Mr. Tily a large number of questions that I now have to ask him.

Examiner Bennett: None, except on this question.

Mr. Weisman: No, no. I think if your Honor is going to let this gentleman call his witnesses and

take them off and put them back, I respectfully submit the respondents should have the same right to go back to a lot of questions that he forgot to ask, and there are plenty of them that I would like to ask Mr. Tily at this time.

Examiner Bennett: Well, we will settle that now. There won't be any questions outside of this original redirect examination.

Mr. Weisman: I respectfully except and state that this——

Examiner Bennett: All right. Let's go ahead.

Mr. Weisman: Now, aside from that I object to this as incompetent, immaterial and irrelevant. 4760

Examiner Bennett: That is perfectly all right.

Mr. Weisman: In this case.

Examiner Bennett: Your objection is——

Mr. Weisman: Yes.

Examiner Bennett: I am going to let him answer that question.

Mr. Weisman: Exception.

A. The month of February we gained 9 per cent, the month of March 13.3, and the month of April 4.7, and the month of May 15.1, and in June approximately 10 was my first statement to you. It is wrong in the record. It was misunderstood, I think, by the reporter. I said approximately 10 or 9.9 and a fraction, and it is in there as 10. Evidently he misunderstood the significance of it. 4761

Q. This is 1936 as compared to 1935? A. 1936 as compared to 1935.

Mr. Haycraft: That is all.

Mr. Weisman: What were those figures?

(The answer was read.)

Mr. Weisman: Are you finished?

Mr. Haycraft: Yes.

Mr. Weisman: I now move to strike this testimony out as incompetent, immaterial, irrelevant and not proper redirect, having no bearing on the issues in this case.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: He was called for redirect examination, as I understand it.

Recross-examination by Mr. Weisman.

Q. Mr. Tily, I understood you to testify that you relied on your subordinates to furnish you with the information
4763 concerning which you testified.

Mr. Haycraft: Objected to as not proper cross-examination, no such a statement was made.

Examiner Bennett: I will sustain the objection unless you apply it to this particular thing.

Mr. Weisman: Exception.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know this that you have testified to of your own knowledge? A. I know that the figures are recorded in the due course of business and these records are taken from the figures.

4764 Q. Somebody handed you the figures; is that so? A. In this particular case I copied them myself.

Q. Where did you copy them from? A. From our official records.

Q. And then you came here and read them into the record? A. Correct.

Q. You rely on your subordinates, I understand? A. (Witness nods head affirmatively.)

Mr. Haycraft: I object.

Mr. Weisman: Exception.

Examiner Bennett: Well, I will sustain it unless you apply it to this particular thing.

By Mr. Weisman.

Q. In connection with your direct testimony in this—no, wait a minute before that.

Mr. Weisman: May it please your Honor, it now develops that there were certain questions which I had neglected to ask Mr. Tily through my own inadvertence. Now, since the Commission has received the courtesy of being permitted to put back the witness on the stand after it had stated that it was finished with him, I ask that the respondent 4766
in this case be accorded the same courtesy, and that I be permitted to reopen my cross-examination of this witness.

Mr. Haycraft: I object to it.

Examiner Bennett: I sustain an objection to it. I denied the request.

Mr. Weisman: Exception. I respectfully object to the Court's ruling.

Examiner Bennett: All right. You will have an exception. Don't make a speech for the record.

Mr. Weisman: No, I have something to go still further. I respectfully ask the Court to strike out all of this witness' testimony. I decline to cross-examine him further in view of the evident fact that 4767
the Commission may do in this case and I may not, to wit, because of an inadvertence by recalling a witness I may not, when the witness is recalled and on the stand, ask him the questions that I now have before me to ask him.

Examiner Bennett: All right.

Mr. Haycraft: That is all, Mr. Tily.

(Witness excused.)

Mr. Haycraft: Is Mr. March present?

KENNETH MARCH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the first name?

The Witness: Kenneth.

Direct examination by Mr. Haycraft.

Q. Where do you live, Mr. March? A. 142 Rumford Road, Philadelphia.

Q. What is your occupation? A. I buy dresses for Strawbridge & Clothier.

4769 Q. What department? A. Departments 338 and 358.

Q. What price range are those dresses, retail price first? A. Retail? From $10.75 to $16.75.

Q. How long have you been in that position? A. Since February 1, 1936.

Q. Before that what did you do? A. From July, 1933, until the end of January, 1936, I purchased dresses for the Economy Dress Shop, that is Department 491.

Examiner Bennett: We will have a recess of ten minutes.

(Whereupon a short recess was taken.)

Examiner Bennett: All right, you may proceed.

By Mr. Haycraft.

4770 Q. How long were you in that position? A. From July, 1933, until the end of January, 1936.

Q. Now, as buyer for Department 491, what were your duties? A. My duties were the selection of dresses for sale in Strawbridge & Clothier Company, Economy Dress Shop.

Q. Where did you make the selections? A. In New York City.

Q. Is that the only market that you attended? A. That is the only market I attended.

Q. How often would you go to New York City customarily for the purpose— A. Once—I beg your pardon?

Q. For the purpose of making selection. A. Once every week.

Q. Now, among the sources of supply were any of the manufacturers members of the Fashion Originators Guild of America, Inc., during the time that you were buying for that department; that is, those that you contacted? A. Yes, one manufacturer.

Q. Which one was that? A. Renclair Dress.

Q. How do you spell that? A. R-e-n-c-l-a-i-r. 4772

Q. What type of dress did they manufacture? A. They manufactured a $4.75 cost dress.

Q. How long were they members of the Guild, to your knowledge? A. A very short time.

Q. And what time? A. I don't recall.

Q. Was it 1935, 1934 or 1933? A. I believe it was 1935.

Q. Can you name some of the principal sources of supply, resources, I believe they are termed in the industry, of Department 491 while you were its buyer?

Mr. Weisman: Objected as to the form of the question as being incompetent, immaterial and irrelevant and framed in a fashion which is not correct in fact, and calling for a conclusion of the witness. 4773

Examiner Bennett: Read the question.

(The question was read.)

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: You may answer.

A. In the misses' end, Trussell.

Q. Will you indicate in making your replies the wholesale price range? A. These manufacturers that I will name are all $4.75 cost manufacturers.

Q. All right. A. Trussell Dress, Joe Mack, Fineberg & Weisend, Cohn & Klausner. In the women's division, Walter Mayer, Emporium. Those were the chief resources.

Q. During that period of time did you do anything about, or did you ever hear of the Fashion Originators Guild of America, Inc.?

Mr. Weisman: During what time?

Mr. Haycraft: At the time that we have talked about here from the last question.

Examiner Bennett: He has testified.

4775 *By Mr. Haycraft.*

Q. Any time that you were buyer for Department 491. A. Yes, I have.

Q. How did you learn of the Guild? A. My department was shopped by the Guild's representative in Philadelphia for copies.

Q. Who was that representative? A. Miss Joyce.

Q. When did she begin to shop your department? A. I am not sure of the exact date.

Q. Will you give the approximate date? A. I should say that it was in the latter part of 1935.

Q. What was her procedure in shopping your department? A. She used to come in the department with a—with various sketches of Guild dresses and would ask me

4776 if I had any of—any copies of these dresses in my stock. Those that I recognized, I told her, and if I didn't recognice the cuts, she went through my stock herself to see if she could find them.

Q. In the event that she found what she believed to be copies of the cuts that she had in her hand, what would she then do? A. She would ask me to return the merchandise to the source of supply.

Q. Did you do so? A. I did.

Q. Did you do that on more than one occasion? A. I did.

Q. Can you testify as to the number or the approximate number of returns that you made of garments pursuant to the request of Miss Joyce? A. I don't know the approximate number.

Q. Do you know the name of the manufacturers to whom you made such returns? A. I don't know those—those records can be obtained.

Q. I will ask you to make a search and be in a position to testify as to the number of returns during the year 1935, giving the approximate date and the name of the manufacturers to whom the garments were returned and the 4778
number of manufacturers, the number of garments returned to each manufacturer. A. Yes, sir.

Q. During the month of January, 1936, do you recall an incident wherein Miss Joyce requested the name of a manufacturer of a garment in your stock? A. I do.

Q. Will you relate the circumstances under which that request was made? A. I believe I had a dress in my stock that Miss Joyce said was a copy of a Guild dress. It was not manufactured by the manufacturer that was specified on her sketch, and she asked me the name of the manufacturer whom I bought the dress from, and I refused to divulge that information.

Q. Will you give the approximate date that that took place? A. It was around the 15th of January, 1936.

Q. Did you relate that incident to your superiors? A. 4779
I did.

Q. Did they require you to furnish her with the information that was requested? A. They did not.

Q. Do you know what she did about it? A. I don't know.

Q. How long after that before you were red carded? A. I don't know exactly. It was some time the early part of February.

Q. Now, at the time that Strawbridge & Clothier was red carded in February—strike that out. What were you doing at the time that Strawbridge & Clothier were red carded by the Fashion Originators Guild, that is, what were your duties then? A. I had been transferred from 491 to Departments 338 and 358.

Q. Now, in Departments 338 and 358 what is the wholesale cost of the garments sold in those departments, or what range of cost? A. Usually from $6.75—that is wholesale?

Q. Yes. A. From $6.75 to $10.75 wholesale.

Q. Are you in a position to testify, or can you testify
4781 as to the percentage of garments, the volume of dresses that you had in that department at the time that you became buyer for it that were of the $10.75 as compared with the $6.75? A. No, I can't.

Q. Can you testify as to the sources of supply, the manufacturers, from whom you purchased dresses at the time you became buyer of that department? A. The only record I had as to whom it was purchased from was the orders that my predecessor had left.

Mr. Weisman: I ask that the answer be stricken out. He was asked as to what he bought. I assume that is why you overruled the objection, Judge. He hasn't answered that at all.

The Examiner: Read the question

4782 (The question was read again.)

Examiner Bennett: If the examining attorney accepts it as an answer, we will let it stand.

Mr. Haycraft: The examining attorney accepts the answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What did you do yourself, personally, with respect to buying dresses for the Department 338 and 358 at the

time you became buyer for that department? A. I don't quite understand your question.

Mr. Haycraft: Read the question.
(The question was read.)

A. On my first trip to the dress market for Departments 338 and 358, I found that we were red carded, so there wasn't very much that I could do.

Q. Where did you go? A. To New York.

Q. Upon whom did you call? A. I called upon two manufacturers, Lyttle Brothers and International Dress.

Q. Whom did you call on at Lyttle Brothers? A. I don't remember the man's name. He was the salesman 4784
representing that firm.

Q. What were you told? A. I was told that Strawbridge & Clothier were red carded and that they could not show or ship me any merchandise.

Q. Was any explanation given further than that? A. I didn't ask for any explanations. I left.

Q. Upon whom did you call at the International Dress? A. I called upon a salesman and was introduced to the owner of the business who told me the same as I was told at Lyttle Brothers.

Q. Did you make any further attempt to buy dresses from the Guild manufacturers? A. I did not.

Q. Did you ascertain at that time the percentage of stock in that department, in those two departments, that consisted of Guild merchandise? A. I did. 4785

Q. What percentage was it? A. Sixty per cent.

Q. Do you know what price range was included in that 60 per cent.? A. The price range that we estimated that figure on was $10.75 cost market.

Q. What did you do when you found that you could not get merchandise from Guild manufacturers? A. I tried to buy merchandise elsewhere.

Q. Where did you go? A. To other dress manufacturers who didn't belong to the Guild.

Q. Located where? A. New York City and in Chicago.

Q. Can you testify now as to the names of some of the leading manufacturers that you called upon in that connection for that purpose? A (A short pause.) Yes, I can.

Q. Will you name some of the leading manufacturers? A. Bettini Frocks.

Q. How did you spell that? A. B-e-t-t-i-n-i.

Q. Are they located in New York City? A. Bettini is located in Philadelphia.

Q. Philadelphia? A. That is about the only one that
4787 I recall at this time.

Q. Do you recall when you went to Chicago whom you called upon there? A. I recall any number of people. I really can't recall all of their names. It was my first trip to Chicago and I was new in that market. I knew nothing about it.

Q. Were you able to replace the merchandise that you had been buying from—that your department had been buying from the Guild manufacturers? A. Not in Department 338.

Q. But you were able to do it in Department 358, is that it? A. We succeeded in doing a much better job in Department 358 in replacing that merchandise than we did in the women's department.

Q. Why were you not able to replace it so successfully,
4788 the Guild merchandise, in Department 338? A. Most of the larger manufacturers of women's dresses at that time were Guild members.

Q. That is, in the $10.75? A. In the $10.75 women's market.

Q. How did you ascertain that to be a fact? A. Through our New York office.

Q. Who is your New York office? A. The A.M.C.

Q. The A.M.C.? A. Yes.

Q. Mr. Bergdahl? A. Yes, sir.

Q. Did he assist you in trying to locate a new source of supply? A. No, sir.

Q. He did not? A. No, he didn't.

Q. When you say you ascertained through the New York office, what do you mean? A. I—we have buyers in New York who are shopping the markets continually and giving that information to buyers as they come into that market. I got my information from them.

Mr. Haycraft: That is all except for the information that I requested, and I should like to have the privilege of recalling the witness and examining him on those. 4790

Mr. Weisman: On what?

Mr. Haycraft: On the matter that I asked him to produce. I thought that it would be available, but apparently it was not.

Cross-examination by Mr. Weisman.

Q. Who were the buyers that told you that most of the larger houses were members of the Guild? A. They were the A.M.C. buyers in New York City.

Q. Well, they weren't your buyers at all, then, were they? A. They are scouts in the New York market.

Q. No. You said your buyers told you that the larger houses were all members of the Guild. Now, I asked you who they were. You said they were A.M.C. buyers. A. That is right. 4791

Q. So they weren't your buyers at all? A. We belong to the A.M.C.

Q. What do you understand by that? That they buy for you? A. They buy some things for us, yes.

Q. Under what circumstances does the A.M.C. buy for you? A. If we are not able to be in the market and we have to have something in a hurry, we use the telephone.

Q. Do you ever pool your orders with other stores who are members of the A.M.C.? A. No, sir.

Q. And buy in that fashion? A. No, sir.

Q. Now, before you went into the New York market you were buying for the Economy Department, weren't you? A. That is right.

Q. The Economy Department is a much cheaper department? A. Yes, sir.

Q. How much cheaper? A. We sold dresses in the Economy Shop from $2.95 retail to $9.95, and in the 338 and 358 departments we usually started at $10.75 retail and went to $16.75 retail.

4793 Q. You had been there for three years? A. Practically three years.

Q. During these three years your buying had been confined to merchandise of that price? A. That is right.

Q. So as a result of that you, personally, didn't know very much about the sources of supply that were available for 338 and 358 departments. You were new at it; isn't that so? A. That is right.

Q. As a matter of fact, when Mr. Haycraft just asked you to give some of the names, by reason of your newness in it, you couldn't remember even the people that you do business with now, could you? A. That is right.

Q. So when you say you couldn't replace them, you really couldn't replace them because you didn't know who to go to because of your lack of experience in that price
4794 range; isn't that so? A. Not wholly, no.

Q. Well, let's see. Did you ever hear of Ace Dance Modes? A. No, sir.

Q. Don't you know they are a $10.75 house? A. I didn't know that, no.

Q. Do you know it now? A. Yes.

Q. When did you first learn it? A. Now.

Q. Just now. Did you ever hear of Ace High Dresses? A. No, sir.

Q. Didn't you know that they were a $10.75 house? A. I did not.

Q. Did you ever hear of Louie Adler Dress, Inc.? A. I have heard of Louie Adler, yes.

Q. Did you go to him? A. No, sir.

Q. Why didn't you go to him? You heard about him. A. I didn't know what prices he made.

Q. Couldn't you have easily learned by having recourse to one of the directories that are commonly issued in the business? You have seen these directories, haven't you? A. That is right.

Q. You have seen one like I hold in my hand from which I am reading and which is Respondents' Exhibit 22, haven't you? A. No, sir. 4796

Q. What? A. No, sir.

Q. You have never seen one like that? A. No.

Q. Have you seen one like Fairchilds? A. That is right.

Q. Like this one (indicating)? A. That is right.

Q. Respondents' Exhibit 21.

Mr. Haycraft: For identification.

By Mr. Weisman.

Q. Did you ever hear of A & B Dress Company?

Mr. Haycraft: Object to the reading of the exhibit not in evidence.

Mr. Weisman: I am asking if he has ever heard of these. 4797

Mr. Haycraft: You said you were reading a moment ago on the record.

Examiner Bennett: He can ask those questions regardless of the source.

Mr. Weisman: Yes.

Examiner Bennett: I don't want you to read in those names on the authority of those particular documents.

By Mr. Weisman.

Q. Did you ever hear of the A. & B. Dress Company, Inc.? A. No.

Q. Did you know that they sold dresses at $10.75? A. I did not.

Q. Did you ever hear of the Aywon Dress Company? A. Yes, sir.

Q. Did you know they sold dresses at $10.75? A. Not to Strawbridge & Clothier.

Q. Why didn't they sell to Strawbridge & Clothier? A. They were a Guild house.

Q. Did you ever hear of the Barhan Dress Corpora-
4799 tion? A. I did.

Q. Do you know that they sold dresses at $10.75? A. Yes, sir.

Q. Did you go to them? A. They were also a Guild at that time.

Q. Are you sure of that? A. I am sure, yes.

Q. How did you become sure of that? Did they have the kind of merchandise you wanted? A. They did.

Q. You say you couldn't get it because they were a Guild house? A. That is right.

Q. And that was the only reason you couldn't get it? A. That is right.

Q. You haven't made a mistake about that; have you? A. I don't think so.

4800 Q. You are certain that they had the kind of merchandise that you wanted? A. I think so.

Q. You saw it? A. I didn't see it, no.

Q. Someone told you? A. That is right.

Q. Did you try to get the merchandise there? A. No, I didn't.

Q. Why? A. I told you before they were a Guild house.

Q. I am going to tell you now you are mistaken. What do you say then?

Mr. Haycraft: What is the name of the firm?
Mr. Weisman: Barhan Dress Corporation.
Mr. Haycraft: How do you spell it?
Mr. Weisman: B-a-r-h-a-n.

By Mr. Weisman.

Q. Now, what do you say? A. I was mistaken.

Q. So there, at least, was a source that you could have gotten dresses from? A. Yes, sir.

Q. What about the Belldane Dress Company? A. Never heard of it.

Q. So that you couldn't know that they sold dresses at 266 West 37th Street, at $10.75? A. No, sir. 4802

Q. What about Bellsky & Shaddock? A. I never heard of those—that place.

Q. You mentioned in your direct testimony that you bought dresses from Bettini Frocks? A. That is right.

Q. Did you find that they had the kind of dresses that you wanted? A. We had always used Bettini.

Q. I am asking you. So they carried what you wanted? A. That is right.

Q. So you continued to buy from them? A. That is right.

Q. What you required. I understood you to say that Bettini Frocks was located in Philadelphia. A. That is right.

Q. Did you visit them in the New York market? A. I do. 4803

Q. Don't you know they have a place at Seventh Avenue? A. Yes, sir. The factories are in Philadelphia.

Q. You don't buy in the factories; do you? A. Sometimes.

Q. What do you do generally? A. Showrooms.

Q. Where are the showrooms? A. 525 Seventh Avenue.

Q. Where do you buy generally? A. Here in Philadelphia.

Q. Didn't you just say you generally buy in their showrooms? A. I said not in Bettini's showrooms, in other manufacturers' showrooms.

Q. In Bettini you buy at the factory? A. That is right.

Q. You have always done that? A. Eight times out of ten I go to the factory.

Q. How often do you go? A. Once a week.

Q. You go to their factory? A. Yes, sir.

Q. What price of merchandise did they make? A. $10.75 cost.

Q. How much do you buy from them? What is your average order?

4805 Mr. Haycraft: That is objected to.

A. That is a hard question to answer. It depends on the season, it depends on how many styles the man has.

Q. Did you ever hear of the Giltwell Dress & Costume Corporation? A. No.

Q. So you wouldn't know that they sell dresses in New York City at $10.75 wholesale? A. No.

Q. Did you ever hear of Berke, Press & Berke, Inc.? A. No, sir.

Q. Did you ever hear of the Blackwear Dress Company, Inc.? A. Yes, sir.

Q. Did you buy any dresses from them? A. I do.

Q. How long have you been buying dresses from them?

4806 A. Since January, 1936.

Q. And at what price? A. Different prices.

Q. What different prices? A. $8.75 to $10.75 wholesale.

Q. Where are they located? A. I am not sure.

Q. New York? A. New York.

Q. What about Samuel Bloom & Company? A. Is that New York?

Q. New York. A. I use their merchandise.

Q. What kind of merchandise do they make? A. Women's dresses.

Q. What price? A. $10.75.

Q. What department do you use them in? A. 338.

Q. 338? A. Yes.

Q. Is that a Guild house? A. No.

Q. No? A. No.

Q. How about their merchandise, is it good or bad? A. All right.

Q. All right? A. Yes.

Q. How does it compare with Guild merchandise? A. It compares favorably.

Mr. Freeman: Stop.

Mr. Weisman: I object to that. Counsel has just said in a loud voice "stop." Will the Court 4808
instruct Mr. Freeman to both restrain his voice and his actions because he not only yelled but he shoved his arm high in a fling that has annoyed me greatly.

Examiner Bennett: Of course, that should not be done.

By Mr. Weisman.

Q. What about the Bon-Ray Dance Frocks? A. I do not know them.

Q. Do you know that they sell dresses at $10.73? A. No.

Q. What about Boudon & Tuman, Inc.? A. (There was no answer.)

Q. Do you know them? A. Yes. 4809

Q. Do you do business with them? A. Yes.

Mr. Haycraft: I wish to interpose an objection at this time because I can readily see where this is going to lead.

Examiner Bennett: Yes.

Mr. Haycraft: It will be seen that as a result of the questions that are now being propounded as to how much business is done, and so forth, and

where they do business, and how much business, that by the present cross-examination the present source of supply of Strawbridge & Clothier's merchandise, which they cannot get from the Guild, will be disclosed.

Mr. Weisman: What of it? Certainly no possible injury can come to them if they are doing it in an honest way. The only reason that I can see for concealment would be that there is something surreptitious about it and sinister in a way which has not made itself known to us.

Mr. Haycraft: No such thing. I say that is an
4811 obvious truth, Mr. Examiner, that is——

Examiner Bennett: That will take out of the record, of course, his answers to your question as to the sources of supply. Obviously, if you may ask him questions on your direct examination as to his sources of supply counsel for the respondent would be entitled in all fairness, it seems to the Examiner, to inquire into that situation in the present manner.

Mr. Haycraft: I have no objection to asking whether he knows these people, but I do think he should be allowed to the amount of business that is being done with them.

Examiner Bennett: The amount of merchandise purchased and the price paid?

4812 Mr. Haycraft: That is it.

Examiner Bennett: I certainly shall permit cross-examination along this line, in view of the matter having been opened very fully by asking this witness as to his sources of supply on direct examination, and he has testified, on direct examination, as to his sources of supply. How else, Mr. Haycraft, do you think the respondent could make a proper defense to that?

Mr. Hayeraft: I did not quite get your Honor's statement. I did not quite get the import of your Honor's statement.

Examiner Bennett: Make your objections if he goes into detail on that proposition.

Mr. Hayeraft: The pending question was whether they did business with them or not.

Examiner Bennett: It is my understanding that that question was answered.

Mr. Weisman: It was, your Honor.

Mr. Hayeraft: I would like to have it read.

(Question and answer read.)

Examiner Bennett: I am going to overrule the objection to that unless you want the whole testimony in that regard to go out of the record. 4814

Mr. Weisman: Mr. Examiner, with the greatest respect, let me make this statement to you——

Mr. Hayeraft: Mr. Freeman wants to make a statement and I think he had the floor.

Mr. Weisman: Go ahead.

Mr. Freeman: Now, your Honor, with the very greatest respect——

Mr. Weisman: Will you not speak so we can all hear you?

Mr. Freeman: I do not want to shout.

Mr. Weisman: Please do not.

Mr. Freeman: I certainly will not.

Mr. Weisman: But I want to hear you. 4815

Mr. Freeman: Mr. Examiner, with the greatest respect, I will instruct this witness not to answer the particular question as last asked as to whether he is doing business with these particular houses.

Examiner Bennett: Do you persist in your refusal to answer the question?

The Witness: I do.

By Mr. Weisman.

Q. Just so we are sure about this, I am going to ask you, too: Do you persist, Mr. Witness, in your refusal to answer that question? A. I do.

Mr. Weisman: I now move that all of the testimony of this witness be stricken, not only legally but physically from the record. I ask that this be done, and I make this motion that it be stricken in view of the extraordinary situation that had developed here when the witness on cross-examination is advised by his attorney not to answer, and does
4817 persistently refuse to answer a perfectly competent and proper question. I submit that the least that should be done is that an orderly procedure requires that all of his testimony be stricken out, otherwise courts of law have become a mockery, and a mere shadow, of substance, and the procedure has become a mere farce if, by this attorney's direction to this witness, he is directed to, and he says he does refuse to answer the question, notwithstanding the direction of the Court. I further desire to call the Examiner's attention to the contumacious conduct of this lawyer, and his entire disregard for all of the dignity, respect and honor due this tribunal in the very face of your Honor's ruling directing the witness to arbitrarily,
4818 persistently, wilfully, and for no reason shown, answer the question. You will observe that counsel's direction to the witness contained not even any reason why he should not answer it but simply said, "I will instruct this witness not to answer questions of the kind last asked as to whether Strawbridge & Clothier were doing business with this particular house or houses.

Mr. Haycraft: I think that the rights of the witness and his firm may well be protected if there is a compromise on this question by counsel for the respondent asking him whether or not he knew these firms and whether or not he could get a supply of goods from them without disclosing whether or not he actually did business with them.

Mr. Weisman: I certainly would object to that——

Mr. Haycraft: I had not finished.

Mr. Weisman: Oh, I beg your pardon. By all means proceed.

Mr. Haycraft: —without disclosing the fact that 4820
they are a source of supply and the amount of business done and the price paid and the nature of the goods bought. In other words, if I understand the purpose of this examination, it is to show that there were available sources of supply other than the Guild. Now, that being the purpose of the cross-examination, will not that be served by showing the various sources of supply which the witness recognizes as being sources of supply where he can obtain a supply of goods without disclosing the fact that he did buy, or the amount he did buy, and the price he paid?

Mr. Weisman: Mr. Examiner, first let me say to you that this is a most extraordinary procedure 4821
than during my entire legal career before the Bar I have ever witnessed. It is perfectly obvious to your Honor that Mr. Freeman is now usurping entirely the position of Government's counsel in this case and taking the entire matter into his own hands, as a duly qualified representative of Strawbridge & Clothier. Here is a witness who takes the stand, a witness tendered by the Commission, and,

as a matter of fact, by Strawbridge & Clothier, who testifies that his sources of supply were injured and were shut off; he says that 60 per cent. of the merchandise they had in the business in those departments came from Guild houses. Now, when I seek to examine this witness and show, by examining him on this very important issue, a witness who has been tendered by the Commission, Commission's attorneys says to your Honor in this case and says to me as follows: "Oh, no. I will not let him testify to that. I will permit him to testify only in a very limited way. I will not let him tes-
4823 tify to what counsel for the respondent deems to be highly material and relevant testimony." He further says, "For that purpose if you want to ask him any question which will tend to rebut, weaken, and thoroughly break down his testimony upon that, you cannot do it in any way." I submit it would be highly improper for me to be limited in that manner. I ask that your Honor permit me to go into that. Your Honor will recall that I have done it very carefully. Your Honor will recall, and your Honor knows, that it is being done by me in the performance of my duty. If these people do not want to testify to this thing they should not have been tendered; this witness should not have been tendered in the first place. They should have
4824 been subpoenaed and then the witness under subpoena could have been called upon to answer the question or not. I submit this practice is highly improper, entirely oppressive, and that I am prohibited from the fair protection of my clients' rights in the premises, and it virtually deprives us of a hearing.

Obviously, for counsel for the Commission to put a witness on the witness stand and to be permitted

freely to adduce any evidence he desires from that witness, and yet to have my cross-examination of that witness restricted by what counsel for the Commission may conceive to be a proper scope of cross-examination, I might as well turn my cross-examination over to counsel for the Commission to conduct. The course of conduct of counsel for the Commission in this case has been characterized in this manner to a more or less degree in the past, but this certainly reaches the very height of injustice, star-chamber proceedings, or a drumhead court-martial. Certainly, justice has flown out of the window, and the personal desires and aspirations of Strawbridge & Clothier have taken its place too thinly disguised, most happily, to fail to be recognized by any person with common sense. 4826

Examiner Bennett: I will ask you to hear what the attorney for the Commission has to say about the available source of supply. What further knowledge or what better position are you in after you find out whether this particular witness had anything to do with, or had, in fact, availed himself of those sources of supply if they existed? What position are you in then? What better position?

Mr. Weisman: I will tell you what better situation I am in, and I hope to show that not alone did they have these sources, but that they could avail themselves of them and use them, and that they did; furthermore, the charge here has been made that they could not obtain merchandise of a similar quality or character. This witness has just testified on that very important point in answer to my question that the merchandise was comparable. I am quite sure that your Honor will see the great importance of that in an inquiry of this kind. Not 4827

only is it necessary to show that they did have other sources of supply, but that those sources of supply were competent to furnish merchandise of the same quality, styling, and so forth, and how better can that be shown than the fact that they did, in truth and in fact, purchase their goods from them, and that they know, by that purchase, receipt and sale of such merchandise, what that merchandise was as to those very important respects about which they have cried in great assumed agony here for over a week. Now, to attempt to shut me off is to attempt to defeat my inquiry, now that we have
4829 gotten to people who are able to testify to something, that I sought to develop in regard to these other witnesses. Your Honor will recall that we started out in this case with Mr. Tily, the head of this firm, and went down gradually to these buyers, and that every time I would ask them a question about these various matters, they would say, "Oh, the buyers can tell you all about that, they are the people who actually did the business." Therefore, your Honor will recall, upon that representation made to you by counsel, and by the witnesses, that I was stopped in my examination of these officers of the corporation. I endeavored to examine them upon matters of the greatest importance to my clients in this case. These things are vital to us,
4830 and they cannot be ignored. Beginning with the testimony which was taken here last Friday, we have built up on the premises all of the testimony of every witness that has come in here, that the buyers, the people who actually transacted the business, would come in here and testify to the actual facts, about which we had speculation, opinions, reports from subordinates, all of which trickled down to the buyers as the people who

really knew something about it. Theirs is the substructure, the foundation upon which all of the testimony of these other witnesses has been built. Now, if I am denied the opportuntiy to see whether that foundation is rotten or strong, true or false, broad or narrow, long or short, where am I? It means that I am precluded as to each and every witness that has appeared on this witness stand in the City of Philadelphia. I want to further state that if I am not permitted to examine these witnesses fully and freely, that I feel that I am properly entitled to an affirmative ruling upon a motion to strike from the record all of the testimony that 4832
has heretofore been adduced in Philadelphia during the course of these proceedings.

Furthermore, it is perfectly obvious that if I have the opportunity of showing that as to each of these sources of supply they were able to buy merchandise at the same price, merchandise of comparable value and nature and styling and type and material and fabric and delivery, discounts, and all of that sort of thing which enter into this very important matter, and that they not only knew of these things but availed themselves of it, my position is incomparably improved.

Examiner Bennett: That would go without saying that they would try to look for other sources of supply. Off the record. 4833

(There was a discussion off the record.)

Examiner Bennett: The Examiner has tried, off of the record, to arrive at a basis by which the inqury might proceed without foreclosing the rights of the respondents in this case which I recognize as very important and still not shut off the Commission's inquiry as to the result of certain actions of this respondent. He suggests that after re-

spondents have developed the sufficiency of resources which, in fact, were available to this merchant, that it is not necessary to go further and to determine that this merchant actually made use of these resources.

And, the Examiner has decided that he will stop the question at that point on the theory that otherwise witnesses cannot be secured who will develop the inquiry; that will develop all of the facts of the inquiry because of the fear that their declarations of their sources of supply may lead to embarrassment.

4835 Is that clear to you now? That is my position.

Mr. Weisman: Yes, your Honor, it is.

Examiner Bennett: I will also say this for the record, that I am doubtful, it is a close legal question, and I am doubtful as to what the decision ought to be from a strict legal standpoint and, of course, that places the burden squarely and fairly and directly upon the attorney for the Commission to uphold the legality of it, and it gives the respondent an opportunity to overthrow the whole proceeding on that particular question.

Mr. Weisman: May I state to your Honor that in a case of this type, in addition to the points which I have already made, I deem it of the greatest of importance to my client that my client be

4836 in a position to show, where, as here, the availability of sufficiently similar merchandise is gained, to show that no loss was sustained, and to show that not alone was such merchandise available, but the available sources were, in fact, availed of.

I deem it greater than any argument that I can make on the question of availability and nature, size and scope and quality of such sources, the fact that the sources were used.

And I, therefore, say that to preclude us from proving through these very witnesses who say that the sources were not available, that they did, in fact and in truth, avail themselves of such other sources, is to deny us a vital, fundamental right in the premises, the denial of which constitutes an insuperable barrier to our proper presentation of a defense in this case which we cannot hope to overcome.

I want to also say that I appreciate and humbly acknowledge the fair and frank statement of your Honor with regard to this matter and if I could, in any justice to my client's position and interest, 4838
meet the thought of your Honor, on behalf of my client I would do so. However, I cannot, and I respectfully except.

Examiner Bennett: We will take an adjournment until 9 o'clock, Eastern Standard Time, to-morrow morning, Friday. At that time the proceeding will be resumed in this room at this place.

Mr. Weisman: May I also say this for the record?

Examiner Bennett: Yes. The record will be reopened for that purpose.

(The record was reopened and the following proceedings were had:)

Mr. Weisman: As an officer of the court and as a lawyer at the bar, and with a knowledge of this situation, it is in my opinion, and I say to this 4839
honorable body that it is utterly incomprehensible that there should be any good and valid reason why the sources of their supply and the fact of their being supplied therefrom, and the details therefor, should be kept secret.

If there is some sinister, subversive, and shadowy reason why that should not be done, it should be dragged out into broad daylight and inspected in the full light of the sun.

Our position is such that we are not interested in that to the slightest degree. Nor do we have any power or control over it to the slightest degree.

We, as a matter of fact, even with our own members, do not care whether they buy from anybody in the world. Our own members have no desire or wishes in that regard.

There is nothing in this case, so far as the Fashion Originators Guild of America, Inc., the respondent herein, is concerned, which says they must buy or they must not buy from anybody else.

In an affirmative way we only say that we will
4841 not sell if you deal in copies of our merchandise. This is a very simple, clean-cut matter and one which does not entail a judgment or determination of this sort.

This is not a case where one merchant seeks to take the business of another merchant and for that reason we want to know with whom they are doing business in order that we may rush around and steal that business. As a matter of fact, we have refused to do business with Strawbridge & Clothier because we did not want to do business with them until such time as they will aid us to keep and protect our property rights, which are our style originations.

This is not a case where one merchant wants to
4842 go out and take the business of another. We do not do any business with Strawbridge & Clothier. We do not want their business.

Mr. Haycraft: I want to make one point and that is this: The red carding of Strawbridge & Clothier was caused by the refusal of Strawbridge & Clothier to disclose the name of a manufacturer who was alleged to have copied merchandise manufactured by members of the Guild.

That is one of the points raised. They wanted to know that information and when it was denied them they refused to continue with Strawbridge & Clothier.

Examiner Bennett: I see.

Mr. Haycraft: Of course, they want to know these people with whom Strawbridge & Clothier is doing business.

Examiner Bennett: Just a moment. I realize all of that and I am inclined to think personally that the merchant is unduly disturbed, but that is a matter for the merchant to decide.

Of course, if I had decided differently from that 4844
which I have decided, I would have called upon the witness to answer.

That is the present situation.

Mr. Weisman: I would like to ask the reporter if I have taken an exception, a formal exception on the record, to the ruling of the Examiner in denying to me the right to interrogate the witness in this regard?

Examiner Bennett: You may have an exception to the ruling. I do not expect you to take my ruling. I expect you to make such objection as you see fit.

We now stand adjourned, gentlemen.

(Whereupon, at 4.35 o'clock P. M., August 6, 4845
1936, the hearing in the above-entitled matter was adjourned.)

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Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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Court Room No. 313,
U. S. Post Office Building,
Philadelphia, Pa., August 7, 1936.

Met pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc. 4850

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge & Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed. 4851

KENNETH MARCH resumed the stand and testified further as follows:

Cross-examination (continued).

The Witness: Your Honor, may I say something?

Examiner Bennett: Just a moment. We are in session.

Mr. Freeman, you made a rather grave interference yesterday with the proceedings. I wish you would tell us directly why you did so.

Mr. Freeman: As counsel for Strawbridge & Clothier, I desire to have noted on the record a statement of the reasons which caused me to direct the witness to refuse to answer the question as to the sources of supply used by Strawbridge & Clothier. There is probably nothing which would so seriously harm a department store as the disclosure of the facts surrounding its purchases of goods. Competitors and others could make use of
4853 this information to the harm both of Strawbridge & Clothier and to their sources of supply. Furthermore, not only is this a public hearing but, in addition, during most of the times that the hearing has been in session there has been present a reporter from a widely circulated trade paper, namely, "Women's Wear," which has already printed articles disclosing to the entire trade certain figures, etc., given, and the figures which Strawbridge & Clothier seriously object to becoming known to the entire trade and the publication of which Strawbridge & Clothier have endeavored in vain to prevent.

In addition, Strawbridge & Clothier is apprehen-
4854 sive that should the names of the sources of supply be disclosed, it would make possible an attempt to cut off the supply which they are now enjoying. It has always been the policy of Strawbridge & Clothier not to divulge to the trade the names of the resources, the prices, terms, and other trade arrangements which it may have.

That is all, sir.

Mr. Weisman: Now, may it please your Honor—

Examiner Bennett: Yes. Well, I will just say that I asked the attorney to make such a statement because I wanted to see why he interfered.

Mr. Weisman: Have you finished?

Mr. Freeman: No, sir.

Mr. Weisman: Excuse me. I thought you had.

Mr. Freeman: I desire to add that the A.M.C. is no exception to the policy pursued by Strawbridge & Clothier in respect to their failure—in respect to their desire not to disclose the resources which they are using—resources, prices, and trade arrangements which they are using.

Examiner Bennett: All right. 4856

Mr. Freeman: Thanks.

Mr. Weisman: In reply, or in response to the statement made by Mr. Freeman, counsel for Strawbridge & Clothier, I respectfully ask that all I have stated yesterday be deemed in answer to his present statement. I don't want to burden the record with a repetition. I furthermore wish to state that I deem Mr. Freeman's statement that he fears that if he discloses the sources of supply that the same will be cut off to be highly improper, not founded on fact, merely a malevolent effort to injure us in the eyes of the Examiner and the Commission.

As a matter of fact, the complaint here is that we have merely refused to do business with them, that we would have or have refused to do business 4857 with them, and we were quite content to go along without doing business with them until they instigated this complaint, as witness the various witnesses' statements again and again that they filed affidavits, et cetera, and so forth, to accelerate this complaint, and to bring it on. I therefore say, in so far as that statement is concerned, it must be perfectly apparent that it is made in bad faith and not in good faith.

I further wish to state that from information furnished to me, the reference to keeping from the A.M.C. secret the various trade practices, trade discounts, et cetera, made by Strawbridge & Clothier at the proper time—I say this with all due solemnity—I will prove that it is wholly unfounded in fact, and that the member stores of this organization, the A.M.C., do interchange and change information, do pool their orders, and they are acting together, as witness the very exhibit offered in evidence by the Commission in this case which started out, "We act"—on the A.M.C. stationery—"We,
4859 acting on behalf of eighteen member stores"—one of which was Filene, and the other of which to-day was the only other witness, retail witness that has testified, members of Strawbridge & Clothier.

In conclusion, I wish to state, and I wish to have this on the record, that this does appear to me, and I say this with all due humility, as the most unreasonable and fantastic legal inquiry that I have ever taken part in. I can only compare it to the old Arabian Nights. The King comes in and he says, "I am going to tell you a story." Whereupon Mr. Tily comes in and tells a story. You come to Mr. Tily and your say to the King, "Well, now, what do you know about this store?"

Examiner Bennett: Now——

4860 Mr. Weisman: May it please your Honor, I ask that——

Examiner Bennett: I know. I know.

Mr. Weisman: —this analogy be in the record.

Examiner Bennett: You are taking up a lot of time.

Mr. Weisman: Well, it will just take me a moment, your Honor.

Examiner Bennett: Yes.

Mr. Weisman: And we asked Mr. Tily, and he says, "Oh, someone beneath me will explain that." So along comes Mr. Taylor. We ask Mr. Taylor about it, and he says, "Oh, my, someone beneath me will tell that." And along comes Mr. Chance, and we all sit here expectantly. We finally get to some facts and not to some hearsay or surmise, and Mr. Chance says, "Oh, my buyers know all about that." Lo and behold, we finally see that the buyer is coming in, and the buyer takes the stand and when we seek to get some information from him, figuratively the King orders his head cut off and you can't question him, and you have got to accept his 4862
story as a fact.

Now, I submit to your Honor that this is the most fantastic, and that is the only word that can fit this situation——

Examiner Bennett: Yes.

Mr. Weisman: And if your Honor——

Examiner Bennett: Well——

Mr. Weisman: If this ruling is to be made in this case, I respectfully now, in view of the reiterated statement of counsel for Strawbridge & Clothier, in view of the reiterated stand, because I assume—that of the counsel for the Commission, who joins in this situation, or in this course of conduct, because he could very easily obviate it by serving a subpoena on this witness so that he might be 4863
compelled to answer, I respectfully move for your most serious deliberation. In the protection of our traditional and constitutional rights that all testimony of Messrs. Tily, Chance, Taylor and this witness as to their inability to obtain sufficient merchandise of the kind and character referred to, be stricken out from the record because notwithstanding the fact that their claim is in the record to

that effect, when I seek to cross-examine them to show an untruth and, in fact, that they had an adequate source of supply, the sources from whom they got it, et cetera, I am shut off by this stand.

Examiner Bennett: All right. Are you through?

Mr. Weisman: Yes, your Honor.

Examiner Bennett: Yes. Well——

Mr. Haycraft: I would like to make a very short statement, your Honor.

Examiner Bennett: You may proceed. Make it short.

Mr. Haycraft: I will make it very short.

4865 As I pointed out in yesterday's session, I have no objection to eliciting from this witness or any other witness the names of available sources of supply. In other words——

Examiner Bennett: I didn't——

Mr. Haycraft: In cross-examination of this witness, if he can divulge that I have no objection to it. The only thing I have an objection on record against is the disclosing of what is recognized in the courts of law as well as by the Commission, as being confidential information in the possession of witnesses who are not parties to the proceedings. And in that connection, I wish to make it very clear on the record that Strawbridge & Clothier is not a party to this proceeding, did not volunteer any

4866 evidence, did not appear until subpoenaed, and every bit of evidence that has been brought in here pursuant to my request and upon my demand.

Examiner Bennett: All right.

Mr. Weisman: Just one short statement. The witnesses have again and again referred to affidavits that they have voluntarily furnished to Mr. Haycraft. He has had those affidavits in court; he has examined from them. He has constantly re-

ferred to them, and I submit the statement that Strawbridge & Clothier did not inspire and are not directly interested in this proceeding is entirely without fact.

Mr. Haycraft: Now, be careful. Be a little careful about that. I want to make it very plain in the record that the statement made by counsel for the respondent is wholly without foundation and fact, that the affidavits referred to by the witnesses were ones which I asked for myself. The Federal Trade Commission in this case conducted an investigation, which it has a right to do under the statutes. As a result of this investigation, information was 4868
obtained, and only as a result of this investigation. These witnesses and this firm in no way sponsored or brought about this proceeding, and in no way volunteered any information until requested to produce such information upon demand of subpoena.

Mr. Weisman: Upon demand of the Federal Trade Commission——

Examiner Bennett: We are not going to have any more. We are not going to have any more of this made in the record.

Mr. Weisman: All right.

Examiner Bennett: And I will say to the attorney for the respondent that his attack on the Tribunal is unwarranted in fact wholly as leads the Examiner to believe that he is trying to ob- 4869
struct this proceeding instead of aiding and bring. it to a conclusion.

All of the facts are presented, and I am going to take the position further in this matter that no substantial right of respondent is jeopardized by failure to disclose specifically, failure of this witness to disclose specifically the source of supply with which he actually did business.

Mr. Weisman: I respectfully except.

Examiner Bennett: All right.

Mr. Weisman: May I also say that I was not attacking the Commission. I was attacking the good faith of Strawbridge & Clothier.

Examiner Bennett: You are attacking this proceeding in a most unseemly manner.

Mr. Weisman: Well, I am——

Examiner Bennett: And I resent it.

Mr. Weisman: I regret—I regret exceedingly that my conduct has caused resentment in the mind of the Examiner.

4871 Examiner Bennett: Well, I resent that sort of statement. It isn't a personal matter.

Mr. Weisman: I believe that before this case is over your Honor will see that what I have said is well founded.

Examiner Bennett: Yes. Well, I will be glad to have the truth.

Mr. Weisman: Yes. That is one of the things that we are going to prove on our affirmative case.

Examiner Bennett: All right, you may proceed.

The Witness: Your Honor, may I say something in regard to the testimony that I gave yesterday?

Examiner Bennett: Do you want to correct something?

The Witness: Yes. I do, sir.

4872 Examiner Bennett: All right, you may correct—

Mr. Weisman: Will you wait a minute? I am looking for something that I want in the complaint, that I want to put in the record, Judge, at this point.

Examiner Bennett: All right. Is it important to do that now, or can't you put that in after?

Mr. Weisman: It will just take me a second, Judge.

In connection with my former statement, I wish to respectfully call the attention to the paragraph 10 of the complaint in this case, subdivisions (b) and (c), which is the summation and the complaint of wrong with regard to the Guild's program. The subdivision (b) claims that as a result of the Guild's program, and that is one of the things that is complained of: "To prevent retail dealers in ladies' and misses' garments from purchasing their requirements of the said products in interstate commerce from the manufacturers thereof."

I assume this is in direct—my endeavor to query is in direct contradiction of that claim. (c) is the 4874
further claim to force many retailers to discontinue the sale of their products because of their inability to maintain a supply thereof at reasonable prices. I respectfully submit that by closing off my inquiry as to the facts that they got the merchandise specifically, I am in no position to disprove this claim.

Examiner Bennett: Well, the Examiner stated at length, at some length yesterday as to his position in the matter.

Mr. Weisman: All right, Judge.

Examiner Bennett: I am not going to take up your time to elaborate upon it.

Mr. Weisman: All right, Judge. I am quite sure that the Court understands that my position is one merely as an attorney. 4875

Examiner Bennett: Oh, I understand that. There is no partiality, that is certain.

Mr. Weisman: That is what I want to be sure of.

Examiner Bennett: Will you make your statement now?

The Witness: Yes, your Honor. When I was being questioned about purchasing dresses from Barham or Baron, I was under the impression that

Mr. Weisman was talking about Baron dresses, not Barhan. I was confused, and when I got back to the store I realized my mistake, and I would like to have that corrected on the record, if that is possible. It was Baron Brothers I was talking about, not Barhan.

Examiner Bennett: All right. Proceed.

(There was a short discussion off the record.)

By Mr. Weisman.

Q. How do you spell "Baron"? A. I do not know how to spell "Baron." He got it out of the directory?

4877 Q. What I want to know is, how you know how to spell it if you do not—you said you distinguished it from another group. I want to know how you were able to do that? A. Well, I know it is different from the other, but I do not know how to spell it.

Q. What priced dresses do Boudon & Tuman, Inc., sell? A. I do not remember.

Q. Do you not now do business with them?

Mr. Freeman: Do not answer that question.

Mr. Haycraft: I object.

Examiner Bennett: I shall sustain the objection. In deference to their claim of privilege, I shall sustain the objection.

Mr. Weisman: I except, and I make the offer to

4878 prove that if the witness had been permitted to answer he would have said that they do do business with them, and then I would have been able to show from this same witness that they do business with them at the same price they did with Guild houses, and that the merchandise compares favorably with that manufactured by Guild houses, if I had been permitted to continue that line of examination.

Mr. Haycraft: I object to that, Mr. Examiner, and move that it be stricken.

Examiner Bennett: I will let it stand. An offer to prove of that type I will let it stand under the circumstances.

By Mr. Weisman.

Q. Did you know them since February 1, 1936? A. No, I did not.

Q. Did you know that they were an available source of supply for you for dresses for Departments 338 and 358? A. I did hear that they were.

Q. Do you not know that they were? A. I did not know 4880
positively.

Q. Have you discussed your previous testimony and your proposed testimony with anybody over night? A. I have not.

Q. Have you talked over with anybody at all this matter since you left the witness stand last night, anybody connected with Strawbridge & Clothier or representing Strawbridge & Clothier? A. I have not.

Q. Did you not testify yesterday that you did business with them since February 1, 1936? A. I do not believe I said since February 1, 1936.

Q. Did you testify that you did business with them? A. I believe I did.

Q. Do you mean by that that you did business with them 4881
prior to February 1, 1936? A. I did not say that I did.

Q. When did you mean that you did business with them when you answered, yes, you were doing business with them? A. I meant that in the course of our business in Department 338 that we did use merchandise from that resource.

Q. When? A. I cannot remember exactly.

Q. You only came into that department on February 19, 1936? A. Yes.

Q. If you say that you knew that you were doing business with them—that that department had used them for the obtainment of merchandise, did not you mean you thought—did not you mean that you had used them since February 1, 1936? A. I suppose I did, yes.

Q. Aside from your supposition, in fact did not you so mean that? Answer the question, please. A. Well, yes.

Q. What do you mean, "Well, yes," or just "yes"? A. Yes.

Q. Did you look upon them as a good resource? A. As a fair resource, I would say.

Q. When you say "fair" you mean as fair as any of the
4883 other resources that were then available to you? A. I would not say that.

Q. Do you mean that they were a poorer resource than the other available resources? A. Possibly, yes.

Q. Not possibly; factually, I want to know. A. I do not do very much business with them, I mean.

Q. Ever since February 1, 1936, you know that the firm of Bowdan & Tyman, Inc., have been ready, willing, and anxious to do business with you, do you not? A. Yes.

Q. You would not have any trouble in getting from them any merchandise that you saw fit to order from them, would you? A. No, sir.

Q. They are quite content with the rating and ability to pay and the standing of your firm, are they? A. Yes.

Q. What priced merchandise do they make? A. I am
4884 not certain what price they make.

Q. What is your best idea? A. I would not know. During the summer months manufacturers go into the cheaper priced merchandise, and I would not know.

Q. Aside from the summer months, which is not the regular line, what is their regular line? A. I could not testify as to what price.

Q. You are the buyer for this department and you have testified that you are in charge of the purchases; as such,

is that part of your duty to go in and know where to get these dresses and to know for what price you can get them for? A. Yes.

Q. Notwithstanding that you do not know that to be a fact; you do not know what they sell goods for, or from whom you can obtain them? A. In this particular case I was only in their showroom once, I believe, and I do not know what price merchandise they are making now.

Q. Do you know that they make $10.75? A. I know that they are listed under the category of $10.75 house.

Q. You know that people who are listed under that category usually make that priced merchandise, do you not? A. Usually, but not in all cases. 4886

Q. Oh, not in all cases? A. No.

Q. But it is the usual run of things, is it? A. It is.

Q. You bought merchandise from Sam Bloom & Company since February 1, 1936? A. Yes.

Q. Do you find that their merchandise compares favorably with other manufacturers concerning which or with whom you do business in that department?

Mr. Freeman: Stop. Do not answer.

Mr. Weisman: Mr. Examiner, I object very strenuously to the conduct of Mr. Freeman here. Every time I ask a question he gets up, stands over Mr. Haycraft, and almost over your Honor, holds a piece of paper up in his hand as if he were going to swat a fly, and motions and indicates and directs, 4887
coerces, and intimidates this witness by his motions possibly, or at least there is that possibility of his actions. I think that is highly improper. He is not the counsel in this case. The Federal Trade Commission is supposedly conducting this lawsuit. I ask your Honor to direct Mr. Freeman to sit down and conduct himself properly. I think this is highly improper and it is certainly highly prejudicial to

the substantive rights of the respondents herein from which we will have no recourse if something is not done about it.

Examiner Bennett: Well——

Mr. Freeman: Mr. Examiner.

Mr. Haycraft: I object to that statement. It is entirely uncalled for, and merely reflects Mr. Weisman's opinion on things which are not necessarily the fact.

Mr. Weisman: "Not necessarily," a delightful way out, Mr. Haycraft.

Mr. Haycraft: For you.

4889 Examiner Bennett: Proceed, Mr. Freeman.

Mr. Freeman: Mr. Examiner, I shall object to having any comparison made by the witness comparing for Strawbridge & Clothier as to the various merits of their various sources of supply.

Mr. Weisman: I think it is most vital to our case, if your Honor please. The suppression of the right to examine the witness upon that vitally injures the respondents' case.

Examiner Bennett: Go ahead with the examination. The witness does not have to make comparisons if he does not want to.

A. I have nothing to compare there, Mr. Weisman. They make stout dresses. I have never bought stout
4890 dresses from any Guild manufacturer so I have nothing to compare that merchandise with.

Examiner Bennett: The witness does not have to cast reflections upon a manufacturer. I will not direct any examination with respect to that. That is entirely up to the witness.

By Mr. Weisman.

Q. You buy merchandise from the Blockman Company? A. Yes.

Q. How does their merchandise compare with others that you have customarily dealt with?

Mr. Freeman: Stop.

Mr. Weisman: Stop what?

Mr. Freeman: I merely want to make a statement to the Examiner.

Mr. Weisman: Oh.

Mr. Freeman: I object, Mr. Examiner. I submit that that is along the same line.

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Examiner Bennett: Yes. The witness does not have to make comparisons unless he wants to.

The Witness: There, again, I have nothing to compare. They make mourning dresses.

By Mr. Weisman.

Q. Are they the only source of supply from whom you have ever bought mourning dresses? A. No.

Q. How do they compare with the others from whom you have bought mourning dresses?

Mr. Freeman: I object to that, if your Honor please.

Examiner Bennett: Yes. I have already made a statement in regard to that. That is sufficient.

4893

The Witness: This mourning dress is a different item. There is hardly any comparison. People need them in a great hurry when they need them.

By Mr. Weisman.

Q. Then, would you say their merchandise was as good as any in the New York market at the same price, manufactured by member of the Guild? A. As good as any mourning dresses in the market, yes.

Q. You have bought from Bettina for how long? A. I believe ever since they have been in business.

Q. Even when you were dealing with the Guild, when your store was dealing with the Guild, they were still buying dresses from Bettina Frocks; is that so? A. Yes, sir.

Q. Do their dresses compare favorably, both as to character, style, and quality with the other merchandise that you have bought from Guild members? A. We have always been successful with Bettina's merchandise.

Q. When you say you have always been successful with Bettina's merchandise, you mean that their productions or their numbers or their originations compared favorably
4895 with, or were equally as good as those which you got from other sources, including Guild members? A. Bettina makes a different type—Bettina makes a certain type.

Q. In that type are they as good as Guild members? A. Yes, in that type they are as good as Guild merchandise.

Q. Do you know Joseph Brown & Company, 498 Seventh Avenue, New York City, N. Y.? A. No, I do not.

Q. Do you know they make $10.75 dresses? Did you ever hear of Harry Butler & Brother? A. No.

Q. Do you know they make $10.75 dresses? A. No.

Q. Do you know that they stand ready, willing, and able to sell you splendid merchandise at that price in the New York market? A. I do not.

Q. You never heard of them? A. I never did.

Q. You have never been in their showroom? A. I
4896 never have.

Q. Do you know Caron Brothers, Inc.? A. No.

Q. You never heard of that firm? A. No.

Q. You do not know that they make $10.75 dresses?

Mr. Haycraft: I object to any further interrogation as to this company. He says he has never heard of them.

The Witness: I have never used that source of supply.

By Mr. Weisman.

Q. I did not ask you whether you had used them. I am trying to find out whether you know them.

Mr. Weisman: I must object to this constant motioning and hovering over counsel by Mr. Freeman. It is very annoying, and it certainly seems to me to be quite irregular.

Mr. Haycraft: Well, that is an improper statement. I move that it be stricken physically from the record.

Examiner Bennett: Gentlemen, let us get along.

By Mr. Weisman. 4898

Q. What about Cartwright Gowns, Inc.? A. Never heard of them.

Q. What about Albert R. Casals? A. I never heard of them.

Q. What about Cecele Dance Frocks, Inc.? A. I know them.

Q. What priced merchandise do they generally handle? A. $10.75.

Q. Do you do business with them?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I make this offer of proof that if the witness had been enabled to answer 4899
he would have said that they do, and I would have then been in a position to prove that they can get an adequate amount of dresses from Cecele Frocks, and that they compare favorably with dresses that they bought from Guild members.

Mr. Haycraft: Move to strike that motion to proof, your Honor, as entirely improper.

Examiner Bennett: No. I think I will let it stand under the circumstances. We have a rather peculiar situation here.

The Witness: We have only been able to get merchandise from them since they resigned from the Guild.

By Mr. Weisman.

Q. And since the last few months you have not had the slightest trouble in getting merchandise from them, then, have you? A. No.

Q. Have you? A. No.

4901 Q. What priced merchandise do you get from them?

Mr. Haycraft: I object.

Mr. Freeman: I object to that. The witness should not answer that.

Examiner Bennett: The witness has volunteered the information. If he volunteers the information of course I cannot shut it off after that. You may answer.

By Mr. Weisman.

Q. What priced merchandise do they make; the Court has directed that you may answer that question, anyhow? A. $10.75 dresses.

4902 Q. Do you find that they sell you good, seasonable merchandise when you place your order with them? A. Yes, if they have the things that I want from them, yes.

Q. That such merchandise that you purchase from them compares favorably in consumer acceptance thereof with such merchandise you were previously able to get from other sources, including Guild resources?

Mr. Freeman: I object.

Examiner Bennett: I am not going to protect him in that. He has volunteered that information.

I do not see where I should protect him in that if he volunteers the information.

By Mr. Weisman.

Q. The Court says you may answer. A. I understand that Mr. Bennett; says I do not have to give my impression.

Examiner Bennett: You had better curb your tongue, then, and not volunteer information.

Mr. Weisman: I insist that he be allowed to answer the question.

Mr. Freeman: Mr. Examiner, I object to the witness answering that question. 4904

Examiner Bennett: I will let him answer that.

Mr. Freeman: Mr. Examiner, may I now be permitted to instruct the witness as to his present sources of supply, the prices, and comparison of the goods purchased from the sources of supply with other sources, he is not required to answer.

Mr. Weisman: I want the record to clearly note this extraordinary action on the part of a counsel has nothing in the world to do with this case, coming in here and instructing the witness as to the manner, scope, and nature of his testimony, and indicating very clearly the way he should turn his testimony. The high degree of impropriety that is indicated in conduct of this character scarcely needs 4905 comment upon my part, but I do feel that it should be called to the attention of the Commission.

Examiner Bennett: The record speaks for itself. He does not have to give invidious comparisons. If he has ordinary common sense he will not do it.

Mr. Freeman: I object. I thought he so understood.

Mr. Weisman: Oh, you thought that you trained him a little better.

Mr. Haycraft: I object to that.

By Mr. Weisman.

Q. Will you answer the question, please? A. May I have the question, please.

Q. (Question read as follows: "Q. That such merchandise that you purchase from them compares favorably in consumer acceptance thereof with such merchandise you were previously able to get from other sources, including Guild resources?") A. I would rather not make any comparison.

By Mr. Weisman.

4907 Q. The Court has directed you to answer that question, anyhow.

Examiner Bennett: He does not have to answer. That is his answer. If it is not satisfactory, why, I do not know what can be done about it.

Mr. Weisman: I respectfully except.

Examiner Bennett: I am not going to compel him to make a comparison.

Mr. Weisman: Now, I respectfully move that all of the testimony in this case wherein it is claimed that the firm of Strawbridge & Clothier could not obtain merchandise of a similar kind and character to that purchased from the Guild be stricken from the record.

Examiner Bennett: Denied.

4908 Mr. Weisman: Exception. It is perfectly obvious upon this record that I am being denied any opportunity to show that they could, in fact, purchase such merchandise in greater quantity than they could possibly buy it in the normal course of their business. To deny me that right is to virtually make this a star chamber proceeding in which we are simply dragged in here and led to slaughter, and I cannot make my objection too strenuous to it.

Examiner Bennett: You have your exception on the record. You are protected.

Mr. Weisman: I only hope that I am.

By Mr. Weisman.

Q. Do you know Dalton Frocks, Inc., 1372 Broadway, New York City, N. Y.? A. No, sir.

Q. Did you ever hear of them? A. No, sir.

Q. Do you not know that in February, 1936, that they were engaged in the wholesale manufacture and sale of ladies' ready-to-wear? A. I——

Mr. Haycraft: That is objected to. He said that he did not know them at all, and he never heard of them. 4910

Mr. Weisman: Mr. Haycraft's extraordinary solicitation for his witness needs no further comment than its mere appearance upon the record, if your Honor please. I do not think I ever saw a case conducted wherein counsel were so solicitous about these babes in arm that they place on the witness stand.

Mr. Haycraft: No such thing.

Examiner Bennett: The objection is sustained.

Mr. Weisman: Exception, and I offer to prove that he did know that, that which I am foreclosed from permitting him to show.

Mr. Haycraft: You do not know any such thing. 4911

Mr. Weisman: How do you know what I know? The old mind reader at work again.

By Mr. Weisman.

Q. It was in December—in February 1, or thereabouts, 1936, did you ever know of the firm of Samuel Davidson, Inc.? A. No, sir.

Q. Do you know of them now? A. No, sir.

Q. Did you ever hear that they were engaged in the business of the wholesale manufacture and sale of dresses at $10.75? A. No, sir.

Mr. Haycraft: That is objected to.

Mr. Freeman: I object to that, if your Honor please.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. Your Honor understands that when I am foreclosed on these questions I am, of course, foreclosed upon questions which would bear upon that particular, and which in deference to your Honor I will not ask immediately
4913 following that.

Examiner Bennett: Yes, I understand.

By Mr. Weisman.

Q. Did you ever, on or about February 1, 1936, and at any time thereafter, know of the firm of Donnaline Dress Company, 1400 Broadway? A. No, sir.

Q. Did you ever hear of the firm of Dresden Dress Company, Inc.? A. Yes, sir.

Q. Where did you hear of that firm, and when? A. In January I heard of it.

Q. Have you since February 1, 1936, or since the claimed red carding by the Guild of your store, done business with the Dresden Dress Company?

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Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that had I been permitted to ask this witness this question and he permitted to answer it, he would have stated that he did do business with them since that time.

By Mr. Weisman.

Q. Have you ever received any merchandise from the Dresden Dress Company, Inc.?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that if he had been permitted to answer he would have stated that he had received certain merchandise.

Mr. Haycraft: As a matter of fact, was not the Dresden Dress Company a member of the Guild in February?

Mr. Weisman: Not to my knowledge. 4916

Mr. Haycraft: I think it was.

Mr. Weisman: Will you take the stand and testify as a witness in this case?

Mr. Haycraft: Certainly not.

Mr. Weisman: Then I object to putting in the record your opinions as to what you know upon which I have no opportunity to cross-examine him. You asked me if they were and I gave you my information in answer to it, and then you are trying to testify. I think that is highly improper, your Honor. It is just typical of the whole transaction involved in this case.

By Mr. Weisman.

4917

Q. In your opinion, in what respect is the merchandise that is sold and delivered by the Dresden Dress Company, Inc., inferior to that which you got from Guild houses?

Mr. Freeman: I object to that. Now I really object to that.

Mr. Haycraft: I object to that, if your Honor please. Counsel has no right to ask a question like that.

Mr. Weisman: It is coming to a pretty pass when counsel for the Commission is going to tell me even the question that I may ask.

Examiner Bennett: Sustained.

Mr. Weisman: Exception, and I offer to prove that if the witness had been allowed to answer he would have stated that in no respect was it inferior to that which he purchased from Guild houses.

By Mr. Weisman.

Q. Have you ever found that the merchandise that you purchased from the Dresden Dress Company, Inc., was in-
4919 ferior in quality or in type or in style or in quality or in consumer acceptation to that which you were enabled to buy from Fashion Originators Guild of America members when you did buy from them?

Mr. Freeman: I object to that, Mr. Examiner.

Mr. Haycraft: I object to that. No foundation has been laid for it.

Examiner Bennett: Sustained.

Mr. Weisman: Exception, and offer to prove that the witness' answer would have been that in every respect the merchandise was equal to that, or better, for that matter, to that purchased from members of the Guild.

Mr. Haycraft: I move to strike that out, if your
4920 Honor please, as not a proper offer to prove.

Examiner Bennett: No, I think I will let it stand. It is in the record physically, anyway.

By Mr. Weisman.

Q. Do you know the Ebon Manufacturing Company, Inc., 498 Broadway, New York—498 Seventh Avenue, it is? A. No.

Q. Did you ever know of them on February 1, 1936?

Mr. Freeman: I object.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

A. No, sir.

By Mr. Weisman.

Q. Did you ever know of, or did you ever hear of Edelman— A. No, never heard of a firm with a name like that.

Q. You answered that very promptly before I ever got the full name out. Did counsel indicate to you to say no? A. (No answer heard.) 4922

Q. Did you ever hear of the Encore Dresses? A. I have.

Q. Did you prior to February 1, 1936, do business with them? A. I would not know.

Q. Have you learned of them since February 1, 1936? A. I have.

Q. Since you have learned of them did you also learn what priced dresses they make and sell? A. Yes.

Q. What priced dress do they make and sell? A. $10.75.

Q. Have you, since February 1, 1936, found that Encore Dresses, Inc., were at all times ready, willing, and able to sell you such merchandise as you desired to purchase from them? A. I have.

Q. Have you, in fact, since February 1, 1936, purchased merchandise from Encore Dresses, Inc.? 4923

Mr. Freeman: I object to that, your Honor. I object. That is not a proper question.

Mr. Haycraft: I object.

Mr. Weisman: I suppose your Honor is going to sustain that in spite of anything I might say.

Examiner Bennett: Yes, in view of the statement by counsel the objection is sustained.

Mr. Weisman: Exception. I make the offer to prove that had the witness been permitted to

answer he would have answered that they have merchandise from them and in substantial quantity.

Mr. Haycraft: Move to strike that as not proper offer to prove.

Examiner Bennett: No, I think I will allow it to stand.

By Mr. Weisman.

Q. Have you found that the merchandise that you have purchased from Encore Dresses, Inc., is, in any respect, inferior to that which you could have purchased from members of the Guild at the same price?

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Mr. Haycraft: I object.

Mr. Freeman: I object to that, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: I except. I now offer to prove that if the witness had been permitted to answer he would have answered that it was not inferior in any respect.

By Mr. Weisman.

Q. Did you ever hear of Estell Frocks, 101 West Thirty-seventh? A. No.

Q. Did you ever hear of the Everglad Blouse & Dresses? A. No.

Q. Did you ever hear of the F. E. D. Dress Company, 4926 1400 Broadway? A. No, sir.

Q. Did you ever hear of the Fashion Dress Company, 525 Seventh Avenue? A. No, sir.

Q. You are certain of that? A. Yes, sir.

Q. I take it with regard to all these houses whom you say you never heard of, you must have, and must be now, of necessity, unaware of the prices at which they sell their merchandise; is that so? A. If I have never heard of them I do not know at what price they sell for.

Q. I am trying to shorten this record as much as I can. Did you ever hear of the Fashion-Craft Dresses, Inc.? A. Where are they located?

Q. 530 Seventh Avenue. A. Yes.

Q. You know of them? A. Yes.

Q. How long have you known of them? A. Since January, 1936.

Q. I take it, then, that they are a resource which prior to January, Department 335 did not do business with?

Mr. Freeman: I object.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception, and I offer to prove 4928
that he would have answered that in the affirmative; that they did not do business with them prior to January.

By Mr. Weisman.

Q. What dresses do Fashion-Craft Dresses, Inc., handle or sell? A. $10.75 and up.

Q. Do they handle the type of dresses that you sell in your Departments Nos. 338 and 358? A. They do.

Q. Have you found them at all times ready, willing, and able to sell you all the dresses that you are willing to purchase from them? A. Not me.

Q. Under one acting under your instructions or directions? A. No, sir. 4929

Q. Or acting for you or for Strawbridge & Clothier? A. No, sir.

Q. When you said, "Not me" what did you mean? A. They do not sell my department.

Q. Do you mean that they do not sell your department because your department does not want to buy from them; is that what you mean, or what do you mean by that? A. They do sell—they manufacture a woman's dress.

Q. Does not Department 338 handle women's dresses? A. They do.

Q. Then your answer is that they manufacture women's dresses—how is your answer that they manufacture women's dresses explanatory of your statement that they do not sell that department? A. They sell—they sell another department in our store.

Q. What department?

Mr. Freeman: I must object to that.

Mr. Haycraft: I object.

Examiner Bennett. Sustained.

4931 Mr. Weisman: Exception, and I offer to prove that the witness would have stated such department, which would have been a piece of information vitally necessary to the proper defense of this case on the part of the respondents.

By Mr. Weisman.

Q. Have you seen the merchandise that they handle or purchase, or produce, I should say? A. Not recently.

Q. What do you mean by "not recently"? A. Not since February.

Q. Did you ever hear of the Fashion Wear Dress Company? A. Where at?

Q. 1400 Broadway? A. No, I have not.

Q. Did you ever hear of Furst-Greenman Company, Inc.,
4932 1400 Broadway? A. I have heard of them, but I do not know what they make, or—I have just heard of them. I have heard the name mentioned in the market.

Q. You know that they are a regularly producing house, do you not; a rather large one? A. No.

Q. Don't you know that they are a regular Broadway house? A. No.

Q. Is not Furst-Greenman Company, Inc., 1400 Broadway, a large producer of $10.75 dresses? A. I would not know that.

Q. How did you hear about it? A. I have heard people speak of the name. When you mentioned the name it brings back the recollection of having heard of them somewhere.

Q. Did you ever hear of Ginsburg & Abelson, Inc.? A. No.

Q. Do you know that house, or did you know that house on February 1, 1936, when you became buyer for this department? A. No.

Q. Do you know Goldstein & Entin, Inc., 1410 Broadway? A. No, sir.

Q. Never heard of them since February 1, 1936? A. No, sir.

4934

Q. Did you ever hear of Golf Dress Company, Inc.? A. I have heard of them.

Q. Did you ever hear that they were in the business of making dresses at $10.75 and up? A. Not the type of dresses that I buy.

Q. What type of dresses did you hear they make? A. Sport dresses.

Q. Did you not also hear that they made tailored suits of linens and woolens? A. When I said sports dresses, I had in mind tailored dresses.

Q. Did you ever hear of the Greensteins Frocks, Inc.? A. No.

Q. Did you ever hear of Greenwald Friedman Corporation? A. No, sir; I never heard of that name.

4935

Q. Did you ever hear of Gross-Sydney, Inc.? A. No, sir.

Q. Did you ever hear of Harris & Stone, Inc.? A. No, sir.

Q. Did you ever hear of Harston Frocks, 525 7th Avenue? A. No, sir.

Q. Did you ever hear of Heimlich? A. No, sir.

Q. Did you ever hear of Irma Dress Company, Inc.? A. No, sir.

Q. Did you ever hear of J. H. Costume Company, Inc.? A. No, sir.

Q. Did you ever hear of George Jacobson, 1400 Broadway? A. No.

Q. Did you ever hear of the Jerry Dress Company, Inc.? A. No, sir.

Q. Did you ever hear of Jescove Frocks of 1400 Broadway? A. No, sir.

Q. Did you ever hear of Jo-Jo Dress Company, Inc.? A. No, sir.

Q. Are you sure of that last one? A. That is right. I am sure.

4937 Q. You never heard of that? A. No, sir.

Q. Did you ever hear of Julmar Frocks, Inc.? A. No, sir.

Q. Did you ever hear of Junior Town Frocks at 1400 Broadway? A. I don't buy junior dresses, so I wouldn't hear about it.

Q. It may be they make dresses other than junior dresses. In any event— A. I don't know.

Q. You don't know them? A. No, sir.

Q. Did you ever hear of the Justrite Dress Company? A. No, sir.

Q. Did you ever hear of Milton Kohn-Schlussel? A. No, sir.

Q. Did you ever hear of Konette Frocks of 101 West 37th Street? A. No, sir.

4938 Q. Did you ever hear of Ladycraft Dresses, Inc? I have.

Q. When did you hear of them? A. January, 1936.

Q. Prior to that you hadn't heard of them? A. I wasn't buying that price prior to that.

Q. I didn't ask you that. That isn't responsive to my question. I asked you whether prior to that you had ever heard of them. A. I had not.

Q. What price to they make and sell? A. $10.75 and up.

Q. Do they make and sell the type of dress that you handled in your Departments 338 or 358? A. I wouldn't like to make a comparison there.

Q. I didn't ask you to make a comparison.

Examiner Bennett: It is perfectly all right. Answer it.

Mr. Haycraft: Read the question to him.

Q. (The question was read.) A. They do have.

Q. Do you find that they are ready, willing and able to sell you all the dresses that you are willing to give them on order?

4940

Mr. Haycraft: That is objected to, the form of the question, Mr. Examiner, assuming that he wasn't willing to give any on order, which is not the fact.

Examiner Bennett: I sustain the objection.

By Mr. Weisman.

Q. Do you find that Ladycraft Dresses, Inc., is at all times willing to sell and deliver to you such dresses as you desire to purchase?

Mr. Haycraft: Objected to on the same grounds. There is nothing to show that he desires to purchase them.

Examiner Bennett: Sustained.

4941

Mr. Weisman: Exception. May I ask the Examiner with all due humility on what basis this objection is sustained?

Examiner Bennett: I think it is an indirect way of doing what has been ruled that you shall not do on a direct question.

Mr. Weisman: I respectfully——

Examiner Bennett: I think it is a matter that has been contended over as to whether they were actually used as a source of supply.

By Mr. Weisman.

Q. Well, has Ladycraft Dresses, Inc., at any time refused to sell you such dresses as you desired to purchase?

Mr. Haycraft: I object to the form of the question, "that you desired to purchase," I object to the language which brings into this whole matter the question that was ruled on.

Examiner Bennett: I assume they were available supplies. They are not a Guild house; are they?

Mr. Weisman: No. I am trying to show that there was plenty of available sources.

4943

Examiner Bennett: Well, you are showing it.

Mr. Weisman: All right. I will have an exception and go to the next.

Examiner Bennett: Showing it with a plethora of wealth.

Mr. Weisman: Thank you.

Examiner Bennett: That is quite amazing.

By Mr. Weisman.

Q. Did you ever hear of the Lanbry Company, 1400 Broadway? A. What is the name, please?

Q. L-a-n-b-r-y? A. No, sir.

Q. Did you ever hear of Le Claire Costumes, Inc., at 525 Seventh Avenue? A. No, sir.

4944

Q. Did you ever hear of Herbert Lightsone? A. No, sir.

Q. Did you ever hear of B. & J. Lipman, Inc.? A. Yes, sir.

Q. When did you hear of them? A. That is a new house. I don't know when they started. It was after January 1st.

Q. What priced merchandise do they make? A. $10.75 and up.

Q. Do they make the type of merchandise that you generally use in your Departments 338 and 358?

Examiner Bennett: Do they? If you know.

A. I have only purchased a few dresses from them.

Examiner Bennett: You don't have to tell about your purchases.

Mr. Weisman: Ha, ha, ha, ha.

Examiner Bennett: You were asked a question as to the kind of merchandise.

By Mr. Weisman.

4946

Q. For what department did you purchase those dresses? A. 358.

Q. Now, if you had been willing to purchase more, would they have been—were they willing to sell them to you?

Mr. Haycraft: That is objected to.

Mr. Freeman: Now——

Examiner Bennett: Well, I will sustain the objection.

By Mr. Weisman.

Q. When you purchased these dresses, did you purchase them yourself? A. I did.

Q. Did you visit their showroom? A. Yes, sir. 4947

Q. Did you see their stock? A. Not their stock, no.

Q. Did you see their line? A. That is right.

Q. How many dresses were there in their line? A. I have no idea.

Q. What is your best recollection? A. I was only interested in one group of their dresses.

Q. Did they try to interest you in the other groups? A. They knew I didn't purchase the other groups.

Q. No. I am not asking you that. I am asking you did they seek to interest you in the other groups? A. No, sir.

Q. Did they at any time seek to have you place an order larger than you actually did place?

Mr. Taylor: Ha, ha, ha.

A. I think they all tried to do that.

Mr. Taylor: Ha, ha.

By Mr. Weisman.

Q. Everybody that you do business with tries to sell you
4949 as much as they possibly can and you seek to take only that which you need; is that it? A. That is correct.

Q. So that when you go to these various houses, your trouble has been, as with most buyers, in keeping down the enthusiasm of the seller to ship you more merchandise than you really need; is that so? A. That is correct.

Q. With Lucile Frocks, have you ever heard of Lucile Frocks? A. The address, please?

Q. 491 Seventh Avenue. A. I have.

Q. When did you hear of them? A. My best recollection is somewhere in March, 1936.

Q. How did you come to hear of them?

Mr. Haycraft: That is objected to.

Examiner Bennett: Objected to?

4950 Mr. Haycraft: Yes.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: I submit it is always competent to show how the buyer—how he found out about these people.

Examiner Bennett: I don't see what it amounts to. I don't see that it is of any help. He did find out. What does it matter how he did it?

Mr. Weisman: Well, all right. I respectfully except.

Examiner Bennett: All right.

By Mr. Weisman.

Q. What type of merchandise do they make? A. They make different types of merchandise.

Q. Well, tell us about the different types. A. What ever is fashionable at the time they make them.

Q. Well, aren't all of these dress houses engaged in making fashionable merchandise? A. Along certain types. A house usually sticks along a certain type.

Q. What do you mean when you said Lucile makes different types? A. Well, he makes costume suits or wool dresses or silk dresses, anything that is in fashion at that time.

Q. Does he make the type of dresses that are generally 4952
handled in Departments 338 and 358? A. Yes.

Q. Have you found that his merchandise is in anywise inferior to such merchandise as you could purchase from members of the Guild at the same price?

Mr. Haycraft: That is objected to.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you since May 1, 1936, placed orders for merchandise with Lucile Frocks?

Mr. Haycraft: I object.
Mr. Weisman: Exception. 4953

By Mr. Weisman.

Q. Have you received merchandise from Lucile Frocks?

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception,

By Mr. Weisman.

Q. Have you at all times found that Lucile Frocks were ready and willing to sell you such merchandise as you indicated you desired to purchase from them?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, do you know Mahler & Michaels, Inc., 1400 Broadway? A. No, sir.

4955 Q. Do you know Mattie Gross-Lucille? A. I do.

Q. 1375 Seventh Avenue—I mean, Broadway? A. That is right.

Q. It is a rather well-known house; are they not? A. I couldn't say.

Q. Don't you know who Mattie Gross is? A. I never met him, no.

Q. She happens to be a woman. Did you ever hear that she was a very well-known designer? Don't you know that in your business? A. No, sir.

Q. Did you ever know that the Lucille of that firm was the Lucille Le Roy, a well-known designer? A. No, sir.

Q. Did you ever hear that that was one of the large volume houses? A. No, sir.

4956 Q. When did you hear of them? A. In March, I believe. It was 1936.

Q. Prior to March, 1936, do you know whether or not they sold any merchandise to your store?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: What, Judge?

Examiner Bennett: Sustained.

Mr. Weisman: Well, I had assumed that the purpose of those objections was with regard to people after February that did business with them.

Mr. Haycraft: You can get that information by a process of elimination. That is why I am objecting to it.

Examiner Bennett: I am not going to let things be done indirectly which are not permitted directly. While you have a great deal of ingenuity in doing that, I am afraid that you won't succeed; that is, unless the attorney goes to sleep.

By Mr. Weisman.

Q. Did you find that Mattie-Gross-Lucille Le Roy, Inc., made such type of merchandise as was generally handled in Departments 338 and 358? A. Yes. 4958

Q. Did you find that they were at all times ready to sell you such merchandise as you desired to buy from them for those departments?

Mr. Haycraft: Objected to.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you in fact since February 1, 1936, purchase and acquire for Departments 338 and 358 such of the merchandise of Mattie Gross-Lucille Le Roy, Inc., that you desired to purchase?

Mr. Haycraft: Objected to. 4959
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you ever heard of Miriam Modes, Inc.? A. No, sir.

Q. Have you ever heard of Mirkin Friedman-Bucholz, Inc., 1406 Broadway? A. Yes, sir.

Q. Are they engaged in making the same—such types of merchandise as you generally use in Departments 338 and 358? A. Yes, sir.

Q. When did you first hear of them? A. January, 1936.

Q. Now, going back to Mattie Gross-Lucille Le Roy, Inc., for a moment. Did you find that the merchandise that you bought from them was in any respects, or the merchandise offered for sale by them, were in any respect inferior to that offered by members of the Fashion Originators Guild at the same price?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

4961 Mr. Weisman: Exception.

(There was a discussion off the record.)

Mr. Weisman: Now, at the suggestion of Mr. Freeman, and the Examiner, I wish to make this statement: That at this time I am desisting from further examination along that line, that if I were to continue I could continue with approximately—I want to get it right. May I have a moment's time? We have analyzed it, Judge.

Examiner Bennett: All right.

Mr. Weisman: That at $10.75 there are approximately 2,200 such sources of supply which I would have continued to read from.

Examiner Bennett: All right.

4962 Mr. Haycraft: $10.75?

Mr. Weisman: No, at the $6.75 and up. I asked him that.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Yesterday I asked you under what circumstances the A.M.C. buys for your store and you said they buy for you at such times as you are not able to be in the market and you are in a hurry. You remember that? A. Yes, sir.

Q. Are those the only circumstances known to you under which the A.M.C. does the purchasing for you? A. There is one other operation that they purchase for us.

Q. What is that other operation?

Mr. Haycraft: That is objected to.

Mr. Weisman: I submit it is vital.

Examiner Bennett: Well, I am going to let him answer, if he knows.

By Mr. Weisman.

Q. The Court says you shall answer, if you know. A. That is the Dean-Taylor operation.

4964

Q. We don't know what that means. Rather, the Court doesn't. Tell us about it. A. The A.M.C. buyers in New York select certain styles that are confined to A.M.C. stores. That is the only thing they purchase for us. We receive one or two styles a month from them.

Q. I see. Now, is that all? A. That is all.

Q. And these styles, no other store can purchase them that isn't a member of the A.M.C.? They are only confined to your store; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: If he knows. If you don't know, please don't answer.

By Mr. Weisman.

4965

Q. Do you know that?

Examiner Bennett: Unless you know. Unless you know don't give us that information.

The Witness: I beg your pardon?

Examiner Bennett: Do you know? If you don't know, don't try to tell about it.

A. I am not positive.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Well, aside from being positive, what is your general knowledge?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain an objection.

By Mr. Weisman.

Q. Do you know the understanding upon which the A.M.C. purchases these garments from the manufacturer? A. No, I don't.

Q. Don't you know that they purchase them on the
4967 agreement that no other retailer in the town or city where the A.M.C. store is located may have that particular style, don't you know that? A. No, sir.

Q. That is news to you? A. Yes, sir.

Q. What did you mean when you said that they purchased this one or two styles a month which is confined to an A.M.C. store, if you didn't mean just that? What do you mean by that answer? A. We have found cases where other stores in the same town did have the dress.

Q. The original or copies? A. The original.

Q. Did you feel that that was contrary to the arrangement that had been made when you bought it? A. I never bought it.

Q. When it was bought by your store.

4968 Mr. Haycraft: That is objected to.

Examiner Bennett: I don't think this man is an executive. I think this man is not such an executive as is qualified to answer that question. I sustain the objection.

Mr. Weisman: All right.

By Mr. Weisman.

Q. Do you know Miss Dean? A. Yes, I do.

Q. Who is Miss Dean? A. She is one of the A.M.C. representatives in New York.

Q. Is she the representative of the A.M.C. that makes up a list of what each of your stores will take each week and goes out and buys this merchandise in one group? A. Miss Dean doesn't handle my division.

Q. No. She handles the $3.75——

Mr. Haycraft: Objected to.

Q. (Continuing) —doesn't she? 4970

Mr. Haycraft: Objected to.

Q. (Continuing) And $4.75.

Mr. Haycraft: I object.

Examiner Bennett: This witness doesn't seem to know anything about that. Let's not waste any time.

By Mr. Weisman.

Q. Weren't you the buyer in this department before February 1, 1936? A. That is right.

Q. And as such buyer didn't you learn that this—didn't you learn what Miss Dean did?

Mr. Haycraft: Objected to. 4971

Examiner Bennett: Well, I will overrule the objection to that, if he knows.

By Mr. Weisman.

Q. The Court says you shall answer. A. Miss Dean never bought anything for Strawbridge & Clothier.

Q. Did she ever suggest to you that you pool your purchases with other members of the A.M.C.?

Mr. Haycraft: Objected to what she may have suggested.

By Mr. Weisman.

Q. Well, did you as a result of a suggestion or discussion with Miss Dean ever pool your purchases with any of the other seventeen or eighteen members of the A.M.C.? A. We never pooled our purchases, no.

Q. What did you do, and what did you mean when you emphasized the word "pool"? Did you buy together with them? A. No, sir. Miss Dean has suggested certain things to us and I have gone over at different times and
4973 bought them by myself, but never with any other store.

Q. You stated a moment ago that sometimes you found dresses in town which were the same as those that you had bought through this well-known Dean operation of the A.M.C. Do you remember saying that to me a minute ago? A. Not the Dean operation.

Q. What did you call it? What did you call that operation?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. Well, may I not ask him what he ~~said to me two~~ moments ago, Judge?

Mr. Haycraft: It has no probative value.

Examiner Bennett: You may ask him anything
4974 you want. I am not curtailing you.

Mr. Weisman: There is no use of asking if your Honor says he can't answer.

By Mr. Weisman.

Q. You were the buyer for Department 491 prior to February 1, 1936, is that not so? A. That is correct.

Q. And you were the buyer there from July, 1933? A. That is correct.

Q. And your immediate superior is Mr. Taylor, the gentleman who has been present throughout your discussion, throughout your testimony? A. Up until January, up until the end of January, 19——

Q. While you were there as buyer for Department 491, Mr. Taylor was your superior? A. That is correct.

Q. When you were buying merchandise for this department, you visited the New York market from week to week? A. That is right.

Q. And you visited the market for the purpose of acquiring new and additional merchandise? A. Yes, sir.

Q. For use in that department? A. Yes, sir.

Q. While you were in charge of that department did 4976
you get all the merchandise that the department required? A. I did.

Q. Did you have any idea whatsoever of getting for Strawbridge & Clothier what Strawbridge & Clothier felt through you they ought to have? A. No, sir.

Q. At no time? A. No, sir.

Q. You are absolutely sure of that? A. That is right.

Q. Didn't have any limitations upon your ability to get merchandise? A. No, sir.

Q. Now, you stated that you first learned of the Guild in 1935? That fall; isn't that so? A. Yes.

Q. Hadn't you long before that pursuant to Mr. Taylor's instructions used the Guild stamp on all of your orders? A. That——

Q. No. Hadn't you? A. I don't know. 4977

Q. Didn't you place orders? A. Certainly.

Q. Well, didn't you on these orders that you placed put the Guild stamp? A. Our orders were printed with that stamp on.

Q. I don't ask whether or not they were printed, or whether it was placed by you. It had that stamp on it; didn't it? A. I don't know.

Q. Do you mean that you went out and placed orders and you didn't know what was the order? A. I didn't know what all of that wording was on the back of the order. Those copies were all printed up.

Q. Didn't you ever see it? A. I certainly have seen it.

Q. You mean that as buyer for this department for two and a half years you never knew that your orders contained a clause that the seller warranted the merchandise as being original and not copies of the Guild merchandise? A. Of course I knew it, but I don't know when——

Q. Now, wait a minute. That is why I asked you. Didn't you know, furthermore, that during all of these
4979 two and a half to three years you reserved the right to return any merchandise that was sent to you and which turned out to be copies? A. I don't know when we started to use that warranty stamp.

Q. Well, let me ask if the stamp will refresh your recollection. A. I don't know the stamp—I don't know when we started to use it.

Q. A moment ago you said you didn't know. You said it was printed on there, didn't you? A. Yes.

Q. Well, now, we have it that you know the stamp. A. That is right.

Q. Well, don't you know as buyer of that department that in July, 1933, your store undertook to place that stamp on all of the orders? A. I don't know that, no.

Q. As a matter of fact, when you went out to purchase
4980 garments in the open market for Department 491, didn't you endeavor to purchase garments that were not copies of original Guild merchandise? A. I don't know whether they were copies of original Guild merchandise.

Q. No, no. I didn't ask you whether you knew. I asked you whether or not you endeavored to refrain from purchasing Guild copies of Guild merchandise? A. As much as I could, yes.

Q. When did you first start to refrain from purchasing as much as you could copies of Guild merchandise? A. When the Guild shoppers first started to make me return those copies.

Q. Do you mean to say that prior to the time that Guild shopper called your attention to the fact that you had copies you didn't care whether you had them or not, and you didn't care whether you bought them or not? A. I didn't know whether they were copies or not at the time I bought them.

Q. No, no. I didn't ask you whether you knew they were copies. That isn't important.

Examiner Bennett: He says he didn't know. 4982
How could he——

Mr. Weisman: The man might not know factually whether a thing is a copy, Judge, but I am seeking to ascertain whether he sought to refrain from buying copies.

Examiner Bennett: Well, the operation of his mind——

Mr. Weisman: It isn't the operation of his mind; it is what he did.

By Mr. Weisman.

Q. Weren't you mistaken yesterday when you said that the first time you heard of the Guild was in the fall of 1935? Didn't you, as a matter of fact, learn through your 4983
superiors that your store was co-operating with the Guild as early as July, 1933? A. I don't recall knowing about the Guild in 1933.

Q. You were buyer for that department in 1933? A. That is right.

Q. Didn't anybody in that store in 1933 tell you that the store had adopted its policy as being one which they had undertaken to refrain from knowingly dealing in

copies of Guild merchandise? A. They might have, but I don't remember.

Q. Well, if they told it to you, wasn't it part of your duties to see that that covenant or agreement or declaration was carried out? A. Yes, I suppose it was.

Q. If they told it to you, and it was your duty to carry it out, don't you remember whether or not you did carry out your store's promise which it was your duty to fulfill? A. I can't recall ever being told.

Q. What? A. I can't recall ever being told in 1933.

Q. If you can't recall ever being told, then would you state that in 1933 you went out into the market and pur-
4985 chased goods for Department 401 without any regard to whether or not you were buying copies of Guild merchandise?

Mr. Haycraft: Objected to on the ground that it was already gone over.

Mr. Weisman: It hasn't been gone over.

Examiner Bennett: I will let him answer.

By Mr. Weisman.

Q. I said 401. I mean 491. Answer as to 491, please. A. I had no way of telling whether dresses were copies or not. I bought a very cheap dress and manufacturers weren't going to tell me that they were copies. I simply went in and bought them.

4986 Q. I am trying to find out from you whether at any time in 1933 you told manufacturers that you didn't want to buy copies of Guild merchandise? A. I can't recall telling manufacturers that.

Q. Do you recall that you didn't tell them that and that you bought it without regard to whether or not it was a copy? A. I didn't know it was a copy.

Q. Did you seek to inform yourself as to whether or not it was a copy? A. There is no way that I could inform

myself. I didn't—I don't know anything about the better dresses—I didn't know anything about better dresses at that time.

Q. Now, coming to 1934, have you any recollection as to whether or not during the year 1934 there was affixed as part of the orders you had printed on it the stamp? In other words, didn't you have in words or substance that the seller warranted that the goods were not copies of Guild merchandise and that you reserved the right to return the merchandise if it turned out to be copies of Guild merchandise? Have you any recollection of using that stamp during the year 19— A. No, I haven't.

Q. 1933? That warranty— A. No, I haven't. 4988

Q. In other words, as buyer of Department 421, it is your best recollection that Strawbridge & Clothier did not place those words upon their orders during the year 1934? A. I don't know.

Q. Well, as buyer, wasn't it your duty to know? A. I don't think so.

Q. Let's come down to 1935. Do you remember whether or not they were on your orders in 1935? A. I believe they were.

Q. When did you think in 1935 you first commenced to use that stamp on your orders? A. I don't know, Mr. Weisman, when we first used them.

Q. Was it early? A. I can't remember when we first started to use it. I knew that we were using it, but I couldn't tell you the date. 4989

Q. How long were you using it? A. I have no idea.

Q. When you go out in the market you take orders with you, don't you, your order blanks? A. That is right.

Q. And on these order blanks you place your orders? A. That is right.

Q. And on these order blanks are the terms of the purchase and the amount of the purchase, isn't that so? A. That is right.

Q. Now, on the orders that you placed for this department, during all of this period, do you remember when was the first time the words——

Mr. Weisman: I am now reading from Respondents' Exhibit No. 20, which comes from Strawbridge & Clothier.

Q. —"This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted"? A. I don't remem-
4991 ber.

Q. You remember it was printed on the order? You stated it was not stamped. A. It was printed. It was printed first and stamped later.

Q. In the beginning you had it stamped? A. Stamped and later on we had to——

Q. Well, now, when was it stamped?

Mr. Haycraft: Let him finish his answer. Later on it was what?

Mr. Weisman: It was printed. He said that.

Mr. Haycraft: Let him say so.

Mr. Weisman: We all heard it except you.

Mr. Haycraft: Did the reporter get it?

The Reporter (reading): "A. Stamped and later
4992 on we had to——"

Mr. Weisman: Had it printed. All right.

By Mr. Weisman.

Q. Take a look at this and see if this refreshes your recollection (showing the witness Respondents' Exhibit 20).

Mr. Haycraft: I object to that, Mr. Examiner. He knows what the stamp is and has said so, al-

though he can't recall when it was first put on there. It is not going to help him refresh his recollection by looking at it.

Mr. Weisman: How do you know it is not going to refresh his recollection? Are you going to read his mind like your witnesses have been trying to do?

By Mr. Weisman.

Q. Have you looked at that? A. Yes.

Q. Now, looking at that, has that refreshed your recollection as to when you used the stamp and when it was printed on the order? A. It has not. 4994

Examiner Bennett: We will have a recess of ten minutes.

(A short recess was taken.)

Mr. Weisman: Have you the last question?

(The last question and answer was read.)

By Mr. Weisman.

Q. This Department 491, what type of department was that? A. We called that the Economy Shop.

Q. Was that a ladies' ready-to-wear department? A. Strictly.

Q. What? A. Strictly a ladies' ready-to-wear department.

Q. Now, I call your attention to Commission's Exhibit 362 and ask you to read the last sentence in the exhibit reading "Furthermore, we propose to annex to all of our orders for ladies' ready-to-wear merchandise the following clause," and ask you whether or not that letter, its date and language I have read you refreshed your recollection as to when you commenced to use that warranty stamp? 4995

Mr. Haycraft: That is objected to, Mr. Examiner. The letter was not written by the witness.

Mr. Weisman: I didn't say it was written by him.

Examiner Bennett: Let's see whether it refreshes his recollection. Does it?

The Witness: It does not. I never saw this letter before.

By Mr. Weisman.

Q. Have you any idea of the total amount of merchandise that you purchased a year in dollar volume for De-
4997 partment 491 during the years that you were there?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. What was the total amount of stock carried in Department 358, the average amount of stock during the year 1935?

Mr. Haycraft: I object to that. That is not what the witness said. He said at the time he took over, which was February 1, 1936.

Mr. Weisman: Did your Honor rule?

4998 Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. What was the total amount in that department in February, 1936? A. What time?

Q. February 1, 1936. A. I do not recall.

Q. What is your best recollection of it? A. I have no recollection.

Q. Do you think it was $100,000? A. I will not guess.

Q. I do not want you to guess. You are in charge of this department; is that so? A. Yes, sir.

Q. It is your duty to purchase merchandise which shall be sold within a reasonable time? A. Yes, sir.

Q. What is that reasonable time? A. We have no set reasonable time.

Q. What is your average stock? A. I do not know.

Q. You do not know? A. No.

Q. You mean as buyer of this department you have no limitation with regard to the amount of stock on hand that you usually carry? A. I do not memorize those figures.

5000

Q. What? A. I do not memorize those figures.

Q. I did not ask you whether you memorized them or not. A. No?

Q. I asked you what is your average stock.

Mr. Haycraft: He has already said that he did not know the figures.

Mr. Weisman: If your Honor please, I ask that counsel be stopped from making these constant interjections and coaching up his witness. This man does not need any help from counsel.

Mr. Haycraft: I am not making any interjections. I am going to make an objection when I feel it is necessary.

Mr. Weisman: If you would make an objection there would be no difficulty. You are not objecting. You are interjecting. If counsel does not know the difference, then I ask that he be informed.

5001

Examiner Bennett: Go ahead with your examination.

Mr. Haycraft: I have an objection pending.

Examiner Bennett: I overrule the objection.

A. I have no opinion.

Mr. Haycraft: The witness has said he had no recollection.

Mr. Freeman: I must object to that, your Honor.

Mr. Weisman: Here is Mr. Freeman again.

Examiner Bennett: The witness has said he had no recollection.

Mr. Weisman: If your Honor please, he may not have any recollection, but he may have an opinion. There is a difference between the two.

Examiner Bennett: Go ahead.

By Mr. Weisman.

5003 Q. As buyer of this department, what are your duties? A. To purchase salable merchandise.

Q. To what degree can you buy all salable merchandise that is offered to you in the New York market or in any other market? A. If I can sell it.

Q. Well, have you any standard to guide yourself as to what you can sell? A. It depends upon the season.

Q. Well, now, let us see. In the spring season of 1936 how did you feel that you could have sold? A. There are so many things to take into consideration that I must take into consideration before I can answer that question.

Q. The spring season is past, is it? A. Yes.

Q. Yes? A. Yes, it is.

Q. You went in the market to buy merchandise, did you? A. That is right.

5004 Q. No doubt about that? A. No.

Q. Before you went out, did you have a budget? A. Yes.

Q. You did? A. Yes.

Q. From whom did you get this budget? A. From my superior.

Q. How coy you are. A. What is that?

Q. I say you are very coy. A. Possibly.

Q. No doubt of it. We will not quarrel on that. You say you got it from your superior? A. Yes.

Q. Do you know from what that budget was made up? A. Yes, I do.

Q. You do know that? A. Yes.

Q. What was that budget made up from? A. Our expected sales.

Q. And from that budget of expected sales you would go out into the market and purchase such amounts of merchandise as you believed would satisfy those expected sales; is that so? A. That is correct.

Q. What relation has the amount of your sales to the amount of your budget, the purchases? A. I do not quite understand that question.

Q. In other words, if you expect to sell about $1,000, or, 5006
let us say $10,000, to get it in round figures of dollars of merchandise in the spring season at retail, how much merchandise will you buy to satisfy that demand? A. The equivalent of the amount you mentioned at cost.

Q. I see. A. Yes.

Q. In other words, you only carry in your department sufficient merchandise to meet the amount of sales? A. Yes.

Q. You have no overage? A. No.

Q. No overage? A. No.

Q. In the spring season of 1935— A. What?

Q. I withdraw that. A. I beg your pardon?

Q. I have not asked you anything yet? A. Oh, no.

Q. In the spring season of 1935 what months constituted the spring season in 1936—we will take 1936 first? A. 5007
The spring season in 1936 constituted the months of March, April and May.

Q. And May? A. Yes.

Q. When did you go out to place your orders for March, April and May? A. We buy from week to week.

Q. Week to week? A. Yes.

Q. You mean you do not buy in February for March, April and May? A. The last week in February we bought for the first week in May.

Q. In May? A. Yes.

Q. What amount of merchandise did you buy for your spring season? A. I cannot recall.

Q. Now, this is very extraordinary. If you cannot recall—what do you mean you cannot recall? A. I cannot recall the exact figures.

Q. I am not asking you if you recall the exact figures. A. No?

Q. No. I want to get from you an approximation? A. An approximation?

Q. Yes. Your best recollection as buyer in charge of this department. A. I have no recollection of how much

5009 I bought.

Q. Have you any idea? A. I have not.

Q. No idea? A. No.

Q. When you say you have no idea you mean by that that you do not know whether in that department you bought $100,000 worth of merchandise or $10,000 worth of merchandise for the spring season? A. I do not know how much I bought.

Q. You do not know whether it is one or the other? A. That is right.

Q. Do you not know how many people you bought your merchandise from? A. I do not.

Q. No? A. No.

Q. Have you no idea? A. None.

Q. None at all? A. None.

5010 Q. Do you know whether or not you bought it from 100 manufacturers or 200 manufacturers? A. I would not be sure.

Q. Do you know whether or not—do you know what was your average purchase price, I will ask you that? A. You will ask me what?

Q. What was your average purchase price? A. I do not know.

Q. Would you know whether your average purchase price from the manufacturer was $100 or $1,000? A. I would not know.

Q. You do not know that, either? A. No.

Q. Do you know whether or not you sold more merchandise in Department 338 than you did in Department 358? A. No. I do not know.

Q. Do you know whether or not you sold more merchandise in Department 338 in the first six months of this year than you sold in Department 491 during the same six months? A. No, I would not know.

Q. Have you any idea? A. No, sir.

Q. Is the same thing true with regard to Department 358? A. That is right. 5012

Q. You were in charge of this Department No. 491 for two and one-half years? A. I was.

Q. You were? A. Yes.

Q. Notwithstanding that, do you state that you have no idea of the volume of business done in that department annually during the period that you were in charge of it? A. I do not know the exact amount of business.

Q. I do not want to know the exact amount of business. A. No?

Q. I want to know the approximate amount, an approximation. A. I do not know the approximate amount.

Q. You have no idea? A. No.

Q. No idea at all? A. No, indeed.

Q. Do you know whether or not that department did 5013
$250,000 annually, or $75,000 annually? A. I do not remember. I do not memorize those figures.

Q. I did not ask you whether you memorized those figures, did I? A. No.

Q. I asked you whether you knew whether or not that department did $250,000 annually or $75,000 annually, did I not? A. Yes.

Q. What is the answer to that? A. I do not know. I do not know at all.

Q. In other words, as far as you are concerned, either one or the other might equally be true; is that so? Can you not answer that? A. I do not understand. Will you repeat the question?

Q. I asked you whether, in so far as your knowledge is concerned, it could be either one or the other?

Mr. Haycraft: I object.

By Mr. Weisman.

Q. Is that so?

Mr. Haycraft: I object.

5015 Examiner Bennett: I will let you answer.

By Mr. Weisman.

Q. The Court says you may answer. A. That is right.

Q. That is right? A. Yes.

Q. Now, you have been in charge of these departments from February 1, 1936; is that not so? A. That is correct. That is, 338 and 358?

Q. That is right. A. Yes.

Q. Did you seek to purchase merchandise from the Renclair Dress? A. I did not seek. I was purchasing dresses from them.

Q. Did you continue to purchase them? A. No, sir. The numbers that I had from Renclair had slowed up. I did not bother to go back for any more.

5016 Q. Is that the only reason? A. That is the only reason.

Q. Did you not testify yesterday on your direct examination that the reason you did not go there was that they were members of the Guild? A. I did not.

Q. Well, let me read this testimony to you: "Q. Now, among the sources of supply were any manufacturers members of the Fashion Originators Guild of America during the time that you were buying for that department; that is, those that you contacted?" And was not your answer

"A. Yes, sir. One manufacturer. Q. Which one was that? A. Renclair Dress. Q. How do you spell that? A. Renclair, R-e-n-c-l-a-i-r." Did you—do you deny that you so testified yesterday? A. I do not.

Q. Then, which is true and correct, your testimony yesterday or your testimony here to-day?

Mr. Haycraft: There is no contradiction there at all.

Examiner Bennett: Where is the contradiction there?

Mr. Weisman: I should think the witness should be permitted to answer that.

5018

By Mr. Weisman.

Q. Did not you say a moment ago to me that the Renclair Dress was not a member of the Guild? A. I do not so remember.

Q. You do not? A. I did not say that.

Q. Let us get this straight on the record now because I do not want any complaint about it. Did you not say to me a moment ago that the Renclair Dress was not a member of the Guild? A. Was not a member?

Q. Yes. A. I did not make any such statement to you.

Examiner Bennett: The record will show that. Go to something else. Let us not delay this thing too long.

5019

By Mr. Weisman.

Q. Did you state that Renclair is a member of the Fashion Originators Guild or not now? A. They are not now.

Q. You never testified to that one way or the other? A. They are not now.

Q. Did you testify that they were at any time a member of the Fashion Originators Guild of America? A. I did.

Q. Do you so testify now? A. I do.

Q. When do you state that they were a member of the Fashion Originators Guild? A. I cannot give you the exact date. It was back in 1935 some time when the Guild took in the $4.75. Renclair was one of the manufacturers that they accepted.

Q. That was what you had in mind when you testified yesterday? A. Yes, sir.

Q. It is? A. Yes.

Q. You knew your testimony was elicited by you for the purpose of showing that you were dealing with a Guild house? A. Yes, sir.

5021 Mr. Haycraft: That is not right. He does not know that. It is not so.

Mr. Weisman: It is very extraordinary that he says it is. The counsel for the Commission seems to be contradicting his own witness slightly.

Mr. Weisman: If that was not the purpose for it, then I move to strike it out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. As a matter of fact, who told you that Renclair was ever a member of the Fashion Originators Guild of America, Inc.? A. If I am not mistaken I saw it published in
5022 Women's Wear Daily.

Q. That is the only knowledge that you had? A. Yes, sir.

Q. When did you see that published? A. Some time in 1935.

Q. How many times did you see it published? A. Once.

Q. Once? A. Once.

Q. That they were a source of supply of large size? A. What is that?

Q. Were they a large source of supply? A. Not to me.

Q. Were they a rather unimportant source of supply to you? A. That is right.

Q. Rather unimportant? A. Yes.

Q. Notwithstanding the fact that the same important—that this small unimportant source of supply—that this concern, we will get it now, was a small unimportant source of supply, you testified that some time in 1935 you recall that they appeared in Women's Wear as being a member of the Fashion Originators Guild of America; is that so? A. Yes, sir.

Q. True? A. True.

Q. And notwithstanding that you said that you cannot and do not have any recollection of the amount of business done with your department directly under your supervision? A. That is right. 5024

Q. No idea at all? A. Not the slightest.

Q. Have you attempted to do business with Renclair since February 1, 1936? A. I am not buying that priced merchandise now. I do not have any reason to go in there.

Q. Do you know, as a matter of fact, that Renclair Dress was never a member of the Guild? A. No. I do not know that.

Q. Suppose I advised you now solemnly and honestly upon my own direct personal knowledge, will you then change your testimony on page 2658 of the record?

5025

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Are you a regular reader of the Women's Wear magazine? A. Yes, sir.

Q. Or paper? A. Yes, sir.

Q. You are interested in that department of the paper known as the dress section?

Mr. Haycraft: I object.

A. Yes.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. In your reading of the dress section do you see from time to time advertisements there in which various manufacturers advertise their products? A. Yes, sir.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

5027 *By Mr. Weisman.*

Q. Did you so read that paper and see it around February 1, 1936?

Mr. Haycraft: I object to the question as too indefinite. What did he see?

Examiner Bennett: I will sustain the objection if you are going back into the matter of sources of supply—

By Mr. Weisman.

Q. How long did you know Miss Joyce? A. From some time in 1935, when she first came in there.

Q. When did you first meet her? A. In my department.

5028 Q. Under what circumstances? A. Policing the department for copies.

Q. Did she come up to you and introduce herself to you? A. I asked her who she was the first time.

Q. What did she say? A. She said she represented the F.O.G.A.

Q. Meaning the Fashion Originators Guild of America? A. I do not know; I suppose so.

Q. Did she show you any credentials? A. Simply a list of sketches that she had with her.

Q. Did she identify herself in any way? A. No, sir.

Q. Did you ask her for any identification? A. No, sir.

Q. Do you mean to say that as the head of this department you would let a woman come in on her own statement that she represented somebody, and you would let her go through your department?

Mr. Haycraft: I object to that question. There is no contention that Miss Joyce did not do it openly. That is generally conceded.

Mr. Weisman: I think, your Honor, that I am entitled to show the manner in which she came in there and conducted herself. Certainly, she was a contact there that should be developed. 5030

Examiner Bennett: What is the disagreement here? What are you trying to prove?

Mr. Weisman: I am trying to prove that Miss Joyce came into this department openly, notoriously, and without any effort at concealment at all, and that we sent letters to them advising them of her appearance there, and that the whole thing was thoroughly understood by all concerned.

Examiner Bennett: I thought that that had been conceded as to all of that.

Mr. Haycraft: Certainly it is all conceded.

Examiner Bennett: That she did not come in there surreptitiously, and so forth.

Mr. Haycraft: Yes. He did not say on direct examination that she came in there surreptitiously. 5031

Mr. Weisman: Very well. I will not ask the witness any questions about that if that is conceded by counsel for the Commission.

Mr. Haycraft: Of course it is.

Examiner Bennett: I thought that was perfectly clear. We are just taking up a lot of unnecessary time about that.

By Mr. Weisman.

Q. There is just one other question on that and then I will be through. A. Yes.

Q. You stated, I believe, that when Miss Joyce came in that pursuant to her request you would, from time to time, return certain merchandise; is that so? A. That is correct.

Q. That is correct? A. Yes.

Q. Did you so return it; you recall that, upon her statement that it was a copy? A. We did not go into it——

Q. What do you mean, that you required proof that it was a copy? A. Well, let me explain that.

Q. Please do so. A. We did not go into that at first.
5033 We just looked at the sketches of the dress that she had, and if she said it was a copy then we would return it, at first.

Q. What did you do later? A. Then, I asked my superior and he said——

Q. What was that? A. Towards the latter end of the year every time Miss Joyce came in and said "I have a copy," I would refer her to my superior.

Q. Do not be so coy. Who was your superior? A. Mr. Charles Taylor.

Q. Mr. Charles Taylor? A. Yes.

Q. He is sitting here? A. Yes, sir.

Q. And actively helping Mr. Haycraft and Mr. Freeman along when they need a boost? A. Well, I do not know
5034 what he is doing.

Mr. Haycraft: I object to that.

Examiner Bennett: Yes. Just go along with the examination.

By Mr. Weisman.

Q. What did he do? A. I do not know what was done. My hands were through with the thing when I turned her over to Mr. Taylor; I had nothing further to do with the matter.

Q. When did that procedure commence that you have referred to, of referring her to Mr. Taylor? A. In the latter part of 1935.

Q. So that in the latter part of 1935, and up to the time of the ceasing of your relations with the Fashion Originators Guild of America, as a result of any request that Miss Joyce would make on you, you say that you would merely refer her to Mr. Taylor? A. Yes, sir.

Q. Then she and Mr. Taylor would take such action as might be decided between the two of them; is that right? A. Yes, sir.

Q. Now, you testified yesterday that at one time Miss Joyce came in and she asked you for the name of a manufacturer and you refused to give it to her; do you remember that? A. Yes, sir. 5036

Q. And you also testified that you referred her to your superior; do you remember that? A. If it is in the record, it is correct.

Q. Did you not or did you refer her to your superior? Let us get that first. A. I do not recall whether I referred her, or whether I took her there myself.

Q. Is your memory any better to-day than it was yesterday, or was your memory better yesterday than it is to-day? A. Just which is it?

Q. Was your memory any better yesterday than it is to-day? A. No, sir.

Q. Did you say yesterday that you referred her to your superior? A. I do not know whether I referred Miss Joyce, 5037 or whether I referred the incident to Mr. Taylor.

Q. And then—I withdraw that. Who is the superior to whom you either referred her or to whom you referred the incident? A. Mr. Taylor.

Q. Mr. Taylor. Now, you were asked yesterday whether or not your superior required you not to furnish her with the information that she requested; do you remember being asked that question yesterday? A. No, sir.

Q. Well, I will tell you that you were asked this question: "Q. Did they require you to furnish her with the information that she required?" To which you answered as follows: "A. They did not." Do you remember that now? A. No, sir—yes, sir.

Q. Is that correct? A. Yes, sir.

Q. That is a correct statement of what happened? A. Yes, sir.

Q. What did they tell you? A. They told me—Mr. Taylor told me to refer any controversy between Miss Joyce and myself to him.

Q. No, no, no, no. What did they say to you about
5039 your giving information that she requested? A. I told you Mr. Taylor called me in and told me that any controversy between Miss Joyce and myself to refer to him.

Q. You were asked this question: "Q. Did they, meaning your superior, require you to furnish her with the information that she requested?" To which your answer was: "A. They did not." What did they tell you to do with regard to the information that she requested? A. That they would give the information.

Q. That they would give the information? A. Yes, sir.

Q. Do you know whether or not they ever gave it? A. I do not know.

Q. Did they tell you that they would give it? A. That is right.

Q. They did tell you that they would give it to her? A.
5040 That is right.

Q. This incident took place when? A. As I recall, in December or January, I am not sure of the month.

Q. When, in December, would you say? A. I do not know.

Q. When, in January? A. I do not know that, either.

Q. I see. A. Yes.

Q. Do you remember at any other time when Miss Joyce came in to see you she asked you to sign certain slips with regard to copies? A. Yes, sir.

Mr. Haycraft: I object as not proper cross-examination.

Mr. Weisman: This is entirely proper, Judge.

Mr. Haycraft: It is not.

Examiner Bennett: Sustained.

Mr. Weisman: I except.

Mr. Haycraft: I move to strike the answer.

Examiner Bennett: It may be stricken.

Mr. Weisman: I except. May it please your Honor, the statement has been made by counsel for the Commission that because this witness—there is not a word of testimony to support it in the record other than the statement of counsel, that because 5042
this witness refused to furnish the name of a manufacturer they red carded them, we red carded. Now, I want to show that entire transaction. He has also further offered in evidence Exhibit No. 393, a letter which refers to this refusal to sign these slips, and I submit that it is perfectly proper and competent for me to show from this witness just exactly what took place. I cannot see where it would not be absolutely vital to the interests of the respondents to do that. It seems to me that to shut us out from that would be a serious invasion of our substantive rights in this proceeding.

Examiner Bennett: I will settle it this way: I will strike that remark from the record wherever it appears in the record. 5043

Mr. Haycraft: What remark do you refer to?

Mr. Weisman: The Examiner remembers the remark that you made. He says it may be stricken from the record.

Mr. Haycraft: I would like to know what the remark was.

Mr. Weisman: Well, you had better listen to what we are talking about.

Mr. Haycraft: I am.

Examiner Bennett: It will be stricken from the record in regard to that matter.

Mr. Haycraft: It does not make any difference anyway. It is all in evidence.

Examiner Bennett: It has been stricken. Proceed.

By Mr. Weisman.

Q. When was the first time that you found out that Guild merchants did not desire to sell to Strawbridge & Clothier? A. In the early part of February, 1936.

5045 Q. What was the circumstance? A. They refused to show me merchandise.

Q. Who? A. Little Dress Company and International Dress Company.

Q. Those were the two? A. Those were all I contacted.

Q. The only two? A. Yes.

Q. That was the first time that you knew that the Guild merchants preferred not to do business with Strawbridge & Clothier? A. That is right.

Q. Who was the buyer that succeeded you in Department 491? A. Mr. Alex Cohen.

Mr. Weisman: I just want it noted on the record that Mr. Taylor is conferring with Mr. Freeman and Mr. Freeman is conferring with Mr. Haycraft. As an observer this is certainly an unusual situation.

5046

The Witness: Just a moment, now. Just a moment, now. I want to change my answer. I understood you—I thought you said 338 or 358.

By Mr. Weisman.

Q. Has somebody been giving you a signal or something to let you know you made the wrong answer? A. Well—

By Examiner Bennett.

Q. Do you want to make a different answer? A. Yes, sir. Mr. Yanowitz.

By Mr. Weisman.

Q. This is the most extraordinary situation. Has somebody succeeded you as buyer in Department 338 and Department 351 or 358? A. No, sir.

Q. What did you mean when you said that you understood me to refer to 338 or 358? A. I thought you were talking about 491.

Q. This is peculiar, indeed. I was. A. I mean, about 338 or 358 when I said—— 5048

Q. Who succeeded you in those departments, then? A. No one has succeeded me there.

Q. What did you mean when you answered me Mr. Alexander Cohen? A. I thought you said who was the buyer.

Q. Now, when you came in charge of this department you came on February 1. I take it? A. Around there; yes, sir.

Q. What do you mean by "around there"? A. I mean it might have been February 2. It may not have been that exact day.

Q. February 1, 2, 3, let us say? A. That is right.

Q. That is right? A. Yes.

Q. Now, what was your first duty? A. To reorder styles that were selling well in the department. 5049

Q. Did you take stock? A. I did.

Q. How much stock did you find you had on hand? A. I do not recall.

Q. Well, what is your best guess?

Examiner Bennett: We have been all over that again.

Mr. Weisman: At that time it did not appear that he took stock. Now, all of a sudden it appears that he took stock.

Examiner Bennett: It is just the same thing over and over and over again, and ending up just as you did at the beginning. Where could you expect to get with it?

Mr. Weisman: You can never tell, your Honor.

By Mr. Weisman.

Q. How long after yo came into the department did you take stock? A. I do not recall, it was very shortly after. If I saw a calendar I might know.

Q. Did you personally take the stock? A. I supervised the taking of stock.

5051 Q. Tell us what were the mechanics of the stock taking. A. At the time of taking stock, dividing the stock into price lines and counting each dress in that particular dress line.

Q. That is all? A. Then we took them also by size, color and type.

Q. And that is all? A. Yes, sir.

Q. And that is the only time in February that you took stock? A. Oh, no. We take stock every week and we took stock every week in February.

Q. Did you do the same thing the next week? A. Yes, sir.

Q. So there can be no question about it, and so I will desist from further querying on this line. Will you tell
5052 us completely just what you did in taking stock?

Mr. Hayecraft: I object.

The Witness: I have just answered you that that is what I did.

By Mr. Weisman.

Q. Have you told us everything that you did? A. Yes, sir.

Q. There was nothing else? A. That is all.

Q. Prior to that time you had not been buyer for this department? A. That is correct.

Q. Right? A. Right.

Q. You were not acquainted with the people from whom that department bought? A. That is right.

Q. No doubt about that? A. No.

Q. Well, if that is so what led you to believe that 60 per cent. of the stock had been purchased from Guild members? A. I pulled the orders out of the file and went through the orders and you knew who the Guild manufacturers were.

Q. How did you know who the Guild manufacturers were if just a moment ago you stated you were not familiar with the people that that department had bought with— 5054
had done business with? A. I have a list of Guild manufacturers.

Q. What was the occasion of your having the list of Guild manufacturers at that time? A. I believe that all of your letterheads on the back have the Guild manufacturers' names on them.

Q. What made it necessary for you at the time that you took this stock, or—I withdraw that—to go through the separate operation of ascertaining how many of your items of merchandise on hand came from Guild houses? A. I—

Mr. Haycraft: I object. There is no foundation laid for that. He has not said that he did that—he did that as a part of this stock taking job.

Examiner Bennett: Overruled. 5055

By Mr. Weisman.

Q. The Court says you may answer. A. I tried to reorder those fast-selling numbers and was not able to, so I knew that we had been red carded and I wanted to find out how much I had in stock; I wanted to find out exactly how much stock I had that was from the Guild houses so I could throw out those odds and ends.

Q. You said a moment ago that you did not even know you had been red carded until you came to New York to the market, did you not? A. That is right.

Q. Let us be clear about it: You said a moment ago that you did not find out you were red carded until you came to the New York market; is that correct? A. That is true.

Q. Well, if you did not know that you were red carded what was the necessity of the going through this operation that you have just told us about? A. I had come back from New York.

Q. Then, was that done after you came back from New
5057 York? A. Yes, sir.

Q. Not before? A. No, sir.

Q. Since you knew when you came back from New York that you could not reorder from Guild merchants, then why did you say a moment ago that you went over these lines for the purpose of finding out from whom you could reorder? You knew when you came back from New York, you have testified, that Guild merchants would not take your reorders? A. That is right.

Q. Well, then, why did you say a moment ago in answer to my prior question that you went through this operation to ascertain what amount of reorders you could have for your fair-selling numbers? A. Because we knew we had to make mark-downs on those odds and ends that were in stock at that time. If we don't reorder them, we
5058 can't buy any more.

Q. Well, then, you went over this list to find out the odds and ends that you had in stock; is that it? A. Merchandise from Guild manufacturers.

Q. And you came to the conclusion that 60 per cent. of your merchandise consisted of odds and ends? A. Of Guild merchandise.

Q. Is that it? A. Yes, sir.

Q. What percentage of odds and ends have you got now?

Mr. Haycraft: Just a moment. The witness didn't say that. You put that in his mouth.

Mr. Weisman: That isn't so.

Examiner Bennett: I sustain the objection.

Mr. Weisman: He said 60 per cent. was Guild merchandise.

Mr. Haycraft: He didn't say odds and ends.

Examiner Bennett: It was a question that was not fair to the witness.

Mr. Weisman: Well, I think I have made that sufficiently plain to your Honor.

Examiner Bennett: I think you have. 5060

By Mr. Weisman.

Q. How is it that you can remember 60 per cent. so well and you cannot remember any other figure, volume, or anything? A. Because I made a record of that and I have looked at that record since.

Q. Let's see. You have made a record. Now, what price range did this 60 per cent. cover? A. The $10.75 price range.

Q. Just $10.75? A. That is all.

Q. Well, this department handles—these departments handle a lot of other merchandise, don't they? A. That is right.

Q. Oh, you meant when you testified to 60 per cent. that 5061
the 60 per cent. only applied to the $10.75? A. That is right.

Q. And you had no knowledge, or you didn't make any estimate as to the other price merchandise? A. No, sir. The Guild affected my $10.75 price line.

Q. Didn't they affect your price range above $10.75? A. I don't buy anything above $10.75.

Q. You don't buy $10.75 merchandise? A. And below.

Q. And below? A. Yes, that is right.

Q. Did you estimate the amount of merchandise that you had on hand below $10.75, and the amount thereof that was Guild merchandise? A. That was a very negligible amount. We weren't interested in that so much.

Q. What relation did the amount of $10.75 merchandise in this department bear to the amount of merchandise below $10.75? A. I don't know.

Q. What is your best guess? A. I wouldn't guess.

Q. What is your best opinion? A. I wouldn't voice an opinion.

Q. Would you say that 90 per cent. of the merchandise
5063 in this department is below $10.75 cost? A. I would not.

Q. Would you say it was 70 per cent.? A. I wouldn't mention any figure.

Q. Do you mean to say that as—well, don't you realize that this figure of 60 per cent. is of no value to us unless we know what was the total amount of other merchandise in the department? A. I told you the 60 per cent. was of my $16.75 retail dresses were from Guild manufacturers.

Q. Yes. Well, now, what about the rest of the dresses? What volume of dresses in dollar volume did you have in that department as compared to your $16.75 dresses? A. I don't see that that has any connection with this.

Q. I don't care whether you see it or not. I want you to answer me. A. I don't know.

Q. Well, did you ever know? A. No, sir.

5064 Q. Did you know at the time you made the estimate? A. I probably did, yes.

Q. And you have forgotten it completely? A. That is right.

Q. Is there anything that will refresh your recollection? A. No, sir.

Q. Have you even the slightest recollection of the total amount of $10.75 dresses in that department at the time you made this estimate? A. I have not.

Q. Have you the slightest recollection of the amount in dollars of Guild merchandise in your departments at the time you made this estimate? A. No, sir.

Q. Of 60 per cent.? A. No, sir.

Q. So that the sole and only thing that you can bring to us here to-day is a statement that you have forgotten everything, but you remember 60 per cent.? A. That is right.

Q. Was it exactly 60 per cent.? A. Yes, sir.

Q. Right to the fraction? A. That is right.

Q. You understand that percentages are run out into the hundreds? In other words, 60 per cent. is an exact 60 hundredths? A. That is right.

5066

Q. Your statement is that you have a recollection that exactly 60 hundredths of your merchandise, no more, no less, was Guild merchandise? A. 60 per cent. Right.

Q. Exactly right? A. Exactly right.

Q. When you came into this department you have testified that you were new to these types of purchases; isn't that so? A. It is in the record.

Q. Well, it is not only in the record, but it is a fact, isn't it? A. That is, yes.

Q. And you knew that the A.M.C. was experienced in the market in New York City, didn't you?

Mr. Haycraft: Objected to.

Examiner Bennett: Why are you going into the A.M.C. again?

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Mr. Weisman: I just want to find out one question, whether or not he asked the A.M.C. to assist him in the location——

Examiner Bennett: I think he has already testified that he didn't. He has told you exactly to what extent they used the A.M.C.

Mr. Weisman: I am not speaking about group buying. I mean, individually.

Examiner Bennett: In every respect. He has shown already just the extent to that which it was used in his department.

Mr. Weisman: I don't think so, your Honor.

Examiner Bennett: Well, ask your question, if you have another. I think you are wasting time.

By Mr. Weisman.

Q. Did you at any time in February, 1936, request the A.M.C., that is, the Associated Merchandising Corporation, of which your store was a member, to aid or assist you in locating new sources of supply? A. I didn't ask
5069 them, no.

Q. Did you direct anyone for and on your behalf to ask them? A. No, sir.

Mr. Weisman: That is all.

Examiner Bennett: All right. We will take a recess until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Be in order, please. Have you any more from Mr. March? The cross-examination is com-
5070 pleted.

Mr. Haycraft: Yes.

Mr. Weisman: May I, before this, just make a brief statement?

Examiner Bennett: Yes, go ahead. Go ahead.

Mr. Weisman: Prior to the adjournment, and in the course of the examination of Mr. March, a stipulation was entered into between counsel for the Commission and myself with regard to some 2,000 names in a list. I do not

know whether or not I stated it as I correctly understood it. One of my associates has called to my attention the fact that my statement appeared to be to him incomplete. I would, therefore, like to restate it for the record and see whether or not Mr. Haycraft agrees with me.

Mr. Haycraft: I had no stipulation. I merely understand that you made a statement with the Examiner. I didn't have any part in that.

Mr. Weisman: Did your Honor so understand me?

Mr. Haycraft: It was between you and the Examiner.

Examiner Bennett: Well, I don't know that there was any stipulation, of course, in that form, but—

Mr. Weisman: Well——

5072

Examiner Bennett: I understood that you had agreed —off the record.

(There was a discussion off the record.)

Mr. Weisman: May I state, then, that as to in lieu of reading these 2,000 names that if the witness were asked, or queried with each of the 2,000, his answers with regard thereto would be substantially the same as with regard to the cross-section read off both as to his knowledge, or lack of knowledge of them, and the type of merchandise and so forth; and, in lieu of taking up the time to have the 2,000 names gone over, I understand that it was perfectly agreeable to Mr. Haycraft that such statement of mind be taken in lieu of inquiry from the witness.

Examiner Bennett: If that is correct, we will proceed on that basis.

5073

Mr. Haycraft: I simply did not want to acquiesce in any statement as to the truth of the facts that were made in any statement. I do not want it now that I concede that there were 2,000 or 250 or any other number of manufacturers that would be available. I do not want that concession.

Mr. Weisman: I do want the concession that this witness, if he were queried as to the 2,000 names, would re-

spond to them as he has responded to the cross section thereof.

Mr. Haycraft: I suppose that he would so testify to them, to those with which he was familiar, and to those with which he was not.

Mr. Weisman: And the result of that inquiry would be substantially the same as the cross-section revealed.

Mr. Haycraft: I assume so.

Examiner Bennett: With that understanding we will go ahead. I think that understanding is all right. It would save the time of going through all these 2,000 names.

Mr. Weisman: I want it understood clearly to that
5075 effect or else I would like to go through those names.

(There was a discussion off the record.)

Mr. Haycraft: You recall, Mr. Examiner, at that time I turned the witness over to the respondent I reserved the right to present some testimony with respect to return orders which he was asked to get.

Examiner Bennett: Yes.

Mr. Haycraft: He has done so and I am now calling them to his attention.

Examiner Bennett: I thought that was at the respondents' request.

Mr. Weisman: No, at the request of counsel for the Commission.

Examiner Bennett: At the request of counsel for the Commission.

5076 Mr. Haycraft: Yes.

Examiner Bennett: I knew the question was raised.

Mr. Haycraft: It was, your Honor.

Redirect examination by Mr. Haycraft.

Q. You will recall that at the last session on yesterday, I asked you about making a search of the records of the Strawbridge & Clothier Company to find out how many returns had been made at the request of the Guild. A. Yes.

Q. Have you made such a search?

Mr. Weisman: I object to the question as being entirely improper. The witness has testified that these returns were only made at one time at the request of the Guild, that subsequently and thereafter only—when returns were made he knew nothing about it, and that they were referred to Mr. Taylor. Mr. Taylor has testified that they would only make returns when there was proof that the garments were copies of Guild merchandise to their satisfaction. In addition to that, we have the stipulation in this case earlier, and I submit that this statement of returns made at the request of the Guild is entirely improper. If it is offered merely to show the number of returns made by them because of the fact that the garments referred to therein were copies of Guild merchandise I have no objection. I do object to Mr. Haycraft's characterization. 5078

Mr. Haycraft: I will change request to ordered.

Mr. Weisman: Now, you have made it worse. 5079

Mr. Haycraft: Now it is in accordance with the facts.

Examiner Bennett: I will make this suggestion, that these returns were made, if it is a fact; find out from the witness if he knows if it were because of the membership in the Guild. I understand that is it, and if that is the fact let it be shown. If made for any other purpose it is irrelevant.

Mr. Weisman: I submit—please don't take this on the record.

(There was a discussion off the record.)

Mr. Weisman: I have no objection to that "They were co-operating with." And there is no question that these stores were not members of our organization. I think that would be conceded, they would be the first to deny it. If the other matter can be properly determined.

Mr. Haycraft: That wouldn't make any difference.

Mr. Weisman: Yes.

5081 Mr. Haycraft: What is the question pending?

Examiner Bennett: There is no question pending.

Mr. Haycraft: I asked one a while ago.

(Question read.)

Examiner Bennett: Do you want to modify that to meet the objections?

Mr. Haycraft: No, sir. "By order of the Guild." I will modify it to that extent.

Examiner Bennett: By what?

Mr. Haycraft: By order of the Guild.

Mr. Weisman: I urge my objection. Of course, there is no such testimony in this case at all.

Examiner Bennett: The attorney will substantiate it if he can.

5082 Mr. Weisman: What?

Examiner Bennett: I will overrule the objection and let him make a statement.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Have you done so? Have you done so? Have you made the search? A. Yes, I have, Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 424 to 449, inclusive. I will ask you whether or not you identify these exhibits as being prepared, as exhibits presented by you in response to my request? A. They are.

Q. Have you checked them in any way so as to testify as to their——

Mr. Weisman: Will you speak up, Mr. Haycraft?

By Mr. Haycraft.

Q. —where they came from? For instance, I will ask you where Exhibits 424 to 433 came from? A. These came —these are copies of the returns—this is a copy of the return book that is filed in our files. 5084

(Documents referred to were marked for identification Commission's Exhibits 424 to 449, both inclusive.)

Q. The original of Exhibit 424 is a recapitulation of the same; is it not?

Mr. Weisman: I object to counsel for the Commission testifying about a document not in evidence. Now counsel for the Commission is testifying as to what these papers are.

Mr. Haycraft: I am just trying to save time.

Mr. Weisman: I am very much afraid of your efforts to save time.

Mr. Haycraft: I know. You are the most suspicious character I have ever come in contact with in my life. 5085

Mr. Weisman: I have grounds for being suspicious when you have the effrontery to ask this witness a question like that.

Examiner Bennett: This is off the record.

(There was a discussion off the record.)

Examiner Bennett: You have had the exhibits marked for identification?

Mr. Haycraft: Yes.

Examiner Bennett: And the witness identifies them as——

Mr. Haycraft: Yes. My question was whether or not this top sheet (indicating) was a recapitulation of the information on the balance of the exhibits.

Examiner Bennett: Yes. It may be answered. Overruled.

Mr. Weisman: Exception.

5087 *By Mr. Haycraft.*

Q. You may answer. A. It is a recapitulation.

Mr. Haycraft: I offer those exhibits in evidence, Commission's Exhibits 424 to 433, inclusive.

Mr. Weisman: I object to the introduction of these papers in evidence, the same being correspondence between Strawbridge & Clothier and third parties unless this introduction in evidence is merely limited to show the number of returns. I submit that the offer of these papers to prove the truth or lack of truth of what is stated thereon is highly improper and no foundation has been laid therefor.

5088 Mr. Haycraft: I will ask the witness:

By Mr. Haycraft.

Q. Whether or not he had charge of this Department 338? A. At the time those returns were made I did not have charge of that department.

Q. Do you have charge of them now? A. I have charge of them.

Mr. Weisman: What materiality has that?

By Mr. Haycraft.

Q. These records come from that department?

Mr. Weisman: I don't care whether they come from the department or not, it still wouldn't be competent to prove the statements thereon contained in view of the positive testimony to the contrary herein. It is certainly not from this witness when he has just testified that he was not in charge of that department when the records were made.

Examiner Bennett: Are you testifying that these statements are correct?

The Witness: I am testifying that the statements 5090
for 461 are correct.

Mr. Haycraft: I haven't got to 491 yet. I am referring to Commission's Exhibits 424 to 433. What is your testimony as to those?

The Witness: My testimony as to those is that I did not have charge of that department during 1935.

By Mr. Haycraft.

Q. Who had charge of that department at that time?
A: My predecessor.
Q. Who is that? A. Mr. Alex Cohen.
Q. You can identify this?

Examiner Bennett: I thought the witness said 5091
that he could not identify that.

Mr. Haycraft: He said that it came from the records. That is as far as he could go.

The Witness: It is not in my department.

Examiner Bennett: He is not in position to testify as to whether they were sent back because of copies or otherwise?

Mr. Haycraft: I understand not.

Examiner Bennett: All right. I cannot receive them until you get the proper identification.

Mr. Haycraft: Very well.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 434, and ask you to testify as to what it is. A. It is a recapitulation of the returns that were made to Guild—at the request of the Fashion Originators Guild of America, Inc.

Q. I ask you what Exhibits 435 to 446 are, both inclusive? A. Why, they are copies of original return slips.

Q. Of what department? A. Of Department No. 491,
5093 Economy Dress Shop.

Q. Were you in charge of that department at the time these returns were made? A. Yes, sir.

Q. Can you testify as to the percentage, or, rather, can you testify as to the authenticity of these returns? A. I can testify as to the authenticity of these returns.

Q. Will you testify as to whether or not the dresses in these returns were actually returned to manufacturers thereof as indicated on each exhibit? A. They were.

Q. Were they returned for the reasons stated on the return? A. They were; yes, sir.

Mr. Haycraft: I offer them in evidence.

Mr. Weisman: I have no objection to them being offered and received in evidence if it is merely to
5094 show the amount of returns and what was said about the return to the persons to whom they were returned. I have objection if they are going in as evidence of the sole reason for the return because some of these say "Ordered returned by Fashion Originators Guild." I submit that that is not to be deemed proof of that fact. As a matter of fact, the witness had testified that one of the most—well, going even before that; the witness has tes-

tified that when Miss Joyce came in she presented sketches to show that it was a copy, and then, if they found that it was a copy he returned it, but subsequently they were only returned upon that being proven to them that they were copies in truth and in fact. This brings in the question of copies which I think we have already gotten out of this case by way of stipulation.

Mr. Haycraft: There is no question of copies on those documents there.

Mr. Weisman: I have finished my objections, Judge.

Examiner Bennett: Overruled. Received in evi- 5096
dence.

Mr. Weisman: I except.

(List of returns, giving date of return, manufacturer, style number, and quantity returned, heretofore marked for identification Commission's Exhibit 434, was marked as an exhibit and received in evidence.)

(Merchandise return orders of Strawbridge & Clothier, Philadelphia, heretofore marked for identification Commisson's Exhibits 435 to 446, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Now, when you were on the witness stand this morn- 5097
ing and you were being examined by counsel for the respondent, you testified that you had not asked the A.M.C. to furnish you with assistance in obtaining a supply of merchandise, or something to that effect. Do you recall that? A. I do.

Q. I will ask you whether or not the A.M.C., however, did furnish you with the names of available sources of supply? A. They did.

Mr. Haycraft: I ask that this document be marked for identification.

(A document, consisting of a letter from the A.M.C. to Strawbridge & Clothier, and having attached to it fifteen sheets containing lists of names of various concerns, was marked for identification Commission's Exhibits 450-A to 450-F, both inclusive.)

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: You may proceed.

5099 *By Mr. Haycraft.*

Q. Can you identify that? A. Yes, sir.

Q. What is it? A. This is a list of resources sent to us by the A.M.C.

Q. Have you seen this before? A. I saw it at the time that it was sent to Mr. Chance. He turned it over to me immediately.

Q. Had you seen a similar list to this before that time? A. No, sir.

Q. That is the first list that you recall? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Mr. Weisman: I have no objection to the introduction of this list in evidence showing the available resources as given by the Associated Merchandising Corporation in addition to Guild houses. I do, however, object if it is offered as a complete list because the exhibit by its very words says that it will continue during the coming week to give more houses, as your Honor will see.

5100

Examiner Bennett: It isn't completed, evidently.

Mr. Weisman: It is a partial list.

Examiner Bennett: Yes.

Mr. Weisman: I have no objection to it.

Examiner Bennett: All right. Received.

(The documents referred to, heretofore marked for Identification Commission's Exhibits 450-A, 450-B, 450-C, 450-D, 450-E, 450-F, 450-G, 450-H, 450-I, 450-J, 450-K, 450-L, 450-M, 450-N, 450-O, and 450-P, were marked as exhibits and received in evidence.)

Mr. Haycraft: I have nothing further.

Examiner Bennett: Any recross?

Mr. Weisman: Just a slight recross-examination.

Recross-examination by Mr. Weisman. 5102

Q. With regard to Commission's Exhibits 435 to 446, and the other exhibits constituting returns, who actually made the return? A. The stock boy in my department.

Q. Who wrote out what appears on the return? A. The stock boy in the department.

Q. And who spoke to the stock boy? A. I did.

Q. Personally? A. That is right.

Q. You instructed him what to put on? A. That is correct.

Q. When you used the words hereon, or when you instructed him to use the words hereon "Ordered returned by Fashion Originators Guild," did you mean that that was the only reason that you returned them? A. Absolutely. 5103

Q. Well, by that, was it a question as to whether or not the dress was in truth or in fact a copy immaterial to you? A. I returned that merchandise at the instruction of Miss Joyce. That is the only reason that I returned them.

Q. Whatever Miss Joyce told you to do you did without regard to whether or not the merchandise was a copy? A. If she showed the sketch of the original dress.

Q. Well, when she showed you the sketch of the original dress, she did that to show you that the merchandise that she was calling to your attention was a copy of the original; isn't that so? A. Of course.

Q. You don't want to give us the idea that merely because Miss Joyce would come into your place and say "Send that back," or "Send that back," you would send it back? A. Not unless she had a sketch of the original dress. I said that before.

Q. And when you looked at the original dress—I will withdraw that. And when you say not unless she had a sketch of the original dress, you mean that from that
5105 sketch you could compare the original with the one that she asked you to send back? A. Miss Joyce also had the name of the manufacturer who copied the dress and the style number. If that corresponded with the dress in my stock then I returned the dress.

Q. Yes. In other words—is it Mrs. Joyce or Miss Joyce? A. I don't know. I don't know her that well.

Q. I didn't understand. Once you said Miss and once you said Mrs. A. Oh, no. I don't think so.

Q. In other words, if Miss Joyce came in to see you with the name of the original manufacturers' origination—A. That is right.

Q. —and the name of the copyist and a sketch of the original which you could compare with the one that she was asking you to send back as a copy and showed you
5106 these things visibly, then if you saw that there was reasonable ground for her action, you would return the dress as a copy? A. Providing the style number on it that she had from the man who copied the dress was the same as the dress that I had in my stock.

Q. Yes. I mean you just didn't return a dress because Miss Joyce wanted it returned irrespective of the fact as to whether or not she demonstrated to you that it was a copy? A. She had to furnish proof that it was a copy.

Q. Yes. That is what I mean. And upon proof being furnished then you would return the dress? A. That is correct.

Q. And when the words "Ordered returned by the Fashion Originators Guild" appear on here you meant that you understood that the ordering consisted of first convincing reasonably that the merchandise returned was a copy of an original; isn't that so?

Mr. Haycraft: Objected to, Mr. Examiner.

Mr. Weisman: I think it is a very fair question.

Examiner Bennett: Object on what ground?

Mr. Weisman: Did your Honor rule?

Examiner Bennett: I say, what ground? 5108

Mr. Weisman: Oh, excuse me.

Mr. Haycraft: Oh. On the ground, Mr. Examiner, that the exhibit there and the testimony already up to this time speaks for itself. An order is an order, it seems to me.

Examiner Bennett: Well, I am going to have this witness answer. I am going to have him answer.

By Mr. Weisman.

Q. The Court says you may answer. A. Will you read me the question?

(Question read.)

5109

A. That is correct.

Q. You don't want to give us the idea that the words "Order Returned" were used in the common ordinary sense that somebody ordered you to do so? You mean that you were requested to do so; isn't that so? A. We were ordered to return the dress.

Q. But before you executed the order you were convinced that the order was reasonable?

Mr. Haycraft: Objected to as irrelevant, immaterial, not proper cross-examination.

Mr. Weisman: I think it is perfectly proper.

Mr. Haycraft: Whether it is reasonable or unreasonable has no bearing on this issue in this case. That is just the point I want to make.

Mr. Weisman: I think it certainly is.

Examiner Bennett: I will let him answer. I will let him answer.

A. A request is an order.

By Mr. Weisman.

5111

Q. You didn't differentiate between request or order? A. No, sir.

Q. As a matter of fact, on some of these slips you said: "Requested to be returned by the Guild" and so on, and on some you said "Ordered to be returned." A. I meant the same thing.

Q. In both cases they meant requests? A. They meant ordered.

Q. In both cases they meant ordered, and ordered means request and request means order? A. They both meant the same thing, request and order. I was asked to return the dress.

Q. That is right. You were asked to return the dress.

5112

Mr. Weisman: That is all I have.

Mr. Haycraft: That is all I have.

Examiner Bennett: You are excused.

(Witness excused.)

Mr. Weisman: I believe that the only items I had reference to was Item 1 and Item 2. I am quite willing for that to go in.

Examiner Bennett: You asked for it.

Mr. Weisman: If Mr. Haycraft is willing to have this go in I am.

Mr. Haycraft: I am.

Mr. Weisman: It is stipulated that the following may be incorporated in the record with the same force and effect as if Mr. Roy Clark was here and testified under oath as a witness in this case with regard thereto:

"In the testimony which I gave on August 6, 1936, I was asked certain questions as to the figures concerning which I testified. As to certain of the questions, I could not, when asked, give positive and definite replies because I did not have the information with me. Since the questions have been asked, I have consulted the records and now 5114
find as follows:

"(1) ADVERTISING ALLOWANCES: According to my present recollection, I stated, when on the stand that as to Department 355 there was received an advertising allowance on the Paul Sargent line in 1935. It is a fact that all such allowances were absolutely discontinued in May, 1934. The fact of advertising allowances, therefore, has no bearing whatever on the figures which I gave, except as to allowances next referred to.

"(2) TEXTILE MANUFACTURERS: The total amount of newspaper advertising allowances received for Departments 331, 338, 358, 350, 355, 371 and 373 for the five months of 1935 which I referred 5115
to was $284.00. All of this came from Textile Manufacturers and not from Dress Manufacturers. No such allowance was received in 1936."

Examiner Bennett: What is the next one?

Mr. Weisman: Yesterday, when Mr. Chance was on the stand, I asked him when he got up in the recess a list setting forth the number of manufacturers which were availed of in the various depart-

ments under his supervision which came under his supervision in 1936, but which were availed of by Strawbridge & Clothier in 1935 by those departments. He has. It is stipulated between counsel for the Commission and counsel for the respondent that if Mr. Chance were to take the witness stand and be sworn as a witness he would testify as follows:

That for the year 1935 Department 331 used 104 manufacturers during that year.

That for the year 1935 Department 350 used seventy-two manufacturers during that year.

5117 That for the year 1935 Department 338 used fifty-one manufacturers during that year.

That for the year 1935 Department 358 used 116 manufacturers during that year.

That for the year 1935 Department 371 used seventy-three manufacturers during that year.

That for the year 1935 Department 373 used sixty-five manufacturers during that year.

That for the year 1935 Department 382 used 126 manufacturers during that year.

That for the year 1935 Department 385 used seventy-seven manufacturers during that year.

That for the year 1935 Department 491 used seventy-nine manufacturers during that year.

That for the year 1935 Department 492 used

5118 forty-two manufacturers during that year.

That for the year 1935 Department 493 used twenty-five manufacturers during that year.

Mr. Haycraft: It is understood those all include the Guild.

Mr. Weisman: Did you make a separate list of the Guild?

Mr. Chance: No, that is the total of the Guild and others.

5119

Mr. Weisman: Very well.

Yesterday I examined Mr. Chance with regard to Commission's Exhibit 410. In connection therewith I asked him if he would—first, I asked him from whom he had obtained that list. He stated that he had obtained it from his statistical department. I asked him how he had made that request for that list and whether it was oral or in writing. He said in writing. I asked him if he would produce a copy of the request which led to the formulation of this list. He has now produced such a request which is as follows:

5120

"Mr. Knipe: Record of total amount of gross business transacted with the attached list of resources beginning February 1, 1935, to January 31, 1936."

LOUIS WEINSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name?

The Witness: Louis Weinstein.

Direct examination by Mr. Haycraft.

5121

Q. Where do you live, Mr. Weinstein? A. Philadelphia.

Q. What is your occupation? A. Divisional merchandise manager.

Q. What is that again? A. Divisional merchandise manager.

Q. For what firm? A. Blauner's, Ninth and Market, Philadelphia.

Q. What is the full name of that concern? A. B-l-a-u-n-e-r-s, Blauner's, Inc., Philadelphia.

Q. What business is Blauner's engaged in? A. Women's wearing apparel.

Q. How long have you occupied that position? A. Since February 1, 1936—1935.

Q. 1935. Before that what did you do? A. Before that I was in business for myself in Philadelphia.

Q. Have you been in this business of women's wear for any length of time? A. Yes, sir.

Q. How long? A. Oh, approximately, fifteen, sixteen years.

Q. Can you name some of the other stores that you have been in besides being in business yourself? A. Yes. Prior
5123 to my connection here, with Wright-Cummer Company of Dayton, Ohio. Before that my previous occupation was formerly with Blauner's, Inc.

Q. You were with them?. In what capacity before? A. As a buyer.

Q. What department? A Various departments at that time.

Q. Various departments? A. (Witness nods head affirmatively.)

Q. How is Blauner's business divided now as to departments? A. Consists of dresses, coats, furs, suits, underwear, shoes, millinery——

Q. Now— A. Infants' wear.

Q. In the dress department, as I understand you—you have charge of it now? A. That is right. I do have.
5124 Q. Do you have different groups or divisions with respect to price ranges that you handle? A. That is right. I handled the wholesale $6.75 and $10.75.

Q. At the present time? A. At the present time I am not in the dress department.

Q. You are not? What department are you in now? A. Coat departments.

Q. Coat departments? A. (Witness nods head affirmatively.)

Q. How long have you been in the coat departments? A. Just since July 1, 1936.

Q. I see. From January 1, 1935, to July 1, 1936, you were— A. In the dress department.

Q. Dress departments? A. Yes.

Q. You had charge of the $6.75 and $10.75 wholesale prices? A. That is right.

Q. What retail price are they usually sold at? A. $9 and $15.

Q. Now, while you were——

Mr. Weisman: I couldn't hear the last part of the answer.

Mr. Haycraft: $15. 5126

Mr. Weisman: Oh.

By Mr. Haycraft.

Q. While you were in charge of the dress department that you have indicated from January, 1935, until July, 1936, did you learn of the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. When did you first become acquainted with that organization? A. Through the manufacturers, I think, around last February. When I would come in with a buyer, myself and a buyer would come in to some of the manufacturers and they would inform us or ask us whether we had signed up with the Fashion Originators Guild, and showed us their agreement in blank and asked us to 5127 sign it. According to the terms written into that agreement it would have been impossible for us to accede to those terms, and not signing that paper which they presented before us, they refused to permit us to buy or leave any orders for merchandise.

Q. What year was that? You said February. A. 1935.

Q. 1935.

Mr. Weisman: Wait just a moment. Have you counsel here?

The Witness: No, sir.

Mr. Weisman: Does he know you are testifying?

The Witness: No, sir.

Mr. Haycraft: I object to that.

Mr. Weisman: Wait a minute.

Mr. Haycraft: Mr. Examiner——

Mr. Weisman: Just a moment. I am rather in an anomalous position. I want the record to show that I am one of counsel for Blauner's. Have you ever heard of me? Milton C. Weisman?

5129 The Witness: No, sir.

Mr. Haycraft: Ha, ha.

Mr. Weisman: Does Mr. Blauner know that you are testifying?

The Witness: Yes, sir.

Mr. Weisman: All right.

Mr. Haycraft: Maybe it is a different Blauner.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 3-A, 3-B, 3-C, 3-D and 3-E. A. Yes.

Q. I will ask you if you can identify any of those exhibits as the paper which you said the manufacturers

5130 wanted you to sign? A. I believe this is a blank similar to what was presented to me.

Q. The one on top there, you think? A. Yes.

Q. What is there in that blank that you could not co-operate with?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant to show a witness a piece of paper that is already in evidence and say what is there that you could not co-operate with. He

answered he did not want to sign the agreement to co-operate in the elimination of style piracy. That is all there is to it.

Mr. Haycraft: I think we should let the witness testify instead of Mr. Weisman.

Mr. Weisman: He did so testify a moment ago.

Examiner Bennett: All right.

Mr. Weisman: He testified that he could not. It is perfectly obvious that such a statement is incompetent.

Mr. Haycraft: He has already testified, you say. The Examiner has already ruled. What are you still talking about now? 5132

Mr. Weisman: Wait a moment. You must not be so rude to me.

Examiner Bennett: I have ruled. I have overruled the objection.

Mr. Weisman: I did not hear it. May I have an exception?

Examiner Bennett: Yes, surely.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. The clause in here stating that we did not want to buy or be compelled to buy no copy of a pirated dress was the clause, I believe, that prevented us from signing it.

5133

By Mr. Haycraft.

Q. At the time in February, 1935, can you testify as to the manufacturers that you called on, with the experience that you have already related, who were Guild manufacturers that you called on? A. Well, I only recall just a few, one was L. & D. Beilinson and C. H. D. Robbins, I have a list in my pocket.

Q. Will that refresh your recollection? A. If I may use it.

Q. Yes. A. LeClair.

Mr. Weisman: May I have the date that this visit occurred?

Mr. Haycraft: He said February, 1935.

Mr. Weisman: I want to know the time of the month. I think it is important.

Mr. Haycraft: If you will just let the witness testify—I do not like this interruption all the time, Mr. Examiner. Let the witness give his testimony.

Mr. Weisman: I say it is very important. Some
5135 of these were not members of the Guild at the time, and I want to find out; before I submit this witness to cross-examination I want to find out when he said that he believed he visited them. There is nothing wrong in that.

Mr. Haycraft: It is just wasting time.

By Mr. Haycraft.

Q. Proceed with your testimony. A. C. H. D. Robbins I visited. If you will furnish me with a list of the names of members of the Guild I can probably pick them out for you.

Q. I am sorry, I cannot do that. If you have anything that will refresh your recollection will you please do so?
5136 A. Mine is just a jumbled list. I have no accurate record of the members of the Guild at that time.

Q. I have a list of the members of the Guild. In what price range? A. $10.75 price range.

Q. I show you Commission's Exhibit 399-A, which is a list—399-B, which purports to be a list of the Guild members in 1935.

Mr. Weisman: When does that purport to be a list?

Mr. Haycraft: He said in the spring of 1935.

Mr. Weisman: No, you said 1935. What date is that instrument dated?

Mr. Haycraft: There is no date on it.

Mr. Weisman: How do you know it purports to be a list of manufacturers in 1935?

Mr. Haycraft: The witness has identified it.

Mr. Weisman: Oh, I will let him testify to that on your statement.

Mr. Haycraft: He is testifying from the record.

Mr. Weisman: Is he? Go ahead.

A. F. E. D. Dress Company, L. & D. Beilinson, Jo-Mac Dress, C. H. D. Robbins, B. Tobias, Lee Clair Costumes, Phil Zohn, Will Steinmann. 5138

By Mr. Haycraft.

Q. Since or subsequent to February, 1935, did you make any effort at any time to contact with members of the Guild? A. Well, it was during all of the period of the year 1935 that we had contacted with manufacturers during the course of that time. When we were—we were eventually unable to buy from those manufacturers, thereby closing our markets to us practically in that type of merchandise.

Q. Can you testify as to whether or not you ever bought any merchandise for a lesser wholesale price than $10.75? A. Yes, sir. 5139

Q. From Guild manufacturers? A. From manufacturers?

Q. Yes, what manufacturers—were they bought from manufacturers that later became members of the Guild, or Guild manufacturers? A. Yes, we purchased it at the $6.75 wholesale mark from members who later became members of the Guild or affiliated with the Guild.

Q. Can you name any of those? A. Rex Lee Dress.

Q. Rex Lee Frocks? A. Rex Lee Frocks, yes. Rosenthal Tollman.

Q. I show you Commission's Exhibit 399-A and ask if that refreshes your recollection? A. Ruderman & Sussman. That was an $8.75 wholesale cost. G. W. Cohn Corporation, H. & I. Cohn and Goshen, Gladdy, George Hess Company, Lipman Brothers, Steinman, Tobias.

By Mr. Haycraft.

Q. Well, now, can you testify as to the approximate amount of business that you did with each one of these Guild houses in 1935 and the date that you were unable to get further merchandise? A. Will you repeat that question?

5141 Mr. Haycraft: Read the question.

Q. (Question read.) A. I have a partial list if I may be permitted to use that.

Q. That was prepared under your supervision, was it? A. Yes, sir.

Q. All right. Go ahead. A. Beilinson, $1,261. That is for 1935 up until the stoppage point. I don't have the exact date of the stoppage point because we were interested—these records were just taken from the manufacturers' cards. George Hess, $3,260; Lee Clair, $1,911; C. H. D. Robbins, $4,376; Will Steinman, $5,093; B. Tobias, $1,560; P. Zallon, $3,633.

Mr. Weisman: Wait a minute. Will you give
5142 me that last?

The Witness: P. Zallon.

Mr. Weisman: Yes.

The Witness: $3,633 G. W. Cohen, $4,261; H. & I. Cohen & Goshin, $1,621.

Mr. Weisman: Wait a minute. You go too fast for me. What was G. & W. Cohen?

The Witness: $2,461.

Mr. Weisman: Yes.

The Witness: H. & I. Cohen, $1,621; Gladdy, $1,111; Georgeous Frocks, $2,629; Rexley Frocks, $2,505.

Mr. Weisman: Wait a minute. What was the last one?

The Witness: Rexley Frocks, $2,505; Rosenthal & Kalman, $3,262.

By Mr. Haycraft.

Q. Are you able to give the dates of any of those when those accounts were closed? A. Yes. Why, I believe I have a notation of the month that the account was closed.

Q. Will you give us that? A. I do not have each one 5144
individually, but I do have them on some of them.

Q. Give what you have. A. Rosenthal & Kalman, purchased in October, 1935; Georgeous, October, 1935; Gladdy, October, 1935; H. & I. Cohen, 1935, in October; G. W. Cohn, October, 1935.

Q. Can you testify as to the type of garments that you were getting from each of those manufacturers and the price range? A. Well, this latter group were $6.75 wholesale price.

Q. What type were they—were they all the same type or different types? A. Well, each individual manufacturer makes his own individual type merchandise.

Q. Well, start at the top of that list that you have there and beginning at Beilinson, I believe, is the first 5145
one. Give us the type of garments as well as the price range. A. The price range of Beilinson was $10.75, and in a dressy type merchandise, street and afternoon wear.

Q. All right. A. George Hess was street and afternoon wear.

Q. The same price? A. $8.75. Lee Clair was $10.75, evening wear. C. H. D. Robbins was $10.75, also $11.75. I believe they made at that time. And they made dressy afternoon wear. Will Steinman was evening wear.

P. Zahn was street and afternoon wear, $10.75. Beilinson—well, we had that one. G. & W. Cohn was $6.75, street wear. H. & I. Cohen, street wear, at $6.75. Gladdy was street wear at $6.75. Rexley at $6.75, street wear. Rosenthal, Kalman, $6.75 and $7.75, street wear and afternoon.

Q. What did you do after you found you could not get the goods or garments from these manufacturers? A. We purchased merchandise from other manufacturers.

Q. Where were those other manufacturers located? A. New York City.

Q. Were any of these lines later made available to you? A. Yes, they were.

5147 Q. Which ones? A. The members of the $6.75 group, subsequently most of them dropped out of the Guild affiliates.

Q. Do you recall when that took place? A. I believe it took place about three months after the stopping.

Q. That would make it about the first of this year, then? A. Somewhere thereabouts. I don't know the correct date of that, but approximately the latter part of December or maybe a few, they dropped out, a few at a time. They all didn't drop out at the same time.

Q. Well, then, how many of those firms are you now buying from, or were buying from at the time you left that department? A. I think a great many of them were—we purchased merchandise from after they subsequently dropped out of the Guild membership.

5148 Q. That is, of the $6.75 or $8.75 group? A. Yes, sir.

Q. How about the $10.75 group? A. The $10.75, those that were members remained members. I don't believe—I think maybe one or two dropped out, but I know, due to the fact that we were unable to buy in their type of merchandise from those manufacturers we practically had to drop out of that price range from the store's selling viewpoint.

Q. What was that price range you had to drop out? A. $14.95.

Q. Which? A. $14.95.

Q. $14.95? A. Yes. $10.75 wholesale cost.

Q. Wholesale cost. What price range did you use to replace that order, or were you repiacing? A. Well, we went and purchased instead of goods at $10.75, we purchased goods at $8.75 at a little lower price.

Mr. Haycraft: That is all.

Mr. Weisman: Have you any witness after him?

Mr. Haycraft: Yes.

Cross-examination by Mr. Weisman. 5150

Q. So at the present time you are doing business with G. W. Cohn?

Mr. Haycraft: Better make it at the time he left the department.

Mr. Weisman: Well, I mean——

By Mr. Weisman.

Q. I understood you to say that for about three months you didn't make any purchases from these $6.75 houses? A. That is right.

Q. And then after that three months you had no difficulty thereafter in getting purchases from them? A. From most of them. 5151

Q. And now I am trying to find out if you were unable to get it from all of them. See? Now, how about G. W. Cohn? A. Yes, I remember them.

Q. What about Gladys Truside? A. Yes, I remember her.

Q. How about Gorgeous Dresses? A. I do not remember them.

Q. Do you recall whether or not they are willing to sell you if you are willing to buy? A. That I do not remember.

Q. What about Rex Lee? A. We have been buying from them.

Q. What about Rosenthal & Kalman? A. I do not remember.

Q. Did not they drop out of the Guild? A. I do not remember.

Q. Tell me this: You were well acquainted with the New York market, and are you not now? A. Yes, I am.

Q. Compared to some of the other prior witnesses you
5153 show a real knowledge.

Mr. Haycraft: I move that that statement be stricken.

Examiner Bennett: It may be stricken.

Mr. Weisman: It was not made for the record, but it was made to reassure this witness. It is a pleasure to see somebody who knows something.

The Witness: I am afraid of that statement.

Mr. Haycraft: Beware of Greeks.

Mr. Weisman: I have been called many things, but I have never been called a Greek before.

Mr. Haycraft: When they come bearing gifts.

Mr. Weisman: Tuneo Danios donis ferentes. That means—that is Latin for "Beware of Greeks
5154 bearing gifts." Now, I have added something to the scope of your knowledge, Mr. Haycraft.

Mr. Haycraft: No, you have not. I have studied Latin.

Mr. Weisman: But to what avail? But to what avail?

Mr. Haycraft: You might be surprised.

Mr. Weisman: Tut, tut. You mean I might be astonished?

By Mr. Weisman.

Q. I understood you to say you are pretty well acquainted with the New York market, are you? A. Fairly generally.

Q. You have been in this business for a great many years, and as such you have gone into the New York market frequently? A. Yes, sir.

Q. I cannot hear you? A. Yes, sir.

Q. Tell me in your opinion how many manufacturers are there making dresses at $10.75? A. I have never counted them.

Q. No? A. No.

Q. I know you have not done it, none of us have ever 5156
done it, because we have not taken that long, but what is your best opinion? A. I really could not express an opinion but there are quite a few.

Mr. Haycraft: I object.

By Mr. Weisman.

Q. Would you say in your own experience in the market that there are in excess of 750 garment manufacturers of that type?

Mr. Haycraft: That is objected to. No foundation in fact in evidence in that regard.

Mr. Weisman: Here is a man who knows something about it. If you will just let us alone, we 5157
both know about this and maybe we can get somewhere.

Mr. Haycraft: I object. Why do you not stick to the 250 that you put in your statement this morning. At least stick to that?

Mr. Weisman: Do you want me to qualify this witness on that or not? I think we will all concede that this is a man who knows what these people are

—he knows the dress business and knows how many people are in it, apparently. Please do not interrupt this with comments of that character which simply go to show how little you know about the proposition.

Mr. Haycraft: I am objecting to that. I am not objecting to its competency, but I am objecting to the question.

Examiner Bennett: I will overrule the objection.

The Witness: What is the question?

Q. (Question read.) A. At what price?

5159 *By Mr. Weisman.*

Q. $10.75 and up. A. I do not know whether there are 750.

Q. You do not know about that? A. No.

Q. What is your best guess as to how many there are? A. Oh, about seventy-five—You asked for my best guess.

Q. No, I do not want you to guess. I wanted your best opinion. Now, I did not want you to merely guess. Did you ever see these directories that are issued? A. Yes.

Q. Have you any idea of how many such manufacturers there are listed in these directories? A. No, unless you would count the number of manufacturers on each page and multiply that by the number of pages in the book.

5160 Q. Well, look at this. I am going to show you one and see if you want to change your mind after looking at that. Maybe it will refresh you a little bit.

Mr. Haycraft: I object to that as it is not in evidence. That book is not in evidence.

The Witness: Do you want me to count it?

By Mr. Weisman.

Q. Do you think that was your best guess when you said seventy-five?

Mr. Haycraft: I insist on my objection.

Examiner Bennett: I think I will permit it. You can ask questions but not about the book.

Mr. Haycraft: He is still examining the book, your Honor.

Examiner Bennett: I will sustain an objection to his testifying as to what is in that.

Mr. Weisman: I do not want him to testify as to what is in the book.

Examiner Bennett: He can refresh his recollection from the paper that you want to show him if it will refresh his recollection.

5162

By Mr. Weisman.

Q. I show you this book and ask you whether looking at that will refresh your recollection as to the approximate number of dress manufacturers engaged in that business in the City of New York selling or manufacturing dresses at $10.75 and up?

Mr. Haycraft: I object to that.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Look at that and see if that does refresh your recollection. A. I would say, from this book, seventy-five to one hundred manufacturers at $10.75.

5163

Q. You mean that after your recollection is refreshed from this book you still say that there are only about seventy-five? A. Yes.

Q. Is that so? A. Yes.

Q. Well, I am afraid, Judge, I will have to take a little time with this. A. There are about fifteen names on the page and there are five pages, and even if there were fifteen names to eighteen names on the page, that is just a rough guess, but it would be about that.

Q. Suppose I told you that there were twelve pages and that the average page had twenty-five names on a page, what would you say? A. You probably looked at a page that had no advertisement. I looked at the page that had an advertisement on it. Naturally, that takes up some of the space.

Q. Did you hear me ask you whether or not your recollection would be refreshed as to the $10.75 and up; now, just look at this book.

Mr. Haycraft: I object to this. I objected before and I object again to this witness being handed this book and asked questions about it.

5165 Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Look at this book and state whether or not that refreshes—whether or not your recollection is refreshed as to the number of manufacturers at $10.75 and up from what is therein listed? A. Do you want me to count that list of manufacturers in there?

Q. No. Although you may count them if that will refresh your recollection.

Mr. Haycraft: I object to any further use of this book. He has refreshed his recollection from it and testified.

5166 Examiner Bennett: I will let him refresh his recollection from the book if he can.

A. About 150, I would say, by an almost accurate count.

By Mr. Weisman.

Q. About 150 in this book? A. Yes, sir.

Q. What do you know about the competition among this 150, is it rather keen?

Mr. Haycraft: I object unless he shows some foundation that he knows the 150. He does not say how many he knows in the book.

By Mr. Weisman.

Q. You go into the market at all times, do you not, generally, in the performance of your duties as buyer? A. Yes, sir.

Q. And you know what is going on in the market right along? A. I do.

5168

Q. Blauner's is a good account, generally regarded as such in the market? A. Yes, sir.

Q. Do you know whether or not the competition to sell Blauner's is rather keen among the various manufacturers engaged in the New York market?

Mr. Haycraft: I object unless there is some testimony that these manufacturers engaged in the New York market are those with which the witness is acquainted.

Examiner Bennett: I will let you testify to that. Overruled.

By Mr. Weisman.

Q. The Court says you may testify. A. Yes, sir. I think 5169 that all manufacturers are willing to sell Blauner's.

Q. I understood you to say in answer to Mr. Haycraft's question as to what you did when these people of the Guild did not want to sell you, to say that you went out and got merchandise from other manufacturers? A. Yes, sir.

Q. As a matter of fact, I see that the only manufacturers that you did business with out of 150 were a total of seven; is that correct; that is, at $10.75; I believe you

gave T. E. D. Dress Company, L. & D. Beilinson, Jo-Mac Dress Company, C. H. D. Robbins Company, B. Tobias, Lee Clair Costumes, Phil Zahn, and Will Steinman. A. Yes, sir. Those are the ones that we were in the habit of buying from and doing business with.

Q. They were? A. Yes.

Q. You know that Phil Zahn is no longer a member of the Guild, do you not? A. I believe so; yes, sir.

Q. Do you know that you are doing business with them now, do you not? A. I do not.

Q. No? A. No.

Q. You do not buy from him? A. I do not know
5171 whether we are buying from him now.

Q. Do you know whether or not you were buying from him last month? A. I do not believe so.

Q. Do you know whether or not he is willing, able to sell you and was last month if you were willing to buy from him? A. I really could not answer that question.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Well, it is evident, is it not, that out of all of these manufacturers in the New York market, there were only six with whom you were doing business? A. Yes, sir.

Q. Tell me what volume of business does Blauner do?
5172 A. I do not know really whether I am in position to say that or not.

Q. What is your best opinion? A. You mean at what price range?

Q. Per year, what is your total? A. You mean at what price range and up?

Q. $10.75. A. I should judge maybe $150,000 total.

Q. $150,000 total per year? A. Approximately.

Q. Approximately? A. Right.

Q. During the entire—is that purchases at wholesale? A. That is sales at retail.

Q. That is sales at retail? A. Yes.

Q. What is Blauner's largest source of supply, do you know? A. In that field?

Q. Yes. A. I believe C. H. D. Robbins was.

Q. Is there a concern in which Blauner's has an interest which furnishes them with a lot of their goods? A. Not to my knowledge.

Q. Tell me something of their accounts; from whom do they buy? A. I would have to get the ledger to do that.

Q. Did you ever hear of Lombardy Frocks? A. Yes.

Q. Who are the principals in Lombardy Frocks? A. I 5174
really do not know.

Q. Did you ever hear that Blauner's is interested therein? A. No.

Q. Do you not know that Lombardy Frocks was one of the largest sources of supply for Blauner's?

Mr. Haycraft: I object unless it is shown within the witness' knowledge.

Mr. Weisman: I am asking the witness whether he knows.

The Witness: They are cheaper, you know; $4.75.

Mr. Weisman: I know that Lombardy is a $4.75 house.

Mr. Haycraft: I object to the question because it is not within the direct examination. 5175

Mr. Weisman: I submit it is a foundation question that I want to lead up to.

Mr. Haycraft: It is a fishing expedition.

Mr. Weisman: The old mind reader at work again. No, I know what I am talking about. Too bad you do not.

Mr. Haycraft: I do not think you ought to be allowed to smear it on this record.

Mr. Weisman: What?

Mr. Haycraft: I do not think that ought to be smeared all over this record.

Mr. Weisman: If it is material, and if it will show the reason why, and I think it will show the reason why, because both this witness and I know something about this. I want to show that the reason why Blauner's would not co-operate with the Guild, and they had a perfect right not to do so if they did not see fit to do so, I want to show that, and I think I can show it if I am permitted to go along the line that I have set to do. I certainly
5177 have the right to ask a foundation question. If your Honor please, you certainly will recall that Mr. Haycraft wanders all over the face of the earth by the argument of asking a foundation question. I think I should be permitted to ask a legitimate foundation question once in a while.

Mr. Haycraft: I object. All of this long stump speech, as Mr. Weisman himself characterized it, does not make it admissible.

Examiner Bennett: Overruled. You may answer.

By Mr. Weisman.

Q. The Court says you shall answer. A. What is the
5178 question?

(Question read.)

A. No, sir.

Q. You do not know that? A. No, sir.

Q. Do you not know that Lombardy Frocks engages to a large degree in the manufacture of copies of higher-priced merchandise?

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled.

A. No, sir.

By Mr. Weisman.

Q. You do not know that?

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

A. What is that?

By Mr. Weisman. 5180

Q. You do not know that? A. No, sir.

Q. Do you not know that Lombardy Frocks is used by Blauner's for the purpose of obtaining through them copies of higher-priced merchandise at $4.75? A. Absolutely not.

Q. You do not know that? A. No.

Examiner Bennett: From your knowledge, is it true?

The Witness: No, sir.

Examiner Bennett: No?

The Witness: It certainly is not true.

By Mr. Weisman.

5181

Q. Did you state that Lombardy Frocks does not engage in the buying and/or making of copies of higher-priced frocks; in the making of copies of higher-priced merchandise?

Examiner Bennett: He did not say that at all. He did not say that.

Mr. Weisman: I want to find out what he did say, Mr. Examiner.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Does not Blauner's carry a lot of copies; a large amount of copies of pirated dresses? A. Blauner's, we buy dresses whether they are copies or not. I am not in a position to answer that.

Q. Have you not just stated that you did not want to join the Guild because you could not subscribe to the refusal to buy pirated dresses? A. Yes.

Q. So you wanted to have the right to go out and buy pirated dresses? A. We wanted to have the right to have an open market for merchandise wherever we could possibly get it without any restrictions.

5183

Mr. Haycraft: I want to object to that. I do not think that the question is a correct interpretation of the witness' previous testimony.

Mr. Weisman: You know better than that. I am ashamed of you.

Mr. Haycraft: You are the one who should be ashamed.

Mr. Weisman: Now, will you sit down and quit yelling at me in such an undignified fashion? You are getting too old for such things, my lad.

Mr. Haycraft: Says you.

By Mr. Weisman.

5184 Q. When you said that you meant you wanted to have the right to buy numbers whether or not they were pirated numbers or not; is that correct? A. That is right.

Q. What? A. That is right.

Q. You know, do you not, and you knew, did you not, at that time, that the Guild houses were the houses whose dresses were being pirated? A. Yes.

Mr. Haycraft: I object to that as calling for a conclusion of the witness.

Mr. Weisman: I think I ought to be allowed to get the answer to that.

A. No, sir; I do not know it.

By Mr. Weisman.

Q. Whose dresses do you think were being pirated when the Guild manufacturers said that they did not want to sell you unless you agreed not to carry copies of Guild members' dresses? A. Well, I suppose they were talking about——

Mr. Haycraft: I object. My objection is that there is no foundation for that question. 5186

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. The Court says you may answer.

Mr. Haycraft: I object.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: There has been no evidence received from this witness that anybody's dresses were being pirated. He hasn't testified to any such thing as that. 5187

Mr. Weisman: Your Honor, may I call your attention—may I see this? This is in evidence, isn't it (indicating paper writing)?

Mr. Haycraft: No, it isn't.

Mr. Weisman: Where is the one you put in evidence that you identified?

Mr. Haycraft: No, not that. You asked him the kind of declaration that he wanted to sign. I think that is it.

Mr. Weisman: So you see I was right.

Mr. Haycraft: Here it is.

Examiner Bennett: I have ruled on that. That wouldn't prove anything. I say this witness hasn't testified as to anybody's pirating.

Mr. Weisman: Well, this witness testified——

Examiner Bennett: You ask him and find out.

By Mr. Weisman.

Q. Didn't you testify that a copy of Commission's Exhibit 3-A was one that you had been asked to sign and you objected to it? A. I believe it is one of the papers.

5189 Q. Yes.

Examiner Bennett: That is not proof that dresses were being pirated, and it has not been testified to by this witness that dresses were being pirated.

By Mr. Weisman.

Q. When you were asked why you couldn't sign it, you stated that you couldn't sign it because you wanted to be free to handle pirated dresses; didn't you? A. No, sir.

Mr. Haycraft: No, he didn't say that.

Mr. Weisman: Didn't you say that?

The Witness: I didn't say anything at all about

5190 pirated dresses.

Mr. Weisman: I am sure——

Mr. Haycraft: You did all of that talking.

Mr. Weisman: Don't say that, Mr. Haycraft. This witness said that he couldn't sign this because he wanted to be free to use pirated dresses, and I took it down.

Mr. Haycraft: He didn't say anything of the kind.

The Witness: Wanted to be free to buy merchandise in an open market without any restrictions.

By Mr. Weisman.

Q. Do you deny that on your direct examination you said, and used the term "pirated dresses"? A. Did not use the term "pirated dresses."

Mr. Weisman: All right. The record will show it.

Examiner Bennett: Yes.

By Mr. Weisman.

5192

Q. I call your attention to Commission's Exhibit 3-A and call these words to your attention specifically: "We do not and will not buy for our ready-to-wear departments any copy or pirated dresses or garments created by members of your Association." Isn't that what you referred to on your direct examination? A. One of the clauses; yes, sir.

Q. Isn't that, in relation to that that you said you couldn't agree not to buy pirated dresses, to refrain from buying pirated dresses? A. Not to refrain.

Q. That is, that you didn't want to agree to refrain? A. That is right.

Q. Didn't you use those terms on your direct examination? A. The terms I did use have already been taken down.

5193

Q. All right. In other words, you don't want to repeat them now. Didn't you know when this was presented to you that the only copies and the only pirated dresses that you were asked not to handle were copies, or pirated dresses of originations by Guild manufacturers? A. Not necessarily.

Q. Didn't you understand the English of this thing? A. Yes, sir.

Q. Well, by the terms of this didn't you understand that this was limited to copies or pirated dresses of members of the Guild? A. You asked me because it was brought up by the Guild.

Q. So that you knew that—so your failure to join the Guild could only be because of your unwillingness to refrain from dealing in copies of dresses originated by members of the Guild; isn't that so? A. One of the reasons.

Q. Yes. I mean, there is no harm in it. I want you to know the Guild says you have a perfect right to do as you please. We are not charging you with any crime thereby, Mr. Weinstein. I don't want you to get the wrong impression. And you felt that you wanted to be free. I assume 5195 you felt you wanted to be free to deal with whomever you wanted, whether the dress was a copy or not; isn't that so? A. Yes, sir.

Q. And that is why you wouldn't join the Guild, isn't that so? Join in the Guild's policy with regard to style piracy? A. Yes.

Q. Are you familiar with the figures of Blauner's with 1935? A. No, sir.

Q. Do you know whether or not your $10.75 department went ahead in 1936? A. I know—'36?

Q. Yes. A. Well, the $10.75 was practically eliminated.

Q. Do you know whether or not Blauner's sales for the year—what is the total price range of Blauner's, by the way? A. What do you mean, "total price range"?

5196 Q. Where do they start? What is their lowest price range? A. Start at $3.88.

Q. And go to? A. Go up to $12.98.

Q. That is $12.98 retail? A. Retail. Formerly $14.95. Due to the fact that we had to drop out of the $10.75 line; due to the fact that we had no open market from which to buy the kind of merchandise we were accustomed to handling, we probably—we had to drop out of that price range.

Q. Now, I understand that you said on your direct examination that in February, 1935, Joe-Mac Dresses refused to ship you? A. I couldn't remember that directly.

Q. Didn't you testify— A. I was selecting the names from the list that you subn.

Q. Well—the members—Mr. Haycraft asked you a question. He said in February, 1935, "Will you give a list of the Guild people who refused to do business with you?" Do you remember that? A. Yes.

Q. And you gave him these names: C. H. D. Robbins? A. That is right.

Q. And you meant him to understand, and the record to show thereby, did you not, that in February, 1935, C. H. D. Robbins refused to do business—— 5198

Mr. Haycraft: May I have an objection to that question, Mr. Examiner, so the record will be straight? The witness, in answering that question, testified that it was subsequent to February, 1935, and all through the year that these contacts were made, and that all of the dropping off was not in February, and I don't think in fairness he should be asked a question of this kind.

Mr. Weisman: I am trying to find out. You asked him one thing. If he answered another I would like to know what he answered.

The Witness: All right.

Examiner Bennett: All right. Overruled. You may answer. 5199

By Mr. Weisman.

Q. The Court says you shall answer. A. All of these—all of the replacements that I made regarding to the purchases from those manufacturers was during the year beginning with February on through.

Q. Oh. But you didn't mean to fix that February as being— A. Was the stopping point.

Q. That was the stopping point? A. No, sir.

Q. Now, as a matter of fact, don't you know that the names that you mentioned didn't join the Guild until October or November? A. Those in the $6.75 didn't join until October?

Q. Well, what is Lee Clair? A. Lee Clair is a $10.

Q. When did you say Lee Clair joined the Guild? A. I really couldn't say.

Q. Would you deny that they joined it in November, 1935? A. I really couldn't say.

Q. Now, Will Zahn is no longer in the Guild? A. Yes, sir.

5201 Q. When do you say C. H. D. Robbins joined the Guild? A. I don't know when they joined the Guild.

Q. Well, when did you first have trouble getting merchandise from them? A. I can tell them when we stopped receiving merchandise from them.

Q. When you said in October— A. I would have to refer to that list.

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Just take a look at when you stopped getting merchandise from them.

Examiner Bennett: We will recess for five minutes.

5202 (There was a short recess taken.)

A. We stopped receiving merchandise after or during the month of May, 1935, C. H. D. Robbins.

Q. Are you sure that you failed to get merchandise from them on that date, because they didn't want to ship you, or because on that date, on and until the fall you didn't place any further orders with them? A. We did want to place further orders and they refused to accept any further orders.

Q. You mean commencing with May? A. Approximately that time; yes, sir.

Q. Now, what about F. E. D. Dress? A. I don't have very much on that. F. E. D. Dress, there was no merchandise received after February, 1935.

Q. I don't care whether you received merchandise or not. I want to know— A. Well, I mean the fact that we didn't—well, that is as far as I can tell you. I mean, the record shows that we received no further merchandise after that.

Q. Do you know whether or not you didn't receive any merchandise because you didn't order from them or because they were members of the Guild? A. Well, I don't recollect it from that particular resource. 5204

Q. I see. What about F. & D. Beilinson. A. Beilinson.

Q. Yes. A. After August, 1935, we received no further merchandise due to the fact that they refused to accept orders for merchandise.

Q. Then you remember? A. Yes, sir.

Q. That was not until August? A. That is right.

Q. What about Joe-Mac Dress? A. I don't have any records of Joe-Mac Dress at all.

Q. You don't know when they refused to do business with you? A. No, sir.

Q. What about B. Tobias? A. B. Tobias, I have until, or after October, 1935.

Q. Do you know that if you got merchandise from them up to October, obviously they weren't members of the 5205
Guild? A. They may have been members of the Guild and still have shipped us due to the fact that we had a prior order.

Q. I see. How much prior to delivery does Blauner's place its orders? A. Well, at that time I believe it was three or four weeks.

Q. As much as that? A. I think so.

Q. Is that your general practice? A. About three or four weeks at that priced merchandise.

Q. I see. Now, what about Lee Clair? A. Lee Clair was February, 1935.

Q. What was February, 1935? A. The last date of the receipt of merchandise.

Q. What is your recollection as to when they joined the Guild? A. They also—I don't know when they joined, but I do know that they refused to ship us merchandise on account of us not signing the agreement.

Q. When did they refuse? A. I have no exact figure—dating of that.

Q. What is your best guess? A. It would be futile to guess. It must have been approximately around that time.

5207 Q. Suppose I tell you that Lee Clair didn't join the Guild until the latter part of October, 1935, what would you then say? A. Well, I told you before that I didn't recollect about Lee Clair.

Q. I see. Let me ask you this question: Assuming that your paper shows that between February and October, or thereabouts, you didn't get any orders or receive any merchandise from these people, and these people didn't join the Guild until on or October, wouldn't that be some indication to you that during that period you didn't want their merchandise? A. Well, these members that didn't join until October were members of the $6.75 price division.

Q. And that has nothing to do with the Guild, has it? A. Well, they joined or became affiliated with the Guild.

Q. All the people that you have been talking about now

5208 are the $10.75 people, aren't they? A. That is right.

Q. We weren't talking about $6.75, the names that we have just gone over? Or are they $10.75? A. That is right.

Q. Now, what I am asking you, and I assume you are going to be fair in your answer, as I am trying to be in my questions, if a man was not a member of the Guild, and he didn't ship you any merchandise from February to October, would that be because you didn't order any? A. That is right.

5209

Q. And would the fact that you didn't order any be a reasonable indicia or sign that he wasn't carrying merchandise that you required? A. Not necessarily.

Q. Why else wouldn't you buy it? A. The period of the year as to whether we would buy merchandise from that particular manufacturer or the number of manufacturers would also have something to do with it.

Q. We have covered a long period, from February to October. A. That period includes seasonable changes. Naturally, the stocks change and you stop buying at a certain period, and you rebuy at other periods.

Q. Would you say that a source of supply from which you didn't buy merchandise for a period of seven or eight months at a time was a very important source of supply in a steady, staple business like Blauner's? A. No, sir.

5210

Q. I didn't hear your answer. A. No, sir.

Mr. Weisman: That is what I wanted to find out. That is all.

Examiner Bennett: Is there any redirect examination?

Mr. Haycraft: I don't believe there is anything further.

Mr. Weisman: That is all, Mr. Weinstein.

(Witness excused.)

Examiner Bennett: What is your further pleasure?

5211

Mr. Haycraft: I ask at this time, Mr. Examiner, that the hearings in this case be adjourned to convene again in Cleveland, Ohio, in the Grand Jury Room, 307, at the Post Office Building at the Public Square on Monday morning, 10.30 A. M., Eastern Standard Time.

Mr. Weisman: May it please——

Examiner Bennett: 9.30 Eastern Standard Time.

Mr. Haycraft: Cleveland does not have Daylight Saving Time.

Examiner Bennett: It has Eastern Standard Time.

Mr. Weisman: May it please your Honor, we have been very laboriously engaged here. My client and I have been away from our regular business, and we are seeking to do everything to reasonably co-operate. We cannot return to our homes until to-morrow. I mean by that, for the business day to-morrow. To-morrow is a short day, being Saturday, and there is very little ability in us to conduct our business by reason of the fact that other people won't remain to conduct it with you. I ask your
5213 Honor most seriously, in view of the complete and thorough hearings that we have had continuously and consecutively this week, and so that my client and I may have at least twenty-four hours to do some other business, that the hearing be had on Tuesday morning so that we may have a business day to devote to our business.

I make serious representation to your Honor that my client's business and affairs are seriously being injured by this absence. I realize that it is necessary that we be away. I make no point of that. What I do say that under the circumstances that we should be permitted to have a regular business day to bring ourselves up and to do such things as do require our immediate and urgent attention.
5214 I respectfully urge that upon your Honor.

Examiner Bennett: I have already engaged a hearing room for that time.

Mr. Weisman: We will stand the cost of the hearing room.

Examiner Bennett: There isn't any cost.

Mr. Weisman: I didn't know that.

Examiner Bennett: But I would like to hear from the Commission's attorney on that point.

Mr. Haycraft: Well, I was hoping you would settle that. I will put it this way: I will be ready to proceed Monday with a witness, but I will not be seriously inconvenienced to have the hearing convene Tuesday.

Examiner Bennett: That is, you are indifferent?

Mr. Haycraft: Absolutely.

Examiner Bennett: You are indifferent?

Mr. Haycraft: Yes.

Examiner Bennett: Well, in view of that statement, I will accommodate counsel for the respondents, and we will meet on Tuesday.

(Whereupon, at 4 o'clock P. M., August 7, 1936, 5216
the hearing in the above-entitled matter was adjourned.)

Court Room No. 307,
Federal Building.
Cleveland, Ohio,
August 11, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: JOHN W. BENNETT, *Examiner.*

(Same Appearances.)

5217

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of Docket No. 2769, the Federal Trade Commission v. The Fashion Originators Guild of America, Inc., et al. You may proceed.

Mr. Haycraft: Will you please take the stand at this time, Mr. Gutsche?

5218 *Hugo C. Gutsche—For Commission—Direct.*

HUGO C. GUTSCHE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Hugo C. Gutsche.

Direct examination by Mr. Haycraft.

Q. Where do you live, Mr. Gutsche? A. 118 Yorkshire Road, Pittsburgh.

Q. Pennsylvania? A. Yes, sir.

Q. What is your occupation? A. I am the ready-to-
5219 wear merchandise manager for the Upstairs Department of Joseph Horne Company, Pittsburgh.

Mr. Albert: If it please the Court, at this time I wish to object to any testimony whatsoever on the part of anybody from J. L. Horne & Company—

The Witness: Joseph——

Mr. Albert: Joseph Horne & Company. It was announced in Philadelphia that the Commission would not proceed to Pittsburgh and that no testimony would be taken from Pittsburgh. As a result of that announcement of counsel for the Commission, the respondent at this time has none of its correspondence or any of the evidence that it would seek to present on cross-examination here with it,
5220 and it certainly is a most unfair bit of tactics on the part of the Commission not to warn us in any way that anybody would be brought up here from Pittsburgh to testify in Cleveland, and I strenuously object to any testimony whatsoever being presented from any Pittsburgh concern, in the light of the announcement of the Commission in Philadelphia.

Examiner Bennett: Yes. Well, you may get your correspondence. You may go forward. I will have the witness appear to-morrow for cross-examination.

Mr. Albert: Exception.

Examiner Bennett: Proceed—that is, unless the Commission wants to withdraw its witness.

Mr. Haycraft: No. I do not.

Mr. Albert: If it please the Court, I have just been informed that our papers were forwarded to Pittsburgh in expectation of a hearing being held in Pittsburgh, and that they have not as yet arrived back in New York. 5222

Examiner Bennett: Can you not get them from Pittsburgh?

Mr. Albert: Beg your pardon?

Examiner Bennett: Can you not get them from Pittsburgh?

Mr. Albert: Well, they are probably in transit back from Pittsburgh to New York at the present time.

Examiner Bennett: Well, we will give you an opportunity to cross-examine after you get your papers. I wish you would be diligent about it, though.

Examiner Bennett: All right. Proceed.

By Mr. Haycraft. 5223

Q. In what business is the Joseph Horne Company engaged? A. Department store business.

Q. How long have you been in your present position? A. About six years.

Q. What are your duties in that position? A. Well, merchandise manager, that is, the supervision of the buying and selling of the apparel.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. Where did you first learn of that organization? A. Well, I believe in December—December, 1932—I am not—there may have been some information prior to that, but I believe that is about the start.

(Photostatic copy of letter from Maurice Rentner, Chairman of the Board, Fashion Originators Guild of America, Inc., under date of March 23, 1932, to M. A. H. Burchfield, Joseph Horne Company, Pittsburgh, Pa., was marked for identification Commission's Exhibits 451-A and 451-B.)

5225

By Mr. Haycraft.

Q. I show you a paper which has been marked for identification Commission's Exhibits 451-A and B, purporting to be an original letter from Maurice Rentner, Chairman of the Board, Fashion Originators Guild of America, dated March 23, 1932, and ask you if you received that in the ordinary course of your duties? I notice it is addressed to Mr. A. H. Burchfield of Joseph Horne Company. A. I must have seen that. It was——

Mr. Albert: I cannot hear the witness here.

The Witness: I must have seen that.

Mr. Albert: I ask that the answer be stricken out, if the Court please; it is not in response to the question.

5226

Examiner Bennett: Read the question.

(Question read.)

A. Yes.

Mr. Haycraft: I offer it in evidence, Commission's Exhibits 451-A and B, and ask that a photostatic copy thereof be substituted for the

original, as the Joseph Horne Company wishes to keep the original copies for their own files.

y Mr. Haycraft.

Q. By way of further identification, I will ask you who Ir. Burchfield is in your organization, mentioned in that etter? A. President of the firm.

Q. President of the firm? A. Yes.

Q. Is he your superior? A. Yes.

Q. There are certain pencil notations in the upper ght-hand margin——

Mr. Albert (interposing): Mr. Haycraft—— 5228

y Mr. Haycraft.

Q. I will ask you——

Mr. Albert: Well, Mr. Haycraft, would you mind holding your questions until I read this?

y Mr. Haycraft.

Q. I will ask you whether or not—just a moment, lease. I will ask you whether or not those notations ere made by Mr. Burchfield and addressed to you? A. Iay I see it again?

(The paper referred to was handed to Mr. Haycraft.)

The Witness: That is Mr. Oxenreiter's notation on there. 5229

y Mr. Haycraft.

Q. Oxenreiter? A. Yes.

Q. Who is he? A. Mr. Oxenreiter at the time was Mr. urchfield's assistant.

Q. I see.

(The paper referred to was handed to M Albert.)

Mr. Haycraft: I renew my offer.

Mr. Albert: No objection, if it please the Cou

Examiner Bennett: Received.

Mr. Haycraft: I substituted a photostatic co for the original.

Examiner Bennett: It is a letter; is it?

Mr. Haycraft: Yes, sir.

Examiner Bennett: All right. You may proce

5231 (Whereupon the paper previously marked Co mission's Exhibit 451 for Identification was r ceived in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 452 for Identific tion, which purports to be a carbon copy of a letter fro Joseph Horne & Company, an original to Fashion Origin tors Guild, dated March 29, 1932, in reply to the or that you have just identified, and ask if you can identi that as such?

(Whereupon the carbon copy of a letter fro Joseph Horne & Company t› Fashion Originato Guild, dated March 29, 1932, was marked Co

5232 mission's Exhibit 452 for Identification.)

A. Yes.

By Mr. Haycraft.

Q. Was the original of that letter sent to the Fashio Originators Guild on March 29, 1932? A. Yes.

Mr. Haycraft: I offer that in evidence and as that a photostatic copy may be substituted for th original.

(Whereupon a letter from Fashion Originators Guild to Joseph Horne & Company, dated April 29, 1932, was marked Commission's Exhibit 453 for Identification.)

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(Whereupon the letter heretofore marked Commission's Exhibit 452 for Identification was received in evidence.)

By Mr. Haycraft.

Q. I now show you Commission's Exhibit No. 453 for 5234
Identification, which purports to be an original letter from the Guild to Joseph Horne & Company, dated April 29, 1932, and ask you whether or not you received that original letter; that is, whether Joseph Horne & Company received it? A. Well, I think so.

Q. I show you Commission's Exhibits 454-A to 454-M, inclusive, and ask if you can identify that as an original letter with certain documents attached received from Maurice Rentner?

The Witness: It is a letter addressed to me, signed by Maurice Rentner of the Fashion Originators Guild of America.

By Mr. Haycraft. 5235

Q. What date? A. December 16, 1932.

Q. Did you receive it? A. Yes.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: May it please the Court, there is no objection with respect to Commission's Exhibits for Identification 454-A, B, C and D. However, with respect to 454-E to M, that is objected to upon the ground that it is a draft of proposed agreement

which never went into effect, which was never signed by anybody, the terms of which were never operative in the industry and by reason whereof there is nothing whatsoever in the Commission's complaint with respect to it, and it is no purpose or function in this proceeding.

Examiner Bennett: I am overruling the objection and receiving it as part of the history of the Guild.

(The documents referred to, heretofore marked for identification Commission's Exhibits 454-A to 454-M, were marked as exhibits and received in evi-
5237 dence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 455-A and ask you to tell the Examiner what it is? A. It is a letter from the Fashion Originators Guild of America, dated June 19, 1933, addressed to me, signed by Maurice Rentner.

Q. Did you receive it? A. Yes.

(Letter from Maurice Rentner, Fashion Originators Guild of America, under date of June 19, 1933, was marked for identification Commission's Exhibits 455-A and 455-B.)

Mr. Haycraft: I offer it in evidence.

5238 Mr. Albert: May I have that?

(Counsel hands exhibit to Mr. Albert.)

Examiner Bennett: That is Commission's Exhibits 455-A and B?

Mr. Haycraft: Yes.

Let the record show that if that record is received in evidence, that the docket section of the Commission will send to the witness the photostatic copy of the exhibit.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 455-A and 455-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now show you the next to the last paragraph of this letter, Commission's Exhibit 455-B: "Our action is expressed in the enclosed resolution, which provides that all retailers who wish to have access to our showrooms and purchase our merchandise shall sign a 'Declaration of Good Faith,' a copy of which we are submitting herewith." I now show you Commission's Exhibits 456-A and 456-B and ask you if you can identify that? 5240

Examiner Bennett: That is for identification?

Mr. Haycraft: Yes, sir.

A. Yes, sir.

By Mr. Haycraft.

Q. What is it? A. A memorandum of the Guild's resolution and its significance.

Q. Dated when? A. Well, there is no date on this except that—except that these resolutions—or this resolution was passed unanimously at a meeting of the Fashion Originators Guild on Monday evening, June 12, 1933. 5241

Q. Was that enclosed in the letter you received from Mr. Rentner, Commission's Exhibit 455-A, and referred to in the language I read a moment ago in the last paragraph? A. Yes.

Q. Yes. I show you now Commission's Exhibit 457 for identification and ask you if you can testify as to what that is? A. That is the Declaration of Co-operation and Anti-Piracy.

Q. Is that a copy of the one that you received from the Guild, enclosure of the letter of June 19, Commission's Exhibits 455-A and 455-B? A. Yes.

Mr. Haycraft: I offer this in evidence—wait a minute.

By Mr. Haycraft.

Q. And was that the original of which this is a copy signed by W. H. Burchfield, vice-president of the Joseph Horne Company and sent to the Guild? A. Yes.

Mr. Haycraft: I will offer it in evidence and
5243 ask that a photostatic copy be substituted for the original.

(A document was there upon marked for identification Commission's Exhibit 458.)

Mr. Haycraft: Just a moment, Mr. Albert. I have another exhibit that ought to really go on with that.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 458 for Identification, and ask if you can testify as to what that is?

Mr. Albert: Rather, if he knows what it is, your Honor, rather than testify what it is.

5244

A. It is a letter dated June 27, 1933, to the Fashion Originators Guild of America, signed by Mr. Burchfield, W. H. Burchfield.

By Mr. Haycraft.

Q. That is a carbon copy? A. Carbon copy.

Mr. Haycraft: I offer that in evidence, Mr. Examiner, and ask that a photostatic copy be substi-

tuted for the original, and I wish to make that offer along with Commission's Exhibit 457, taken together.

Examiner Bennett: Is Commission's Exhibit 457 objected to?

Mr. Haycraft: No. He hasn't yet objected to it.

Mr. Albert: No objection.

Examiner Bennett: They may be received. Commission's Exhibits 457 and 458.

(Copy of Declaration of Co-operation in Anti-Piracy was marked for identification Commission's Exhibit 457 and received in evidence.)

5246

(Copy of letter from W. H. Burchfield vice-president and general merchandise manager, Joseph Horne Company, under date of June 27, 1933, to Fashion Originators Guild of America, New York, N. Y., heretofore marked for identification Commission's Exhibit 458, was received in evidence.)

(A document was thereupon marked for identification Commission's Exhibits 459-A and 459-B.)

Ir. Haycraft.

I show you Commission's Exhibits 459-A and 459-B, sk if you can identify it? A. Yes.

What is it? A. A letter dated November 8, 1935, essed to Mr. W. H. Burchfield, care of Joseph Horne 5247 pany.

Signed by whom? A. Signed by Mr. Post.

Now, Mr. Gutsche, during the period of time from , 1933, until the present time, has Joseph Horne Com- co-operated with the Guild as indicated in the corre- dence I have just called to your attention and to h you have identified? A. Yes.

Mr. Albert: That is objected to as calling for the conclusion of the witness, and no foundation whatsoever has been laid showing the knowledge on the part of the witness with respect to what has been done by Joseph Horne Company over and above a period of three years.

Examiner Bennett: I think it best that you develop a foundation further to show just what this gentleman's duties were with the Joseph Horne Company.

Mr. Haycraft: I have a statement, Mr. Examiner, of his general duties.

5249 *By Mr. Haycraft.*

Q. I will ask him if he had any peculiar duties with respect to the Guild.

Mr. Albert: May it please the Court, I object to any question with respect to "the peculiar duties" as regards the Guild. I don't know what "peculiar duties" means, and it certainly has an unpleasant connotation.

Examiner Bennett: I will hear what he has to say in response to the question.

Mr. Albert: Exception.

Examiner Bennett: Overruled.

5250 A. I had no peculiar duties in connection with the Guild, Mr. Haycraft.

By Mr. Haycraft.

Q. Did you have any instructions from Mr. Burchfield as to what you were to do in co-operation with the Guild and the Guild's policies? A. Not that I remember.

Q. Did you ever hear of a warranty clause, a warranty statement, referred to in——

Mr. Albert: 306.

By Mr. Haycraft:

Q. —Commission's exhibit, in the last paragraph, where it says "Furthermore, we will affix to all of our orders the following clause: 'This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.'" A. Yes.

Q. You know about that? A. Yes.

Q. What do you know about it? A. Well, I knew that as soon as that was signed we started to do that. It was in line with my general duties. 5252

Q. Had you been doing it before? A. Not before we signed the agreement.

Q. You had not been putting that warranty clause on garments before the agreement was signed? A. No, sir.

Q. Well, then, your general duties were changed somewhat after the signing of that agreement? A. Well, it was an addition, that is all.

Q. What steps did you take to see that that stamp went on orders placed for garments thereafter? A. That stamp was in our ready-to-wear office, and before the orders were sent out it was placed on copies of our orders.

Q. Who placed it on there? A. One of the clericals.

Q. Did you have anything to do with supervising the task? A. Well, the original instructions were given by me in our office. 5253

Q. Did you do anything to see whether or not they were carried out? A. I checked on it.

Q. Were they carried out? A. I believe so.

Q. Well, now, as a result of placing that stamp on all orders, did you find it necessary to return any garments to manufacturers? A. Occasionally.

Examiner Bennett: We will take a recess of ten minutes.

(There was a short recess taken.)

By Mr. Haycraft.

Q. How did you determine when to make the returns? A. We were informed by the Guild's local shopper.

Q. Who was she? A. Mrs. Elliott.

Q. When did she first shop your store? A. I cannot give the exact date. I imagine it was after the 1st of March or so.

Q. What year?

5255

Mr. Albert: What year was that?

A. 1935.

By Mr. Haycraft.

Q. Well, what would she do when she came to your store? What was her procedure? A. Well, she would have information confirming the fact that the dress in question was a copy.

Q. Well, you say she had the information, but what would she do, then, with that information? A. She would give it to us with a slip authorizing the return of the garment.

Q. Did you take any steps yourself to determine whether

5256 it was a copy, in fact? A. No, we did not.

Q. Have you prepared for me, or had prepared, from the records of Joseph Horne Company, a statement of the garments returned in the year 1935, and up through the year 1936, showing the name of the manufacturer, the date of return, style number, quantity returned, and the price of the garment? A. To the best of our ability——

Examiner Bennett: Do I understand you to say that you returned no garments before March, 1935?

Mr. Haycraft: No, he did not.

The Witness: I am not sure about that.

Mr. Haycraft: Mark this for identification as Commission's Exhibit 460.

Examiner Bennett: Yes.

(Document referred to was marked for identification Commission's Exhibit 460.)

Mr. Haycraft: That is his testimony as to when he remembers the shopper came around. I will probably go into that a little bit more, Mr. Examiner.

By Mr. Haycraft. 5258

Q. I show you Commission's Exhibit 460 for Identification and ask you if you can identify that? A. Yes.

Q. What is it? A. This is a record of garments that we returned because they were copies.

Q. And the information contained thereon, where did it come from? A. It came from our records in combination with the records which we were able to obtain from the local Guild shopper.

Q. Are you satisfied it is correct? A. I wouldn't swear that it is complete. As near as we could get from the time that you were in Pittsburgh, and we had to work it out.

Mr. Haycraft: I offer this in evidence, Mr. Examiner. 5259

Mr. Albert: That is objected to, if it please the Court, on the ground that the witness has just testified that he would not swear to the fact that it is complete, and obviously the Commission does not want anything that is not a complete record and does not adequately show the facts.

Examiner Bennett: Is there anything on there that you did not return?

The Witness: Not that I know of.

Examiner Bennett: Well, what is your best recollection of that?

The Witness: Sir?

Examiner Bennett: I say, what is your best recollection as to that, as to whether it contains any garments, or you know of any goods that are not, in fact, returned, as indicated?

The Witness: None that I remember.

Examiner Bennett: All right. Overruled; it may be received.

Mr. Albert: Exception.

5261 (Document referred to, heretofore marked for identification Commission's Exhibit 460, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Now, I notice the first date on this is February 21, 1935; I will ask you whether or not that refreshes your recollection as to the time that the shopper began to shop your store? A. I believe it was.

Q. You think it was on or about that date? A. Yes.

Q. Had you made any returns of garments to manufacturers prior to February, 1935? A. Yes, we had.

Q. Well, how did you determine what garments to return prior to that time? A. We received notices from the
5262 Guild office giving the information as to the origination—or the originator of the garment and the manufacturer who had copied it, with his style number.

Q. How was that received? A. Sir?

Q. How did you receive that? That is, who gave it to you? How did you get it? A. It came through the store mail.

Q. I show you Commission's Exhibits 375, 376 and 377 and ask you if you recall those, or if you can testify with respect to them in any way? A. Not to these; I would not remember.

Q. I will ask you whether or not they are similar to the information which you received before the shopper began to call?

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness and no proper foundation has been laid. He does not know what these are, and yet he is asked to compare them with something that is not present.

Examiner Bennett: Sustained.

By Mr. Haycraft.

Q. Prior to June, 1933, the date of the signing of that original co-operation agreement, which you have identified, Commission's Exhibit 457, had you returned to the manufacturers any garments because they were copies of members of the Guild, or of any other manufacturer? 5264

Mr. Albert: That is objected to, if it please the Court, as being outside of the scope of the complaint, entirely immaterial and irrelevant. In addition, there is no proper foundation laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: He may answer.

A. I do not remember.

By Mr. Haycraft. 5265

Q. What was the policy of the store prior to that time, in that respect?

Mr. Albert: Prior to what time, if you please?

Mr. Haycraft: Prior to June, 1933.

A. Well, just a policy of ethical dealings.

By Mr. Haycraft.

Q. I mean, with respect to returning to the manufacturers garments that were found to be copies of other manufacturers? A. Well, I don't recall.

Q. You do not recall any? A. We kept away from buying copies where we could; we were not in favor of buying copies at any time.

Q. Well, that was your general policy for a number of years? A. Yes.

Q. Prior to June, 1933, however, had you followed the policy of returning garments to manufacturers when you found that they were copies?

5267

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and not within the scope of the complaint.

Examiner Bennett: I have already ruled on that. Overruled. He may answer.

Mr. Albert: Exception.

A. I don't believe we returned any; it was impossible to do so, as I remember.

By Mr. Haycraft.

Q. You say it was impossible to do so? A. Yes.

Q. Why?

5268

Mr. Albert: That is objected to as calling for the conclusion of the witness, if it please the Court; no foundation laid.

Examiner Bennett: I will sustain it.

By Mr. Haycraft.

Q. Have you observed whether or not there was any effect on the dress business, sale of garments, in your department as a result of the co-operation with the Guild?

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid; calling for the conclusion of the witness.

Examiner Bennett: What was the question?

(Question read.)

Examiner Bennett: Overruled.

Mr. Albert: In that relation, if it please the Court, there is nothing in evidence at the present time as to what department is referred to. There has been no evidence of any department as regards Joseph Horne & Company.

Examiner Bennett: Read the question again.

(Question again read.)

Examiner Bennett: Yes. Overruled. You may answer. 5270

Mr. Albert: Exception.

A. I haven't any definite figures on that.

By Mr. Haycraft.

Q. I asked you whether or not you had observed any effect. I didn't ask for any figures, I asked whether or not you had observed any effect upon the sale of garments in your department as a result of co-operating with the Guild. A. Not on the sale of garments.

Q. Have you observed any effect at all? A. Yes.

Q. What has been the effect you have observed? A. We have had less complaints from our customers. 5271

Q. As to what? A. When they bought a garment at a certain price, that it wasn't to be found at considerably lower prices in a copied garment.

Q. Couldn't be found where? A. In other stores.

Q. In other stores? A. Yes.

Q. Is that the only effect that you observed? A. I believe so.

Q. You have not observed any effect upon the volume of business done in your department? A. No.

Q. How many price lines of dresses do you have in your department? A. Well, they range from—according to the season of the year—as low as $5.95 up to the top.

Q. Do you have any separate departments for the different price ranges? A. Yes.

Q. What are they? A. Sir?

Q. How are they divided? A. Well, at the top you come down to $5.75, and from there down to about $17.50, and then the third division.

Q. That is, from $5.75 to $17.50? A. Pretty close to that, yes.

Q. I just want to make sure that I understood your
5273 testimony correctly. As I understood it, you put the warranty stamp on all orders, including the low price as well as the high priced garments? A. Yes.

Q. And now I also want to make sure that I understand your testimony correctly, that as a result of this co-operation and what you have done, you have observed no effect upon either the better priced dress departments, or the lower popular priced?

Mr. Albert: If it please the Court, Mr. Haycraft understood the witness thoroughly. There is no possible claim that he could be misunderstood in the fact that he said there was no effect whatsoever on his volume. I think Mr. Haycraft has been in this trial long enough to understand when a wit-
5274 ness says in plain answer to a very plain and simple question and there can be no other inference placed upon the repetition of that question other than an attempt to get a different answer from his own witness. I think it was perfectly plain. It was a simple question. He got a simple, straightforward, honest answer.

Examiner Bennett: Do you want to change your former statement in any way?

5275

The Witness: No, sir.

Examiner Bennett: All right. I will let it stand. I will sustain the objection.

W. E. MILLER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

5276

Q. Mr. Miller, will you please state your name and address? A. W. E. Miller, 3024 Woodbury Road, Shaker Heights.

Q. Now, what is your occupation, Mr. Miller? A. I am the ready-to-wear merchandise manager — merchandise manager of ready-to-wear and ready-to-wear accessories, William Taylor Sons & Company.

Q. In what business is William Taylor & Sons engaged? A. Retailer.

Q. They operate more than one store? A. No, one store.

Q. What type of merchandise do they handle? A. We handle all types of merchandise; that is, a general line and apparel for women, children, men and also home furnishing lines.

5277

Q. Do you carry a full line of ladies' garments? A. We do.

Q. What are your duties as divisional merchandise manager of ready-to-wear and ready-to-wear accessories? A. To supervise and work with the buyers and in all of their buying and selling operations.

Q. Do your duties include any buying itself? A. They do not.

Q. Do you supervise the work of the buyers for your various departments? A. I do.

Q. Just what is your contact with the buyers? A. Well, it is a very close contact in this respect, that all of their buying and promotional operations are talked over with me.

Q. That is, before buying and after buying? A. That is correct.

Q. In other words, you consult with them before they do their buying and also afterwards, relative to the selling problems? A. And also relative to what they have purchased.

5279 Q. Do your buyers have anything to do with the sales in their respective departments? A. Yes, they do.

Q. If so, what are their duties, relative to sales, in their particular departments? A. It would be their responsibility to dispose of the merchandise after it is bought.

Q. Now, in the regular course of your business as divisional merchandise manager of ready-to-wear and ready-to-wear accessories, and in the course of the supervision of the buyers who work under you, do you, from time to time, make checks to determine what is the trend of business in your particular departments? A. Yes, continually.

Q. Now, Mr. Miller, have you ever heard of an organization called the Fashion Originators Guild of America, Inc.? A. I have.

5280 Q. Do you recall when you first heard of it? A. The first time I recall of having heard of it was in the spring of 1933; that is, there is correspondence prior to that time, but I was not there.

Q. When did you, and by "you" I mean your employee, join or signify your intention to co-operate with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, as calling for testimony not as yet in evidence; no proper foundation has been laid.

Mr. Martin: All right. I withdraw the question.

By Mr. Martin.

Q. Have you ever signed a declaration of co-operation in anti-piracy, signifying that you would co-operate with the Fashion Originators Guild?

Mr. Albert: That is objected to upon the ground that no proper foundation has been laid, and calling for the conclusion of the witness.

Examiner Bennett: All right, overruled; you may answer.

5282

A. I have not personally signed.

By Mr. Martin.

Q. By "you" I mean the store. A. The store did sign it, yes.

Q. When did the store sign such a declaration?

Mr. Albert: That is objected to; the declaration is the best evidence of the date of the signing.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

A. In June, 1933.

By Mr. Martin. 5283

Q. In June, 1933. Now, from the time that Taylor's signed the declaration of co-operation in June, 1933, down to April of 1936, did Taylor's in any way, co-operate with the Guild in its activities? A. We did.

Q. In what way did you co-operate? A. We attempted to live up, to the best of our ability, to the clauses of the agreement that we had signed. We placed——

Q. Go ahead. A. We placed the warranty stamp as specified in that document of co-operation on all orders that were placed.

Q. Did you place the Guild warranty stamp on all orders? A. We did.

Q. Did any manufacturers refuse to accept orders because they contained this Guild stamp?

Mr. Albert: That is objected to, if it please the Court. He has personally testified he had nothing to do with the buying of the dresses, that he was reported to only through his buyers.

(Question read.)

5285

A. We have two instances that I know of definitely that that was done.

By Mr. Martin.

Q. In what price field were those manufacturers, if you know? A. $4.75 cost.

Q. Does the Fashion Originators Guild maintain a shopper in Cleveland? A. They do.

Q. Do you know her name? A. Yes, Mrs. Joseph.

Q. Who? A. Mrs. Joseph.

Q. Have you ever met her, or do you know her personally? A. I have met her in the course of business.

Q. Have you ever encountered her in the performance
5286 of her duties in your store? A. Yes.

Q. What was she doing? A. She had brought in information that had been forwarded to her from the Fashion Originators Guild, New York office, with reference to copies of dresses, and had located those copies in our stocks, and was calling it to our attention.

Q. Did she ever request you to return goods to the manufacturer? A. Occasionally.

Q. Is your ready-to-wear business divided into departments? A. Yes.

Q. What are those departments? A. In dresses?

Q. Yes, with reference to dresses? A. We have a department for women's dresses retailing at $12.95 and up; we have a department for misses' dresses retailing at $12.95 to $29.95; we have a department for misses' dresses retailing at $29.95 up as a duplication price line; we have a budget dress shop.

Mr. Albert: What was that last one?

Mr. Feldman: Budget.

The Witness: Budget. Budget dress shop, in which we carry dresses retailing at $6.95 through $10.95, and we have junior dresses which are included with junior coats at all prices, and we have 5288
sport dresses, which are included in our General Sportswear Department.

By Mr. Martin.

Q. Do you recall when the Fashion Originators Guild shopper was appointed in Cleveland? A. We had a letter from Mr. Golby to that effect, I believe, dated February 25, 1935.

Q. Was your store ever red carded by the Fashion Originators Guild? A. It was.

Q. Do you recall when? A. Early in February of this year.

Q. Do you recall the reason for being red carded? A. We were never given a definite reason. 5289

Q. What, briefly, was your first knowledge that you had that your store had been red carded? A. It came to us through "Women's Wear."

Q. Did the Fashion Originators Guild notify you directly that you had been red carded? A. No.

Q. What other notice——

Mr. Albert: Was there an answer to that question?

The Witness: No.

Mr. Martin: Yes. He said "no."

By Mr. Martin.

Q. What other notice besides reading it in "Women's Wear" did you get that your store had been red carded? A. We were informed by manufacturers when we went into the market.

Q. What did you do when you got notice of being red carded, if anything? A. I don't believe I quite understand your question.

Q. Well, let me see if I can change it. You have testified
5291 that the first notice that you had of being red carded was reading it in "Women's Wear"? A. (Witness nods head affirmatively.)

Q. Following that, what action did your store take, if any? A. We sent our buyers into the market to find out what the situation was.

Q. Were your buyers denied access to Guild manufacturers, and by that I mean did Guild manufacturers refuse to display their lines to your buyers? A. Yes, they did.

Q. Can you testify as to the names of any of the buyers who were refused access by Guild manufacturers? A. The names of the buyers?

Q. Yes. A. Yes. Mrs. Williams, our misses' dress
5292 buyers, and Mrs. Howard, our women's dress buyer.

Mr. Albert: May I have the last answer?

(Answer read.)

By Mr. Martin.

Q. Do you recall what manufacturer refused them access? A. There were a number of them. I recall a few. Rosen Brothers is one, International Dress, Bender & Hamburger, Milton Altmark, Feigenbaum & Edelson.

Mr. Albert: What was that last one?

The Witness: Feigenbaum & Edelson. Willie Bass. Those are all that I recall without refreshing my memory. If I could see a list perhaps I could tell you more.

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 470.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 470 for Identification, and ask you if you can identify that? A. Yes, I can.

Q. What is it? A. It is a list of the Guild manufacturers with whom we did business in 1935 and early spring 1936. 5294

(Commission's Exhibit 470 for Identification was handed to Mr. Albert.)

Mr. Albert: That is objected to at the present time, if it please the Court, on the ground that there has been no proper foundation laid with respect to the accuracy of this list. The witness hasn't testified as to anything whatsoever with respect to it.

By Mr. Martin.

Q. Who prepared this list, Mr. Miller? A. I did.

Q. You did not, you say? A. I did. 5295

Q. You did. Do you know of your own knowledge that this is a list of the Guild houses from whom purchases were made during 1935 and the spring of 1936? A. I do.

Mr. Martin: I offer that in evidence, your Honor.

Examiner Bennett: Received.

(The list referred to, heretofore marked for identification Commission's Exhibit 470, was marked as an exhibit and received in evidence.)

Examiner Bennett: Objection overruled.

Mr. Albert: Exception.

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 471.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 471 for Identification, and ask you if you can identify that? A. I can.

Q. What is it? A. It is a list of the purchases that were made in dollars of costs from Guild manufacturers during the period February 1, 1935, to February 1, 1936.

5297

Q. Did you prepare that list? A. It was prepared under my supervision and at my request.

Q. It was prepared under your supervision and at your request? You are satisfied that that is a correct statement? A. Right.

(The document was handed to Mr. Albert.)

Mr. Albert: This is objected to upon the ground that no proper foundation has been laid, if it please the Court.

Mr. Martin: I offer this in evidence, your Honor.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(The list referred to, heretofore marked for identification Commission's Exhibit 471, was marked as an exhibit and received in evidence.)

5298

By Mr. Martin.

Q. Now, Mr. Miller, you have testified that your store was red carded about the middle of February of this year. At the time that your store was red carded, did you have outstanding any orders for goods with manufacturers who were members of the Guild? A. Yes, we did.

Mr. Martin: Mark this.

(A document was marked for identification Commission's Exhibit 472.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 472 for Identification, and ask you if you can identify that? A. Yes.

Q. What is it? A. It is a list of the outstanding orders at cost at the time that we were red carded.

Q. Was that prepared by you or under your supervision? A. It was prepared by me and under my supervision.

Q. You are satisfied as to the correctness of it? A. I am. 5300

Mr. Martin: I offer this in evidence, your Honor.

(The paper was handed to Mr. Albert.)

Mr. Albert: That is objected to, if it please the Court, as being incompetent, no proper foundation having been laid.

Examiner Bennett: Overruled. Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 472, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, I will ask you, Mr. Miller, were any of these orders which are shown on Commission's Exhibit 472 to have been outstanding with Guild manufacturers at the time your store was red carded ever filled subsequently to the red carding? A. They were not. 5301

Q. Since the time you were red carded in February of 1936, have you ever been able to buy any garments from Guild manufacturers from whom you had been buying previous to being red carded?

Mr. Albert: Now, if it please the Court, I think we have come to the time when Mr. Martin should refrain from asking leading questions. Up to the present time I haven't objected to the leading questions as a time saver, but I believe that we are now getting to information that may be very, very vital, and specific, and I suggest that he be admonished not to lead the witness. The question is obviously a most leading question.

Mr. Martin: I disagree with my friend, your Honor. I think that the question is entirely proper. I asked him a question which can be answered either "yes" or "no."

5303 Mr. Albert: Which is the hallmark of a leading question on direct examination, your Honor.

Mr. Martin: I think that the question is perfectly proper, wholly competent and relevant.

Examiner Bennett: Let me have the question.

(Question read.)

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. No, we have not.

By Mr. Martin.

Q. When did you last attempt to do so? A. Within the
5304 space of one week after we were red carded.

Q. Now, Mr. Miller, in what price range did you buy dresses from F.O.G.A. manufacturers? A. At the time——

Q. That is, I am speaking of prior to being red carded, of course. Prior period. A. From $6.75 cost up.

Q. In what price range were the bulk or the majority of your dresses bought?

Mr. Albert: That is objected to as calling for the conclusion of the witness; no proper founda-

tion having been laid; no testimony here as to the ability of the witness to give us that estimate.

Mr. Martin: If your Honor please, he has testified that he has been in full and complete charge of the ready-to-wear division, and in supervision of the same, and as such has full knowledge of the activities of that department.

Mr. Albert: Without meaning any disrespect toward the witness, your Honor, if we are to judge his ability to testify from the mere fact that he has testified that he is divisional merchandise manager, from our experience with divisional merchandise managers in Boston and Philadelphia, I think he is 5306
perfectly incompetent to say anything whatsoever about it.

Mr. Martin: If your Honor please, possibly because divisional merchandise managers in Boston and Philadelphia didn't give the answers my friend would have liked them to have given——

Mr. Albert: I don't think they gave any answers, your Honor.

Mr. Martin: I still contend that it is not relevant to this gentleman's testimony. He has testified as to his position and as to his duties.

Mr. Albert: If it please the Court, I don't think that the mere fact that he has stated that he is a divisional merchandise manager, in the light of your 5307
experience with divisional merchandise managers, does not cast any halo on his ability to testify as to what he is asked right now, and no foundation whatsoever has been laid for it. At least, I will say this much, he hasn't passed it on to his subordinates as yet, but before that happens I would like to know as to his ability to testify about it.

Examiner Bennett: Let us have the question.

Mr. Albert: Because, if you may remember, we let in a lot of evidence from others on the ground that we would get to the real facts from their subordinates, and then when we got to the subordinates we were thrown out altogether.

Examiner Bennett: What was the question that is pending?

(Question read.)

Examiner Bennett: Do you know?

The Witness: Yes, I do.

Examiner Bennett: All right. You may answer.

Mr. Albert: Exception.

5309 A. $10.75 through $16.75 cost.

Mr. Albert: $10.75 what?

The Witness: $10.75 through $16.75 cost.

By Mr. Martin.

Q. Do you know how long Guild membership has included manufacturers in the brackets under $10.75? A. Yes.

Q. How long have they included——

Mr. Albert: Same objection.

By Mr. Martin.

5310 Q. —those? A. The fall of 1935.

Q. Now, Mr. Miller, you have named various departments of your dress business, women's dresses, misses' dresses, women's dresses at $12.95 up retail, misses' dresses $12.95 to $29.95 retail, misses' dresses $29.95 up retail, Budget Shop, which includes women's and misses' inexpensive dresses, $6.95 to $10.95 retail, the junior dress and coats and the sportswear. Do all of those departments handle Guild merchandise? A. They did.

Q. They did. I mean, prior to being red carded, did all of those departments handle Guild merchandise? And the answer? A. Yes. Right.

Q. Have you made any study of your business to determine the effect of being red carded on your store?

Mr. Albert. That is objected to, if it please the Court. No foundation having been laid. Being entirely irrelevant and a matter of conjecture, the effect on the business of the store of red carding. We are now pretty far afield.

Examiner Bennett: Overruled. You may answer.

5312

A. We have.

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 473.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 473 for Identification and ask you can you identify that? A. I can.

Q. What is it? A. It is a record showing the volume increases or decreases by months through February, through June of this year, for the total store for each of the departments mentioned by you and for the total better dress departments, which constitute women's, misses', women's and misses' better dresses. 5313

Q. Was this prepared by you under your supervision? A. Prepared by me.

Q. Are you satisfied as to the correctness of it? A. I am.

Q. Of the exhibit?

By Mr. Albert.

Q. Mr. Miller, with respect to Commission's Exhibit No. 473, can you testify definitely and specifically with respect to the figures therein contained? A. Yes, I can.

Q. Can you testify definitely and specifically with respect to the various factors that led either to an increase or decrease in the various departments? A. I believe so.

Q. Can you testify from first-hand knowledge with respect to the component departments that make up the total store estimates of advances or decreases? A. I am sorry. I didn't get your question.

Q. Can you tell us specifically what departments were
5315 considered in reaching the figure with respect to the total store as contained in Commission's Exhibit 473? A. Yes. Yes.

Q. Have you the figures with respect to all other departments? A. I have at my access.

Q. Of the store? A. Right.

Q. Have you the figures for 1935? A. I have.

Q. The specific figures? A. I have.

Q. Can you further identify these department numbers with——

Mr. Martin: I will get to that.

Q. (By Mr. Albert) With the particular department that you have testified to? A. I can.

5316 Q. How did you obtain these figures? How did you reach them? A. Obtained them from the records.

Q. Well, what specifically, do they represent? A. They represent the percentage either of increase or decrease of sales of that period.

Q. Did you take those off the sales slips? A. Took them off of the annual summary of sales.

Q. You haven't any annual summary of sales for 1936 yet, have you? A. I have the monthly summaries. I beg

your pardon. They are monthly summaries taken from each month's report. I am sorry.

Q. Does this represent volume of units sold, or does it represent— A. It represents——

Q. —dollar value? A. Dollars.

Mr. Albert: I renew my objection, if it please the Court, upon the ground that——

Examiner Bennett: Overruled. Received.

Mr. Albert: Not subject to computation.

(The document referred to, herefore marked for identification Commission's Exhibit 473, was marked as an exhibit and received in evidence.) 5318

By Mr. Martin.

Q. Mr. Miller, referring to Commission's Exhibit 473, I notice on the first line is marked "Total Store" and in the first column there is a figure 37.02. What does that—just explain that figure, what it means.

Mr. Albert: Have you got another copy?

Mr. Martin: No.

Mr. Albert: Do you mind if I look over your shoulder?

Mr. Martin: No.

A. It means the increase in volume for the total store in dollars this year over last year for the month of February. 5319

By Mr. Martin.

Q. And I suppose the figures under March, April, May and June in that same line refer to this same thing? A. They do.

Q. Now, Department 330, what department is that? A. That is women's dresses, $12.95 and up.

Q. Department 335? A. Misses' dresses, $39.95 and up.

Q. Department 350? A. Misses' dresses, $12.95 to $29.95.

Q. Department 360? A. Budget dresses, women's and misses', $6.95 through $10.95.

Q. Department 371? A. Junior dresses and coats.

Q. Department 380? A. Sports wear.

Q. In the first column marked "F bruary," under Department 330, there is in parentheses—there are in parentheses the figures 5.73. What does that mean? A. That is the same as red figures. It means a decrease.

Q. Do I understand that all figures in the exhibit which
5321 are included in parentheses means decreases? A. That is correct.

Q. And figures that are not in parentheses mean increases? A. That is correct.

Q. Now, on the bottom line there is a heading, "Total Better Dresses, Departments 330, 335 and 350," and under the month of February there are the figures 22.7. What does that mean? A. It means in the sum of those three departments we showed an increase for the month of February in dollars over last year of 22.7 per cent.

Q. And in the next column what does that show? A. That shows a 1.1 per cent. decrease for the same departments over the same period.

Q. And in the next column, April? A. That shows a
5322 20.2 decrease for the same departments this year as against last year for the month of April.

Q. And in the column marked "May"? A. That shows a 31.2 increase.

Q. And in the column marked "June"? A. A 14.7 increase.

Q. Can you explain the fact that in the month of March and in the month of April there were decreases, while in the months of May and June those three departments showed an increase?

Mr. Albert: That is objected to, if it please the Court. There is no proper foundation laid, calling for the conclusion of the witness, and the exhibit speaks for itself.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

Examiner Bennett: The question is whether you can explain it.

By Mr. Martin.

Q. Can you explain that? A. Yes.

Q. What is your explanation? 5324

Mr. Albert: Same objection.

Examiner Bennett: Overruled.

A. The month of March, from a study of our unit control record, the month of March we found that certain price lines in which we were strongest in our purchases were Guild houses showed radical decreases for the months of March, for the month of April; for the months of May and June we dropped down in our prices in those same departments so that we dropped below the price lines in which we were greatest affected. Consequently, we were able to show better results in May and June, proportionately, than we were in March and April.

Q. Now, referring to the exhibit, what did the total store 5325 show for the month of February, 1936, as compared with the same month of 1935? A. The total store?

Q. Yes. A. 37.02 per cent. increase.

Q. What did the total better dress show for the same month? A. 2.7 per cent. increase.

Q. Now, referring to the month of March, what did the total store show for the month of March, 1936, as compared with the month of March, 1935?

Mr. Albert: If your Honor please, now that the figures have been explained as to the various significances of them, all he is doing is reading them off from the record.

Mr. Martin: Well, to save time I will withdraw that.

Examiner Bennett: All right.

By Mr. Martin.

Q. Now, you have testified that the lower-priced manufacturers became members of the Guild in the fall of 1935?

5327 Mr. Albert: That is objected to, if it please the Court. There is no such testimony.

Mr. Martin: All right.

Mr. Albert: The witness did not testify as to that.

Mr. Martin: I think he did, your Honor.

Mr. Albert: He testified that they were members of the Guild during all of 1935.

Examiner Bennett: Will you read the question?

(Question read.)

Examiner Bennet: Yes.

By Mr. Martin.

Q. Prior to that time where did you buy your lower-
5328 priced garments? A. I am sorry. I don't understand your question.

Q. Prior to the early fall of 1935 when the lower-priced manufacturers became members of the Guild, from whom did you buy your lower-priced garments?

Examiner Bennett: From what class of manufacturers?

By Mr. Martin.

Q. From what class of manufacturers? A. From manufacturers who were organized in the market to produce that market.

Q. Were they Guild or non-Guild members—manufacturers? A. They were non-Guild manufacturers up until the time they became members of the Guild.

Q. And did you, during this period of the fall of 1935, use the Guild warranty stamp on orders for lower-priced goods? A. We did.

Q. Can you testify as to when you were first called upon to return merchandise to the manufacturers? A. Not the exact date, no. 5330

Q. Approximately? A. It was prior to the employing of the shopper in Cleveland, that is all I can tell you. Up to that time we had been informed of copies by letter and telegrams that it was urgent.

Examiner Bennett: Have you some further direct examination, Mr. Martin?

Mr. Martin: I think I have quite a bit more, your Honor. It is after 4.30, and——

Examiner Bennett: Yes. Well, I think we best adjourn until to-morrow morning.

Mr. Martin: All right, sir.

The Witness: 10 o'clock to-morrow morning?

Examiner Bennett: 10 o'clock to-morrow morning at this place. 5331

(Whereupon, at 4.30 o'clock P. M., August 11, 1936, the hearing was adjourned.)

Court Room No. 307,
Federal Building,
Cleveland, Ohio,
August 12, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

5333 M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: You may resume the stand, Mr. Miller.

W. E. MILLER resumed the stand and testified further as follows:

Direct examination by Mr. Martin.

5334

Q. Now, Mr. Miller, what percentage of the dresses in your women's and misses' ready-to-wear departments were purchased from Guild sources?

Mr. Albert: Objected to, if it please the Court. No proper foundation has been laid.

Mr. Martin: Perfectly good foundation has been laid. It does not need any argument on my part.

Examiner Bennett: I think the record already shows that he has made an investigation of that particular situation. Go ahead and answer, if you know.

A. We have studied our records, and from the indication from the records of purchases from Guild houses compared with other purchases in those price lines, we have estimated it runs between 60 and 75 per cent., depending upon the departments.

By Mr. Martin.

Q. Depending upon the departments? A. Depending upon the departments. 5336

Mr. Albert: I move the answer be stricken out. It is not responsive to the question. The question was with respect to a specific department, not general.

Mr. Martin: If your Honor please, the question was as to his women's and misses' dress departments. His answer that it was from 60 to 75 per cent., varying with the different departments.

Examiner Bennett: Yes. He spoke of price lines. I wish you would develop that, what he means.

Read the answer.

(Answer read.)

5337

By Mr. Martin.

Q. Just what do you mean, Mr. Miller, by saying, compared with other goods in the same price lines? A. I have reference to the price lines covered by Guild houses.

Q. Do you mean by that that in the price lines covered by Guild houses you also bought some merchandise from non-Guild houses? A. I do.

Q. Now, Mr. Miller, your store, did it at all times co-operate with the Guild in its activities? A It did.

Mr. Albert: May we have a time fixed, if the Court please.

By Mr. Martin.

Q. During the time it was a member of the Guild, during the time of its affiliation, or from the time of signing the Declaration of Co-operation until you were red carded, did you at all times co-operate? A. We did.

Q. Did you ever refuse to return any garments when
5339 requested?

Mr. Albert: May it please the Court, there is no testimony so far that they have been requested to return any.

Mr. Martin: I think there was from his testimony yesterday——

Examiner Bennett: That is my recollection.

Mr. Martin: —to that effect.

By Mr. Martin.

Q. You may answer. A. Yes, we did co-operate. We did not refuse to return any garments.

(A document was thereupon marked for identification "Commission's Exhibit 474.")

5340

By Mr. Martin.

Q. I hand you Commission's Exhibit 474 for Identification, and ask you can you identify that? A. Yes, I can.

Q. Will you describe it, please?

Mr. Albert: May it please the Court, I object to any description of anything that is not in evidence.

Mr. Martin: Well, let him say what it is.

A. It is a telegram addressed to the Fashion Originators Guild of America.

By Mr. Martin.

Q. From whom? A. From six stores in Cleveland.

Q. Were you one of those six stores? A. We were.

Mr. Martin: I offer this in evidence as Commission's Exhibit 474.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification "Commission's Exhibit 474," was 5342
marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Miller, have you made any study to determine the effect upon your store of being red carded? A. We have.

Q. What has been the effect of red carding so far as your ability to purchase ladies' and misses' garments?

Mr. Albert: That is objected to, if the Court please. There has been no foundation laid. I would like to know what his study has been before I accept his conclusions of an opinion as to what the effect has been. He may have studied the Cleve- 5343.
land "Press" or "Daily Dispatch" or New York "Journal" to find out what the effect has been.

Examiner Bennett: I think that is a matter for cross-examination.

Mr. Albert: May I point out I would like to know it beforehand so it does not go into the evidence. We can save a lot of time. He may be perfectly unqualified to give his opinion on it. Why should that evidence go into the record with the

effect upon the record and then have it stricken out if he is unqualified to testify on it?

Examiner Bennett: Read the question.

(The question was read.)

A. We have been unable to purchase from resources with whom we had done a sizeable volume of business.

Q. What has been the effect of red carding so far as the good will of your customers is concerned? A. We have been unable to furnish the same type of merchandise that we had before.

Q. What has been the effect on your store so far as your
5345 competitive standing with other merchants engaged in the same line of business in Cleveland——

Mr. Albert: Now, if it please——

Q. (Continuing) ——is concerned?

Mr. Albert (continuing): If it please the Court, there has been absolutely no foundation laid for this particular question. There has been no evidence whatsoever as to what investigation he has made of the competitive practice in Cleveland, of what the other stores have been doing, or what they have customarily been doing of a contrast between the volume of Taylor's and the other stores; and there has absolutely been no foundation laid for his
5346 giving his opinion. With all due respect, I think the stenographer is just as capable of giving an opinion, as far as the record is concerned, as this witness is at the present time. We are having opinions taken out of the air here.

I think we found in the past that being a divisional merchandise manager doesn't clothe a person with knowledge.

Mr. Martin: I thought you admitted yesterday that this particular divisional merchandise manager knew what he was talking about. I thought I heard you make that remark as you went out of the court room yesterday.

Mr. Albert: I may have made a remark that I was thankful that he hadn't been appointed divisional merchandise manager on February 1st of 1936.

Examiner Bennett: I will ask the witness a question here. I will ask the witness a question which may settle this debate.

5348

By the Examiner.

Q. Is it part of your job to keep yourself informed on competitive conditions in your line in Cleveland? A. Yes, it is.

Q. Do you keep yourself informed? A. Yes, I do.

Examiner Bennett: All right. Go ahead.

Mr. Albert: May I ask a question, if it please the Court?

Examiner Bennett: Yes, if you want to.

By Mr. Albert.

Q. In what way do you keep yourself informed, Mr. Miller? Just exactly what do you do? A. Shopping other stores continuously. 5349

Q. In what way do you shop them?

Examiner Bennett: I think that is cross-examination, proper cross-examination. I will shut it off right here.

Mr. Albert: Exception.

Mr. Martin: You may answer, Mr. Miller.

The Witness: May we have the question again?

Mr. Martin: Will you read the question back to him?

Examiner Bennett: Read the question.

(The question was read by the reporter as follows: "What has been the effect on your store so far as your competitive standing with other merchants engaged in the same line of business in Cleveland is concerned?")

The Witness: They have had access to the best houses in the market and we haven't.

By Mr. Martin.

5351 Q. Have you had to replace the lines which you formerly handled with other sources of—from other sources of supply? A. We have.

Q. Do you consider the sources of supply now available to you of equal standing with your former sources of supply? A. No.

Q. Have you been unable to supply your customers with the former grade of merchandise which you formerly handled? A. I don't understand what you mean by "grade."

Q. Well, we will change the word "grade" to "quality." A. I think so.

Mr. Martin: That is all.

Cross-examination by Mr. Albert.

5352

Q. For how long have you been division merchandise manager, Mr. Miller? A. Since April, 1929.

Q. Were you with Taylor & Company before that period? A. I was not.

Q. Have you any duties whatsoever with respect to the actual purchasing of dresses? A. Will you qualify that?

Q. Well, do you in any way assist the buyers in actually purchasing dresses? A. Yes, I go into the market with them periodically.

Q. How often did you go into the market, and which market are you referring to? A. I am referring primarily to the New York market. I go in approximately once a month.

Q. You mean that your go down to New York on an average of once a month to assist in purchasing the dresses? A. That is correct.

Q. Do you visit the various manufacturers in New York? A. I do.

Q. And inspect their lines? A. I do.

Q. Would you say that for the most part your duties in connection with the various departments over which you have control is of a statistical nature? A. No. 5354

Q. Would you say your duties were— A. Of a general nature.

Q. Well, specifically with respect to what? A. Specifically with respect to their buying and selling operations.

Q. You say that you don't personally buy? A. No.

Q. Isn't it your function to correlate the figures of the various departments, contrast and compare them with previous years and by virtue of that contrast and comparison lay down policies for the future guidance of the department? A. That is a part of the work.

Q. Yes. And as such you are thorough familiar with the various figures in the departments, are you not? A. I am.

Mr. Albert: May I have Commission's Exhibits 470, 471 and 472? 5355

(The exhibits referred to were handed to Mr. Albert.)

By Mr. Albert.

Q. Now, Commission's Exhibit 470, in evidence, is a list of the Guild houses from whom purchases were made during 1935 and the spring of 1936; is that correct? A. (Witness nods head affirmatively.)

Q. And is that a complete list of all the Guild houses with whom you did business during that period of time? A. To the best of my knowledge.

Q. Didn't you check it carefully? A. Yes.

Q. You went over your list, didn't you? A. Yes.

Q. Is there any possibility that you have omitted any? A. Not that I can see.

Q. That is, as far as your records are concerned, this reveals every single Guild house that you did business with during that period of time? A. That is true.

Q. Now, Commission's Exhibit 471 is a list of the Guild houses from whom purchases were made together with
5357 the cost figures of those purchases; is that correct? A. Correct.

Q. And that, I assume, follows Commission's Exhibit 470? A. Not necessarily.

Q. Why do you say "not necessarily"? A. Because the list of purchases at cost includes merchandise received during February, early February, 1936. The list—the other list includes, I believe, as the heading states, only the Guild houses with whom we did business during the year 1935.

Q. Well, Commission's Exhibit 470 is entitled "Guild Houses from whom purchases were made during 1935, and spring, 1936." And this includes only the year 1935 (indicating).

Q. Commission's Exhibit 471 is headed "Guild Pur-
5358 chases, February 1, 1935 to February 1, 1936." A. Correct.

Q. So that— A. Meaning——

Q. So that it does— A. —the purchases that were made that might have been made in early February, 1936, are not included on this list that you have now in your hand.

Q. Well, did you make any purchases from Guild houses after February 1, 1936? A. We received merchandise—our records, you see, cost records are not posted until merchandise is actually received in our store.

Q. Now, with respect to Commission's Exhibit 471, which contains the cost figures, are there any houses listed on that list who are not on Commission's Exhibit 470? A. I am not prepared to say. If you will let me examine the records I will tell you.

Q. Let me put it this way: Would all the houses listed on Commission's Exhibit 470 be listed on Commission's Exhibit 471? A. Will you state that question again?

(Question read.)

A. I am not prepared to say. I haven't checked those two records definitely together.

Q. Weren't the two records—weren't the two lists compiled from the same records? A. The second list was compiled from the first list, yes. 5360

Q. Well, that is what I mean. So that this—so that Commission's Exhibit 471—I withdraw it. The figures on Commission's Exhibit 471 could very easily have been contained opposite the houses listed on Commission's Exhibit 470, couldn't they? A. With the exception——

Mr. Martin: Object.

A. With the exception that I have stated.

By Mr. Albert.

Q. I notice that the firm of Matthes-Kadetsky Company of Boston is a concern from whom purchases were made in 1935 and in the spring of 1936; is that right? A. If that is the list. 5361

Q. Well, don't you know it aside from the fact it is on the list? A. I haven't my records available here. One list was prepared from the records, and I haven't those with me.

Q. Didn't you state that you personally prepared these records? A. Yes.

Q. Don't you recall you took Matthews-Kadetsky Company off your records?

Mr. Martin: I object. He has testified these were made and he cannot recall the names of all those people on that list, some two pages of typewritten names. I don't think counsel ought to expect him to memorize this list.

By Mr. Albert.

Q. Well, will you have those records available this afternoon, Mr. Miller? A. I would have to consult my firm about that.

5363 Q. Well, you would not want to conceal anything, would you? A. I am not making any effort to.

Q. You would want to show the Commission exactly how you prepared this list, wouldn't you?

Mr. Martin: If your Honor please, we are going back into that same old question. I would like to ask the Court at this time to advise the witness as to his rights in the matter. Counsel is requesting the production of papers which are not here, and I would like to have your Honor advise the witness as to his rights.

Examiner Bennett: I am simply advising him, as I have other witnesses in similar circumstances, that he is under no obligation to produce anything

5364 that he has not produced on direct examination; but so far as the Examiner is concerned if the witness cares to accommodate the respondent by producing the things they ask for, he is under no obligation.

By Mr. Albert.

Q. Have you been subpoenaed to attend this hearing Mr. Miller? A. I have.

Q. Did the Commission request you to bring certain records here? A. (No response.)

Q. Did you discuss your testimony before you came in with either Mr. Haycraft or Mr. Martin?

Mr. Martin: I object to that.

Mr. Albert: I think it is most relevant, especially at the impasse I have reached. I don't think I am required to take this man's figures on their face.

Examiner Bennett: Just a moment. I want to say something with regard to that. It is assumed that any experienced lawyer will not offer a witness to any tribunal without knowing whether that witness' testimony is going to be of some importance and some weight in the record as bearing upon the issues which are at stake. 5366

Mr. Albert: Naturally.

Examiner Bennett: There is only one way of finding that out and that is by consulting the witness and knowing in general what he has to say. We will assume, in all this inquiry, that the Commission's attorneys know approximately what their witnesses are going to say. I am speaking now of testimony other than some passing upon public opinion where it is necessary to get the witness without knowing anything about what he has to say. I assume that when the respondents present their case, they will know what the witness is going to say, at least approximately. I think it would be a very poor compliment to the tribunal to have any other state of affairs. Now, let us assume that that is true and let us go ahead. 5367

Mr. Albert: I did not for one moment, by the question, mean to imply that the Commission had not consulted with its witnesses beforehand, nor did I mean to cast any reflection upon them for it.

I am trying to find out what happened with respect to these records in order to know where they are and how I can get at them. I do not think, under any system of procedure, administrative or judicial in the legal sense, that I am required to accept this man's figures at their face value without being given an opportunity to go into them and finding out what they are.

Examiner Bennett: There is no way you can get them on cross-examination.

Mr. Albert: May it please the court, the Commission certainly had the right to subpoena this man to bring them into court, and if he refuses to do that they are subject to Section 10 of the Federal Trade Commission. If the Commission is trying to get the facts, and not to prosecute or persecute, he ought to bring them in. They have had sufficient experience in Philadelphia and Boston to see what is going on with respect to these witnesses from department stores who come in and present figures and do not present records when we try to examine them. What kind of evidence is that going to look like before the Circuit Court or any other tribunal. I don't think they can place much credence in a man that comes in and gives us figures and won't give us the basis on which he computed those figures.

Examiner Bennett: I have said what I have to say. I think when the proper time comes you can subpoena those records if you can make the correct foundation for it, but this is not the proper time.

Mr. Albert: Well, now——

Examiner Bennett: I think you are hardly in a position to dictate what the Commission's attorneys

want to offer in their case. If they do not offer an adequate proof of their case, why, it is too bad for them, that is all.

Mr. Albert: But, your Honor, we are being placed in this position. I think it must be conceded that as far as those figures are concerned, we should have the privilege of cross-examining. Before we have that privilege we have to come back to Cleveland.

Examiner Bennett: You have that privilege. We are not going into an audit of those books. You can fill up the record with that stuff if you want to, but I don't see that it is going to serve you at all. 537

By Mr. Albert.

Q. I notice, Mr. Miller, that Commission's Exhibit 470, Matthes-Kadetsky Company of Boston, was listed as a house from whom purchases were made by Taylor during 1935 and the spring of 1936. Do you want to follow me on the exhibit (indicating)? A. Yes.

Q. Matthes-Kadetsky is among the affiliated members? A. That is correct.

Q. Now, despite the fact that you purchased merchandise from them during the spring of 1935 and 1936, I notice that they are not included in your Commission's Exhibit 471 with respect to the amount of purchases made from them. Can you explain that? A. That is possible. 537

Q. Well, I know it is possible. There are many reasons why it can be possible. I would like to know what your explanation is. A. I have no recollection of it.

Q. Can you find out for us between now and this afternoon? A. I suppose I could.

Q. Will you do it? A. If it does not involve bringing in a lot of records here, which I have no right to do. If all you want to know is whether or not there is an error in these two lists, I will verify that for you.

Q. You want to offer these various figures—You went over these various figures and lists with Counsel for the Commission, didn't you? A. No.

Q. Did not you discuss them with them? A. I handed them to him.

Q. You just handed it to him in complete form? A. That is right.

Q. He did not go over the records with you? A. He did not.

Q. So that, in so far as the Commission is concerned, they have no knowledge of the accuracy of those records except the fact that you told them they are accurate? A.
5375 I am not prepared to testify to that.

Q. That is so; they have not seen the original records?

Mr. Martin: I object.

Mr. Albert: There is certainly no trade secret revealed.

Examiner Bennett: Will you sit down until this other gentleman gets through?

Mr. Albert: I am sorry.

Mr. Martin: The witness has put in these exhibits. He has testified how they were made up. He has testified to the best of his knowledge and belief that they are correct, and the exhibits speak for themselves.

Mr. Albert: I suppose we are supposed to lay
5376 down and take the figures without doing anything about it.

Mr. Martin: Not at all. You can cross-examine him all you please.

Mr. Albert: Well, then, permit me to cross-examine.

Examiner Bennett: You may proceed.

Mr. Albert: Will you answer the question?

(Question read.)

Examiner Bennett: There is an objection to that.

Mr. Martin: I object to that question.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Aside from anyone connected with Taylor & Company, has anyone from the Commission checked the accuracy of these records?

Mr. Martin: Objected to.

Examiner Bennett: Sustained. 5378

Mr. Albert: Exception.

By Mr. Albert.

Q. On Commission's Exhibit 470; in evidence, under members of Dress Creators League I notice the name New York Dress Company? A. Correct.

Q. Can you find that dress company with the amount of purchases made from it on Commission's Exhibit 471? A. No.

Q. Have you any explanation for that? A. Not without consulting the record.

Q. On Commission's Exhibit 470, under members of the Dress Creators League, I notice that Reich Goldfarb is listed as a party from whom you purchased goods during 1935 and '36. Do you find that? It is down near the bottom. A. Yes. 5379

Q. Will you please find that name listed for me on Commission's Exhibit No. 471? A. I do not find it.

Q. Is there any explanation as to why, if you purchased goods from them during 1935, the amount of that purchase is not included in Commission's Exhibit 471? A. I am not prepared to say.

Q. I also notice on Commission's Exhibit 470, Franklin House of Chicago. A. Right.

Q. Do you notice that? A. Yes.

Q. Will you please find that for me on Commission's Exhibit 471? A. No, it is not there.

Q. Is there any explanation for it? A. Not without consulting the record.

Q. Now, with all of these various concerns, with whom you did business in 1935, there is not any doubt but what you did business with them in 1935? A. The ones——

Q. You seem to hesitate.

Mr. Martin: Give him a chance.

5381

A. Not the ones that are listed here definitely as having been purchased from.

By Mr. Albert.

Q. You have a staff of accountants and clerical assistants in Taylor & Company, have you not? A. I have a staff of clerical assistants.

Q. Clerical assistants? A. Yes.

Q. There are also, I presume, accountants who can be made available to you at your request? A. Correct.

Q. Is it not customary for them to draw up lists of this kind?

5382

Mr. Martin: I object to what is customary for somebody else to do.

Mr. Albert: Laying a foundation, if it please the Court.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: For whom?

(Record read.)

Examiner Bennett: I will let him answer if he knows.

The Witness: Will you read the question back again?

Q. (Question again read.) A. The original list of Guild houses with whom we did business was made out by me personally and was turned over to the accounting division at my request to draw up the list of actual dollars purchased from these houses, and was submitted to me at my request.

By Mr. Albert.

Q. Did you give them any instructions as to how to prepare Commission's Exhibit No. 471? A. Of what nature? 5384

Q. Did you give them any instructions? A. I do not quite understand your question.

Q. Well, you told them to prepare a list for you. A. Yes.

Q. What were your instructions with respect to that list that they were to prepare? A. To prepare a list of cost purchases from those houses.

Q. From the houses that you gave them, listed on No. 470? A. That is right.

Q. When the list that they gave you was handed back to you, that is when Commission's Exhibit 471, in evidence, was given to you by your accountants as an accurate compilation of the purchases of Guild houses, did you compare it with Commission's Exhibit 470, your own list? A. I did not compare it resource for resource. In other words, I did not take the resources list and go down one by one and compare it. I did go over this resource list to see that the houses included in here were houses that were familiar to me as being the ones that we had done business with. 5385

Q. That is, you merely looked at No. 471, in order to see if the houses therein contained were familiar to you as being Guild houses? A. Correct.

Q. But you didn't compare it with your own list in order to check on the accuracy of Commission's Exhibit 471? A. I did not check as to the list, resource by resource. I did not.

Q. With respect to all of the estimates and figures that you have been giving us up to the present time, have you just as carefully checked the accuracy of those figures as you have with respect to 470 and 471? A. No. I think I have been accurate in my statements so far.

Q. Have you been as accurate in your other figures in checking their accuracy as you have been with respect to Commission's Exhibits 470 and 471? A. I think I have been more accurate.

5387

Q. That is, you hope you have? A. I think I have.

Q. Well, you obviously had no idea whatsoever of the accuracy of Commission's Exhibit 471; did you? A. I wouldn't say that.

Q. Well, you don't mean to tell me that if you had checked Commission's Exhibit 471 with Exhibit 470 you wouldn't have seen the errors? A. Commission's Exhibit 471 is correct.

Q. As far as it goes, perhaps. A. Commission's Exhibit 471 is correct.

Q. Yes. But you stated that you gave your accountants and your clericals, or whoever it was that drew up Commission's Exhibit 471, instructions to get the actual purchases of the houses listed in Commission's Exhibit 470;

5388

didn't you? A. That is right.

Q. Now, there are approximately four or five houses contained on Commission's Exhibit 470 that are not contained on Commission's Exhibit 471. A. That is right.

Q. So that if your clericals and accountants upon whom you relied for your information to a great extent—they made a grevious error; isn't that so? A. Not necessarily.

Q. Well, obviously, they discarded certain houses that you thought were important; isn't that so? A. Not necessarily.

Q. Well, you prepared Commission's Exhibit No. 470; didn't you? A. I did.

Q. You thought that all the houses therein contained were required to be on that list; didn't you? A. I did.

Q. You didn't give them any instructions to leave any houses off of that list; did you? A. I did not.

Q. You specifically told them to take those houses and give the actual purchases of those houses, isn't that so? A. That is correct.

Q. Well, now, let me ask you this, Mr. Miller. I notice that Commission's Exhibit 470 is divided into various component parts of affiliated members, members of the dress creators league, and in all there are three different 5390
lists on Commission's Exhibit 470? A. That is correct.

Q. When we turn to Commission's Exhibit 471, we find all of the houses listed alphabetically without this distinction as to classification? A. That is right.

Q. Do you think your clericals thought that the error might be overlooked? A. No.

Q. By reason of that re-classification of your list? A. No. No.

Q. Did they like their classification better; do you know? A. It is an alphabetical classification that the ledger cards are set up with—in.

Q. You asked them to get up a list of purchases in conformity with your list; didn't you? A. That is correct.

Q. Wouldn't it have been very simple for them merely to 5391
put down the purchases along side the names on your list? A. Yes. Yes, but not necessary.

Q. I mean, it would have been very simple; wouldn't it? A. It could have been done.

Q. Don't you think that there is some serious question as to the necessity of preparing an entirely new list in a different form than your list, especially when an error creeps up in it?

Mr. Martin: Now, if your Honor please, I object to this line of questioning. The witness has testified that he furnished the clerical department with a list of names on which he wanted information. Now, I submit that it is wholly immaterial whether the clerical department went through their files and picked them out alphabetically, or whether they did them this way and whether they did them that way or the other way, as long as the information was furnished.

Mr. Albert: That is just the point.

Mr. Martin: It is immaterial.

5393 Mr. Albert: If it please the Court, Mr. Miller asked his clericals or accountants for information and didn't even see fit to determine specifically and accurately whether they gave him the information he wanted, and yet he comes in before this tribunal and vouches for the accuracy of the records that have been presented to him, and on a very simple examination of it, merely a compilation of lists, we find five names missing from the one list as regards the other, and yet we are supposed to depend upon testimony of that kind to determine an issue of this kind, and I can't get their figures and the Commission won't assist me in getting their figures on a simple little matter like this. God knows what errors have been made on their more vital figures.

5394 Examiner Bennett: I take these to be their figures (indicating Commission's Exhibits 470 and 471).

Mr. Albert: I am sorry. I didn't hear your Honor.

Examiner Bennett: I say, I take these to be their figures (indicating).

By Mr. Albert.

Q. Now, will you turn to Commission's Exhibit 472. A. I don't have that.

Q. (Commission's Exhibit 472 was handed to the witness.) When did you say Taylor & Company was read carded? A. I am not sure of the date. I can give you the approximate date.

Q. What is your approximate of the date? A. About February 16 or 17.

Q. Well, now, you knew that you were coming in here to testify; didn't you? A. Yes, surely.

Q. You knew that one of the main subjects of this investigation was a red carding of Taylor & Company; 5396
didn't you?

Mr. Martin: If your Honor, please, I object to this. The witness has testified that he doesn't know the exact date, and it is further in the record he testified that they were never notified by the Guild or any other person that they were red carded; that the first knowledge they had was what they saw in Women's Wear, and he has testified it was around the middle of February, but he doesn't know the accurate, the exact date, and, obviously, he wouldn't know it when they had received no notification of it from the Guild.

Mr. Albert: If it please the Court, it seems to me that it is the philosophy of Government's counsel in this case with respect to our rights in the matter, that we should come in and listen to testimony and then walk out and do nothing at all about it. I think I have a perfect right to find out why this man doesn't know information that is of vital importance to him, why he hasn't found it out before he came in here to testify. It certainly is the province of cross-examination to attack the credibility of a witness. 5397

Mr. Martin: I have no objection to counsel asking questions, but I do want him to ask the proper questions.

Mr. Albert: Well, we differ as to what is a proper question.

Mr. Martin: That is the point I want the Judge to rule on. Not you.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Albert: Merely a preliminary question, your Honor.

Examiner Bennett: What is it preliminary to, if you don't mind.

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Mr. Albert: The witness, I believe, is very intelligent, your Honor, and knows exactly what my next question will be, and I have no hesitancy in telling it to him. Why, if this were so important and he knew he was going to testify, didn't he in one minute's time over at his firm take the time to find out when he was red carded so that he could testify definitely to it?

Examiner Bennett: Yes.

Mr. Albert: That is a very simple issue, because I am going to show that they don't want to find out things.

Examiner Bennett: I think the testimony is that the red carding, the subject of the red carding——

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Mr. Albert: That may be so, your Honor, I haven't reached——

Examiner Bennett: It is something within the knowledge of the respondent, absolutely.

Mr. Albert: Now, your Honor, that may be so. I haven't reached that point.

Examiner Bennett: It isn't of any crucial importance here as to what date it occured, so far as I can see. I think I will sustain the objection.

Mr. Albert: If your Honor please, the particular date is not of any crucial importance in this proceeding, but as regards the credibility of this witness and his frankness in giving testimony, it is important to show that despite the fact that he knew the importance of the matter, yet he didn't think it necessary to find out specifically what day it was, which was a matter very easily found out by anybody.

Examiner Bennett: Yes. The matter isn't important. I have listened to what you have had to say. I am going to sustain the objections to that particular inquiry. I think you have all of the 5402
information, and I think it bears not at all upon the credibility of this witness.

Mr. Albert: Exception.

By Mr. Albert.

Q. When would you say was the approximate time that Taylor & Company was red carded, Mr. Miller? A. Around February 15 or thereabouts.

Q. When did you make your purchases of merchandise for delivery during the month of February, 1936, approximately? A. Some time during the month of January.

Q. That would be within the period from January 1st, 1935 to February 1, 1936; would it not?

Mr. Martin: January 1, 1936. 5403

A. Will you please restate that?

Mr. Albert: I will withdraw that.

By Mr. Albert.

Q. That would be between the period January 1, 1936, to February 1, 1936, wouldn't it? A. Yes.

Q. Will you turn to Commission's Exhibit No. 472. A. (Witness does as requested.)

Q. You will notice under Department 330— A. Right.

Q. —you have listed Rosen Brothers. A. Right.

Q. As an order outstanding at the time of red carding? A. Correct.

Q. Will you please find Rosen Brothers listed as a Guild resource from whom you made a purchase during 1935-1936 as found in either Commission's Exhibit No. 470 or Commission's Exhibit No. 471?

Mr. Martin: Now, if your Honor please, I object to that. That question is obviously unfair.

5405 Here is a list, Commission's Exhibits, of orders outstanding. The other list contains purchases. There is quite a distinction between orders and purchases.

Mr. Albert: I fail to see the distinction, if it please the Court, unless the William Taylor & Company is coming in here and attempting to set up some vague strong man that we are not supposed to pierce.

Mr. Martin: In other words, your Honor, this is a list of purchases, the amount of money which was spent by Taylor for these goods. This other list, Commission's Exhibit 472, is an amount of orders which they testified they couldn't get filled.

5406 Therefore, if the orders were filled, the purchases—the orders were not filled. The purchases were not made and obviously would not appear on that list.

By Mr. Albert.

Q. Well, now, Mr. Miller, let's start back a little further. Did you make any purchases from Rosen Brothers during 1935 and 1936, prior to your red carding? A. Yes.

Q. You did? A. Yes.

Q. So that your orders for $93.25, $10.75, $2.60, and $10.75 were not the first orders that you gave to Rosen Brothers, were they? A. No.

Q. Will you explain Rosen Brothers cannot be found in Commission's Exhibit 470 or Commission's Exhibit 471? A. Commission's Exhibit 470 does contain Rosen Brothers.

Q. Commission's Exhibit 470? A. Yes.

Q. I am sorry. I meant to say Commission's Exhibit 471. A. Commission's Exhibit 471 also contains Rosen Brothers to the extent of $8,189, the largest single purchase on there.

Q. Well, now, will you turn to Department 350. A. On which exhibit, if you please? 5408

Q. On Commission's Exhibit 472. A. Right.

Q. What does Deb. Mode refer to? A. Deb. Mode?

Q. Yes. A. It refers to a manufacturer, and it is an error. I am sorry.

Q. It is an error? A. It is an error.

Q. Did you check that exhibit before you brought it into court? A. I did, but I overlooked it.

Q. Are there any other errors that you might have overlooked? A. No.

Q. You are quite certain of that? A. Positive.

Q. Are you making an error when you say you haven't made any other errors? A. No.

Q. Will you look at Lipman Brothers listed on Commission's Exhibit 472? A. Yes.

Q. Is that contained on Commission's Exhibit 471? 5409

Mr. Martin: The same objection, your Honor, that I previously made. It is two lists of different things.

Examiner Bennett: I will overrule the objection.

By Mr. Albert.

Q. You may answer. A. No.

Q. Do you find it on Commission's Exhibit 470? A. I do not.

Q. So that when you stated in response to my questions after you had admitted an error with respect to Deb. Mode that there couldn't possibly be any other error in the exhibit as listed— A. In Exhibit——

Q. —you were mistaken? A. In Exhibit 472 I was testifying to.

Q. Yes. A. That is correct.

Q. You were mistaken? A. No, I was not mistaken. It is not an error. Commission's Exhibit 472 is correct with the exception of the error that I pointed out to you.

Q. Well, then, Commission's Exhibit 470 and 471 are in error; isn't that so? A. There is an omission.

5411 Q. Omission. Well, we will use your word for it. Now, Mr. Miller, you testified yesterday, I believe, that none of the orders contained in Commission's Exhibit 472 were at any time filled; is that correct? A. That is correct.

Q. Is Commission's Exhibit 472—does that represent a list of all orders that were outstanding at the time of the red carding? A. To the best of my knowledge, and I prepared the list.

Q. That is, on or about February 16 or 18, 1936, the date of the red carding that you approximately gave, there were no other orders outstanding except the ones contained in Commission's Exhibit 472? A. To the best of my knowledge.

Q. And since those orders were not filled, then no orders of any kind outstanding at February 18, 1936, were filled;
5412 is that correct?

Mr. Martin: I object to that.

A. No, that isn't correct.

By Mr. Albert.

Q. On or about the date of the red carding, did you have orders outstanding with any other firms except the firm—

in addition to the firms listed in Commission's Exhibit 472?

Mr. Martin: I object to that question, your Honor. That is not in proper form. If he wants to ask, "Did you have any other orders outstanding with any other Guild manufacturers," that is perfectly correct, but whether they had orders with—

Mr. Albert: I will accept Mr. Martin's amendment.

Examiner Bennett: All right. You may answer.

The Witness: Will you read the question, please?

(Question read as follows: "Q. On or about the 5414
date of the red carding, did you have orders outstanding with any other firms in addition to the firms listed in Commission's Exhibit 472? Mr. Martin's amendment was: Did you have any other orders outstanding with any other Guilld manufacturers?")

The Witness: To the best of my knowledge, we did not.

By Mr. Albert.

Q. And you have carefully checked your records in order to give us a complete list of all Guild houses? A. I——

Q. Will you please wait until I finish the question? Your have carefully checked your records to give us a 5415
complete list of all Guild houses that owed you merchandise at the time of the red carding? A. I checked over all orders that were open at that time.

Q. Do I understand you correctly that you have never received any merchandise from the houses listed on Commission's Exhibit No. 472 with respect to the orders that were outstanding at the time of the red carding?

Mr. Martin: Objected to as repetition. The witness has already testified two or three times that these orders were not filled.

Mr. Albert: The answer "Yes" would have been less awkward than Mr. Martin's objection, I think.

Examiner Bennett: I will let him answer. Overruled. You may answer.

The Witness: What?

Examiner Bennett: You may answer.

Mr. Albert: Read the question.

Q. (Question read.) A. It is correct, according to our
5417 records.

By Mr. Albert.

Q. Now, did any of the manufacturers listed in Commission's Exhibit 472 offer to deliver the merchandise to you that was outstanding at the time? A. No.

Q. You are quite certain of that? A. That is right.

Q. Did you refuse in any way to accept delivery of the merchandise from the houses listed in Commission's Exhibit 472? A. We didn't have that opportunity.

Q. In other words, after the red carding, all of these houses refused to deliver goods which you had previously ordered? A. They did not deliver goods.

Q. I beg your pardon? A. They did not deliver goods.

Q. Yes. They refused to deliver it to you? A. They
5418 did not deliver.

Q. And did not?

A. (Witness nods head affirmatively.)

Q. Do you know when these orders were placed as listed in Commission's Exhibit 472? A. They were placed within the period which you stated.

Q. What period is that? A. Between the period February 1, 1935, to February 1, 1936.

Q. They were placed, then, before February 17, 1936; is that correct? A. That is correct. If that is the date of the red carding. That hasn't been definitely fixed, and I am not positive of it.

Q. I show you Respondents' Exhibit 24, for Identification. I will ask you if that is your signature? A. That is.

Q. Does that signature appear on the letterhead of William Taylor & Sons Company, addressed to Fashion Originators Guild? A. It does.

Mr. Albert: I offer this letter in evidence.

(Letter handed to Mr. Martin.)

Mr. Albert: The pencil notations on it are out, Mr. Martin. 5420

Examiner Bennett: The witness saw only the heading and the signature on the letter.

Mr. Martin: Yes.

Examiner Bennett: Of the document, whatever it is.

(Letter was handed to the witness.)

Mr. Martin: No objection.

The Witness: It is all right.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 24, was marked as an exhibit and received in evidence.)

By Mr. Albert, 5421

Q. Do you know of the firm of Bernard Appel & Company? A. I do.

Q. Were they a Guild house in 1935 and 1936? A. Yes.

Q. Will you find their name for me listed, if you will, please, on Commission's Exhibit 472, as being a firm from whom you had purchased goods which were not delivered at the time of the red carding?

Mr. Albert: I show your Honor this letter in which Bernard Appel is so listed.

A. It is so contained on that.

Q. Now, according to Respondents' Exhibit 24, on March 11, 1936, you wrote to the Fashion Originators Guild that there were still outstanding orders which you had placed with Bernard Appel, isn't that so? A. That is correct.

Q. Do you wish to change your testimony previously given to the effect that Commission's Exhibit 472 is apparently correct and accurate? A. As far as it goes.

Q. But it does not go far enough? A. It is possible
5423 this was made up from a record of our unfilled orders, not at the time of red carding, but after the time of red carding. It is possible that that order was misplaced.

Q. You want to be perfectly fair and frank with us, don't you, Mr. Miller? A. Yes.

Q. There has been a mistake made in Commission's Exhibit 472 in listing? A. There was a mistake in listing.

Q. And possibly where we discover one error there may be other errors? A. Not on this exhibit, this exhibit, with the exception of one error that we pointed out to you, is correct.

Q. In Commission's Exhibit 472, it is claimed that you had outstanding orders uncompleted from Guild resources from the Baron Dress Company, Dresden Dress, Goldstein, Etkin, Radiant Dress, Rosen Brothers, Bender & Ham-
5424 berger, William Bass, Milton Altmark, Feigenbaum & Adelson, Pauline Fields, Mary Lee, B. G. Garment, Deb. Mode, which you have stated is entirely in error? A. Yes.

Q. And should be off the list completely? A. Yes.

Q. Cecele, Mattie Moskowitz, and Lipman Brothers: is that correct? A. That is correct.

Q. So, that is sixteen firms? A. I did not count them.

Q. I have just counted them. A. Yes.

Q. There are sixteen firms, so there are more orders than sixteen? A. Yes.

Q. In your letter of March 11, 1936, you state the following: "At the present time we still have undelivered orders outstanding with the following manufacturers: Bernard Appel, Milton Altmark, William Bass, Mary Lee." A. That is correct.

Q. At that time, did you have any other orders outstanding? A. All orders had been filled up to that time. All orders in addition to those had been canceled and removed from our files.

Q. What orders of those listed in Commission's Exhibit 472 did you cancel? A. I am sorry. I did not get your 5426
question.

Mr. Albert: Will you read the last answer and question?

(Record read.)

The Witness: All those that are still not outstanding as of the 11th, with the exception of the error which you pointed out of Bernard Appel.

Examiner Bennett: Do you want to follow this right up? It is time for a recess.

Mr. Albert: Very well.

Examiner Bennett: Ten minutes.

Mr. Albert: Unless you wish to permit me to ask two or three questions on that.

Examiner Bennett: Certainly, go ahead. 5427

By Mr. Albert.

Q. Do I understand you to mean, Mr. Miller, that with the exception of Bernard Appel, Milton Altmark, William Bass, and Mary Lee, referred to in your letter of March 11, 1936, being Respondents' Exhibit 24, all of the orders that were outstanding as listed in Commission's Exhibit 472, were canceled? A. Were canceled and removed from our

files. We have an internal cancellation system which does not necessarily go to the manufacturer.

Mr. Albert: Very well, then, we will have a recess. All right.

By Mr. Albert.

Q. Mr. Miller, you have admitted certain errors to be prevalent in Commission's Exhibits 470, 471 and 472, and merely on the basis of comparison of the various documents that are in evidence.

Mr. Martin: Object to that.

5428 Mr. Albert: I have not finished my question.

By Mr. Albert.

Q. Don't you believe it possible that if counsel for the respondents were given the opportunity of examining the records from which these exhibits have been drawn that other errors would be found?

Mr. Martin: Objected to as being no admission of an error.

Examiner Bennett: Sustained.

Mr. Martin: Except in the one case.

Examiner Bennett: Sustained.

By Mr. Albert.

5430 Q. Well, now, let us go back. I believe you admitted, Mr. Miller, that there were various names contained in Commission's Exhibit 470 that were not contained in Commission's Exhibit 471.

Mr. Martin: Objected to.

By Mr. Albert.

Q. Is that correct?

Mr. Martin: He has already answered that question.

Mr. Albert: Now, if it please the Court, Mr. Martin has stated there have been no admission of any errors. Certainly I should be permitted to point out that there have been admissions of errors.

Examiner Bennett: Answer the question.

Mr. Albert: Read the question.

Q. (Question read.) A. I said that certain names in 471 that were contained in 470 were omitted on 471; that is correct. 5432

By Mr. Albert.

Q. You also testified that there was a mistake in Commission's Exhibit 472 in the complete list of one of the so-called manufacturers listed there; isn't that so? I am referring to Deb. Mode. A. I admitted that the Deb. Mode is still there in error.

Q. Well, then, let me ask you this question, Mr. Miller: Do you believe it possible, in the light of your previous testimony, that if the attorneys for the respondents were permitted to examine the records of Taylor & Company we might be able to disclose other omissions from these exhibits which have been entered into evidence? 5433

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, with respect to Commission's Exhibit 472, which of the orders from the manufacturers therein listed were canceled?

Mr. Martin: Objected to, your Honor. The witness has already testified that all orders were canceled except those which appeared on Respondents' Exhibit No. 24.

Mr. Albert: But Mr. Martin forgets, if it please the Court, that the witness has differentiated between two types of cancellations. He said some
5435 were cancellations and some were internal cancellations in his department store. I think it is incumbent to point out the difference.

Examiner Bennett: Do you want to point out that difference here?

The Witness: So far as our procedure is concerned, there is no difference.

By Mr. Albert.

Q. Well, now, as a matter of fact, Mr. Miller, when you cancel an order, don't you notify the manufacturer of that fact? A. Not if we have already been notified that the order is not going to be filled.

Q. Were you notified when the order was not going to
5436 be filled, these orders? A. Told by manufacturers that they were not going to fill them.

Q. Were you notified by these particular manufacturers that these particular orders were not going to be filled? A. I cannot testify which ones we were notified.

Q. And you were notified by all of them? A. Only notified, that is all I can tell you.

Q. Were you notified by Baron Dress Company that they would not fill the order that was then outstanding? A. We were notified. That is all I can tell you.

Q. How were you notified? A. By being red carded.

Q. How were you notified by Baron Dress Company? A. I have told you all I can about it.

Q. Were you notified by Dresden Dress? A. I told you all I can about any of those.

Q. Then you don't know whether or not they subsequently notified you of their refusal to furnish the order?

Mr. Martin: Objected to. The witness has testified as to what he knows about it.

Examiner Bennett: Overruled. You may answer.

A. We knew definitly that all of those orders were not 5438
going to be filled.

Q. How did you know definitely? A. Because we were red carded.

Q. Aside from the fact that you read in Women's Wear that you were red carded, from your association with the Guild you presumed that manufacturers would not deliver merchandise to you, did you have any knowledge that these particular manufacturers would not deliver merchandise to you on outstanding orders? A. Our buyers contacted manufacturers in the market and were informed that they would not deliver—could not deliver any orders then outstanding.

Q. Did your buyers contact any other manufacturers listed in Commission's Exhibit No. 472? A. They did.

5439

Q. Which ones did they contact? A. I do not recall.

Q. Did you question them about it? A. I did.

Q. Did they make any written reports to you? A. Verbal.

Q. Was that the subject of any inter-office memorandum of any kind? A. That was the subject of considerable discussion.

Q. But did you make any inter-office memorandum of it?

Mr. Martin: Objected to. The witness has answered the question.

Mr. Albert: He has not answered the questions.

Mr. Martin: He said "verbally."

Mr. Albert: He said it was the subject of verbal discussion. That does not preclude the fact that there may have been an inter-office memorandum of it.

Mr. Martin: You asked him the question, "Did they make any memorandum," and he said, "verbally."

Mr. Albert: The reply to my question is either "yes" or "no."

5441 A. I don't recall.

By Mr. Albert.

Q. No. Is there any written notation of any kind on the order itself as to the disposition of the order? A. I don't understand the question.

Q. What record have you got, written record, that the Baron Dress Company refused to deliver to you any merchandise? A. I don't recall.

Q. You mean by that that there may be, but you are not sure? A. I don't recall. It is very clear.

Q. Then you don't know one way or the other? A. I don't recall.

5442 Q. Well, can't you explain what you mean by "I don't recall"? A. I think it is clear enough.

Q. Well, no, I don't think it is clear. I don't quite understand you, and I presume that you want to be helpful to me. A. I am trying to be very frank with you.

Q. Do you mean by that that you don't know one way or the other whether or not there is a written memorandum? A. I think it perfectly clear. These manufacturers would not deliver merchandise to us. Now, as to the means that they advised us of that, I am not in a position to say because I do not recall.

Q. Did Bernard Appel notify you that he wouldn't deliver merchandise to you? A. I don't recall.

Q. Did Milton Altmark notify you that he wouldn't deliver merchandise to you? A. I am not sure. I am—I don't recall whether he did or whether he didn't.

Q. Did William Bass notify you of that? A. I don't recall.

Q. Did Mary Lee notify you in any way? A. No.

Q. Now, as a matter of fact, didn't Bernard Appel, Milton Altmark, William Bass and Mary Lee fill their orders? A. They did not.

Q. When did you cancel the orders contained in Commission's Exhibit 472? A. Subsequent to the time we were red carded and prior to March 11. 5444

Q. What information did you have that prompted you to cancel the orders listed in Commission's Exhibit No. 472 and not the orders listed in Respondents' Exhibit 24? A. After the delivery dates had been passed on orders listed in Commission's Exhibit 472 we canceled them. The other orders which were still outstanding, because there was no reason on our part to cancel them, until we were definitely sure they would never be filled, we had been told that they would not be filled.

Q. Did you thereafter become definitely sure that they would not be filled? A. They were not filled.

Q. No. Did you thereafter become definitely sure that they wouldn't be filled. A. I said they were not filled.

Q. I am not asking you that. That is the result. A. 5445
That is the best——

Q. I am asking—you differentiated between these two lists and said that you didn't include those on Respondents' Exhibits 24 because you had not received definite assurance that they would not comply with the filling of the order. Now, what information did you receive? A. I am sorry——

Mr. Martin: The witness did not make that statement.

By Mr. Albert.

Q. What is your statement? A. I think the record will show it.

Mr. Albert: Will you read back his answers, please?

(The record was read.)

By Mr. Albert:

5447 Q. Now, would you mind explaining what the difference is between the two lists? A. Well, one list is the list of orders that Exhibit 472—Commission's Exhibit 472 is the list of orders that were outstanding at the time we were red carded with the exception that you have pointed out of Bernard Appel, which was omitted from that list. Respondents' Exhibit 24 is a list of the orders that were still outstanding, had not been canceled or received from our files on March 11, 1936.

Q. Well, you stated by reason of the fact that you were red carded, and therefore presumed that no merchandise would be delivered, that you canceled orders contained in Commission's Exhibit 472 on your books. A. As they became due.

5448 Q. Didn't you cancel them with respect to the date that the order was placed rather than with respect to the delivery date? A. No.

Q. You are quite certain of that? A. I feel reasonably sure of that.

Q. You mean by that that you are now not certain of it or you are still certain of it? A. I say I feel reasonably sure of it.

Q. Do you know when Bernard Appel—withdraw that question. Do you know the delivery date of the orders

that had been placed with Bernard Appel that are referred to in Respondents' Exhibit 24? A. I don't recall that now.

Q. Do you know the delivery date of the orders that had been placed with Milton Altmark, referred to in Respondents' Exhibit 24? A. No, I don't recall.

Q. Do you know the delivery date of the orders placed with William Bass, referred to in Respondents' Exhibit 24? A. I don't recall exactly.

Q. Do you know the delivery date of the orders placed with Mary Lee, referred to in Respondents' Exhibit 24? A. I do not. I do not recall the exact date, no.

Q. As a matter of fact, Mr. Miller, isn't it true that the orders referred to in Respondents' Exhibit 24 were the 5450
orders that you chose to have delivery of and that you didn't choose to accept delivery of the orders contained in Commission's Exhibit 472?

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. No, that is not true.

By Mr. Albert.

Q. Isn't it a fact that with respect to all orders outstanding at the time of the red carding, William Taylor & Sons sought to chose which orders they wished filled at that time? A. It is not true.

Q. Now, I believe William Taylor & Sons is affiliated 5451
with the A.M.C.?

Mr. Martin: Objected to, irrelevant, immaterial, not proper cross-examination.

Mr. Albert: It is merely a preliminary question, if your Honor please, laying a foundation on this very point.

Examiner Bennett: The objection is sustained as to that question. I think nothing about that was covered by the direct examination.

Mr. Albert: Well, I think, if your Honor will recollect, previous testimony on this identical topic. I am merely asking it in connection with the orders, and your Honor will see exactly what I am driving at.

Examiner Bennett: What are you trying to do? I want to see what you are trying to develop. Are you attacking his statement that he did not have adequate sources of supply?

Mr. Albert: I am attacking his particular testimony, your Honor, that he could not get his orders which were outstanding at the time of the red carding, and I think that I can prove that they were available to him by reason of the fact that it has been previously testified in other cities by other houses, retailers, in similar condition that they were provided with orders which were outstanding at the time of the red carding.

5453

Mr. Martin: That statement is objected to.

Examiner Bennett: Through that organization?

Mr. Martin: Through——

Examiner Bennett: I have no recollection of any such testimony.

Mr. Albert: Through, if it please the Court, an agreement which was entered into by the Fashion Originators Guild at that time, and which was known to William Taylor & Son.

5454

Examiner Bennett: Well, please confine yourself to that. I don't see——

Mr. Albert: I mean, I have got to lay the foundation for it, your Honor.

Mr. Martin: If your Honor please, the only testimony along the line to which Mr. Albert is referring is the agreement which was entered into between Fashion Originators Guild and Filenes pursuant to court instructions.

Mr. Albert: And that agreement, your Honor—

Mr. Martin: Referred to Filenes Store.

Mr. Albert: Applied to William Taylor & Son also.

Examiner Bennett: Yes.

Mr. Martin: That was not in the record, your Honor.

Examiner Bennett: I don't know. I think that is a matter for your direct case. I am going to sustain the objection to that.

Mr. Albert: Exception.

By Mr. Albert. 5456

Q. Now, with the exception of Bernard Appel, are there any other Guild sources with whom you had outstanding orders at the time of the red carding? A. There were not.

Q. And no Guild source with whom you had outstanding orders at the time of the red carding fulfilled those orders? A. That is correct.

Q. Nor did any Guild source at the time of the red carding offer to fill those orders? A. To the best of my recollection, that is true.

Q. Nor was any attempt made by you to obtain the fulfillment of those orders? A. Oh, yes, there was.

Q. What attempt was made? A. We sent our buyers into the market, as I testified on direct examination, tried to get those orders filled. 5457

Q. Well, aside from the general statement that you sent your buyers into the market, can you be more specific as to what they did? A. They went to each manufacturer with whom we had outstanding orders and asked if the merchandise could be delivered.

Q. Who were those buyers? A. Mrs. Williams, our misses' dress buyer; Mrs. Howard, our women's dress buyer.

Q. Just those two? A. That is all I can recall at that time.

Q. Are they here in Cleveland? A. No.

Q. Where are they? A. New York. One of them is in New York. One of them is on vacation.

Q. Will they be back to Cleveland shortly?

Mr. Martin: I object to it as irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

5459 Q. Did you receive a letter in response to your letter of March 11, addressed to the Fashion Originators Guild? A. There was considerable correspondence at that time, and I am not sure exactly when the final letter was received. There was an answer, yes.

Q. I show you a letter on the stationery of William Taylor Son & Company dated March 21, 1936, addressed to Mr. J. M. Golby, Fashion Originators Guild, signed by yourself, and ask you if you can identify that as a letter mailed by yourself to the Fashion Originators' Guild?

Mr. Martin: I will ask that you have it marked for identification.

Mr. Albert: Will you mark this?

(Letter referred to was marked for identification
5460 Respondents' Exhibit 25.)

The Witness: That is right.

Mr. Albert: I offer this letter in evidence.

(Letter was handed to Mr. Martin.)

Mr. Martin: No objection.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 25, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this, please?

(Document was marked for identification Respondents' Exhibit 26.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 26 for Identification, and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

(Letter was handed to Mr. Martin.)

Mr. Albert: I offer this letter in evidence.

Mr. Martin: No objection.

Examiner Bennett: Received. 5462

(Letter referred to, heretofore marked for identification Respondents' Exhibit 26, was received in evidence.)

Mr. Albert: Will you mark this for identification.

(Document was marked for identification Respondents' Exhibit 27.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 27 for Identification, and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

Q. And does Respondents' Exhibit 27 for Identification 5463 refer to an enclosure of Respondents' Exhibit 25? A. May I see it?

Q. Yes. A. That is correct.

Mr. Albert: I offer Respondents' Exhibit 27 for Identification in evidence.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 27; was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification.

(Document was marked for identification Respondents' Exhibit 28.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 28, being a telegram dated March 13, addressed to Albert M. Post, signed
5465 "Miller—Taylor's." I will ask you if that is the telegram that was sent by you to Mr. Post? A. That is right.

Mr. Martin: No objection.
Mr. Albert: I offer it in evidence.
Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 28, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

(A document was marked for identification Respondents' Exhibit 29.)

5466 *By Mr. Albert.*

Q. I show you Respondents' Exhibit 29, being a telegram addressed to Albert M. Post, dated March 13, 1936, signed "Miller—Taylor's," and ask if you sent this telegram to Mr. Post? A. That is right.

(Exhibit 29 was handed to Mr. Martin.)
Mr. Martin: No objection.
Mr. Albert: I offer it in evidence.
Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 29, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this?

(A document was thereupon marked for identification Respondents' Exhibit 30.)

By Mr. Albert.

Q. I show you a copy of letter dated March, 1936, addressed to you care of William Taylor Son & Company from the Fashion Originators Guild of America by J. M. Golby, referring to your communication dated March 16, 5468
and ask you if you received this letter? A. To the best of my knowledge. I am not positive, but I think that that is correct.

Mr. Martin: No objection.

Mr. Albert: I offer this letter in evidence.

Mr. Martin: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Respondents' Exhibit 30, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

(A document was thereupon marked for identi- 5469
fication Respondents' Exhibit 31.)

By Mr. Albert.

Q. I show you a copy of a telegram addressed to you, care of William Taylor & Son, dated March 12, from Albert M. Post, in behalf of the Fashion Originators Guild of America, and ask if you received this telegram? A. That is right.

Mr. Albert: The telegram I referred to is Respondents' Exhibit 31 for Identification.

Mr. Martin: No objection.

Mr. Albert: I offer the letter.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for identification Respondents' Exhibit 31, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

(A document was thereupon marked for identi-
5471 fication Respondents' Exhibit 32.)

By Mr. Albert.

Q. I show you a copy of a telegram, being Respondents' Exhibit 32 for Identification, addressed to you from Albert M. Post on behalf of the Fashion Originators Guild, dated March 13, 1936, and ask if you received that telegram? A. That is right.

Mr. Martin: No objection.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 32, was marked as an exhibit and received in evidence.)

5472 Examiner Bennett: We will have a recess until 2 o'clock for luncheon.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Come to order, please. The hearing is resumed.

By Mr. Albert.

Q. Mr. Miller, did you have any conversation with anyone in the Fashion Originators Guild with respect to the fulfilling of these orders? A. Will you state that again?

Mr. Albert: Will you read the question?

Q. (Question read.) A. I believe it was indicated in our one letter that I talked to Mr. Golby on the telephone in New York. 5474

By Mr. Albert.

Q. Do you recall the substance of that conversation? A. Not definitely, no, except as indicated there that it was with reference to the fulfillment of the order.

Q. Now, did you discuss with him the question of whether or not the manufacturers were to deliver to you merchandise with respect to orders which were on hand at the time of the red carding? A. To the best of my recollection I discussed with him the delivery of merchandise on orders that were still outstanding as of the date mentioned in my letter of March 11.

Q. Didn't he inform you of the willingness of manufacturers with whom you had outstanding orders to deliver those orders to you? A. Well, the record, I believe, is indicated in my letter confirming our telephone conversation wherein I said it was understood that manufacturers would deliver us that merchandise which was on order as of March 11, and no others. 5475

Q. Is that what he told you at that time? A. To the best of my recollection, it is.

Q. Didn't he tell you that the manufacturers were ready and willing to deliver to you all of the merchandise with respect to all of the orders then outstanding? A. I don't recall.

Q. You would not say that he did not say that, would you? A. I don't recall.

Q. I am sorry, I did not hear you. A. I am sorry, I do not recall what he said with reference to that.

Q. That is, you don't recall one way or the other what he said? A. In connection with that point, I do not.

Q. Did you make any answer to the letter of the Guild, being Respondents' Exhibit 30, addressed to you? A. I
5477 believe there is a letter in evidence that was in answer to this. I am not sure. If I made an answer, it is among these letters that you have.

Mr. Albert: Take this off the record.

(There was a discussion off the record.)

By Mr. Albert.

Q. Well, now, Mr. Miller, does the correspondence now in evidence refresh your recollection to the effect that William Taylor Sons & Company wished to choose certain orders which were accepted for fulfillment and wished to cancel certain other orders outstanding at the time of the red carding? A. We simply would receive the orders that were still outstanding at that time is all.

5478 Q. Well, now, before February 17 you canceled certain orders; did you not? A. Before February 17?

Q. Yes. A. Not to my knowledge.

Q. When did you cancel the orders? A. As they became due.

Q. Did they all become due subsequent to February 17? A. To the best of my knowledge. I am not positive of that.

Q. Did you replace with other merchandise the orders which you canceled which were on hand on February 17

and unfilled at that time? A. We did the best we could under the circumstances.

Q. Did you fill them all? A. No.

Q. Which ones didn't you fill? A. I don't recall.

Q. Did you say that you had filled half of them? A. I couldn't give you an honest answer on that.

Q. You haven't any idea as to how many you did fill? A. Oh, all I can tell you is we filled as many as it was possible to fill.

Q. Was it possible to fill more than two or three or four or ten or twenty, or how many? A. My answer—any answer I would give you would be a guess.

Q. So that insofar as you are able now to tell us it is 5480
possible that you were only able to fill one order of that group? A. I didn't say that.

Q. Well, you say that you don't know how many you filled. A. That is correct.

Q. So that in so far as you are able to tell us now, it may be that you only replaced one?

Mr. Martin: I object.

Q. Of course, it may be that you replaced more. A. I didn't say that.

Mr. Martin: Objected to. The witness testified——

By Mr. Albert. 5481

Q. What did you say?

Mr. Martin: Your Honor, that he has no recollection of what they were able to do.

Mr. Albert: I think it is a fair question to ask him, then, if it is not possible that he filled only one, since he doesn't know how many he filled.

Mr. Martin: He has told you he has no recollection. He doesn't know.

Examiner Bennett: That is an answer, isn't it?

Mr. Albert: Very well, your Honor.

By Mr. Albert.

Q. On or about March 11 there were outstanding some unfilled orders from Guild sources which had not been replaced by orders from other manufacturers not connected with the Guild; isn't that so? A. That is correct.

Q. Did you make any effort whatsoever to obtain that merchandise from Guild sources? A. I think the records are clear on that, that we did.

Q. After March 11, 1936, did you refuse to accept un-
5483 filled orders after February 17 from Guild sources? A. Only those orders that had been canceled prior to the date of this letter.

Q. Were you not aware of a stipulation that had been entered into between the Fashion Originators Guild of America and Filenes Sons Company of Boston to the effect that all unfilled orders would be filled by members of the Guild?

Mr. Martin: Objected to. This is not proper cross-examination.

Mr. Albert: I am laying a foundation, if it please the Court with respect to all of this testimony that was just put in.

Mr. Martin: We attempted that this morning
5484 and the Judge ruled you out on this particular point once.

Examiner Bennett: Yes, I——

Mr. Albert: In the light—if your Honor pleases, I tried that this morning before these letters came in. Now with these letters in evidence I believe that a reading of the letters will show that it was entirely possible for them to have had this merchandise if they so desired and I want to show that in

addition to that they were specifically informed of the fact that they could have the merchandise if they wanted, but they chose to attempt to discriminate between which order they wanted to fill and which they did not want to fill.

Examiner Bennett: Well, if the letters will show, of course, it is a matter of record now, and I suppose there is no need of going into it further. At all events, I don't see the relevancy of your questions. I will sustain the objection.

Mr. Albert: Exception.

Examiner Bennett: All right.

5486

By Mr. Albert.

Q. Are you acquainted with a Mr. Bergdahl?

Mr. Martin: Objected to as not being proper cross-examination, and irrelevant and immaterial.

Mr. Albert: It is a preliminary question, if it pleases the court. I am laying a foundation to show that they were given specific knowledge and had specific knowledge of the fact that they could obtain these goods.

Mr. Martin: He is laying——

Mr. Albert: I can't jump in feet first, your Honor.

Mr. Martin: He is laying a foundation, your Honor, just on the very same point that you ruled 5487
on just before lunch, trying to bring in some connection between this store and the Associated Merchandise Corporation. Now, there is nothing in the evidence on behalf of this witness to in any way connect them with the A.M.C., and I respectfully submit that any cross-examination along that line is improper.

Mr. Albert: I don't think that William Taylor & Sons are ashamed with their connection with the A.M.C., your Honor. There is nothing to hide. We all know it.

Mr. Martin: I don't care what counsel thinks. It is a question of evidence here and I respectfully urge my objection on the grounds stated. It is entirely and wholly outside of the direct examination.

Mr. Albert: If your Honor pleases, I mean this goes vitally to the question as to whether or not their source of supply was stopped. On direct examination he testified that he couldn't get goods
5489 from Guild manufacturers, and I am attempting to show that their inability to get the particular goods that were on unfilled orders as of the date of the red carding is due to their own voluntary choice and I think that I should be permitted to show that their representative was informed of it and they had full knowledge of their ability to get the goods.

Examiner Bennett: Yes. If you have direct testimony to that effect, why, we will hear it on the direct case. I will sustain the objection to that question.

Mr. Albert: Exception.

By Mr. Albert.

5490 Q. Now, Mr. Miller, have you inquired of your superiors as to whether or not they insist upon your concealing figures with respect to departments of the Taylor store?

Mr. Martin: I object to that question.

Examiner Bennett: Will you give me the question?

(Question read.)

Examiner Bennett: I don't see that that will help us. I will sustain the objection.

Mr. Albert: Well, now, if your Honor pleases, I want to get the figures.

Examiner Bennett: Yes. Well, ask him for the figures. If he wants to give them he will give them. If he does not——

Mr. Albert: But the witness this morning testified that it was first necessary for him to ask his superiors. I want to know if he has inquired of his superiors.

Examiner Bennett: Well, ask him if he is ready to give them.

By Mr. Albert. 5492

Q. Have you inquired of your superiors as to whether or not they will permit you to give the figures with respect to what you testified to this morning?

Mr. Martin: I object. His Honor has just ruled on that question.

Examiner Bennett: I recall it was said this morning.

A. I have not had an opportunity.

By Mr. Albert.

Q. We left here at half past twelve this morning to convene at 2 o'clock. Were you at your store? A. I was not.

Q. Did you attempt to communicate with your store in any way? 5493

Mr. Martin: I object to this as immaterial and irrelevant.

Mr. Albert: It is most material for the simple reason I want to show that Mr. Haycraft's and Mr. Martin's remarks about our attempting to prolong these proceedings are entirely improper and out of place. Any prolonging of these proceedings

is due to the fact that we cannot get information from the witnesses that are put on the stand by them.

Examiner Bennett: I think that the instruction of the Examiner on that matter was entirely sound, and I am going to follow that. If this gentleman feels as though it was not necessary for him to advise with his superiors, why, that seems to be the fact since he has not done it, why, I think that is all there is to it.

Mr. Albert: Well, your Honor, if it please the Court——

5495 Examiner Bennett: That is, he is not under any obligation to secure those things for you if he hasn't them.

Mr. Albert: I think that the Commission, if it seeks to present a fair case, should make it possible for a witness to substantiate the testimony that they have gotten. If the Commission want to conceal anything they should not ask witnesses to give figures without being able to back them up.

Examiner Bennett: There is a time when you can get that, if you are entitled to it, I am sure. If you cannot get it on cross-examination. I am sure there is no way of the witness of the Commission forcing it on cross-examination.

5496 Mr. Albert: Since there was no basis whatsoever demonstrating the accuracy of the opinions that have been presented here to-day, with respect to percentages——

Examiner Bennett: You have the testimony of this witness, and if you can discredit that testimony by producing testimony to the contrary, that is perfectly all right.

Mr. Albert: Will your Honor bear with me for just a moment?

Examiner Bennett: But you are not entitled to have him go to the pains and trouble of producing you means of discrediting himself.

Mr. Albert: Will your Honor bear with me for just a moment? I think I cannot help but agree with what your Honor says in so far as your Honor has pronounced that as the decision of the Court, but in the light of the fact that we have demonstrated the errors in various exhibits that have been presented by this witness merely from an examination of the exhibits presented by the witness without examining the records from which they were taken, and with respect to his other figures, we have merely his statement what they are, and, further, in the light of the witness and the Commission backing up the witness, he refuses to permit us to examine as to the accuracy of those figures, I think you should strike out all his testimony. 5498

Examiner Bennett: I think that is not an entirely accurate statement. The Commission does not prevent you from cross-examining this witness. Now you have already taken a couple of hours at that sort of thing, cross-examining him. If you have shown that this witness is mistaken, so much the better for your case. You should be very much gratified if you have shown that.

Mr. Albert: I would probably be even more gratified if I could show the result of figures that were erroneous and not make it necessary for us to come back to Cleveland, your Honor. That is the point. 5499

Examiner Bennett: That is the decision of the Examiner. I am sorry that I cannot change.

Mr. Feldman: Your Honor, I just want to make one short statement in that connection. I just

happen to be acquainted with the procedure that the Commission's attorneys employ in getting information. They don't always subpoena witnesses. They go to these witnesses, and they ask them to produce certain figures, or they give them a questionnaire to answer, or send them a questionnaire to answer, and in response to those questions they get information. Now, is there any difference when the witness gets on the stand and testifies and gives part of the information? Why cannot the attorney for the respondent ask the witness to produce testimony that will illuminate the proceedings and possibly save time. It just does not——

5501

Examiner Bennett: I beg your pardon?

Mr. Feldman: It just does not seem proper to me.

Mr. Martin: I would like to state for the benefit of counsel that this witness has testified that he is here testifying pursuant to a summons.

Mr. Feldman: But some of the other witnesses that have testified did not have like summonses, and I take it what we want to do is get through the proceedings.

Examiner Bennett: Yes. Well, I have heard your argument on the matter. There is a time when you can come and call this witness and get anything that he has or he can procure for you and offer it in this case. This is not the time. You are cross-examining this witness now, and I am not going to send him around on errands collecting evidence which may or may not discredit him. That is at his own discretion.

5502

By Mr. Albert.

Q. Mr. Martin, will you turn to Commission's Exhibit No. 473?

Mr. Feldman: That was not photostated. That is the original.

Mr. Albert: I am switching from this, your Honor, in order to save time waiting for the other exhibits to come back. Now I find this exhibit is gone. May we have a few minutes' recess to wait for it?

Examiner Bennett: Yes. You can find out whether it is actually gone.

Mr. Martin: What exhibit is that?

Mr. Albert: 473 is the percentages.

Mr. Martin: I will be glad to give you a copy of it. 5504

Mr. Albert: That is all right.

Examiner Bennett: There is a copy of it, Mr. Albert.

By Mr. Albert

Q. Now, what department, Mr. Miller, is 330? A. Women's dresses at $12.95 and up.

Q. What is the price range? A. $12.95 retail and up.

Q. What was the total volume of sales in price, in dollars?

Mr. Martin: I object.

Mr. Albert: 1936.

Mr. Martin: That question is objected to. This exhibit, if your Honor please, does not purport to 5505 go into volume sales by dollars. It is merely percentage, and that question of dollar sales was avoided on direct examination, and I respectfully submit that it is not a proper subject of cross-examination.

Mr. Albert: If it please the Court, may I ask what the percentages are based on?

Examiner Bennett: Yes, certainly.

By Mr. Albert.

Q. What are the percentages sed on, Mr. Miller? A. Based on dollar sales.

Mr. Albert: Is Mr. Martin withdrawing his objection?

Mr. Martin: I object to any introduction——

Examiner Bennett: It is all a matter whether this witness cares to disclose those figures. If he doesn't, he does not, and I am not going to force him, because it would be merely a matter of verifying certain arithmetical processes, and I think if
5507 we take any of it for granted, we might take for granted that those processes were accurate, were carried on with accuracy. Do you care to disclose your dollar figures?

The Witness: No.

Examiner Bennett: All right. I am not going to force you to. I will sustain the objection.

By Mr. Albert.

Q. What was the dollar volume in Department 330 in February of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: If it please the Court, I wish to
5508 strenuously object to the Commission's objections to my asking the question before the witness testifies or signifies his intention of not giving me the information. It merely bears out my contention that the Commission doesn't wish this information brought out.

Examiner Bennett: I asked him a qualifying question covering all of this matter, and that is whether he objected to disclosing the figures. He

said he did not wish to disclose the figures. That is my recollection of the record, and I think it covers the situation. Of course, if you want to put the Commission on record on each particular thing, go ahead and do it.

Mr. Albert: I am sorry, your Honor, but I feel that I must do it.

Examiner Bennett: All right.

Mr. Albert: In order to protect the record.

Examiner Bennett: Put him on record on everything.

By Mr. Albert.

5510

Q. Now, with respect to Department 330, what is the total volume of dollar sales for March of 1935?

Mr. Martin: Same objection.

Mr. Albert: Now, if it please the Court, I insist that the Commission, unless it attempts and wishes to have its objection interpreted as seeking to hide these figures, not object to the question but let the witness answer as to whether he wants to volunteer it. Certainly if the witness wants to volunteer, the Commission should have no objection to the true facts being presented.

Mr. Martin: If your Honor please, this is simply a waste of time on the part——

Mr. Albert: I think it is a greater waste of time 5511
the other way.

Mr. Martin: Will counsel please let me finish? I will be glad to bear with him as long as the Judge will.

If your Honor please, counsel has asked this witness, and your Honor asked him whether he desired to disclose those figures. He has testified that he did not desire to do it. Now, I can see no point in

counsel for the respondent therefore asking him a question about each and every one of those figures when the witness has already testified that he doesn't want to disclose them.

Examiner Bennett: Yes. Well, I see no point—

Mr. Albert: The Commission doesn't see any point in any cross-examination.

Examiner Bennett: —in getting this on the record. Do you wish to be heard further, Mr. Albert?

Mr. Albert: I wish to continue my questioning, your Honor.

Examiner Bennett: I am going to sustain those
5513 objections if they are made by the Commission, and I assume they will be, but you can ask the question, though—I have no objection to your asking the question if you want to put the Commission on record in each particular item. Go ahead and do it.

Mr. Albert: Yes, your Honor, I am afraid I must.

Mr. Martin: In order to save time, Mr. Albert, I am perfectly willing to stipulate that the Commission can be put on record as to each one of these figures, purely in order to save time. The witness has testified that he does not want to give any of those figures, and is not going to give any of them, so I need no valid reason for keeping on asking him as to any specific item, and I am therefore perfectly willing to stipulate that. I do object to the con-
5514 tinuance of the examination along this line.

Mr. Albert: Well, if it please your Honor, I can't, with all due respect, place much credence in Mr. Martin's contention that he can't see any validity in the continuation of a line of cross-examination because I believe that the Commission's counsel all along have made it clear that they can't see the purpose of any cross-examination of any witness on anything. Now, I feel that I have got to make my

record complete with respect to this witness not wishing to disclose the information upon which he comes in here and makes some very wild assertions.

Examiner Bennett: All right. Go ahead.

By Mr. Albert.

Q. Now, with respect to Department 330, do you know the volume of dollar sales for the year 1936, for April?

Mr. Martin: I object.

Examiner Bennett: Sustained.

By Mr. Albert.

5516

Q. Do you know those figures for April, 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know the figures for that department for May of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. For May of 1936?

5517

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know the figures for Department 330 for June of 1935?

Mr. Martin: The same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. For June of 1936?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know the figures for Department 335 for February of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

5519 *By Mr. Albert.*

Q. Did you know them when you prepared this exhibit?

Mr. Martin: Same objection.

Mr. Albert: Now, does the Commission's counsel really sincerely object to this witness telling us as to whether or not he knew what he was doing when he prepared those exhibits?

Examiner Bennett: You are asking him if he knew of the figures? I will let him answer.

Mr. Albert: When he prepared it.

A. Yes, I knew them.

By Mr. Albert.

5520

Q. Yes.

Mr. Albert: I don't think Mr. Martin really wants us to believe that that objection was serious. I wonder if the other objections are as serious as that one.

Mr. Martin: I think that question has already been answered, Mr. Albert. He testified to that on direct examination.

By Mr. Albert.

Q. Do you know of the volume of dollar sales for Department 335 for March of 1935?

Examiner Bennett: Do you know?

Mr. Martin: Do you know?

Examiner Bennett: He didn't ask you——

Mr. Martin: Yes or no?

The Witness: Will you read the question?

(Question read.)

Examiner Bennett: That is asking you now whether you know now.

The Witness: No.

5522

By Mr. Albert.

Q. Did you know them when you prepared this exhibit? A. Yes.

Q. Did you give them to the Commission? A. No.

Q. Did you inform the Commission of them in any way? A. No.

Q. Did the Commission ask you for the figures? A. No.

Q. Would you have given the Commission the figures if they had asked for them?

Mr. Martin: Objected to.

Examiner Bennett: Well, I am going to let him answer.

5523

A. My firm didn't want the figures given out.

By Mr. Albert.

Q. Would you have given the figures to the Commission if they had asked for them, is the question. A. No.

Q. Do you know the dollar value for Department 335 for March of 1936?

Mr. Martin: At this time.

A. No.

Q. Did you know them when you drew the exhibit? A. Yes.

Q. Are the figures available? A. They are.

Q. Will you produce them? A. No.

Q. Do you know the dollar value or the figures for Department 335 for April of 1935?

The Witness: What is the question?

(Question read.)

Mr. Martin: Do you know them at this time?

5525 The Witness: No.

By Mr. Albert.

Q. Did you know them when you prepared the exhibit? A. Yes.

Q. Did you take them from the records of the Taylor Company? A. I did.

Q. Are those figures available? A. They are.

Q. Will you produce them? A. No.

Mr. Martin: If your Honor please——

By Mr. Albert.

Q. Will you produce them on direct examination?

5526 Mr. Martin: I object to any further questioning along this line, as it is an obvious effort to delay and waste time and it is accomplishing no good purpose. The witness has told him over and over again that he is not going to furnish them and I can see no good purpose in keeping on asking him any longer. I respectfully request that the Examiner limit this cross-examination along this line.

Examiner Bennett: Well, I am going to let him finish it.

Mr. Albert: If your Honor pleases, in answer to that, may I point out that one very good purpose that it showed was the obvious desire of the Commission not to even permit this witness to testify that he knew the figures when he prepared the exhibit by reason of the fact that he objected to my asking him that question.

Examiner Bennett: All right. Go ahead.

The Witness: What is that question?

Mr. Albert: There is no question pending.

5528

By Mr. Albert.

Q. Do you know the dollar value of Department 335 for April of 1936?

Mr. Martin: At this time.

A. I do not.

By Mr. Albert.

Q. Did you know it at the time you prepared such exhibit? A. I did.

Q. Did you prepare this exhibit from those figures? A. Prepared under my supervision.

Q. You personally had no hand in the preparation of the exhibit? A. Not in the exact preparation of it. I 5529
knew the figures.

Q. Did you make the arithemetical computations that are contained in this exhibit? A. I did not.

Q. Did you check the arithmetical computations that are made on this exhibit? A. They are our regular monthly records already computed for us.

Q. Did you check the arithmetical computations? A. I did not.

Q. All you know about these figures is that somebody in William Taylor Sons & Company prepared them for you from their records? A. Under my supervision.

Q. Well, your supervision amounted to the fact that you asked them to prepare them for you; isn't that so? A. Correct. That is right.

Q. That is all your supervision amounted to? A. That is right.

Mr. Albert: Now, if it please the Court, I move that this exhibit be stricken from the record on the ground that the witness has testified that except for the fact that it was handed to him by somebody
5531 in the employ of William Taylor Son & Company, he knows nothing with respect to the truth or accuracy thereof; and, further, I object upon the specific ground that upon my examining him before the exhibit was admitted into evidence he declared that he had supervised the preparation, that he had prepared the figures, that he could testify as to the breakdown of them, that he could give us all of the figures of how the percentages were arrived at. I say that now his testimony reveals that he knows nothing about it; it is merely handing in a piece of paper that was handed to him by somebody else.

Mr. Martin: I suggest, your Honor please, that the statement of counsel is not only a little bit misleading, but is entirely and wholly and grossly
5532 misleading and deliberately. There is no evidence in the record at all that this witness testified he could break down these figures, or anything of that sort at all. He declared—he testified that these figures were prepared under his supervision at his request from the store records.

Mr. Albert: I will find that for you in a moment, your Honor.

On page 3020 of the record, your Honor, the following transpired between Mr. Miller and myself when I originally objected to the admission of Commission's Exhibit 473 into the record:

"Q. Mr. Miller, with respect to Commission's Exhibit No. 473 can you testify definitely and specifically with respect to the figures therein contained? A. Yes, I can.

"Q. Can you testify definitely and specifically with respect to the various factors that led either to an increase or decrease in the various departments? A. I believe so.

"Q. Can you testify from first-hand knowledge with respect to the component departments that make up the total store estimates of advances or decreases? A. I am sorry. I didn't get your question. 5534

"Q. Can you tell us specifically what departments were considered in reaching the figure with respect to the total store as contained in Commission's Exhibit 473? A. Yes. Yes.

"Q. Have you the figures with respect to all other departments? A. I have at my access.

"Q. Of the store? A. Right.

"Q. Have you the figures for 1935? A. I have.

"Q. The specific figures? A. I have.

"Q. Can you further identify these department numbers with—— 5535

"Mr. Martin: I will get to that.

"Q. (By Mr. Albert) With the particular department that you have testified to? A. I can.

"Q. How did you obtain these figures? How did you reach them? A. Obtained them from the records.

"Q. Well, what, specifically, do they represent? A. They represent the percentage either of increase or decrease of sales of that period.

5536 *W. E. Miller—For Commission—Cross.*

"Q. Did you take those off the sales slips? A. Took them off of the annual summary of sales.

"Q. You haven't any annual summary of sales for 1936 yet, have you? A. I have the monthly summaries. I beg your pardon. They are monthly summaries taken from each month's report. I am sorry.

"Q. Does this represent volume of units sold, or does it represent— A. It represents——

"Q. —dollar value? A. Dollars."

Now, I think from that examination, your Honor, it specifically appears that this witness testified as
5537 to his personal knowledge of these figures, not that they were prepared by anybody under his supervision or anything else, and the purpose of examining him voir dire with respect to 473 was to obviate the terrific difficulty that we ran into in Philadelphia and in Boston when witnesses came in and presented figures and thereafter passed the buck to their subordinates, and I believe that your Honor admitted this into evidence by reason of the fact this witness testified that he could tell us all about the meaning of these figures and what they represented and how they were arrived at. I sincerely believe that while your Honor didn't express any opinion about it at the time, I think, if I am not
5538 mistaken or misinterpreting your Honor's ruling, that had this witness said that he couldn't explain these figures in any manner, shape or form, if cross-examined about them that your Honor wouldn't have permitted this exhibit to go into evidence. We have here simply a piece of paper that was taken from the records of William Taylor & Son Company thrown at the Commission for such weight as it cares to give it, and we have no explanation whatsoever what they mean. As a matter of fact, how

little the exhibit is understood is evidenced from the fact that Mr. Martin didn't even know that it referred to the dollar value. I respectfully request and move that this exhibit be stricken from the record.

Examiner Bennett: Are you through with your statement?

Mr. Albert: Yes, your Honor.

By Examiner Bennett.

Q. You speak about taking those figures from your records? A. Yes.

Q. Are they records of your concern or store and are 5540
they made in the ordinary course of business? A. They are, yes.

Q. Are they records on which you rely on in carrying out your business? A. They are.

Examiner Bennett: I deny the motion.

Mr. Albert: May I further point this out to your Honor? "By Mr. Martin: Q. Was this prepared by you under your supervision (referring to 473)"——

Examiner Bennett: Yes.

Mr. Albert: "Prepared by me?

"Q. Are you satisfied as to the correctness of it? A. I am."

And yet the witness has testified that he has made no investigation of the correctness of it. 5541

Examiner Bennett: Well, he has now told me that he is satisfied of the correctness of it. They are figures upon which he relies. The case Bonay & Sons makes that perfectly proper in a proceeding of this kind, makes that sort of testimony, and, in fact, I think it is proper under the strictest kind of procedure in law where it is a matter that is relied on by a business concern in its own business.

It has a probative value, and that is the only thing that the Examiner is particularly concerned with just now. If Mr. Miller's testimony was not as complete as it might have been, why, I think he has remedied it merely by stating just where the thing came from and what it is.

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. With respect to Department 335 do you know the dollar volume of sales for May, 1935?

5543 Mr. Martin: That is, at the present time?

A. I do not.

By Mr. Albert.

Q. Did you know them at the time that you prepared this exhibit? A. I have explained that I personally didn't prepare this exhibit, but I know what the dollar volume of sales were, yes.

Q. Did you examine them, the original records, to determine what they were? A. Yes; I have those original records.

Q. And you examined them at the time of the preparation of this exhibit? A. I didn't prepare this.

5544 Q. I say, you examined the original records at the time of the preparation of this exhibit? A. No; they were our store records. We took them for face value, naturally.

Q. No. No. Did you examine the physical record that contained the figures before the preparation of this exhibit? A. Not at the time it was prepared. I have examined it, if that is what you mean.

Q. Is that figure available? A. Yes.

Q. In what book or record—what is the name of the book or record in which that figure is contained?

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Have you any objection to telling me the name of the book or the record in which that figure is contained?

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. No, I have no objection.

Q. What is the name of the record or the book in which that figure is contained?

5546

Mr. Martin: Objected to as being immaterial.

Examiner Bennett: Well, I will let him answer, if he wants to.

A. It is the monthly report, merchandise report.

Q. And that is the reference to it in your store, when you refer to it, monthly merchandise report? A. Monthly report of operations, yes.

Q. Monthly— A. Monthly report of the merchandise operations.

Q. Monthly report of the merchandise operations. Thank you. Are these figures of the monthly volume of dollar sales of your various departments in any way made public to anybody except employees and executives of William Taylor Sons & Company?

5547

Mr. Martin: Objected to as being immaterial.

Mr. Albert: I think it is quite material, your Honor, as going into the credibility and the frankness and fairness of the contentions of this witness that those figures should not be made public.

Mr. Martin: If your Honor please, I must—maybe I am rather dense, but I can't see what the credibility has to do with the question of whether

the figures are open to the public or not. I can't see where it has anything to do with the question of credibility of this witness.

Mr. Albert: It is very simple. It is a very simple reason and there is nothing dense about it at all, Mr. Martin. The fact that this witness ostensibly in good faith is coming up here and saying that he doesn't want to disclose those figures, and the Court in reliance upon that good faith has sustained him in the contentions that he doesn't have to present those figures.

Mr. Martin: And the Court——

5549 Mr. Albert: If those figures are a matter of public record, then there is evidence of bad faith on the part of this witness in not attempting to give us the figures with respect to which he has testified, and we can readily infer that he doesn't present them because of the fact that they would not support the figures that are in evidence in Commission's Exhibit 473.

Mr. Martin: The Court has already told you that on numbers of occasions that those figures would be available to you at the proper time.

Examiner Bennett: Yes. I will sustain the objection to the question.

Mr. Albert: Exception.

5550 Q. With respect to Department 335, do you know the total volume of these sales for May of 1936? A. I do not.

Q. Did you know it at the time that this exhibit was prepared? A. I knew of it, yes.

Q. Are those figures available? A. Yes.

Q. They are available in your monthly merchandise reports at the store? A. Yes.

Q. And they are presently in the store? A. What?

Q. Those figures are presently in the monthly merchandise report at the store? A. That is right.

Q. Will you make those figures available to me?

Mr. Martin: Objected to.

Mr. Albert: Does the Commission object to the witness telling me whether or not he wishes to give me the figures?

Mr. Martin: He has already told you on several occasions that he would not give them to you.

Examiner Bennett: He may answer.

A. No. I cannot give it to you.

Mr. Albert: I think it is the evident purpose of the Commission to conceal the evidence.

Mr. Martin: We have no desire to conceal it. 5552

Examiner Bennett: Just a moment. That is disposed of. Go ahead.

By Mr. Albert.

Q. With respect to Department 330, do you know the figures of dollar volume sales for February of 1935? A. I do not.

Q. Do you know them for February of 1936?. A. I do not.

Q. Did you know the respective figures at the time that this exhibit was prepared? A. I did.

Q. Are they contained in your monthly merchandise reports? A. They are.

Q. Are they at present in the store in Cleveland? A. 5553
They are.

Q. Will you make those figures available to me?

Mr. Martin: I object.

Examiner Bennett: Overruled. I will let him answer that question.

A. No.

By Mr. Albert.

Q. Do you know the dollar volume of sales for Department No. 350 for March of 1935? A. I do not.

Q. For March of 1936? A. I do not.

Q. Did you know those figures at the time that the exhibit was prepared? A. I did.

Q. Are those figures available at the present time? A. They are.

Q. Are they contained in the monthly merchandise reports of William Taylor Sons & Company? A. They are.

Q. Are they at present in Cleveland? A. They are.

Q. Will you make those figures available to me? A. No.

5555 Q. Now, with respect to Department 350, would your testimony with respect thereto for April, May and June, as regards the dollar volume of sales for 1935 and 1936 be the same if I asked you the same question with respect to Department 350 as I asked you with respect to Department 330 and Department 335? A. It would.

Q. That is, the figures are available but you would not produce them for me? A. Yes.

Q. Now, you have testified, Mr. Miller, that at least a good part of your work as divisional merchandise manager has to do with reference to correlating figures of different departments comparing them, and thus fixing the policy of the store. A. I said a part of it.

Q. Yes, a part of it. I am not quibbling with you on

5556 that. When you have three departments, each of which sell behind in its dollar volume of sales for 1936, as contrasted with 1935, and you have the specific figures with respect to each department, how do you arrive at a single figure which will demonstrate the percentage of difference of the three departments combined between 1935 and 1936? Do you understand the question? A. I think I do, but I think it better be read back.

(Question read.)

A. I assume that is a hypothetical question?

Q. Yes. I want to find out. A. My attention of three departments' volume figures in dollars for the three departments for the period of 1935 and the same three, for the same months in the following year, adding those figures, making a difference, dividing it by the original figure, 1935, altogether.

Q. Is this correct: Let us assume that in 1936 Department A was 10 per cent. behind its 1935 figures; let us assume that Department B was 20 per cent. behind its 1935 figure— A. Right.

Q. —and let us assume that Department C was 30 per cent. behind its 1935 figure. What would be the total percentage behind 1935 of the three departments? 5558

(Witness laughs.)

Mr. Martin: Objected to as immaterial, your Honor; certainly not proper cross-examination. I doubt if the witness can answer it himself.

The Witness: I am sure I cannot. I am not going to be sucked in on that one. Don't worry. It is a good question, though.

Examiner Bennett: Objection sustained.

Mr. Albert: Was the objection sustained?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Well, now, Mr. Miller, will you turn your attention to Commission's Exhibit 473. We find there that Department 330 in April of 1936 fell behind April of 1935 12.38. 5559
A. That is right.

Q. We find that Department 350 fell behind in 1936 over 1935 6.18, according to this exhibit. A. That is right.

Q. Would you say that the combined difference between 1936 and 1935 of those two departments is, roughly speaking, 18 point plus? A. No.

Q. Why not? A. You cannot do that. You cannot average or add or subtract the percentages. You have to have dollar volume figures to compute those. That is the way to average.

Q. Now, we also find there Department No. 335 went ahead in 1936 over 1935 11.97. A. That is right.

Q. Now, we find on the bottom line that the total difference between the dollar volume in 1936 of Departments 330 and 335 and 350, the total difference between their dollar volume in 1936 over 1935 is minus 20.2, a sum in excess of the decrease in two of the three departments taken individually. A. That is right.

5561 Q. Well, now, what were the figures on which you predicated that computation? A. Dollar figures for those departments this year and last year.

Q. Well, can you give us a rough approximation in order to show us how you reached that computation? A. I haven't those figures.

Q. So you don't know how they reached that figure? A. Yes, I know how they reached them, but I haven't the figures with me.

Q. Well, how did they reach them? A. The dollar figures last year and the dollar figures for this year for those three same departments, taking the difference and dividing by last year's total volume for those three departments.

5562 Q. Let me put it this way: Let me ask you the question this way: How can you get a total decrease of 20 per cent. in the three departments which is greater than the total decrease and difference between 1936 and 1935 of the individual departments? A. I would have to see the figures to answer that.

Q. You have seen the figures, but— A. I would have to have the figure to answer that.

Q. I am sorry, I cannot hear you. A. I would have to have the figure to answer that, the dollar figures in order to answer that question.

Q. Do you believe that any figures could result in such a computation? A. I would have to see those figures, I would say.

Q. Well, doesn't it sound strange to you? A. I would have to have the figures before I can answer that question.

Q. Does it not sound strange to you? A. No.

Q. I mean that Department A should be 10 per cent. behind, and Department B should be 10 per cent. behind, and that the two departments combined should be 30 per cent. behind? That is all that figure is. A. I cannot answer that unless I had the figures. If I had the figures I could answer in a minute.

5564

Q. Let us go into the theory of it. You laughed very much at my question. Let us see what is so funny about it.

Mr. Martin: I object to going into any theory.

Mr. Albert: I am forced to go into theory when he will not give the figures upon which it is predicated. I am going to show on his own exhibit, as I did on 470, 471 and 472, that his own figures can be shown to be fallacious.

Mr. Martin: Object to any theorizing. The witness has testified that he can only answer Mr. Albert's question if he had the figures available in front of him.

Mr. Albert: How can the whole be greater than the component parts? That is a simple question that is presented to us on these figures. I don't claim to be an Einstein, but I don't see how a third and a third and a third can add up to more than one. That is what they have done with these figures.

5565

Examiner Bennett: The record is made on that. Go ahead.

By Mr. Albert.

Q. Will you give us the theory on which the manner of these figures were arrived at? A. The division of the dollar figures by those three departments for the months in question last year, the same three departments in this year, the difference divided by last year's total.

Q. Now, I am just asking you these questions with respect to your qualifications to pass on this. There is nothing else behind it. I believe you are a graduate of Harvard Business School, aren't you? A. Yes.

Q. While you were present at Harvard Business School, I believe you took some courses on statistics. A. That is
5567 right.

Q. Well, now, from your knowledge of those courses that you had at Harvard Business School, will you please explain to me how, if Department A is 10 per cent. behind, and Department B is 10 per cent. behind over a given year, how both departments combined can be 30 per cent. behind over their both business records? I think that is a very simple and very fair question.

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer, if he has any answer.

A. I would have to see these figures before I can answer you on percentage.

5568

By Mr. Albert.

Q. That is not the question. A. I cannot answer it.

Q. I am asking you to please explain to us the theory by which that can be worked out. A. I cannot answer you.

Q. Well, now, Mr. Miller, assuming that the volume of Department No. 330, 1936, was $100,000, and assuming that the volume of Department 350 in 1936 was $100,000,

can you and will you work out for me on the basis of those figures the relative volume for 1935, and then, by comparing them, demonstrate the figures that you have here? A. No, I cannot do that because we have to have exact figures. It is the weighted average.

Q. What do you mean by weighted average? A. I mean it is weighted by the amount of volume that is done in those departments.

Q. In other words, you are referring to what figures are taken? I mean, that is not a mathematical theory, weighted average? A. I don't get you.

Q. That is not a mathematical process of arriving at a conclusion? A. I don't understand you. 5570

Q. That is not the name given to any particular formula of arriving at a conclusion, is it? A. Well, it is a method, yes.

Q. What is that method? A. That your volume figures in each of its component parts have a direct bearing on the total percentage.

Q. Well, now, can the volume figure in each of its component parts, when taken together, be greater than the addition of those parts? A. I do not know.

Q. Would you say that where Department A is 10 per cent. behind its previous year, and Department B is 10 per cent. behind its previous year, a taking of the weighted average reveals a figure in excess of the individual percentages of those departments, that that is an unusual circumstance? 5571

Mr. Martin: Objected to. Pure speculation.

Mr. Albert: I think it is perfectly proper in the light of what I am running up against, your Honor. I want to show you how clear these figures are.

Examiner Bennett: Well, I will let him answer. Go ahead.

The Witness: Will you read the question, please.

(Question read.)

The Witness: I cannot answer that without knowing volume figures.

By Mr. Albert.

Q. Well, now, have you ever come across any particular result of that kind before very often? A. I don't recall.

Q. You do not recall ever having come across it before? A. I do not recall either having come across it or not having come across it.

Q. Did you not testify just a little while ago that you had seen cases of that kind? A. No.

Q. Well, now, will you please read back the record, or
5573 is it your Honor's recollection of the fact that he had come across such cases perfectly clear?

Examiner Bennett: Well, if it is in the record it is in the record. That is all there is to it.

By Mr. Albert.

Q. Do you want to deny that you had testified that you had seen cases of results of obtaining a weighted average? A. I don't recall.

Q. In which it appeared that Department A had been 10 per cent. behind in its volume over a particular year, and Department B had been 10 per cent. behind in its volume in a particular year, and that the combination of the two departments revealed that they had 30 per cent.
5574 difference there, the combined reports? A. I do not recall.

Q. You do not know? A. I do not recall.

Q. You do not know whether you testified to that or not? A. I do not recall.

Q. Do you mean you do not know one way or the other? A. I mean I do not recall.

Mr. Albert: Well, now, if it please the Court, I think it is a most equivocal answer that the wit-

ness is trying to hide behind. I think it is very simple for him to tell me what he means by "I do not recall." Whether he means that he did say it, or whether he means he does not remember whether he said it or not. I think that is fair.

Examiner Bennett: I think it has a very definite meaning.

The Witness: I do not remember, if that is better.

By Mr. Albert.

Q. So that you do not remember now what you testified to only about ten minutes ago? A. Not the exact wording, 5576
no.

Q. I was not asking you the exact wording. I am asking you the substance as to whether you had not testified that you saw figures exactly or substantially revealing the queer result about which I have been speaking, assuming merely for the sake of argument, that it is a queer result. I don't want you to agree with me that it is a queer result.

Mr. Martin: I think the witness has answered the question.

Mr. Albert: He has not.

Mr. Martin: Just a moment, Mr. Albert, until I am through. He has already asked him two or three times whether he said it or not, and the wit- 5577
ness has said two or three times he does not recall whether he did or not.

Mr. Albert: He has just testified that his testimony was in reference to the fact that he did not use the specific language. He is obviously hiding behind an equivocation or something of that sort. The same kind of a situation we were presented

with when a witness was presented a book and he said he had not read that particular book, a book that was of general circulation.

Examiner Bennett: You have made the record. You may proceed.

Mr. Albert: I am awfully sorry, your Honor, but I did not get your ruling on that question.

Examiner Bennett: I say, you have made a record on that, why not go ahead?

Mr. Albert: Very well, your Honor.

Examiner Bennett: The record shows what the witness testified to, and if there is any dis-

5579 crepancy——

By Mr. Albert.

Q. Let me ask you, Mr. Miller, have you ever seen any figures presenting the same results as I have here, picked out with respect to Departments 330, 335 and 350, and the total taken of all? A. I don't recall of having seen any.

Q. You have seen quite a few figures in your time? A. Right.

Q. And you have worked on quite a few figures? A. Yes.

Q. So that unless we have the exact dollar volume of the sales with respect to what these percentages mean,

5580 these figures are meaningless to us, aren't they? A. No. I don't think so.

Q. Mr. Miller, you have testified that the figures on Exhibit 473, representing the combined percentages as affecting Departments 330, 335 and 350, are a weighted average. I think that is the term you used. A. The combined figure?

Q. Yes. A. That is right.

Q. Are the figures given individually for each department also a weighted average? A. No.

Q. Just how do you weight— A. By the volume.

Q. —the three departments when you bring them in? A. By volume.

Q. Well, do you consider only the volume when you weight the figures? A. I don't get your question.

Q. Do you use any other criterion in arriving at the figures represented in the last line of Commission's Exhibit 473 than you did in arriving at the figures in each department individually? A. No.

Q. None whatsoever? A. No.

Q. Then what is all this talk about a weighted average? A. Simply that the percentage varies. The percentage of an increase or decrease for the total of the three varies as 5582
the volume between the three varies. It is an arithmetic average if you prefer to call it that, and we usually introduce another figure——

Q. There are no other elements taken into consideration in arriving at the percentage decrease between 1936 and 1935 of the combined combination of Departments 330, 335 and 350 than were taken into consideration in arriving at the percentage increase for each department individually; was there? A. No.

Q. None whatsoever? A. No.

Q. Then we have a simple arithmetical computation to be made in adding Departments 330, 335 and 350; is that correct? A. The total of the three.

Q. Right? A. The same.

Q. Let us assume that Department 330 for April of 5583
1936 did a total business of $100,000 on the basis of the figures presented in Commission's Exhibit 473, what was the total volume of business done in that department in 1935, roughly speaking? Don't carry it out to cents. A. I know what you are getting at. It won't work.

Q. Well, let us see if it will work. A. It won't work, because your percentage varies as your volume between departments varies.

Q. Let us see if we can get some basis of working on it. A. Perfectly willing to do it if you want to go through a mathematical computation here.

Q. Well, can you set up any hypothetical figures? A. No, I would have to have the actual figures.

Q. I don't want the exact figures of your volume, but will you let me work with figures which bear the same proportion in variation as do your actual figures of your departments? A. I will attempt to get those for you.

Q. Don't you know them now? A. No.

Q. Will you bring them in with you to-morrow? A. I will attempt to get them, yes.

5585 Q. You understand what I want? A. I understand what you want.

Q. I don't want the exact figure. A. I understand what you want.

Q. Just the exact proportion. A. I can multiply them by two or three or anything else, as long as I multiply them with the same figure.

Q. So that they bear the same proportion as they originally bear? A. I know what you want.

Q. Then we will all do a little arithmetic to-night.

Examiner Bennett: Take a recess of ten minutes.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may resume.

5586

By Mr. Albert.

Q. Now, merely in order to solidify the record, your Honor, I wish to ask the witness the following question: That if I had asked you with respect to Departments 360, 371 and 380 for the dollar volumes for 1935 and 1936 for the months of February, March, April, May and June, am I correct in stating that your answers would have been the same, to the effect that you knew the figures when the

exhibit was prepared, that they were available, that they were in your monthly merchandise reports, and that you did not wish to provide them for me? A. That is correct.

Q. Now, in the light of what has been disclosed with respect to the exhibit, Commission's Exhibit No. 473, will you now, Mr. Miller, volunteer to bring in the actual monthly figures with respect to Departments 330, 335 and 350? A. No, I can't bring the actual figures.

Q. What was the total volume of purchases of dresses in Department No. 330 for the year 1935?

Mr. Martin: That is objected to, your Honor.

Mr. Albert: Now, if it please the Court, the witness has testified here—the question is withdrawn. 5588

By Mr. Albert.

Q. You are the divisional merchandise manager of the ready-to-wear dress department of William Taylor & Company; aren't you? A. Yes, sir.

Q. You have been such for sometime past? A. Right.

Q. You were there during 1935 and in 1936? A. Yes.

Q. What was the total volume of dresses purchased by William Taylor & Company during 1935? A. Of dresses?

Q. Yes. A. I haven't those figures with me.

Q. Are they available? A. They are.

Q. Will you provide them for me? A. No.

Q. When did you last know those figures? A. Oh, recently, within the past week, I would say. 5589

Q. You looked them up within the past week? A. That is right.

Q. Where are those figures contained in the records of William Taylor & Company? A. In the monthly summaries.

Q. Well, now, you testified that 60 per cent. of all dresses purchased in the various departments are Guild dresses. Do you recall that testimony? A. No; I didn't testify as to that.

Q. What did you testify to? A. I testified that between 60 and 75 per cent. of all dresses covered by Guild price lines came from Guild resources.

Mr. Albert: Will you repeat that, please?
(The answer was read.)

By Mr. Albert.

Q. When you say 60 to 75 per cent. of all dresses covered by the Guild price lines, what do you include within the price line? A. The price lines covered by Guild houses.

5591 Q. What is that price line? A. It was in the latter part of 1935 from $6.75 cost up.

Q. How much business do you do—the question is withdrawn. What is the volume of dresses purchased by Taylor below $6.75? A. I haven't got that figure with me.

Q. Cost. Have you those figures available? A. They are.

Q. Are they in your William Taylor & Company monthly reports? A. Not in that exact form.

Q. In what form are they? A. In the form that is represented by our price line divisions as indicated by the departmental set-up.

Q. If you asked for the figures with respect to what I have just asked you of any clerk in William Taylor & Company, what would you refer to and ask for? A. I

5592 beg your pardon?

Q. If you asked an employee of William Taylor & Company for the figures with respect to the total purchases under $6.75, what would you ask him for? A. I would ask him for the total purchases of $4.75 and $5.75.

Q. What records would you specifically refer him to? Would you refer him to a particular book? A. I would have to compute that from our unit control. We would compute it from our unit control.

Q. Then your unit control book then is the only physical record that contains those figures? A. That is correct.

Q. Is that here in Cleveland at the present time? A. Yes.

Q. Will you bring those figures for me and compute them to-morrow? A. No.

Q. Well, now, Mr. Miller, as divisional merchandise manager of William Taylor & Company, will you give me your estimate of the total volume of dresses purchased in the price lines that you have referred to? A. May I ask what price lines are referred to there in your question?

Q. $6.75 and up. A. I cannot give you that figure offhand. I would have to compute it.

5594

Q. Well, I don't want it in exact figures. Can you give me an estimate of it? A. I can't give you an estimate, no.

Q. Well, now, I show you Commission's Exhibit 471. Does that figure represent 60 per cent. to 75 per cent. of all merchandise purchased by William Taylor & Company within those price lines? A. Yes.

Q. It does? And is it your contention that the whole amount of dresses purchased by William Taylor in those particular price lines does not exceed approximately between $73,000 to $91,000? A. That was the way to work—the way—that is the way it would work out, yes.

Q. So that with regard to any merchandise which may be affected by the Guild price line, the total amount of dresses that might possibly be affected by any program of the Guild, does not exceed $100,000 in purchases of William Taylor Son & Company? A. That is it. That is the cost.

5595

Q. Cost? A. That is correct.

Q. Now, Mr. Miller, will you be good enough to tell the Court the precise method in which you arrived at the figures? A. These figures?

Q. Yes. Where you took them from. A. Ledger sheets.

Q. Ledger sheets? A. Accounts payable ledger sheets.

Q. Let me see if I am right. So that if an order was given to Herman Beistell for $200, $300 and then $207, that reflects the total figure here of roughly $707; is that correct? A. Well, this refers, of course, to merchandise received, not merchandise ordered.

Q. This does not refer to your merchandise ordered? A. No, sir; it refers to merchandise received.

Q. Well, how much of the business in Guild lines contracted for during 1935 and the 1936 period up to the red carding in dollar volume would you say has been
5597 omitted from this exhibit? A. I wouldn't know. I wouldn't have any way of estimating that.

Q. Would you say it was substantial or letter? A. Of course this record does not include any of the February, 1936, purchases.

Q. It doesn't include any of the February, 1936, purchases? A. No, because that only goes up to February 1.

Q. It does not include, therefore, any of the merchandise referred to in Commission's Exhibit 472? A. That is right.

Q. Well, now, then are there Guild houses and are there orders that were placed by William Taylor & Company which find no record either in Commission's Exhibit 472 or Commission's Exhibit 471? A. Only if they were canceled before completed.

5598 Q. Then there were orders placed by William Taylor & Company before the red carding which were not fulfilled by reason of the fact that William Taylor & Company canceled the orders? A. By reason of the fact that they were past due and canceled.

Q. Not referred to in Commission's Exhibit 472 or Commission's Exhibit 471? A. I am covering the whole period, you understand, from February 1, 1935, through Febru-

ary 1, 1936, in the normal course of business. We always cancel orders when they become past due a certain length of time.

Q. Well, were any of those orders within the period of January, 1936, and February, 1936? A. I can't say.

Q. Will you look it up for me and let me have the figures on it? A. I don't quite get your point. I am sorry.

Q. There are obviously, from your testimony, certain orders placed with Guild houses that are not recorded in Commission's Exhibit 472, and are not recorded or listed in Commission's Exhibit 471? A. Those were only orders that were delivered between February, 1936, and February 17, 1936, or had been shipped prior to Febru- 5600
ary 17, 1936.

Q. That is Commission's Exhibit 471? A. No. They are not included on that. To make myself clear, any additional orders that do not appear on 472 or 471 would be—or any additional purchases, let us say, would be merchandise that was on order as of February 1, 1936, from Guild resources, and was received by us between the period February 1, 1936, and February 17, 1936.

Q. So that—the question is withdrawn. Now, you have entitled this exhibit "Guild Purchases, February 1, 1935, to February 1, 1936"; haven't you? A. That is right.

Q. Shouldn't that be entitled "Merchandise Delivered from Guild Resources"? A. Not in our terminology, no. We do not consider purchases in our records until it is 5601
actually received in our store.

Q. Well, how are we to know that? A. That is common terminology in all of the stores.

Q. You made the distinction when I used the word "purchased" as to whether or not the goods had been purchased, you made the distinction that "No, they weren't purchased, this refers merely to goods that were purchased and delivered." If it is a common terminology—A. In what connection?

Q. —why did you correct me if it is commonly understood? A. In what connection?

Q. In referring to this exhibit.

Examiner Bennett: Well, you are arguing over terms. It is a matter of law. I think the term "purchase" has a very definite meaning in law.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I don't know as this gentleman has qualified as a lawyer.

By Mr. Albert.

5603 Q. Well, coming back to the original question——

Mr. Albert: I don't mean to bring up the legal question, your Honor. I merely wished to show that the title did not adequately reflect the fact.

Examiner Bennett: I think probably this witness testifies that that is the practice in his business. The legal definition of it will indicate that that would be an entirely legitimate use of the word "purchase."

Mr. Albert: Well, then——

Examiner Bennett: That is as I read the decisions about purchase. It includes delivery.

By Mr. Albert.

5604 Q. Then in order to make certain of this, Mr. Miller, we are to understand that Commission's Exhibit 471 does not reflect goods that were ordered but reflects the total dollar volume of goods that were ordered and actually delivered; is that correct? A. That is it.

Q. Now, to come back to the illustration of Mr. Beispell, you say that if you gave Mr. Beispell three orders of $200, $300 and $207 that that would reflect itself and is reflected in the figure in Commission's Exhibit 471, which

states that the cost figures of goods purchased from Herman Beispell was $707 and some cents; is that correct? A. That is correct.

Q. Do you in any way take into consideration, in the compilation of that figure, the amount of returns on that purchase? A. Yes. This is the net figure.

Q. Well, now, I just asked you whether or not the figure that you took off was the actual amount of the order. A. I said no.

Q. And you said what? A. I said no, it was not the actual amount of the orders.

Mr. Albert: Well, now, let's refer back to about four or five questions. 5606

(Record read.)

By Mr. Albert.

Q. Were those your answers?

The Witness: May I have that last part read again?

(Record again read.)

The Witness: I understand by that question you mean that the orders are naturally reflected in the receipts. In other words, he not shipping us merchandise that we don't order; on the other hand, we don't—we are not bound to take all merchandise against that order if he violates that contract in regard to the delivery dates. 5607

By Mr. Albert.

Q. Well— A. That part of it which he actually delivers in accordance with the contract would naturally reflect itself in this purchase record. That is what I mean.

Q. Yes. But, if after the receipt of that $707 worth of merchandise from Mr. Beispell any returns were made

by William Taylor & Company, that is not reflected in this figure, is it? A. Yes, it is.

Q. Well, how? A. That is the ledger card on these manufacturers recording both incoming merchandise and any returns to manufacturers. It does not take into consideration discount. It is the gross cost figure.

Q. Well, didn't you say a moment ago that this was the net figure? A. I said it was the net purchase figure, but I had nothing to say about the net cost figure. There is a distinction there, as you know.

Q. Yes. Well, but in answer to my question—I asked you whether or not when you gave an order for $200
5609 worth of merchandise, and you gave an order for $300 worth of merchandise, and you subsequently gave another order for $207 worth of merchandise in 1935, and according to your testimony with respect to Commission's Exhibit 471 that amount was delivered to you, does not that figure reflect the exact order that was given to Herman Beispell & Company for $707? A. No.

Q. Without taking into consideration the total amount due to returns? A. No, it does not.

Q. Well, then, will you please explain exactly what the figure opposite the name means (indicating) and how you arrive at that figure? A. The figure opposite these names means total amount of merchandise, gross cost of that merchandise delivered to us and entered on our journal sheets, our ledger sheets of the accounts payable office dur-
5610 ing the period February 1, 1935, to February 1, 1936, less any returns that were made to that manufacturer during that same period.

Q. Less discount? A. Discounts are not considered. That is the gross cost.

Q. So then, in so far as the amount of dollar volume of purchase prior to delivery is concerned, this figure of $54,492 would represent actual combined orders of Taylor to the various manufacturers of, let us say, $75,000 worth of goods? A. It would hardly be that much.

Q. Well, I am not taking a specific figure? A. It would be more than that amount.

Q. It would be more than this amount? A. That is right.

Q. Now, when you investigated the figures with respect to the comparison of Guild sources in the price lines of the Guild sources with other sources, did you use the same basic figures? A. I did.

Q. Have you any opinion as to whether or not the percentage of returns from sources other than Guild sources is greater than the percentage of returns to Guild sources? A. I think they are comparable.

Q. They are the same? A. Approximately. I have no reason to think otherwise. 5612

Q. And that you testify to from your experience as divisional merchandise manager of William Taylor Company? A. Yes.

Q. Would you say that since the percentage of returns does not vary between the two, that the quality of the merchandise from other sources is equal to the quality of the merchandise from Guild sources? A. I don't think that is a fair assumption necessarily.

Q. Pardon me a moment.

Mr. Albert: Has your Honor any objection to our putting in photostats of the exhibits we put into evidence this morning, rather than the originals? 5613

Examiner Bennett: I have no objection.

(There was a discussion off the record.)

Examiner Bennett: You can arrange with the Reporter to have them marked.

Mr. Albert: The photostats have been marked to conform to the originals.

Examiner Bennett: All right. Unless the Commission's attorney objects, I have no objection.

Mr. Albert: Correct me if I am wrong.

The attorney for the Commission has no objection to photostatic copies being placed in evidence with respect to Respondents' Exhibits 24, 25, 26, 27, 28 and 29 with the expressed stipulation from counsel for the respondent that the pencil notations on Respondents' Exhibit 24 are not to be considered evidence and only the typewritten matter of the letter will be considered evidence. Is that right?

Mr. Martin: Yes.

By Mr. Albert.

Q. Now, Mr. Miller, referring to Respondents' Exhibit
5615 24, being letter from you to Fashion Originators Guild, was that letter written in response to any communication or any request for information from the Fashion Originators Guild? A. No.

Q. None whatsoever? A. Not to my knowledge.

Q. Had you given them any information prior to sending that letter of the orders which were outstanding at the time of the red carding? A. Not to the Fashion Originators Guild.

Q. You had not? A. No.

Q. Through anybody? A. We had given it to individual manufacturers but not to the Guild.

Q. Did anybody on your behalf give any information to the Fashion Originators Guild, to Mr. Post or to Mr.
5616 Golby, with respect to the orders outstanding at the time of the red carding? A. Not that I know of.

Q. Was any discussion had with either Mr. Post or Mr. Golby of the Fashion Originators Guild with respect to orders outstanding at the time of the red carding, either by yourself or by any person acting on behalf or with the authority or consent of William Taylor & Company? A. I do not know. I do not know of anyone else that did.

Q. Did you receive any information in the ordinary course of the business of William Taylor Company that any discussion was had on behalf of the William Taylor Company with the Fashion Originators Guild with respect to orders outstanding at the time of the red carding?

Mr. Martin: I object. He has already testified that he did not have any conversation with them, and that so far as he knows nobody else did, and he has no knowledge of it.

Mr. Albert: We still have not got, as far as he knows nobody else did, and I am merely adopting the tactics of the Commission in asking if he received it in the course of his business. 5618

Mr. Martin: He has testified that he does not know, that so far as he knows no one did. I think it is a perfectly full and complete answer to your previous question.

Examiner Bennett: What is the last question.

(Question read.)

Examiner Bennett: He may answer.

The Witness: What was the question?

(Question read.)

The Witness: I do not know of any.

By Mr. Albert.

Q. Would you have been informed of any in the ordinary course of business had there been any? A. Yes. 5619

Q. Well, now, as a matter of fact, Mr. Miller, don't you know that there were various conferences held by persons representing William Taylor Company with the Fashion Originators Guild with respect to the fulfilling of these orders? A. (No response.)

Q. Don't you know as a matter of fact that Mr. Bergdahl had conferences with the Fashion Originators Guild with Mr. Post and Mr. Golby with respect to this matter?

Mr. Martin: I object.

Examiner Bennett: Sustained. There is not any indication here that this gentleman is in any way related to Mr. Bergdahl.

Mr. Albert: Very well. I will show the relationship if it please the Court.

Examiner Bennett: I don't think we will go into a matter of that kind on cross-examination, cross-examining on cross-examination.

Mr. Albert: If your Honor please, may I be permitted to refresh the recollection of the witness with respect to it? I think I can refresh his recol-
5621 lection of it.

Examiner Bennett: The matter has not been gone into in connection with direct examination. There is nothing in the record to indicate at all that this man was a representative of this particular concern. I will sustain the objection. If you want to put on Mr. Bergdahl in your direct case to testify as to his being authorized by this concern, Taylor & Company, to look after this business for them, why, that is all right.

Mr. Albert: I am sorry. I did not follow that last remark.

Examiner Bennett: I say, if you want to put on Mr. Bergdahl as your own witness, when it comes to presenting your case, if Mr. Bergdahl was
5622 authorized to represent this concern and did, in fact, represent them, I think you are entitled to do so.

Mr. Albert: Well, I feel quite certain before we are through with the case that the Commission will undoubtedly call Mr. Bergdahl.

By Mr. Albert.

Q. Now, in response to Respondents' Exhibit 24, you received Respondents' Exhibit 31; is that not so? A. That is right.

Q. And what do you understand to be the meaning of that telegram? A. I understood to be the meaning of it that it would be necessary for us to take all orders, to accept all merchandise against all orders outstanding on February 17, the date, I believe, we were red carded, according to the evidence, if we were to have any of them.

Q. Well, now, as a matter of fact, did you not believe by this letter that the Guild was of the opinion that you had attempted to pick out only certain manufacturers mentioned in your letter of March 11, and that in response to that letter they said that if you desire all merchandise available, you cannot discriminate on individual shipments or manufacturers? A. No, I did not.

5624

Q. You did not understand that to be so. Well, now, is it not a fact that in response to this letter, Commission's Exhibit 31, you sent the following telegram: "Orders listed in letter cover all merchandise now outstanding with your members"? A. That is right.

Q. So that what you attempted to convey to the Fashion Originators Guild was that you had not chosen any particular manufacturers from those whose orders were outstanding, but that the four represented in Respondents' Exhibit No. 24 were the only ones from whom orders were outstanding at that time; is that not so? A. That is correct.

Q. But except for the fact that you used a departmental cancellation, which you did not inform anybody of, and which nobody knew anything at all about as regards the cancellation, there were other orders outstanding undelivered at the time that you sent this telegram, were there not?

5625

Mr. Martin: I object, your Honor, as being cross-examination on cross-examination. All these were brought out by my friend.

Mr. Albert: To the contrary, your Honor, they are matters that refer to his direct examination.

Examiner Bennett: Overruled. I will let him answer.

The Witness: Read the question.

(Question read.)

The Witness: I cannot answer that definitely. I know that we used what we call "House Cancellation" on some orders. What they are, I am not in position to testify now.

By Mr. Albert.

Q. Now, is it not a matter of fact that you contended as regards these unfilled orders, that by reason of the fact
5627 that you had put on your house cancellation of the order, you were not required to take the orders from the manufacturers; is that not so? A. I contended nothing about it.

Q. Well, what is the meaning of this telegram, Respondents' Exhibit No. 28, as follows: "Thought my wire plus letter explained clearly merchandise we desired delivered from your members. Orders specified all that are outstanding at the present time. Other orders placed prior to February 17 were canceled when past due and placed with other manufacturers. Impossible to accept merchandise covered by these canceled orders." What did you mean by that? A. I think it is clear.

Q. Well, I am a little dense. Would you mind explaining it? I mean, I am in Mr. Haycraft's class now. The matter seems dense and I cannot figure it out.
5628

Mr. Martin: You do not mean Mr. Haycraft.

Mr. Albert: I mean Mr. Martin.

The Witness: It simply means that in accordance with our records there were no other orders outstanding on our files except those that were covered in our letter of March 11.

By Mr. Albert.

Q. But who knew that they were canceled aside from yourself? A. I am not in a position to testify which ones were entered on house cancellation and which were not. If you would like that information I will get it for you.

Q. At the present time you do not know who was notified of the cancellation? A. I do not know which manufacturers were definitely notified and which were not.

Q. Can you tell me how long after the delivery date of the orders which were unfulfilled you filled those orders with other manufacturers? A. No, I cannot.

Examiner Bennett: Is that your regular course of proceeding? That is, canceling orders as soon 5630
as they are due?

The Witness: Yes, within a reasonable length of time after they become due, if they are still unfulfilled, we cancel them.

Examiner Bennett: That is true, is it, generally about your business?

The Witness: Yes, it is.

Examiner Bennett: I see. Very well.

By Mr. Albert.

Q. What is your usual course of business, Mr. Miller, with respect to cancellation of orders? A. Well, it depends entirely upon the type of order, and whether or not the manufacturer had indicated a willingness to deliver 5631
that merchandise or an intention of delivering it. If it is an order that is past due, we usually cancel it within a reasonable length of time; sometimes due date, it is past due; sometimes it will be a week, sometimes it will be as long as two weeks. Other times, when we have an indication from the manufacturer that the order will not be delivered, we cancel it then and there.

Q. Now, isn't it a matter of fact, Mr. Miller, particularly with respect to the price lines which are the subject of immediate discussion, that no cancellation is operative until notice thereof is given to the manufacturer? A. Unless the manufacturer gives us notice, which we had had in certain instances in the Guild merchandise. In other words, that they had told us that they could not deliver.

Q. You had the same notice of an item in Women's Wear that the Guild had red carded you, from which you assumed that you could get no merchandise from Guild houses with respect to Bernard Appel, Milton Altmark,
5633 William Bass and Mary Lee; didn't you? A. Yes.

Q. Why didn't you cancel theirs? A. I don't know. We didn't cancel any of those orders until they were past due. That is all I can tell you, either on a house cancellation or a mail out. If the information relative to house versus mail-out cancellation is of great importance, I can bring that in definitely in the morning for you.

Q. On cancellation of an order, which you give notice to a Guild house—when you give notice to a manufacturer, what sort of notice did you usually give of the cancellation? A. It is a formal cancellation blank similar to our order blank except marked "Cancellation" and specifies the order number to which it refers along with other information pertaining to that order.

5634 Examiner Bennett: It is our usual time for adjournment.

Mr. Albert: Very well, your Honor. We can take this up from here to-morrow.

Examiner Bennett: You have further cross-examination?

Mr. Albert: I think so with respect to this particular item, your Honor.

Examiner Bennett: I beg your pardon?

Mr. Albert: I say, I am through with respect to this particular field.

Examiner Bennett: All right. We will adjourn. Do you want this witness to-morrow morning?

Mr. Albert: I beg your pardon, your Honor?

Examiner Bennett: Do you want this witness to-morrow morning?

Mr. Albert: Oh, well, we will just about be starting with him to-morrow morning, your Honor. I mean, after all, I have only been examining him with respect to his mistakes.

The Witness: Ha, ha, ha, ha, ha.

Examiner Bennett: All right. We will adjourn until to-morrow morning at 10 o'clock at this place. I will ask the witness to be present for further examination. 5636

The Witness: 10 o'clock to-morrow morning?

Examiner Bennett: Yes, 10 o'clock.

(Whereupon, at 4.40 o'clock P. M., August 12, 1936, the hearing in the above-entitled matter was adjourned.)

5637

Court Room No. 307,
Federal Building,
Cleveland, Ohio,
August 13, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

5639 Examiner Bennett: Be in order, please.

You may resume.

Mr. Albert: If it please the Court, before we resume questioning to-day——

Mr. Miller: Your Honor——

Examiner Bennett: I beg your pardon?

Mr. Albert: —I have a slight statement I wish to make.

Mr. Miller: May I——

Mr. Martin: Wait.

Mr. Albert: If you will just wait a few moments, Mr. Miller.

On the hearings yesterday, Mr. Miller, representing William Taylor Sons & Company, presented various figures, ostensibly representing percentages of increase and decrease of various departments compared with their 1936

5640 and 1935 volume.

Examiner Bennett: Yes.

Mr. Albert: He also presented, or, rather, testified to the fact that in the price line covered by Guild sources, William Taylor Sons & Company used 60 per cent. of their total volume of merchandise in those particular price lines.

Examiner Bennett: Yes.

Mr. Albert: He also presented various other figures without giving the basis or the foundation for computing the percentages which have been testified to in evidence.

I believe that the witness also acknowledged that with respect to the itemization of these various things as contained in certain exhibits, which are now in evidence, certain omissions appeared in those exhibits.

Now, in the light of that fact, I ask your Honor to call upon the attorneys for the Federal Trade Commission, pursuant to the power vested in them for the orderly and fair presentation of evidence upon this hearing, in order to obviate the necessity, the expense, and the discomfort of all parties concerned, coming back here to Cleveland in order to get the information which must be gotten in order to show the basis for those figures, and, as an evidence of good faith on the part of the attorneys for the 5642
Commission, that they are seeking to present all of the facts and the figures, and not to present a biased case, I ask your Honor to demand of the attorneys for the Commission that they subpoena the records of William Taylor Son & Company, and produce the figures which form the foundation of the testimony of Mr. Miller, and that in default of their presenting the figures which form the foundation of that testimony, that your Honor strike from the record all of this witness' testimony.

The Federal Trade Commission's attorneys have been protesting at the extraordinary length of these proceedings, that their schedule has been delayed. It seems to me that if the Commission insists upon assisting William Taylor Son & Company in not disclosing the figures which form the basis of their computations, it will be necessary 5643
for all parties concerned to come back here to Cleveland, with added expense on everybody, and certainly additional time, which seems to be the main concern of the Federal Trade Commission's attorneys, and I say that if they are sincere in that regard alone, aside from the question of the competency of the evidence that has been presented, but in order to be consistent with their argument that these proceedings are not advancing with the speed which

they think they should advance, that in order to save all of the time of coming back to Cleveland, the Commission, pursuant to the Federal Trade Commission Act, Section 10, should demand of William Taylor Son & Company that they produce those figures and make them available to the Commission for investigation.

Mr. Martin: If your Honor please, as counsel for the respondent has already been advised, not once but half a dozen or more times by your Honor, if they desire those figures there is a proper time and a proper place, and a proper method, by which they can secure the figures. In the meantime counsel for the Commission respectfully sub-
5645 mit that it will conduct its case according to their view of it and not in accordance with instructions from counsel for the respondent.

Examiner Bennett: I might say that Mr. Weisman was advised that he might put in his testimony at all these places immediately on the closing of the hearings by the Commission, and he said that he did not care to do so, and we have let it go on. At least, that is true of the hearings in other than in New York and Boston and Philadelphia, which were close by to the headquarters, and I presume that that still stands.

I, of course, will say that if he had indicated otherwise, why, he would have been given an opportunity, and we would have arranged for that, but as to the request of the attorney, it is denied.

5646 If the Commission chooses to put in that testimony in that form, while the evidence is not so strong as it would be if the figures were here—however, in the judgment of the Examiner it is competent evidence, and he sees no reason why it should be—why the witnesses should be compelled—in behalf of the Commission, to disclose what they consider to be damaging facts, damaging to their business.

The witness has indicated that he wishes to correct some errors in his testimony of yesterday, and the Examiner now gives him an opportunity to do so.

5647

Mr. Albert: May I have just a brief word in reply, your Honor? May I point out to your Honor——

Examiner Bennett: Well, what are you going to debate? The matter of getting that evidence?

Mr. Albert: I merely wish to show your Honor the difference between what is occurring here in Cleveland and what has occurred in Boston and Philadelphia. In Boston, New York and Philadelphia we were given volume figures, plus the percentages.

Examiner Bennett: Yes—well, I am not talking about that.

Mr. Albert: In Cleveland we are only talking about percentages. 5648

Examiner Bennett: Well, I am not going to hear any more argument on that.

Mr. Albert: Very well, your Honor, exception.

Examiner Bennett: You may have your exception.

W. E. MILLER, resumed the stand and testified further as follows:

Cross-examination (continued).

Examiner Bennett: You may make such questions as you have to make if you care to do so.

The Witness: Your Honor—— 5649

Mr. Albert: If it please the Court, may I make objection to the witness making corrections in his testimony, and ask to be permitted to continue with my cross-examination, and if the Commission wishes to rehabilitate the witness on redirect examination, I think that is the proper place for it.

Examiner Bennett: Yes. Well, I am going to give him an opportunity right now to correct his testimony.

Mr. Albert: Exception, your Honor.

Examiner Bennett: You may have it.

The Witness: Your Honor, with reference to Commission's Exhibit—I believe—473, in which are given percentage increase and decrease figures for the store as a whole and for various departments which occur through February, through June of 1936, as compared to February through June, 1935. I find upon further personal investigation that the total figures, for total better dresses, that is, Departments 330, 335 and 350 for the month of April, 1936, as compared with the month of April,

5651 1935, was inaccurate.

That total figure, instead of being 20.72, as I get it here—it is blurred—should have read a decrease of 6.91.

Examiner Bennett: What?

The Witness: 6.91 decrease. I personally have checked every other figure in this exhibit against the actual monthly record figures of our concern and find them to be correct. The figures at the bottom of this page, which are the total of the three departments in question, were computed in addition to the monthly record figures. I personally have checked each of those computations and can testify as to the fact that they are now correct.

5652 *By Mr. Albert.*

Q. Well, now, you also testified that they were correct yesterday, didn't you, Mr. Miller? A. I did.

Q. And you found that you were mistaken? A. I did.

Q. You also testified yesterday in response to the direct questions from Mr. Martin that you had previously personally checked these figures; is that true? A. I don't believe that is correct, sir.

Q. Well, now, didn't you testify in response to a question from Mr. Martin that you had personally prepared the exhibit? A. I don't believe so.

Q. You are quite certain of that? A. I don't believe so. The records, I think, would show that.

Q. I mean, you are not certain of what you testified to?

Mr. Martin: I don't think there is any evidence of that sort in the record at all.

Mr. Albert: Well, let me ask about it, if it please the Court.

Mr. Martin: The record will show what he testified to.

Mr. Albert: May I be permitted? 5654

Examiner Bennett: The Examiner recalls one document that he prepared himself.

Mr. Albert: Yes, your Honor.

Examiner Bennett: There is a list of names of Guild houses with whom he did business.

By Mr. Albert.

Q. Have you any doubt whether or not you testified yesterday that you personally prepared Commission's Exhibit 473? A. I think the record will show that.

Q. I am asking you. Have you any doubts as to what you testified to? A. I can't answer that question. I can't answer that question. I am sorry.

Q. Well, if you didn't prepare it personally, should there 5655 be any doubt in your mind that you didn't?

The Witness: Would you read that question back?

(Question read.)

Mr. Martin: That isn't the question. That isn't the question you asked him. You asked him whether he had testified. He is replying to that question.

Mr. Albert: No.

By Mr. Albert.

Q. Let's start all over again, Mr. Miller. Didn't you testify yesterday that Commission's Exhibit 473 was prepared by you? A. I can't answer that question.

Q. You don't know what you testified to yesterday? A. I think the record will show that.

Q. Now, please answer my questions. Don't you know what you testified to yesterday? A. I think the record will show that.

Mr. Albert: May I ask your Honor to direct the witness to answer that question?

5657 Examiner Bennett: I will ask him to answer.

By Mr. Albert.

Q. Don't you remember what you testified to yesterday? A. I am not sure of the wording.

Q. I am not asking you about the wording. I am asking you of the substance. Did you testify that you prepared Commission's Exhibit 473? A. To the best of my knowledge, I testified that Commission's Exhibit 473 was prepared under my supervision and at my request.

Q. Well, now, what was so doubtful about it in your mind up to now?

Examiner Bennett: That is exactly what he testified to yesterday.

5658 Mr. Albert: Well, now, Mr.——

Examiner Bennett: Let's not waste time with it.

By Mr. Albert.

Q. Mr. Miller, do you recall this testimony: "By Mr. Martin. Q. I hand you Commission's Exhibit 473 for Identification and ask you can you identify that? A. I can." Up to the present time, Mr. Miller, you have been

particularly discreet in answering questions, haven't you? You have made certain that you answered the question in accordance with what your belief was that the answer should be as to the true facts?

Mr. Martin: I object to that as being immaterial and irrelevant. This witness is under oath.

Examiner Bennett: Well, it is not a question, is it?

Mr. Martin: Sir?

Examiner Bennett: I say, it is not a question, is it? It is a comment. Do you want it to be stricken?

Mr. Martin: I think the question he is asking him 5660
is improper.

Examiner Bennett: Well, I didn't think it was a question. I thought it was a comment. Read the question.

(Question read.)

Examiner Bennett: Sustained. I think we can judge Mr. Miller's testimony without asking him further along that line.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you recall yesterday when I used the word "purchase" you corrected me as to my use of the word and as to the meaning of it, didn't you? A. In one reference, 5661
yes.

Q. Yes. And during the time of the examination generally when words were improperly used, or when questions were propounded, you have refused to answer the question until a question was separated, or until the complete meaning of the word was apparent to you; isn't that so? A. That is correct.

Q. Now I read further in the examination by Mr. Martin in referring to Commission's Exhibit 473: "Q. What is it? A. It is a record showing the volume increases or decreases by months through February, through June of this year for the total store for each of the departments mentioned by you and for the total dress departments which constitute women's, misses', women's and misses' better dresses. Q. Was that prepared by you under your supervision? A. Prepared by me." Do you recall that testimony now? A. I presume if it is in the record I must have given it.

Q. Well, I am reading it to you from the record. Do you recall that? A. I understand. Yes.

5663 Q. Now, then, was your testimony wrong? A. It must have been in that respect.

Q. Isn't it more than "it must have been"? It was, wasn't it? A. The record was prepared under my supervision, not by me personally.

Q. So that if this exhibit was admitted into evidence on the basis of the fact——

Mr. Martin: Now, if your Honor please——

Q. —that you personally prepared it, it was wrongly admitted, wasn't it?

Mr. Martin: I object to counsel for the Commission picking out one particular question out of the record. As I recall it, there are further questions

5664 and answers.

Mr. Albert: I would only be too glad to read them.

Mr. Martin: Further on that which explained it.

Mr. Albert: I will only be too glad to read them.

Examiner Bennett: That was gone into on cross-examination yesterday very thoroughly. Mr. Miller went into the matter and showed just how it had been prepared.

Mr. Albert: Your Honor recalls those questions.

Examiner Bennett: I recall the cross-examination very thoroughly, and I know just what he testified to on cross-examination. It was exactly what he testifies to now. There is nothing concealed about it.

By Mr. Albert.

Q. Mr. Miller, did you compute the percentage of increase or decrease for the combined departments 330, 335 and 350 for the five months, February, March, April, May and June? A. I did.

Q. What is that figure? A. You mean as a total? 5666

Q. Yes. A. No, I did not.

Q. Can you compute that figure for us? A. Yes, easy.

Q. Have you the figure there? A. No, I haven't.

Q. Have you any figures there which will permit you to compute it? A. No, I haven't. I haven't the dollar figures. I can have it for you this afternoon, if you would like.

Q. Will you do so? A. Yes. That is the same figure, the same percentage figure for the five months as the total? Do I understand you correctly?

Q. Yes. A. (Witness nods head affirmatively.)

Q. That is, you have taken departments 330, 335, 350 for one month? A. That is correct.

Q. Now, take 330, 335, 350 for the five months. A. Five months as a total? I understand. 5667

Q. And let us know how much they increased their business over 1935. A. Would you also want the same figure for the store as a total? As a whole?

Q. No, I don't think so. A. All right.

Mr. Martin: If your Honor please, I object to any comparison of that sort. The Commission's exhibit shows exactly what it is. It is a compari-

son of those departments for the total stores for each month. Now, if counsel for respondents wants the total for those five months as compared with the total of the store for the five months, I see no objection to his getting it, but otherwise I do object to it.

Mr. Albert: Well, we are up against the same proposition of the Commission refusing to permit evidence to be presented even on the hocus pocus figures that have been presented here in Commission's Exhibit 473.

Mr. Martin: Now, if your Honor please, there
5669 is a limit, I think, to which Counsel for the Commission is required to go. Personally.

Mr. Albert: You have exceeded the limit.

Mr. Martin: Just a minute. I am talking.

Mr. Albert: By the Commission's evidence——

Examiner Bennett: Just a moment.

Mr. Martin: Now, as far as I am concerned, I am sick and tired of counsel being—counsel for the Commission being met on every occasion and willfully and maliciously charged with the suppression of evidence on every occasion because we do not happen to conduct our case as they want us to conduct it.

Mr. Albert: Well, Mr. Martin——

Mr. Martin: Will you wait until I am through?

5670 Examiner Bennett: Just a moment. Sit down until he is through.

Mr. Martin: I have always.

Examiner Bennett: Haven't you the courtesy to sit down until the gentleman is through?

Mr. Martin: I have always been taught that cases were won by proper presentation of evidence and argument and logic, not by such interpolations and personalities which seems to be the basis for counsel

on the other side trying the case. I respectfully request that the Examiner ask counsel for the other side to address his remarks towards the proper cross-examination and refrain from further personalities and accusations.

Examiner Bennett: What is the question pending?

(Record read.)

Examiner Bennett: Well, it is a matter up to the witness.

By Mr. Albert.

Q. Now, Mr. Miller, when did you start preparing Commission's Exhibit 473? 5672

Mr. Martin: I object to that. Immaterial and irrelevant as to when he started preparing it.

Mr. Albert: Foundation question, if your Honor please.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Well, let me put it this way, then: How long would you say it took to prepare Commission's Exhibit 473?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception. 5673

By Mr. Albert.

Q. You prepared Commission's Exhibit 473 over the week-end?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. We left here last night at about 4.30. When did you start correcting the figures of Commission's Exhibit 473?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Now, if it please the Court, we have here a total of thirty months of figures of six departments. We have five months of figures of the total stores' sales for both 1935 and for 1936. The witness left here last night at 4.30 o'clock, and I
5675 presume he took time out for dinner, and yet the witness comes in and tells us that between approximately 6 o'clock last night and 10 o'clock this morning he was able to personally check every single figure that forms the basis of any of the estimates in this particular exhibit. And I think that I should be permitted to examine him to show the practical impossibility of his having done so. If he actually did look at the figures he couldn't have paid very much attention to them.

Examiner Bennett: You may examine him as to the sources.

Mr. Albert: I beg your Honor's pardon?

Examiner Bennett: I say, you may examine him as to sources. I don't see that the matter of
5676 time—it is merely a matter of what records he had, what shape they were in, and what assistance he had, and so on. I don't think it throws any light on it at all. It appears that these figures are taken from reports which were in informative form when submitted, and did not entail a great deal of work.

By Mr. Albert.

Q. Well, now, Mr. Miller, do I understand that with respect to each department the figure that you checked was the figure on the merchandise monthly report for the particular month for that department?

Mr. Martin: Objection. The witness has already testified to that question, both on direct and on cross-examination.

Mr. Albert: I am only asking him——

Mr. Martin: And I object on the ground of repetition needlessly.

Mr. Albert: I haven't started to examine him yet, your Honor, on his corrections that occurred since yesterday, which I am now directing myself to. 5678

Examiner Bennett: All right. Overruled.

The Witness: Will you read the question?

(Question read.)

A. That is correct. I checked the figures that were on Exhibit—Commission's Exhibit 473, month by month, with the report—with the monthly statistical report—which shows increase or decrease of volume over the previous year.

Q. So that you compared the final figure contained in Commission's Exhibit 473 with the very identical figure prepared by your clerk or accountant as contained in your merchandise monthly report; is that correct? A. That is correct, except I did it personally this time. 5679

Q. Didn't you say that you personally checked the figures? A. Pardon me?

Q. Didn't you say that you personally checked the figures? A. I said that I personaly checked these figures against our merchandise report.

Q. What did you mean just now when you said "except that I personally did not"? A. No. No. I said I personally did check it.

Mr. Albert: Oh.

Mr. Martin: He said "I personally checked it."

Mr. Albert: I am sorry. I thought you said "I did not." I am awfully sorry.

The Witness: No.

By Mr. Albert,

Q. Now, let us assume that on a particular month, let's say for February in Department 330, when you went into the merchandise monthly report you found the total business was $10,000. That is just an arbitrary figure, has no meaning at all. A. That is right.

5681 Q. Did you examine the figures to determine how that $16,000 was computed? A. No, because those figures are—

Q. Now, Mr. Miller, all I want to know is, did you examine them, and the answer is "yes" or "no." A. No.

Q. Did you examine them with respect to any other department?

Mr. Martin: I object to that as being entirely irrelevant and immaterial. He has testified that these figures were prepared from the store records, which were ordinarily used in the course of business, and which were relied upon by the store in the conduct of their business.

Mr. Albert: I pity William Taylor Son & Company if they relied upon that figure of 20.2 for

5682 April for the three departments, your Honor.

Mr. Martin: They do not need your pity.

Mr. Albert: Seemingly all that Mr. Miller has done is merely to compare the main figure that was presented to us with the figure that was reached in Commission's Exhibit 473. Anybody could do that and see that nobody made a mistake in the transcribing of the figure, but he has not checked up on the accuracy of that particular figure.

Examiner Bennett: I see.

Mr. Martin: The objection is renewed.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, Mr. Miller, you have testified that since you have been with William Taylor Son & Company you have gone down to New York upon various occasions, to the market, to assist in buying, to look over the market, in conformity with your various duties; is that not so? A. I have.

Q. And as a result of that you have become familiar with the various manufacturers in the market; is that not so? A. With those with whom we were doing business, yes. 5684

Q. You have no knowledge of any other manufacturers except those with whom you have been particularly doing business? A. Yes, I have some knowledge, naturally.

Q. Well, to what extent have you a knowledge of the business? A. That would be a difficult question to answer. I do not know.

Q. Have you any knowledge as to how many manufacturers there are that manufacture merchandise in the same price line as the members of the Fashion Originators Guild?

Mr. Martin: Objected to as being irrelevant, immaterial, and outside of the scope of cross-examination. The witness has testified that he did not personally do any buying, that he has supervision over the buyers who did the actual buying, and that he has been to New York on occasions with them to look at stocks, and, further, that he was familiar with the buyers with whom they did business; but otherwise he was not. And I respectfully 5685

submit that that question is not a proper question for cross-examination; outside of the scope of direct examination——

Mr. Albert: If it please the Court——

Mr. Martin: —and is irrelevant and immaterial.

Mr. Albert: Now, if it please the Court, this witness has testified with respect to the injury to William Taylor Son & Company in its inability to maintain its sources of supply. Now, when we seek to cross-examine this witness to show that his source of supply has not been injured, we meet the same philosophy of approach that we met in Philadelphia and Boston to the effect that the witness knows nothing about it, that he did not go down to New York, that he is not a buyer, and that the buyers are the ones who are to testify as to that.

5687

When I sought yesterday in anticipation of this very thing to inquire where the buyers were, I was met with the proposition that one buyer is presently in New York and that the other was on her vacation somewheres.

Now, if Mr. Martin believes sincerely that this witness can give us no information as regards his ability to tap sources of supply, then I say that in fairness to the respondent, and in fairness to the Commission, this witness' entire testimony with respect to sources of supply should be stricken until

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such time as the Commission brings in people who are competent to testify as to what the sources of supply were, as to how they were injured by any action of the Fashion Originators Guild, and people who can entirely answer and demonstrate the contentions of the respondent, or, rather, not demonstrate, but give reply to the questions to the attorneys for the respondents, demonstrating that their sources of supply have not been injured.

Mr. Martin: If your Honor please, the question of source of supply is a matter of defense. If the respondents seek to show that there were ample and plenty of sources of supply available to this witness for securing merchandise, that is a question of defense, and is properly brought out by the respondents' direct examination, but I respectfully submit it has no place in cross-examination.

Mr. Albert: If it please the Court——

Examiner Bennett: Well, I have heard all the debate I care to hear on that. I am going to let you pursue the examination to a certain extent.

Mr. Albert: Thank you, your Honor. 5690

Examiner Bennett: Objection is overruled.

(Question read as follows: "Q. Have you any knowledge as to how many manufacturers there are that manufacture merchandise in the same price line as the members of the Fashion Originators Guild?")

A. I have never counted them, no.

Q. After the red carding, did you make any investigation to determine from what manufacturers you could obtain the same price line as had been handled by you through members of the Fashion Originators Guild? A. Yes, we did.

Q. And, as a result of that investigation, what did you find? A. We found that in some cases we could replace, 5691 and in other cases we could not.

Q. Well, as a result of your investigation, how many manufacturers did you find who were manufacturing merchandise in the same price line as the Fashion Originators Guild of America members did?

Mr. Martin: Objected to; the witness has already testified he does not know.

Examiner Bennett: Yes, that is your testimony, that you do not know?

The Witness: I don't know how many there were.

Examiner Bennett: I see. All right.

By Mr. Albert.

Q. Were you furnished with any list by any of your sources of information listing manufacturers manufacturing merchandise in the same price line as the members of the Fashion Originators Guild of America?

5693 Mr. Martin: Objected to.

Examiner Bennett: Overruled; he may answer.

A. You mean the A.M.C.?

By Mr. Albert.

Q. That is right. A. We have a list.

Q. So that you did have a list of manufacturers, did you not? A. Yes, we had a list.

Q. You did not testify to that, or that information, in response to any of my previous questions, did you? A. It was not asked, to my knowledge.

Mr. Albert: May I have Commission's Exhibit 450?

5694 (Counsel searches for exhibit.)

Mr. Albert: May I ask the Court's indulgence for just a moment?

Examiner Bennett: I beg your pardon?

Mr. Albert: May I ask the Court's indulgence for just a moment; they went for that exhibit.

Examiner Bennett: Yes.

Mr. Post: A copy of it would be attached to the last day's testimony taken in Philadelphia.

Mr. Keller: Here it is (indicating).

Examiner Bennett: Have you found the exhibit?

Mr. Albert: Yes, your Honor.

Mr. Keller: Not the original; it is just in the testimony.

Examiner Bennett: Yes, I see.

By Mr. Albert.

Q. I show you Commission's Exhibit 450, as typewritten into the record, and ask you if you received a similar letter as this letter?

Mr. Post: Excuse me. Here is the original exhibit.

Mr. Albert: Oh, you found it? 5696

Mr. Post: I found it right here.

(Mr. Albert shows original exhibit to the witness.)

Mr. Martin: This is objected to, your Honor, as seeking to bring in that same old question in connection with the Associated Merchandising Corporation, which you have ruled out.

Mr. Albert: Your Honor, you cannot divorce the serpent from the tree; they have been together since Adam and Eve.

Mr. Martin: There is no evidence to show that this witness or his firm has any connection with the Associated Merchandising Corporation.

Mr. Albert: Why, if your Honor please—— 5697

Mr. Martin: And I object to any cross-examination along that line.

Mr. Albert: If your Honor please, this witness has volunteered the information that the A.M.C. sent him a list of sources of supply.

Mr. Martin: In other words, do you think you can cross-examine him on cross-examination?

Mr. Albert: I can get out of him any information that is pertaining to his direct. He said his

sources of supply were affected, and that is what I want. It is the only purpose of this examination.

Examiner Bennett: I understand that the witness testified that he had a list of this sort. That is, that he had a list setting forth certain manufacturers. Is that not your testimony?

The Witness: That is correct.

Mr. Albert: That is, he referred to a list generally without——

Examiner Bennett: Yes, I will sustain the objection to that question. He has a list, and that is all there is to it.

5699

By Mr. Albert.

Q. Well, now, I show you a list of non-Guild members, being Commission's Exhibit 450-B to 450-P, and ask you if this is the list that you had?

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer that.

A. I believe that that is true. May I go through it? (Witness examines Exhibit 450.)

By Mr. Albert.

Q. Is that an accurate list? A. As far as——.

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Mr. Martin: I object to that. Obviously the witness cannot testify as to that. He did not prepare the list; it was a list that was sent him.

Mr. Albert: He testified he had actually received a lot of things that he has not prepared, your Honor.

Mr. Martin: He has not testified as to the accuracy of that, though.

Examiner Bennett: Sustained; I will sustain the objection.

Mr. Albert: Exception.

By Mr. Albert.

Q. Was this list provided you in the ordinary course of business of William Taylor Son & Company?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Now, if your Honor please——

Examiner Bennett: Well, I do not think—I think you are asking him impossible questions; he evidently cannot——

Mr. Albert: That is what I am trying to find out. That is precisely what I am trying to find out.

Examiner Bennett: Well, find out whether this, that or the other concern was providing him with the information as to what he wanted. Let us get at it. Let us get at the thing. 5702

By Mr. Albert.

Q. Did you purchase any goods from Simon & Schmer? A. Not to my knowledge.

Q. Did you purchase any goods from Rosenthal-Kalman? A. May I ask a question?

Q. Yes. A. That is the same as Rosana?

Mr. Feldman: Yes, that is right.

The Witness: Yes.

By Mr. Albert.

Q. You did? A. Yes. 5703

Mr. Martin: Your Honor please, I would like at this time—it is immaterial, of course, to the Commission whether or not these names are put in evidence, but I would like to——

Examiner Bennett: Make your objection.

Mr. Martin: —enter an objection and ask the Court to call to the attention of the witness that he

is—if he does not want to disclose his present source of supply he does not have to, that is up to him.

Examiner Bennett: Well, I thought I made——

Mr. Albert: Now, then——

Examiner Bennett: I thought I had made that plain to him.

Mr. Albert: Now, if it please the Court—I mean, do you not think that this solicitation of the Federal Trade Commission——

Examiner Bennett: May I say——

Mr. Albert: —making certain that the witness is informed that he does not have to testify is unseemly?

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Examiner Bennett: Please do not debate that. There is no need of debating that and filling the record with that sort of thing.

Mr. Albert: Very well.

Examiner Bennett: The witness has not indicated that he is reluctant to disclose it, and that is up to him. Go ahead and question him. If he wants to answer, why, he may do so; if he does not, if he thinks that is confidential matter, he need not disclose it. It is up to him to say.

By Mr. Albert.

Q. Now, Mr. Miller, did you contact Rosenfield-Newman for the purpose of purchasing merchandise?

5706

Mr. Martin: Objected to.

Examiner Bennett: Overruled.

A. Not to my knowledge.

Q. Did you contact Patricia for the purpose of purchasing merchandise? A. Yes.

Q. Did you purchase any? A. I believe so; I am not sure.

Q. Do you know the amount of that purchase? A. I do not know, offhand.

Q. Will you furnish me with the figures? A. I am afraid I cannot do that.

Q. You mean you won't do that? A. I could not without permission of my concern.

Q. Will you find out if they will permit you to disclose those figures? A. I will ask them to.

Q. What about Virginia Lee? A. I don't recall that.

Q. You don't recall that at all? A. I don't recall whether we made any—I know the name is on the list, that is all.

Q. And Bacher & Schachter, did you contact them? A. 5708
Not to my knowledge.

Q. Did you contact Varsity? A. Yes.

Q. Did you purchase any goods from Varsity? A. I don't know.

Q. Did you contact Ruth Lane? A. Not to my knowledge.

Q. Did you contact D. Saltman? A. Not to my knowledge.

Q. Did you contact Baronet? A. Yes.

Q. Did you make any purchases from them? A. Yes.

Q. How much merchandise did you purchase from them? A. I don't know.

Q. Are the figures available? A. They are.

Q. Will you provide me with them? A. No.

Q. That is, you do not have to ask your superiors with 5709
respect to them, do you? A. If you would rather have the other answer no, we will make it no all the way down.

Q. That is, I understand with respect to all houses on this list that you actually purchased goods from, you refuse to provide me with the figures or the amount of the purchase? A. That is right.

Q. Is that correct? A. That is correct.

Q. Very well, I won't have to ask that question on all of them. A. That is correct.

Q. Did you contact D. Saltzman? A. I beg your pardon?

Q. (Question read.) A. I don't know; not to my knowledge.

Q. Did you contact Baronet? A. I believe I answered that.

Q. Did you contact Rolfe? A. I did not personally contact any of these manufacturers.

Q. I certainly am not referring to you personally. A. Well, I want that clear.

5711 Q. I am referring to you, your buyers, or your business. A. I simply want to make that clear that I did not do it personally; that's it.

Q. I mean, you are not qualifying your answer with respect to all of the houses I have asked you about? A. No, I am simply explaining, simply explaining.

Q. So that your answers with respect to the various houses are correct answers? A. So far as I know, yes.

Q. You are the divisional merchandise manager, are you not? A. Yes.

Q. And know what your buyers are doing, do you not? A. Yes.

Q. And they act under instructions from you, do they not? A. Yes.

5712 Q. Did you contact Esterles? A. Yes.

Q. Did you make any purchases from them? A. Yes.

Q. Did you contact Adair? A. I am not sure.

Q. Did you contact Hurwitz? A. I am not sure.

Q. Did you contact Samuels? A. I am not sure.

Q. Melgro? A. I don't know.

Q. Abrams & Norman? A. I don't know.

Q. Casanova? A. I believe so, but I am not sure.

Q. Abrams & Norman?

Mr. Martin: Now, your Honor, please, I object to any further continuation of this. Here is a list of fifteen pages typewritten names of manufacturers. I object to the time of the Court being taken up by Mr. Albert going through and naming each manufacturer, asking this witness whether he was contacted or not. The witness has testified that he did have a list of non-Guild manufacturers which were an open source of supply to him for the purchase of goods, and that his purchases were made therefrom.

Now, I object to any delay on the part of counsel here. I can see no purpose that it can serve by 5714
checking up each individual name on fifteen pages: "Did you know this man?" "Did you buy from this man?" I object to a continuation on the grounds it is irrelevant and immaterial.

Mr. Albert: If your Honor please, it is really unfortunate that the list is so long and that he has so many sources of supply that he can contact, but that is not my fault. I have to investigate in order to determine exactly what sources of supply he has attempted to tap. Now, if the witness will tell me, or if Mr. Martin will stipulate that they only attempted to contact about twenty-five houses that were not Guild members, and didn't attempt in any way to contact any of the others, I will take the stipulation. I will save time. 5715

Mr. Martin: I won't stipulate anything because I cannot stipulate that.

Examiner Bennett: Why don't you ask that question?

By Mr. Albert.

Q. Mr. Miller, about how many houses would you say William Taylor Son & Company contacted who were not

members of the Guild for the purpose of obtaining merchandise after the red carding? A. I don't know, Mr. Albert.

Q. You don't know.

Mr. Albert: Well, now, there you are, your Honor.

Examiner Bennett: Well, the list is in the record.

Mr. Albert: Not as to what he did, your Honor.

Examiner Bennett: Which indicates that there were those sources of supply. The witness has said he had that list, and there are sources of supply,
5717 which proves he had sources of supply. He says they were not adequate. Now, there you are, and I don't see that you are adding anything whatever to the record by taking all of this time to ask about each one individually. I have permitted you to go through and get samples.

By Mr. Albert.

Q. Can you form any estimate, Mr. Miller, of the amount of houses you contacted? Would you say it was fifty? A. I wouldn't know, Mr. Albert.

Q. Would you say it was 100? A. I wouldn't know.

Q. Would you say it was ten?

Mr. Martin: The witness has already testified,
5718 your Honor, that he doesn't know.

Mr. Albert: I think I can prove a little deeper, your Honor, to find out what his knowledge is, or at least, to test his credibility, to find his knowledge of his own business.

Mr. Martin: He has told you.

Mr. Albert: In the face of the fact they had no sources of supply, he now says that he doesn't even know whom he contacted.

Mr. Martin: He said that he——

Examiner Bennett: That is not quite the fact. You are asking him about the numbers he contacted. He doesn't know the number.

By Mr. Albert.

Q. You have no idea of how many ufacturers you contacted for the purpose of supplying yourself with the same price line of goods as was furnished by the Fashion Originators Guild?

Mr. Martin: Objected to as already having been answered.

5720

Examiner Bennett: I will overrule the objection. You may answer.

A. I haven't counted them, no.

By Mr. Albert.

Q. Now, Mr. Miller, have you brought in the records of the notices of cancellation on the outstanding orders at the time of the red carding pursuant to Commission's Exhibit 472, I think it is? A. I found upon investigation, Mr. Albert, that those records were not complete, that we only carried them back three months, that they have been discarded.

Q. And that is— A. I am sorry. That is a fact.

Q. That is, they have been destroyed? A. That is right. 5721

Q. You left them in a corner somewheres, and they disappeared? A. No. No. I beg your pardon. They are actually not available.

Q. They are actually—I assume that if you tell me they are not available that they aren't but where were they when you last saw them?

Mr. Martin: Now, if your Honor please, I object to this line of questioning. The witness has testified that their records of that character were only kept for three months.

Mr. Albert: Now, if your Honor pleases——

Mr. Martin: And that those records are available, and that prior to that time he did not keep the records.

Mr. Albert: If it please the Court, this witness very deliberately testified yesterday that the records showing the cancellation of these orders which he says he didn't have to date were available and
5723 that he would bring them in, and then we come in this morning and for the first time in all of the fantastic things that have occurred on these hearings with respect to evidence, we now find that evidence is missing or has been destroyed, or cannot be located, that it was affirmatively testified to yesterday was absolutely available to the Commission. Now, I ask in the light of that fact that Commission's Exhibit 472 be stricken from the evidence upon the ground that your Honor has somewhat restrained cross-examination with respect thereto upon the grounds that we could bring in William Taylor Company upon our direct examination, subpoena their records, if possible, and demonstrate the inaccuracy of them.

5724 Examiner Bennett: You can't subpoena records that are not in existence.

Mr. Albert: Exactly, your Honor, and therefore I am foreclosed from in any way disputing this sheet of paper upon which we have now no record whatsoever to substantiate.

Examiner Bennett: Motion denied.

Mr. Albert: Exception.

By Mr. Albert.

Q. That in so far as the records of William Taylor Company now go, you have no knowledge whatsoever as to whether or not the orders which were outstanding at the time of the red carding were canceled either by your internal cancellation system or by the direct cancellation system? A. I have no records to substantiate that.

Q. And, of course, there are no duplicates around anywheres? A. Not complete files, no.

Q. Now, haven't you any letter file with respect to these orders? A. No.

Q. Haven't you any duplicate letter of an original which might have been sent to the manufacturer informing him 5726
of the fact the order had been canceled? A. We don't handle it that way. We don't write letters.

Q. You don't write any letters at all? A. No.

Q. You don't give any manufacturer any notice of the fact that in so far as you were concerned the order has been canceled? A. Oh, yes. We do: It is a form. It is a regular form that is made out. It is not a letter.

Q. Well, whatever that may be termed, a letter or a form or anything else, you have no duplicate of those? A. No, not complete files, no.

Q. How about your internal cancellation system? A. That is it. That is the——

Q. That is, as far as these particular files are concerned, you have destroyed your records, or your records are miss- 5727
ing, or they have been misplaced, or they are on top of a file cabinet and cannot be found, or they were dropped in water and they are not available? A. They are not available.

Q. So that, Mr. Miller, since you have no record of the cancellation of these particular orders, and since you have sent out no record on your internal cancellations, there is, therefore, no written memorandum demonstrating the fact

that these orders have been cancelled; isn't that so? A. Well, there is nothing available to indicate at the present time, if that is what you mean.

Q. Well, you don't expect these records to suddenly appear in the future, do you? A. No.

Q. I mean, I hope you don't. A. No.

Q. And they are not going to appear, are they? A. As far as I know, they will not.

Q. What do you mean by "as far as you know"? Aren't they gone? A. So far as I know, they are gone.

Q. Did you make a strict search for them? A. I requested the records from the department sources and was
5729 told that they were not available.

Q. What do you mean by "they were not available"? A. I mean they weren't in existence, so far as I know.

Q. Then they are not in existence in so far as your store is concerned? A. So far as I know, that is true.

Q. Why do you qualify it by "so far as you know"? Don't you vouch for the accuracy of the statements of your subordinates? A. Simply because I wasn't present when they were destroyed. I don't know what happened to them.

Q. I see. Were you present when these records, Commission's Exhibits 471, 472 and 473 were made up? A. I don't know what they are. I am sorry.

Q. I mean, those are the famous ones that we have been discussing now for two days, and which you testified were
5730 very accurate, and which you had to correct. You weren't present when those were made up, either, were you? A. Yes, I was.

Q. Oh, you were present when they were made up? A. The one I was present. I made it up myself.

Q. Yes. 470. How about the others? A. The others were made up under my supervision.

Q. Supervision in the sense that you instructed them to get up the figures; isn't that true? A. That is correct.

Q. You didn't actually see them take the figures off, did you? A. No.

Q. You don't know anything more about the accuracy of those figures than you know about the accuracy of the fact that records are missing, do you? A. Except that they are records that are obtained in the ordinary course of business and are used by our firm for the transaction of the business.

Q. Isn't the information that was given to you to the effect that the records are missing information that has been compiled in the regular course of your business? A. Yes.

Q. Why won't you vouch for the accuracy of that statement by your subordinates? A. Simply because I don't know. I was simply told that they were not available and that they had not—they don't keep records beyond three months. 5732

Q. Well, you weren't told anything more about the accuracy of Commission's Exhibits 471, 472 and 473, were you, except the fact that your subordinates handed them to you as work which they had done in the ordinary course of their business pursuant to instructions from you; isn't that so? A. That is true.

Q. Why do you vouch for the accuracy of Commission's Exhibits 471, 472 and 473? Is it because you think it helps your case? A. No.

Q. Well, now, I hope that the records are not going to be available in the future, Mr. Miller. A. They will not be available. Don't worry about that. 5733

Q. I merely say that by reason of the fact that you seemingly—your statement as to the accuracy of the subordinates upon whom you rely in some cases and refuse to rely in others. A. No, I don't mean anything like that.

Q. Have you brought in with you the records showing the delivery dates of the outstanding orders of the date of

the red carding, or the delivery dates of the orders which you say were outstanding on the date of the red carding? A. No, I have not.

Q. Are those also not available? A. No; those orders are available.

Q. Did you attempt to get them last night? A. I didn't know I was expected to.

Q. Am I mistaken in believing that you volunteered to bring them in? A. You are.

Q. Well, I am sorry. Will you make those records available to me this afternoon or to-morrow morning? A. No.

Q. That isn't something that is going to affect your busi-
5735 ness very much, is it? A. Well, I simply do not choose to make them available.

Q. In other words, you don't want us to see when those delivery dates actually fell due; is that right?

Mr. Martin: Objected to, your Honor—the witness—he has asked for them and the witness has said that he would not produce them. Now, his reasons I don't think he is obliged to disclose.

Mr. Albert: Now, if it pleases the Court, up to the present time every time that a witness refused to disclose information it was with respect to what might possibly be deemed to be confidential figures that might be of use to his competitors, and there might be some basis for the Court saying, "Well,
5736 you subpoena him and get him to bring it in that way. We won't make him do it." I am not saying there is. I am saying there is something of an argument with respect to it. Now, I disagree with the argument. Now, we have a witness coming in and giving a long line of testimony to the effect that certain orders were canceled by reason of the fact that delivery dates had expired. Those orders are dead. They are past transactions. The people with whom they were had in the record. There is

absolutely nothing harmful in the fact that Taylor & Company should come in and disclose those dates except if those dates, when disclosed, show that Taylor is not telling the truth when they come in here and say that they canceled their orders because the delivery dates expired. That is the only reason why those dates can be, or should be, willing to be canceled by the witness, and I ask your Honor to direct this man to bring in those figures, or on condition that all of his testimony to the effect that they canceled the orders by reason of the fact that the delivery dates expired, be expunged and stricken from the record. This is merely a contumacious and I believe a contentious refusal on 5738
the part of the witness to supply information. I don't mean that in an evil sense, I mean it in the legal sense.

Examiner Bennett: Denied.

Mr. Albert: I am sorry, your Honor. I didn't get your ruling.

Examiner Bennett: I beg your pardon?

Mr. Albert: I did not get your Honor's ruling.

Examiner Bennett: I said, "Denied."

Mr. Albert: Exception. And I now offer to prove that if the witness had answered the question he would have answered that the records were available, and that if those records were produced they would have disclosed that the delivery—— 5739

Examiner Bennett: That is enough of this offer of proof.

Mr. Albert: I am sorry; I couldn't hear you on account of the noise.

Examiner Bennett: You don't know what are in those records, not the least bit.

Mr. Albert: I believe, if it pleases the Court, I should offer my proof——

Examiner Bennett: Yes.

Mr. Albert: To show the relevancy of it.

Examiner Bennett: Under the guise of an offer to prove you are making a charge that is wholly without foundation so far as anybody knows.

Mr. Albert: But equally, your Honor, not untrue, so far as anybody knows.

Examiner Bennett: You have made it already. I am simply warning you. Go ahead and make your offer of proof, if you want to encumber the record with that sort of stuff.

Mr. Albert: If your Honor pleases, I respect-
5741 fully believe that in order to show the relevancy of my line of questioning, and the necessity for getting answers from the witness, that I should know and show what I hope to prove by the questions. That is all I want to do.

Examiner Bennett: All right.

Mr. Albert: Of course I don't say that that is true. I mean, it is open to an inference either way. I want to show the inference that can be drawn.

Examiner Bennett: Offers of proof are offers to prove. They are not conjectures.

Mr. Albert: I must respectfully differ, if it pleases the Court.

Examiner Bennett: You can go ahead and make
5742 your offer of proof, if you want to. Make it, if you want to. Make it in that form.

Mr. Albert: Yes. Thank you.

Examiner Bennett: Make it in any form you want to.

Mr. Albert: I offer to prove that if the witness had been permitted to answer, that the records were available, he would have answered that they were available. And I offer to prove that had the——

Examiner Bennett: He was permitted to answer and did answer that they were available.

Mr. Albert: Then, had the witness been required to bring the records in, the records would have disclosed that the delivery dates on the orders which were outstanding pursuant to Commission's Exhibit 472 had not expired at the time of the cancellation, upon which basis I would have been further able to prove that William Taylor & Company had arbitrarily wished to discriminate in the orders which it sought to have filled, and that its inability to obtain the fulfillment of the orders mentioned in Commission's Exhibit 472 arose from the fact that 5744
it desired certain of those orders, and not the entire list thereof; and that the refusal of the manufacturers to supply William Taylor & Company with the merchandise was due to its own willful acts.

Mr. Martin: I move that the offer of proof be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Miller, what percentage of Guild merchandise is sold in Department 330? A. I haven't the records by departments.

Q. Beg your pardon? A. I haven't the records by departments with me. 5745

Q. Are they available? A. They are.

Q. Will you provide me with them? A. No.

Q. What percentage of Guild merchandise is sold in Department 335? A. I haven't the records with me.

Q. Are they available, or have they been destroyed, or are they missing? A. They are available.

Q. Will you provide me with them? A. No.

Q. What percentage of Guild merchandise is sold in Department 350? A. I don't know.

Q. Beg your pardon? A. I haven't the records with me. I don't know.

Q. Are they available? A. They are.

Q. Will you make them available to me? A. No.

Q. Will you supply the Commission and the Court with the information with respect thereto? A. If it is requested.

Q. Well, I am requesting it. A. No.

Q. If the Commission requested it, you will supply it? A. That is right.

5747 Mr. Albert: Well, in the interests, if it pleases the Court, of a full and complete disclosure of the evidence upon which Commission's Exhibit 473 is predicated, in the interest of saving the time of all concerned, certainly in the interest of a complete record with respect thereto, I ask that you ask the Commission to ask Mr. Miller to bring these records in which are now available in Cleveland.

Mr. Martin: If your Honor pleases, I would like to renew my statement that the Commission's counsel reserves unto itself the right to handle this case as it sees fit, not as counsel for the respondent sees fit.

Mr. Albert: I didn't ask that, if it pleases the
5748 Court. I didn't ask Mr. Martin to make the request. I very respectfully and most humbly ask your Honor to request of the Commission that he bring it in.

Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Albert.

Q. Can you tell me the percentage of Guild merchandise sold in Department 350? A. Not now, no.

Q. What do you mean by "not now"? A. I haven't the records available.

Q. Do you know what percentage is sold? A. I did.

Q. When did you last see the records? A. I don't recall.

Q. You haven't any knowledge of when you last saw it? A. No.

Q. Well, didn't you see it when you prepared Commission's Exhibit 473? A. No.

Mr. Martin: Objected to as being irrelevant and immaterial.

Mr. Albert: Goes to the credibility of this witness, your Honor, who says he doesn't know those figures at the present time. 5750

Mr. Martin: He testified that he didn't have them with him.

Examiner Bennett: Go ahead. You may answer.

The Witness: May I have the question?

A. (Question read.) A. As far as I know it, it has no relation to 473.

Examiner Bennett: We will take a recess of ten minutes.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

(Question and answer read.) 5751

By Mr. Albert.

Q. Will you explain that statement, Mr. Miller? Well, merely that the Exhibit 473—Commission's Exhibit 473—is a record of percentage of increase and decrease of sales for the period February through June in 1936 over 1935, and has no relation to the merchandise contained in those departments.

Q. In other words, in preparing Commission's Exhibit 473, no computation was made of the amount of Guild merchandise that was involved in the sales of merchandise in these departments; is that what you mean? A. That is correct.

Q. Now, Mr. Miller, do you mean that with respect to Departments 360, 371 and 380, no computation was made of the Guild merchandise that was being sold in those departments?

Mr. Martin: Objected to. The witness has answered fully what the exhibit is.

Examiner Bennett: Sustained.

5753

By Mr. Albert.

Q. Well, now, with respect to Department 330, in preparing these figures on Commission's Exhibit 473 for February, was any computation made of the amount of Guild merchandise being sold in that department during the period covered?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Now, if it please the Court——

Examiner Bennett: You seem to be arguing on the matter that you are trying to justify as to some sort of a fluke which you made in one of your questions, and I do not think we are interested in that.

5754

Mr. Albert: No, no, it is not directed to that, your Honor——

Examiner Bennett: If you want—there is an estimate of Guild merchandise, if you want to go into that, I think you have been into it, though, very thoroughly——

Mr. Albert: But may I point this out, your Honor? In so far as these particular departments

are concerned for the various months in question, unless there was Guild merchandise sold in those departments in that particular month, the figures have no relevancy whatsoever in this proceeding. For instance, if there was no Guild merchandise whatsoever of that 60 per cent. in the Department 330 in February of 1935 or 1936, then that particular figure has absolutely no materiality or probative force, and should not be contained in Commission's Exhibit 473. That is what my question is predicated upon, your Honor. It is quite true——

Mr. Martin: Your Honor, it may be——

Mr. Albert: It is quite true—it is quite true that 5756
the witness has testified that 60 per cent. of his merchandise in the early styles line is purchased from Guild manufacturers, but the question is in what particular departments were they sold. The entire 60 per cent. of the merchandise may have been sold in one department in one month. We do not know. That is what I am trying to find out, your Honor. I believe in the light of the explanation I have made your Honor should permit me to examine further.

Examiner Bennett: I have ruled.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you know how much Guild merchandise was sold 5757
in Department 330 in March, 1935, or March of 1936?

Mr. Martin: Objected to; that was gone into fully.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Can you tell me, or will you tell me what percentage of your total percentage of Guild merchandise was sold in any of the departments during the period set forth in Commission's Exhibit 473?

Mr. Martin: Same objection. That has been covered thoroughly on cross-examination already.

Mr. Albert: I am seeking to elicit the basis, and what the meaning is of the figures in Commission's Exhibit 473, your Honor. For instance, in March, with respect to Department 350, there was an increase over 1935 of .47. Now, for all we know,

5759 where there was such a slight difference in the figures, there may have been no merchandise, of Guild merchandise, sold in that department during that month. It may have been all Guild merchandise. I am trying to get some basis of understanding of Commission's Exhibit 473 for the edification of the Court.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Miller, are you acquainted with Ashley Frocks, Inc.?

5760 Mr. Martin: Objected to as being irrelevant, immaterial, not within the scope of proper cross-examination.

Mr. Albert: Not considered immaterial and irrelevant by Mr. Martin, your Honor, until he knows what I am asking the question for. I am just asking him if he knows that firm, laying the foundation, very obviously, your Honor.

Examiner Bennett: Well, I will let you develop it and see whether you have anything. He may answer.

A. I know of it.

By Mr. Albert.

Q. Do you also know that they were formerly—that they were formerly members of the Guild?

Mr. Martin: Objected to.

A. I don't remember that.

Q. Have you attempted to purchase any merchandise 5762
from Ashley Frocks, Inc.?

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. I don't know.

By Mr. Albert.

Q. By that you mean that you may have, but you do not know, or you mean that you have not any idea about it at all? A. I mean that I don't know. I don't know whether we have or we have not.

Q. Well, isn't it your duty as merchandise manager, especially in the light of the fact that you say your sources of supply were diminished, to adequately determine 5763
whether adequate sources of supply have been contacted by your buyers? A. Yes, but I don't issue instructions on each individual source.

Mr. Martin: Now, if your Honor pleases, the question which was just asked indicates that what Mr. Albert is leading up to is the question of source of supply, which I think he has pretty fully cov-

ered this morning by that list, and which I understood by your Honor's ruling there would be no more examination along that line.

Examiner Bennett: Yes——

Mr. Albert: Entirely different.

Examiner Bennett: If you will disclose what you——

Mr. Albert: Yes, your Honor, I wish to do that now.

Examiner Bennett: What you intend to show by this line of questions, why——

Mr. Albert: Yes, your Honor, I want to do that
5765 now.

Examiner Bennett: ——it will help the Examiner.

Mr. Albert: The previous testimony with respect to sources of supply was directed for the most part at showing the great number of sources of supply of manufacturers in the same price line as Guild manufacturers.

Examiner Bennett: Yes.

Mr. Albert: The present line of inquiry is directed at showing that manufacturers who were formerly members of the Guild are now open as sources of supply to Taylor & Company, and ostensibly of the same quality of merchandise as has previously been purchased by him, and some of them were houses whom he formerly purchased
5766 from, and whom he cannot purchase from as no longer being members of the Guild. So far as number and so far as ostensible quality is concerned, in so far as Mr. Martin has it, his sources of supply have not been diminished in any amount.

Examiner Bennett: Well, I will permit you to develop that.

Mr. Albert: Thank you.

By Mr. Albert.

Q. Are you familiar with the firm of Isidore Ash, Inc.? A. No.

Q. Do not know them at all? A. No.

Q. Do you know that they were members of the Guild? A. I am not familiar with that fact.

Q. Do you know the firm of Baron Dress Company? A. Yes.

Q. Are they members of the Guild? A. They are not.

Q. I mean, were they members of the Guild? A. Yes.

Q. Have you attempted to purchase dresses from them since the red carding? A. We have purchased dresses from them. 5768

Q. You have purchased dresses from them? A. Yes.

Q. Will you make available to me the amount of merchandise you purchased from them? A. No.

Q. Do you know the firm of Baum, Kravat & Baum? A. Baum, Kravat & Baum?

Q. Baum, Kravat & Baum. A. Yes.

Q. Do you know that they were formerly members of the Guild? A. I am not familiar with that fact.

Q. Will you accept my statement that they were formerly members of the Guild? A. If you say it is true, I guess it is.

Q. Yes, they were. Did you attempt to purchase any merchandise from them since the red carding? A. I am not sure of that. 5769

Q. Will you accept my statement that they are no longer members of the Guild? A. Yes.

Q. Are you familiar with the firm of Cohn, Kahn, Inc.? A. I know of them, yes.

Q. Do you know of them as a member of the Fashion Originators Guild previous to the date of the red carding? A. I haven't that list, and so I don't know. They are not a house we did business prior to——

Q. Will you accept my statement that they were formerly members of the Guild when I tell you that they were? A. If it is on the list it is O.K.

Q. Have you attempted to purchase any merchandise from them? A. I believe so, but I am not positive of that.

Q. Are you familiar with Jack Edison, Inc.? A. How is that last name spelled?

Q. Edison, E-d-i-s-o-n. A. No.

Q. Will you accept my statement that they were members of the Guild and that they no longer are? A. If you say so.

Q. Yes. A. It is all right with me.

5771 Examiner Bennett: Are you testifying?

Mr. Albert: I am asking him if he will accept my statement, your Honor, for the purpose of further questioning.

Examiner Bennett: I know, but if it is just for the purpose of further questioning, or do you expect to establish that fact in the record?

Mr. Albert: Well, it is for the purpose of further questioning; it is for the purpose of saving time. I do not think it is anything that the Comission will seriously dispute, your Honor.

Examiner Bennett: Yes, but we prefer to have testimony as developed by questions.

5772 *By Mr. Albert.*

Q. Did you attempt to purchase any merchandise from Jack Edison, Inc.? A. I don't know that.

Q. Are you familiar with F. L. Gustave & Company, Inc.? A. I know of the firm.

Q. Did you know of them as members of the Guild? A. I don't recall it.

Q. Have you previously at any time during the time prior to the red carding purchased merchandise from them? A. I don't know.

Q. Have you attempted to purchase merchandise from them since the red carding? A. I don't know that.

Q. Who in William Taylor Son & Company would definitely know as to whether or not these various manufacturing concerns, which I have just mentioned had been approached for the purpose of purchasing merchandise on behalf of William Taylor Son & Company? A. Unless they are accounts we do a sizeable business with, only the buyers would know.

Q. Only the buyers? A. Unless they are accounts we use regularly and do business with.

Q. So, up to the present time, in so far as the manufacturing firms I have just inquired about are concerned, you 5774
have not placed any sizeable orders with them otherwise you would know? A. I have indicated in some cases that I did know.

Q. Well, I mean aside from those that you have stated you did purchase merchandise from, those that you stated that you did not know whether or not you had purchased merchandise from, if you have purchased merchandise from them, it has not been in any sizeable amount otherwise you would know it? A. I don't have sufficient evidence—I don't have sufficient grounds on which to base an answer, otherwise no.

Q. Well, you have just stated unless an order is of a sizeable amount—strike that. A. Will you repeat them?

Q. You have just stated if an order was of a sizeable 5775
amount you would know it. A. I did not say——

Mr. Martin: He did not testify that, your Honor. He testified he would not know it unless it was an account with which they were regularly accustomed to do business.

Examiner Bennett: Yes, I think that was the statement.

By Mr. Albert.

Q. Are you familiar with the firm of Joseph Greenbach & Katina, Inc.? A. Yes.

Q. Do you know of them as a former member of the Guild? A. Yes.

Q. Did you do business with them while they were members of the Guild? A. Yes.

Q. Have you purchased any merchandise from them since the red carding? A. Not to my knowledge.

Q. Do you mean by that "No"? A. I don't know.

Q. Well, they were a former account of yours, were they not? A. Yes.

5777 Q. Were they a substantial account formerly? A. Not large, no.

Q. So that you do not know whether or not one of your old accounts is still selling you merchandise?——

Mr. Martin: I submit he has answered the question. Your Honor——

Examiner Bennett: There is nothing before the Examiner. That question is uncompleted, I believe.

(Question read.)

By Mr. Albert.

Q. —do you?

5778 Mr. Martin: I object.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Are you familiar with the firm of Grossward Company, Inc.? A. I know of them.

Q. Do you know of them as a former member of the Guild? A. I am not familiar with that firm.

Mr. Martin: Now, if your Honor pleases——

Mr. Albert: Have you——

Mr. Martin: Just a second, Mr. Albert. I would like to renew my objection as previously made, that it has been developed that they are manufacturers, they are sources of supply, and I see no reason to go into this question any further.

Mr. Albert: If it pleases the Court, I think this goes directly to his testimony on sources of supply.

Examiner Bennett: Yes, you have a very fair sample of it, I think, unless the Guild has been pretty well stripped of its members.

Mr. Albert: I did not quite follow that. 5780

Examiner Bennett: I say, you have a pretty good sample of it, unless the Guild has been pretty well stripped of its members, and I will sustain an objection to that.

Mr. Albert: Your Honor, I want to show that this witness has been stripped of his memory rather than that the Guild has.

Mr. Martin: I did not say "memory"; he said "members."

The Witness: Members.

Mr. Albert: Oh, members. I am sorry. Will your Honor grant me an indulgence for just a moment? I want to make a computation here.

Examiner Bennett. Certainly. Certainly, I will indulge you. 5781

Mr. Albert: If it pleases the Court, I now make this offer of proof: That if the witness had been permitted to answer as to whether or not he had made any attempts to purchase merchandise from former members of the Guild——

Examiner Bennett: He has been permitted to answer. Why do you make that statement?

Mr. Albert: I believe Mr. Martin has just objected to my continuation with that line of testimony.

Examiner Bennett: Yes, I know, but the Examiner indulged you in that to a very large extent, and he thought you had gone far enough, that you had gone as far as it was of any service to you or anybody else in this matter, and he is not pleased with your making a statement that is not in fact the fact.

Mr. Albert: I am sorry, your Honor, if I misunderstood.

5783 Examiner Bennett: You had better be accurate, then, if you have any statement to make.

Mr. Albert: May I make this offer of proof with the consent with Mr. Martin: That had the witness been questioned with respect to other former members of the Guild as to whether or not he attempted to purchase merchandise from them, his answers as to whether or not he did purchase merchandise from them would have shown the same proportion of those whom he had not purchased from as his present answers to those of whom he has been directly questioned about.

Examiner Bennett: All right.

Mr. Martin: I move that that be stricken from the record. He has been given full and ample opportunity, and the Court indulged him at length, and I move that any purely speculative statement on the part of counsel introduced into the record as an offer of proof as to the facts which cannot possibly be in the respondents'.

5784

Examiner Bennett: I will let it stand.

By Mr. Albert.

Q. Mr. Miller, you testified that you knew the Guild shopper, Mrs. Joseph? A. That is correct.

Q. What was customarily her method of doing business in so far as the Guild is concerned with William Taylor & Company? A. Will you qualify that so I can get just exactly what you mean?

Q. What was her method of operation in the William Taylor & Company store when she came in to get information? A. She would go into the departments that she was most likely to be connected—concerned with, usually with sketches of dresses provided her by the head office of the Fashion Originators Guild, and seek to determine in the 5786
departments whether or not there were reproductions of those dresses on sale in those departments that were not manufactured or provided by the maker whom her sketch indicated had been the originator of that fashion.

Q. By "reproductions" you mean copies; don't you? A. I assume they are synonymous.

Q. So that you agree with Mr. Gutsché yesterday and disagree with Mr. Martin that there is no synonymity between reproduction and copy; is that correct?

Mr. Martin: I object to that statement. I didn't take part in any examination of Mr. Gutsche.

Mr. Albert: Well, maybe it was Mr. Haycraft.

By Mr. Albert. 5787

Q. The first time that Mrs. Joseph appeared in your store she made herself known to you; did she not? A. She did.

Q. And to the buyers? A. I handled that.

Q. That is, you— A. Yes, I saw——

Q. You acquainted the buyers with her? A. ——saw that she met Mrs. Joseph. That is right.

Q. And she came in very openly and above-board and said who she was and what her purpose was and what she expected to do and what she would like to do with your permission; isn't that so? A. That is correct.

Q. Whenever she walked into a department in order to examine the stock, would she first see you? A. No.

Q. Or the buyers? A. She didn't always see me before she had gone into the department. The procedure was to allow her access to the departments.

Q. That is, you gave her the complete run of the departments? A. Within reason. I mean, she was very discreet in what she did.

5789 Q. She was discreet? A. Right.

Q. She wasn't in any way—withdraw that.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 33 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 33 and ask you if that is a letter——

Examiner Bennett: That is Respondents' Exhibit 33?

Mr. Albert: Quite right, your Honor.

5790

By Mr. Albert.

Q. I show you Respondents' Exhibit 33 for Identification and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

(Respondents' Exhibit 33 for Identification was handed to Mr. Martin.)

Mr. Martin: No objection.

Mr. Albert: I offer this letter in evidence.

Examiner Bennett: Received.

(The document heretofore marked Respondents' Exhibit No. 33 for Identification was received in evidence.)

Mr. Albert: Have you any objection, Mr. Martin, if we substitute a photostat for the original?

Mr. Martin: No, I have no objection.

Mr. Albert: Thank you. Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 34 for Identification.) 5792

By Mr. Albert.

Q. I show you Respondents' Exhibit 34 for Identification, Mr. Miller, and ask you if this is a photostat of a declaration of co-operation in anti-piracy signed by William Taylor Company? A. That is right.

(Respondents' Exhibit 34 for Identification was handed to Mr. Martin.)

The Witness: There was a letter to the Company with that.

Mr. Martin: No objection.

Examiner Bennett: Received.

(The document heretofore marked Respondents' Exhibit No. 34 for Identification was received in evidence.) 5793

Examiner Bennett: That is the usual form; is it?

Mr. Martin: Yes.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 35 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 35 for Identification, and ask you if that is a photostat of a letter sent by you to Mr. Goldby, executive secretary of the Fashion Originators? A. As far as I know, that is right. I don't recall of the letter, but it must be right. It has got my signature on it.

(Respondents' Exhibit 35 for Identification was
5795 handed to Mr. Martin.)

(There was a discussion off the record between Mr. Martin and Mr. Albert out of the hearing of the Examiner and the Reporter.)

Mr. Albert: Well, is there any objection, Mr. Martin?

Mr. Martin: No, there isn't.

Mr. Albert: To Respondents' Exhibit 35 for Identification?

Mr. Martin: I told you I had no objections.

Mr. Albert: Therefore, I offer it in evidence.

Mr. Martin: But it is not properly identified.

Examiner Bennett: It may be received.

(The document heretofore marked Respondents'
5796 Exhibit No. 35 for Identification, was received in evidence.)

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 36 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 36 for Identification, and ask you if this is a photostatic copy of a letter sent to the Fashion Originators Guild on the stationery of William Taylor & Sons Company? A. I don't know. I never saw that letter before.

Q. Is that the stationery of William Taylor & Sons Company? A. That is right.

Q. Do you recognize the signature of Mr. Classel? A. It is Miss Classel.

Q. Miss Classel? A. I don't know her signature. I am sorry.

Q. Would you say that that letter had not been sent 5798
from William Taylor Son & Company? A. No, I don't know. I mean, I never saw it.

Q. Do you know whether or not you received a stamp? A. Yes, we received the stamp. We received a stamp. This has reference, however, to the basement store, with which I would not be familiar.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 37 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 37, being a letter 5799
addressed to Albert M. Post, executive secretary, Fashion Originators Guild of America, and ask—rather being a photostat of a letter, and ask if this letter was sent with the authority of William Taylor Son & Company?

Mr. Martin: That is 37, for identification?

Mr. Albert: Yes.

The Witness: May I have the question?

(The question was read.)

The Witness: I believe so.

(The letter referred to, Respondents' Exhibit 37 for Identification, was handed to Mr. Martin.)

(The document heretofore marked Respondents' Exhibit No. 37 for Identification, was received in evidence, subject to the original letter being produced.)

Mr. Albert: Will you mark this for identification?

(The document referred to was marked Respondents' Exhibit 38 for Identification.)

5801

By Mr. Albert.

Q. I show your Respondents' Exhibit 38 for Identification and ask you if that is a photostatic copy of a telegram sent to the Fashion Originators Guild by William Taylor Son & Company? A. I didn't send the telegram.

Q. Do you know whether or not it was sent? A. I imagine it was.

Q. I mean, you don't— A. I didn't see it.

Q. You don't claim that it wasn't sent? A. No, but I didn't see it.

Q. But as divisional merchandise manager of William Taylor Son & Company, and as the representative of William Taylor Son & Company, do you identify that telegram as a telegram sent by a duly authorized representative of William Taylor Son & Company to the Fashion Originators Guild of America? A. I should say that was true.

5802

Mr. Martin: Let me ask him——

Mr. Albert: I offer that——

Mr. Martin: —one or two questions.

By Mr. Martin.

Q. Are you satisfied that that telegram was sent by Taylor's to— A. Yes.

Mr. Martin: Mr. Post, was that telegram received by the Fashion Originators Guild of America as offered in evidence?

Mr. Post: Yes, sir.

Mr. Martin: With that identification, I am willing to admit it, your Honor.

Examiner Bennett: All right.

Mr. Albert: Thank you, Mr. Miller.

Examiner Bennett: It may be received. 5804

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 38, was marked as an exhibit and received in evidence.).

Examiner Bennett: We are up to the time for taking a recess for luncheon.

Mr. Albert: May I be permitted to ask this one question, your Honor?

Examiner Bennett: Will you be through with this witness?

Mr. Albert: Then I will be through—no, I will not be through with them, I will be through as far as the recess is concerned.

Examiner Bennett: All right.

5805

By Mr. Albert.

Q. Mr. Miller, do you know whether or not Respondents' Exhibit 38 is in response to a telegram sent by Fashion Originators Guild to William Taylor Son & Company? A. I believe that that is true.

Q. That is, if you received a telegram, Respondents' Exhibit 38 is an answer to that telegram? A. I did not receive the telegram.

Q. I mean, William Taylor Son & Company. A. I assume that that is true.

Q. Would you be good enough to produce that telegram to which Respondents' Exhibit 38 is an answer this afternoon? A. Yes, I will try to.

Mr. Albert: Thank you. That is all right.

Mr. Martin: Let me see that.

(Counsel hands paper to Mr. Martin.)

Examiner Bennett: That is all, is it?

Mr. Feldman: Yes.

Examiner Bennett: Before luncheon?

Mr. Albert: Before the recess, your Honor.

5807 Examiner Bennett: All right, we will recess until 2 o'clock.

(Whereupon, at 12.32 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. You may resume.

By Mr. Albert.

Q. Have you consulted Mr. Roth with respect to the telegram of which I made a request upon you this morn-
5808 ing? A. Yes, I have, and so far we have been unable to locate that. I have left word, however. They are still searching the files. If they get it they will bring it here. Our files on this matter were scattered all around and two or three people had them. That is the reason it is difficult to——

Q. Well, now, did you at all discuss with them as to whether or not a telegram had been sent to Taylor & Son to which Commission's Exhibit— A. I didn't discuss it with him.

Q. —which Respondents' Exhibit 38 was a reply? A. I was not able to discuss it with him. I was trying to find the telegram through his secretary.

Q. Did you discuss with anybody as to whether or not there was such a telegram? A. No, I didn't discuss it during the noon hour.

Q. Did you ask any of them whether they recalled receiving such a telegram? A. I asked his secretary if she recalled it and she said she should she said, and she would try to find it.

Q. You have no information as to whether or not such a telegram was received by Taylor & Company? A. Not definitely. I know that there was such a telegram but I 5810
have no——

Q. Do you also know that the substance of that telegram was a request to Taylor & Company asking whether or not Reilly had authority to speak for them pursuant to Respondents' Exhibit 37? Wasn't that the substance of that telegram? A. I assume that that is true. I would rather not give definite testimony without that telegram available, but I assume that that was true.

Mr. Albert: Will you mark this for identification?

(A document was marked for identification Respondents' Exhibit 39.)

By Mr. Albert. 5811

Q. Who is the Mr. Roth of whom you have been speaking, Mr. Miller? A. He is the manager of the William Taylor Company.

Q. Naturally, you had a great deal of business dealings with him? A. Yes.

Q. You have had correspondence with him, inter-office communications, things of that sort? A. At times, yes.

Q. You are familiar with his signature when you see it, are you not? A. Yes.

Q. Now, I ask you if this is—Respondents' Exhibit 39 for Identification—is a photostatic copy of a letter sent by Mr. Roth on the stationery of William Taylor Son & Company to the Fashion Originators Guild? A. Yes, that is correct.

Q. Did you discuss the contents of the letter with Mr. Roth in any way? A. No more than I believe he asked me what action had been taken with regard to obtaining merchandise from Guild houses, which is indicated in that letter.

5813 Mr. Albert: I offer the letter in evidence.

Mr. Martin: This is a photostatic copy. You are satisfied that such a letter as this was sent by your store?

Mr. Post: I think I have the original here, if you want it?

Mr. Martin: Well, that is all right.

Mr. Post: Is that it?

Mr. Martin: I would rather have him identify the original and then put this in.

Mr. Post: Surely.

The Witness: Yes.

Mr. Martin: No objection.

Examiner Bennett: Received.

5814 (Copy of letter referred to, heretofore marked for identification Respondents' Exhibit 39, was marked as an exhibit and received in evidence.)

By Mr. Albert.

Q. Now, in response to Respondents' Exhibit 39, was a letter received from the Fashion Originators Guild? A. I don't know.

Q. Did you see any such letter? A. I don't recall it.

Mr. Albert: Will you mark this for identification?

(Document was marked for identification Respondents' Exhibits 40-A and 40-B.)

By Mr. Albert.

Q. I show you Respondents' Exhibits 40-A and 40-B for Identification and ask you if that is a copy of a letter addressed to Richard G. Roth of William Taylor Son & Company, signed by Albert M. Post as executive director of the Fashion Originators Guild which was sent to Taylor Company? 5816 A. What was the question with reference to this?

Q. (Question read.) A. I don't happen to recall this letter. I assume that it was received, but I am not sure.

Q. In connection with your duties as divisional merchandise manager of Taylor & Company, did Mr. Roth discuss any such letter with you? A. I can't be sure, to be honest with you. I think he did, but I can't be sure.

Q. Is Mr. Roth presently in Cleveland? A. Yes.

Q. Is he at the store? A. Yes. I assume he is. I haven't seen him to-day.

Q. Will you be good enough between now and to-morrow to inquire of him whether such a letter was received and whether or not he has the original of it? A. Yes.

Q. Have you any objection to producing such a letter? 5817 A. If I can find it. I mean, with the files in the mess they are, anything might disappear.

(At this point a young lady appeared at the door of the hearing room.)

The Witness: May I be excused just a minute, Judge?

Examiner Bennett: Yes.

The Witness: May I examine this a moment? Perhaps I can find this telegram.

Mr. Albert: Yes, sure. They seem to have sent over some correspondence. Will you look for the letter of February 26 from the Guild to Taylor & Company while you are at it, if you have no objection?

The Witness: I think both of them are here.

(Paper writings to Mr. Albert by the witness.)

Mr. Albert: I offer this Respondents' Exhibits 40-A and B in evidence, the original of which has been presented by the witness.

5819 Mr. Martin: You are satisfied that this is a copy?

The Witness: Yes, I am.

Mr. Martin: I have no objection.

Examiner Bennett: It will be received.

(Copy of letter referred to, heretofore marked for identification Respondents' Exhibits 40-A and 40-B, were marked as exhibits and received in evidence.)

Mr. Albert: In order to observe the sequence, Mr. Martin, have you any objection if I have this exhibit (referring to paper writing not marked) marked Respondents' Exhibits 38-B and C for Identification, the telegram responding to this par-
5820 ticular exhibit being Respondents' Exhibit 38.

Mr. Martin: No. That is all right.

Mr. Albert: Will you mark this telegram 38-B and 38-C.

(Documents were marked for identification Respondents' Exhibits 38-B and 38-C.)

By Mr. Albert.

Q. Mr. Miller, I show you Respondents' Exhibits 38-B and 38-C and ask you if this is the telegram from the Guild to William Taylor Son & Company, to which Respondents' Exhibit 38 is the reply. A. Yes, I believe that is true. I did not receive this telegram, but I think that is true.

Mr. Albert: I offer in evidence Commission's Exhibits 38-B and 38-C.

Mr. Martin: This was received by your store?

The Witness: Yes.

Mr. Albert: That was taken from the Taylor files, Mr. Martin, and presented by the witness.

5822

Mr. Martin: I just wanted to make sure, he said he had not received it personally. I have no objection to this being offered in evidence, your Honor, it being understood that the exhibits will be photostated, and a photostatic copy be placed in evidence and the original returned to the witness.

Mr. Albert: That is acceptable.

Examiner Bennett: All right, it may be so understood.

(Documents referred to, heretofore marked for identification Respondents' Exhibits 38-B and 38-C, were marked as exhibits and received in evidence.)

By Mr. Albert. 5823

Q. Now, Mr. Miller, in Respondents' Exhibits 40-B and C, the third paragraph refers to "We are enclosing a copy of the Guild's statement in 'Women's Wear Daily' on Monday, February 24"; is that correct? A. Yes.

Q. Did you see that statement in "Women's Wear Daily"? A. I don't recall whether I did or not. I saw so many statements at that time.

Q. Did you receive a copy of that statement together with the letter? A. I did not receive this letter so, therefore, I do not know.

Q. You have presented the letter from your files, have you not? A. That is correct.

Q. Do your files disclose that the statement in "Women's Wear" was received by William Taylor Son & Company together with the letter? A. I don't know that, sir. I did not look to see.

Q. Is there any reference in your files to the effect that the enclosure was not received? A. (Witness shakes head negatively.)

5825 Q. You say "No"? A. No.

Q. I show you Respondents' Exhibit 41, Mr. Miller, and ask you if this is the statement in "Women's Wear Daily" of Monday, February 24, 1936 referred to in Respondents' Exhibits 40-A and 40-B?

Mr. Martin: Your Honor please, I would like to object at this time. As I recall it, the witness testified that so far as he recalls, there was no enclosure; that is, rather, he does not know whether or not there was an enclosure with that letter. In view of that statement, I do not see how he could identify this as being something which he says he does not know anything about.

Mr. Albert: Well, let us find out if the witness

5826 can identify it, your Honor.

(Document referred to was marked for identification Respondents' Exhibit 41.)

(Witness examines document.)

A. I presume that I read the statement, but I do not know whether it was enclosed in that letter or whether it was not. I could not testify to that fact.

By Mr. Albert.

Q. Did you read Respondents' Exhibits 40-A and 40-B? A. Did I read the letter?

Q. Upon its receipt at any time. A. I don't recall reading the letter, no.

Q. Did you discuss it with Mr. Roth? A. I may have, I honestly don't know. I presume I did discuss it, to some extent.

Q. Will you be good enough, Mr. Miller, to look in the files that have been sent to you and see if you can find this enclosure.

A. You mean here?

Q. Yes. 5828

(Witness refers to file.)

Q. Is that it? A. I don't know whether it is or not. This is not my file, understand.

Q. I mean the file that was presented by Taylor & Company. A. Yes, I believe it is.

Mr. Albert: I offer in evidence Respondents' Exhibit 41.

Mr. Martin: No objection.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Respondents' Exhibit 41, was marked as an exhibit and received in evidence.) 5829

By Mr. Albert.

Q. Now you say that you read Respondents' Exhibit 41, approximately the time that it appeared in "Women's Wear"? A. I say I presume I did. I read most of those, and I presume that I read that one.

Q. You read some? A. I don't recall.

Q. There was so much information with respect to the particular matter in hand that you cannot localize anything that you read? A. That is so.

Q. But undoubtedly you read that article; is that not so? A. That's probably true.

Q. Did you read this article, dated February 21, 1936, which is referred to in Respondents' Exhibit 41, in evidence? A. I presume I did; I don't recall definitely.

Q. I mean, you read it probably in the same way you read Respondents' Exhibit 41.

Mr. Martin: The witness testified he did not remember having read it.

5831

By Mr. Albert.

Q. You mean you do not recall the specific time you read it?

Mr. Martin: He did not say that.

Q. But you do remember the substance of it?

Mr. Martin: He did not——

Mr. Albert: Please permit me to ask him something as to what he meant, and not what you say.

Examiner Bennett: Yes, but do not ask him as to something he did not say.

Mr. Albert: I am asking him what he meant.

5832 Mr. Martin: The witness said he did not remember reading it.

By Mr. Albert.

Q. Did you read the substance of that article, Mr. Miller? A. I assume I did, but I don't recall distinctly.

Q. You mean you do not recall definitely because there were so many articles you did read; is that so? A. Yes.

Q. And undoubtedly you read this particular article among the others; is that not so? A. I probably did.

Q. From an examination of Respondents' Exhibit——

Examiner Bennett: That has not been marked.

Mr. Albert: Mark this Respondents' Exhibit 42.

(A paper was marked for identification Respondents' Exhibit 42.)

By Mr. Albert.

Q. From an examination of Respondents' Exhibit 42 for Identification, is the P. J. Reilly, Director, the same person referred to in Respondents' Exhibit 38, which 5834
reads, "P. J. Reilly, Director, Associated Merchandising Corporation, has full authority to act for us."

Mr. Martin: Objected to.

Examiner Bennett: I will sustain the objection. I do not see that we are getting anywhere with this.

Mr. Albert: Exception.

Examiner Bennett: Let us have the question.

Mr. Albert: I offer in evidence Respondents' Exhibit 42 for Identification.

Mr. Martin: Objected to on the ground that it has not been properly identified by the witness, and on the further ground even if it had been identified, it is immaterial and irrelevant.

Examiner Bennett: Sustain the objection. 5835

Mr. Albert: May I most respectfully ask your Honor on which ground you are keeping it out?

Examiner Bennett: Well——

Mr. Albert: On the ground that no sufficient basis has been laid, or that it is entirely irrelevant?

Examiner Bennett: Each ground is valid as far as that is concerned; I——

Mr. Albert: Thank you. Exception.

Examiner Bennett: —I think it has not been properly identified; I think it is not of any consequence if it has been properly identified, as having been read by this man.

Mr. Albert: If your Honor feels that it is irrelevant under any circumstances, then I won't waste any further time trying to lay the foundation for identifying it.

Examiner Bennett: I think it is irrelevant.

Mr. Albert: Very well. Exception.

Examiner Bennett: All right.

5837 *By Mr. Albert.*

Q. Mr. Miller, have you any knowledge with respect to the increase or decrease of your fixed prices of merchandise in your various Guild departments during 1935?

Mr. Martin: Objected to as not being proper cross-examination. The question of fixed prices was in no way gone into.

Mr. Albert: May I tell your Honor——

Examiner Bennett: Read the question, please.

(Question read.)

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Have you any knowledge with respect to any change
5838 in the sales price of your Guild lines during 1935?

Mr. Martin: Same objection.

Mr. Albert: Had I been permitted to receive an answer from the witness as to whether or not he had any knowledge or whether or not sales prices in Departments 330, 335 and 350 had been decreased during the months of May and June of 1935, the witness would have replied that those sales prices had been reduced.

Mr. Martin: I move that the same be stricken.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception. If you will bear with me just a moment. I want to check off these items. It may facilitate the examination.

Examiner Bennett: Surely.

By Mr. Albert.

Q. Now, Mr. Miller, William Taylor Son & Company pride themselves on the honesty and probity of their business dealings, do they not?

Mr. Albert: There is no inference of any kind that I wish drawn from the question. I am merely laying a foundation for a subsequent question. 5840

Mr. Martin: Objected to; irrelevant, immaterial and not proper cross-examination.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. William Taylor & Company stands behind its representations, does it not?

Mr. Martin: Objected to as being immaterial and irrelevant.

Mr. Albert: Foundation question, if it pleases the Court.

Examiner Bennett: Sustained. 5841

By Mr. Albert.

Q. I show you Respondents' Exhibit 34 and quote therefrom as follows: "Believing the policies declared by your members to be proper for the protection of the public, the retailer, and the manufacturer, we wish to go on record as stating our fixed business policy." You, of course, subscribed to that statement of policy?

Mr. Martin: Object.

Q. On the part of William Taylor Son & Company, did you not?

Mr. Martin: Objected to.

Q. Speaking for William Taylor Son & Company?

Mr. Martin: Objected to as irrelevant and immaterial. The exhibit speaks for itself.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

5843 Q. Are you wholeheartedly in accord with the objectives of the Fashion Originators Guild?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: What is that question, please?

(Question read.)

Mr. Martin: And, furthermore, the fact is that there is in evidence an exhibit which fully states Taylor's position on this subject, and the exhibit will speak for itself.

Examiner Bennett: Sustained.

Mr. Albert: Will Mr. Martin concede that the exhibits that are in evidence with respect to the

5844 fact that William Taylor Son & Company are wholeheartedly in accord with the objectives of the Fashion Originators Guild speak as of to-day?

Mr. Martin: I am not on the stand and I am not conceding anything.

Mr. Albert: I am asking if Mr. Martin will concede it. I am not asking you whether you are on the stand. I have had suspicions of that.

Mr. Martin: I say, I am not conceding anything

Mr. Albert: Very well. Then, if it pleases the Court, I press the question with respect to their position to-day.

Examiner Bennett: I have ruled.

Mr. Albert: I beg your pardon?

Examiner Bennett: I say, I have ruled.

Mr. Albert: Exception. Now, I make an offer of proof, that if the witness had been permitted to answer the question he would have testified that William Taylor Son & Company is to-day fully in accord with the objectives of the Fashion Originators Guild as set forth in Respondents' Exhibit No. 35.

5846

Mr. Martin: I move that the same be stricken from the record as obviously and apparently an offer of proof of something which the respondents' counsel could have no earthly knowledge.

Examiner Bennett: It may be stricken.

Mr. Albert: Of course the Commission has no knowledge of the opposite.

Examiner Bennett: It may be stricken.

By Mr. Albert.

Q. Mr. Miller, during the time that you were a member of the Fashion Originators Guild—that you were a co-operators with the Fashion Originators Guild— A. Ha, ha, ha, ha.

5847

Q. —did you return any dresses at the request of the Guild as being copies? A. We did.

Q. That is, after they had been demonstrated, or were you satisfied that they were copies? A. Correct.

Q. And in what price lines, generally speaking, were those dresses that were returned? Did they cover all the price lines? A. To the best of my knowledge they were in price lines at from $4.75 cost through $10.75 cost.

Q. Yes. And of course you continued in that policy of co-operating with the Guild down until at least the end of 1935, generally speaking? A. Yes, that is right. May I ask a question before you proceed, Mr. Albert?

Q. Why——

The Witness: Your Honor——

Mr. Albert: I prefer you not to. I mean, that I think we will be able to bring out whatever you have in mind.

The Witness: (Nods head affirmatively.)

By Mr. Albert.

5849 Q. I show you Respondents' Exhibit 37, and I show you Respondents' Exhibits 38-B and C, and I show you Respondents' Exhibit 38, and ask you after the reading of those exhibits whether or not you still testify that William Taylor Son & Company have no knowledge or expectation of the fact that they were to be red carded, and that the first information they had of it was what they read in "Women's Wear"? A. That is correct. I don't need to read these.

Q. I beg your pardon? A. My testimony was correct.

Q. Respondents' Exhibit 37 was sent to the Fashion Originators Guild on your behalf by P. J. Reilly of the Associated Merchandising Corporation informing the Guild that members of the Association therein listed were 5850 not going to further co-operate with the Guild; is that not so?

Mr. Martin: Objected to as being improper cross-examination; still trying to bring in this old subject of the A.M.C. That is an entirely improper question. Now he wants to cross-examine the witness on his own cross-examination.

Mr. Albert: Far from it, if it please the Court. In the light of the fact that the witness has testified

that he knew nothing at all about the red carding, had no inkling that they were to be red carded, I have introduced into evidence correspondence which leads to the conclusion that they had knowledge of it, and now I am attempting to show that they had specific knowledge of it and expected it.

Examiner Bennett: Well, now, red carding, as I understand it, is a definite thing. You have asked about that definite thing and the witness has testified it is a definite thing. What the preliminary steps are has nothing to do with this testimony in that respect. That might be all true and those documents and still what he says might be just as 5852
true.

By Mr. Albert.

Q. I read to you from Respondents' Exhibits 38-B and

Mr. Martin: Do I understand your Honor to uphold my objection?

Examiner Bennett: Why, yes.

Mr. Martin: Well, then, I see no——

Examiner Bennett: I sustain the objection.

Mr. Martin: That is what I understood. I see no percentage in it.

Mr. Albert: I am not—I am on a different exhibit entirely. 5853

Mr. Martin: I understood your Honor——

Examiner Bennett: I think it has no bearing on this witness' testimony that the reading of the notice of red carding in that paper was his first knowledge of it.

Mr. Martin: I understand.

By Mr. Albert.

Q. Prior to the time that you read of that notice in "Women's Wear," did William Taylor Son & Company have any expectation or any indication of the fact that they would be red carded?

Mr. Martin: Objection.

Examiner Bennett: Well, I will let him answer that question if he wants to.

The Witness: Would you read the question?

Q. (Question read.) A. I don't know.

5855 *By Mr. Albert.*

Q. Do you mean that you personally don't know that William Taylor Son & Company doesn't know—didn't know? A. We didn't know what to expect.

Q. You didn't know what to expect? A. Yes.

Q. But by reason of Respondents' Exhibit 37, Respondents' Exhibits 38-B and 38-C, and your telegram to the Fashion Originators Guild, being Respondents' Exhibit 38, you had informed the Fashion Originators Guild of the fact that you no longer were going to co-operate in their policy; isn't that so?

Mr. Martin: Objected to as being irrelevant and immaterial, still referring to the same letters

5856 on which your Honor has already ruled.

Mr. Albert: But I have based another question on it, if it please the Court.

Examiner Bennett: Sustained. I don't see that it would mean anything to this record if he were to testify that they did expect it, that they had been expecting it for months.

Mr. Albert: The relevancy of it, if I may be permitted to be heard on it, your Honor, unless you

want to foreclose any examination on it, and you say that it is entirely immaterial and that you don't believe I could say anything that might change your mind. If your Honor feels that strongly about it I won't waste any time on it.

Examiner Bennett: I think it is of no service to me to have you argue. Of you want to make a short statement for the record I have no objection to that.

Mr. Albert: The witness, if it please the Court, has testified that the first that they knew that they were red carded is when they read about it in "Women's Wear." Now, I believe that that statement without any explanation thereof means and 5858
leads to an inference that suddenly without any warning Taylor & Company woke up and read in "Women's Wear" that they had been red carded, and it might lead to the inference that it was arbitrary, and there has been no other explanation of that fact from this witness. I am trying to bring out that this matter was not an arbitrary thing, that they did not suddenly wake up——

Examiner Bennett: All right.

Mr. Albert: —and discover it, and that this witness, despite the fact that he has said nothing about it, did know about it, and William Taylor & Company did know about it and expected the red carding, and practically said, "We can't help ourselves since we are not co-operating with you. We 5859
expected to be red carded and that is the course that we expect that you will take."

Examiner Bennett: It is all in the record.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I think that the only thing that the statement shows is that the respondents red carded people without any direct notice from the respondents to the persons who were red carded.

By Mr. Albert.

Q. You have testified, Mr. Miller, that by reason of the fact that merchandise manufacturers informed you that they were not going to deliver merchandise by virtue of the fact that you were no longer co-operating with the Guild, that it was unnecessary for you to send them any cancellations; is that substantially correct?

Mr. Martin: Objected to as having been gone into thoroughly.

Mr. Albert: Laying a foundation, if it please the Court.

5861 Examiner Bennett: I sustain the objection. We have been over that, thrashed it through.

By Mr. Albert.

Q. Now, in the light of your testimony, Mr. Miller, as to your failure to send cancellation slips to merchandise manufacturers, isn't it also true that it was unnecessary for the Fashion Originators Guild to send you any specific notice of red carding, in the light of your reply to Respondents' Exhibit 38, which ends: "Please advise by wire Monday afternoon if your store is amongst eighteen mentioned above. If we don't hear from you we will assume Reilly's letter applies to your store"?

Mr. Martin: Same objection.

5862

By Mr. Albert.

Q. And your reply to that telegram: "P. J. Reilly, Director, Associated Merchandising Corporation, has full authority to act for us." In the light of that——

Mr. Martin: Same objection.

Q. —In the light of that correspondence demonstrating the fact that William Taylor Son & Company had no in-

tention of further co-operating with the Fashion Originators Guild, were you not fully informed of the fact that a red card was issued by your own declaration of non-co-operation?

Mr. Martin: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Miller, in addition to the records now in evidence, was any notification given to William Taylor Son & Company of the fact that they were to be red carded? 5864

Mr. Martin: Same objection, your Honor. That has been gone into time after time.

Examiner Bennett: Sustained.

By Mr. Albert:

Q. Isn't it a matter of fact, Mr. Miller, that Mr. Reilly was verbally informed after the receipt of the telegram from William Taylor & Company that Mr. Reilly represented William Taylor & Company, that William Taylor & Company, in the light of its announcement that it intended no longer to co-operate with the Fashion Originators Guild, would be red carded? 5865

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: I am attempting to refresh the witness' recollection, if it please the Court. No testimony, as yet, has been given of the conversation, and he may have knowledge of it.

Examiner Bennett: I think you have done that very thoroughly.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you deny, Mr. Miller, that Mr. Reilly was verbally informed, after the receipt of Respondents' Exhibit 38, that William Taylor Son & Company was to be red carded?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Did Mr. Reilly inform you that he had been informed by the Fashion Originators Guild, after the receipt of Respondents' Exhibit 38, that William Taylor Son
5867 & Company was to be red carded?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I make this offer of proof: That if the witness had been permitted to answer as to communications between Mr. Reilly and the Fashion Originators Guild, the witness would have answered that Mr. Reilly was informed by the Fashion Originators Guild, after the receipt by it of Respondents' Exhibit 38, that the Guild intended to red card William Taylor Son & Company, and that Mr. Reilly informed William Taylor Son & Company thereof.

Mr. Martin: I move the offer of proof be
5868 stricken.

Examiner Bennett: It may be stricken as irrelevant.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you understand, Mr. Miller, that the members of the Fashion Originators Guild are refusing to sell you

merchandise because it is no longer your policy to protect style originations?

Mr. Martin: Objected to. He has——

Examiner Bennett: Sustained.

Mr. Martin: —testified that they are refusing him. The question of what their reason is, of what he understands to be their reason, is pure conjecture.

Mr. Albert: Well, certainly, your Honor, if they are refusing to sell William Taylor & Company because they do not like William Taylor & Company's credit, then it should not be in this proceeding at all, and all that testimony should be stricken out; 5870
or because they do not like the name William Taylor & Company. There must be some relevancy to their refusal.

Examiner Bennett: Let us have the question.

(Question read.)

Mr. Martin: He has already testified as to why they are refusing.

Examiner Bennett: Yes, I know that. I am going to let him answer and state what he——

The Witness: Let me have the question.

(Question read.)

A. As far as I know, we have never been given any definite answer. 5871

By Mr. Albert.

Q. No manufacturer has ever told you why they refused to sell you? A. As far as I know, they have not.

Q. And you have no idea why they refuse to sell you?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. From your knowledge of the industry, and from your knowledge of your co-operation with the Fashion Originators Guild, what is your opinion as to the reason why the manufacturers are refusing to——

Mr. Martin: Objected to.

Q. —sell you merchandise?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

5873

By Mr. Albert.

Q. Do you not know that if William Taylor Son & Company agree to protect the originations of manufacturers and refuse to permit their original designs to be copied, that they will then sell you merchandise?

The Witness: Will you please restate the question?
(Question read.)

Q. By "manufacturers," I mean members of the Guild. A. According to the original agreement, we find, I believe, that was a part of it.

Q. And that if you agree to protect styles they will
5874 only be too glad to sell you their merchandise; is that not so? A. That was part of the original agreement.

Q. Yes. Now, there are various factors, are there not, that must be taken into consideration in determining the validity of the percentages which are contained in Commission's Exhibit 473; is that not so?

Mr. Martin: Objected to: he has gone into those figures fully.

Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Is it not a fact that the volume of sales in a particular department for a period of a year is affected by the number of promotional sales that occur in that department?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert. 5876

Q. Do you know how many promotional sales were had in either Departments 330, 335 or 350 during the period from February to June, 1935, and from February to June, 1936?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. If there were a number of promotional sales in these departments referred to in 1935, and there were no promotional sales in these departments in 1936, would not that have had a great influence upon the percentage figures 5877
presented in Commission's Exhibit 473?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Do you know how many promotional sales were had in Department 330 in the five months' period referred to in Commission's Exhibit 473 in 1935?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. For the same period of 1936?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

5879 Q. Is it not a fact, Mr. Miller, that the volume of sales is affected by the amount of advertising that is done in attempting to push the merchandise in the department?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: This line of testimony has not been gone into at all, if it please the Court.

Examiner Bennett: Well, you have been over it. You should have gone into it when you had the matter up. I am not going to have this cross-examination dragged over days and days. It is not fair to this witness.

Mr. Albert: Well, if it please the Court, the Commission has tendered him.

5880 Examiner Bennett: Yes.

Mr. Albert: He is here testifying.

Examiner Bennett: I have just said that is the reason why I am curtailing your cross-examination. Your cross-examination is unreasonably long, and diversified, and brings us—brings neither you nor anybody else very much. You have done some good work in your cross-examination and found some

errors, and I think that is all right, but you should have gone on and exhausted the subject when you took it up.

Mr. Albert: Well, if your Honor please, with all due respect, I wish to be permitted to adopt the line of attack in my cross-examination that I deem best fitted——

Examiner Bennett: Yes.

Mr. Albert: To the particular witness, to the particular type of testimony.

Examiner Bennett: Yes.

Mr. Albert: That we have in mind, and I do not believe that we should be cut off from this further 5882
cross-examination on Commission's Exhibit 473 merely because I did not take up this particular line of attack at the time that I was examining with respect to Commission's Exhibit 473.

Examiner Bennett: We have had a lot of testimony on the line that you are asking now, in Philadelphia, I think it was. It really meant nothing, because, as a matter of fact, the promotional work was usually a rather fixed proposition and it amounted to about the same in one year as in another——

Mr. Albert: Well, now——

Examiner Bennett: We went into all the figures of advertising.

Mr. Albert: I am willing to concede what you 5883
say, your Honor, but that is exactly what I find——

Examiner Bennett: Yes, well——

Mr. Albert: —if it was fixed in 1935, did they do the same amount in 1936.

Examiner Bennett: Well, we are not going into it now and I am just giving you notice that we will not.

Mr. Albert: Exception.

Examiner Bennett: It is not fair to this witness to try to keep him on the stand indefinitely.

Mr. Albert: I am not trying to keep him on the stand indefinitely, your Honor.

Examiner Bennett: It seems——

Mr. Albert: I am trying to exhaust his knowledge as to what he has testified to.

Examiner Bennett: That seems to be your tactics. You don't seem to be getting anywhere much. We have been liberal with you, allowed you to put in a whole lot of respondents' documents and make
5885 your case as far as you could, and now you are abusing that situation by dragging out this cross-examination to inordinate lengths and I am sorry that you are doing that.

Mr. Albert: Well, I must respectfully disagree with the Court, very humbly disagree with the Court, as regards the necessity of my bringing out on cross-examination what this witness has testified to.

Examiner Bennett: Yes. Well——

Mr. Albert: I sincerely hope——

Examiner Bennett: An attorney of your experience and skill would have succeeded in doing that in half a day.

Mr. Albert: Well, I——

5886 Examiner Bennett: If they wanted to save time.

Mr. Albert: I am sorry, your Honor, but I do not think that there is any other way for me to do that than the way I have been doing it.

Examiner Bennett: Go ahead.

Mr. Albert: Maybe your Honor overestimates my ability to cut the cross-examination.

Examiner Bennett: Well, go ahead.

By Mr. Albert.

Q. Is it not true, Mr. Miller, that the advertising budget is supposed to reflect itself in the volume of sales?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Is it not true, Mr. Miller, that there is a ratio between advertising and sales?

Mr. Martin: Same objection.
Examiner Bennett: Sustained. 5888
Mr. Albert: Exception.

By Mr. Albert.

Q. Have you any knowledge as to the amount of display space that was used by the departments referred to in Commission's Exhibit 473 during 1935?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Have you any knowledge as to the amount of display space that was used by the departments referred to in 5889
Commission's Exhibit 473 during 1936?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Is it not true, Mr. Miller, that the volume of sales is affected considerably by the amount of the mark-up?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. What is, or what was the percentage of mark-up generally over cost of the merchandise sold in the departments referred to in Commission's Exhibit 473?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

5891 *By Mr. Albert.*

Q. Do you know that mark-up?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Are those figures available?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

5892 Q. Will you make those figures available to me if they are available?

Mr. Martin: Same objection.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Does service afforded by a store to its customer in any way affect the volume?

Mr. Martin: Now, if your Honor please, I respectfully suggest that counsel for the other side has heard your Honor's remarks on this line of cross-examination and I would like to know does he intend to continue willfully and deliberately in disregard to the Examiner's ruling?

Examiner Bennett: Yes. Well, I guess you will have to inquire of the attorney.

Mr. Albert: I mean, I am awfully sorry, your Honor, but as long as I differ with your principle I must make my record clear.

Examiner Bennett: Well, you are asking——

Mr. Albert: I will try to get through as fast as I can with my line of questions. 5894

Examiner Bennett: You are asking questions that—so far as has been developed, and so far as you can develop any knowledge on the subject—of a witness who is incompetent to give it——

Mr. Albert: Well, now——

Examiner Bennett: And, as a matter of fact, they are rather innumerable objections to your——

Mr. Albert: If your Honor pleases, in the light of the fact your Honor has stated you will not permit me to elicit any information from him on this general line, I have in an endeavor to save time not asked all of the preliminary questions but have merely asked a single question to show what line of examination—— 5895

Examiner Bennett: Yes.

Mr. Albert: —in this respect I would have taken up.

Examiner Bennett: Yes.

Mr. Albert: Now, if Mr. Martin insists upon me asking all of those preliminary questions instead of demonstrating to the Court what line I

would like to pursue I will do that, and we are going to waste much more time. I am trying to save time——

Examiner Bennett: Yes.

Mr. Albert: —by admittedly asking questions—

Examiner Bennett: You are diligently engaged in saving time now——

Mr. Albert: I beg your Honor's pardon?

Examiner Bennett: I say, you are diligently engaged in saving time now, filling the record up with speeches that mean nothing.

Mr. Albert: I am sorry, I have got to protect the record, your Honor. If Mr. Martin insists on my 5897
asking preliminary questions, I will ask them——

Examiner Bennett: I will not——

Mr. Albert: —I prefer to continue along with the line of questions I am asking.

Examiner Bennett: Go ahead and ask your questions and we will rule on them as they come up.

(Question read.)

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Is not the volume of sales affected by the comforts afforded by the store to its customers in the appointments 5898
of the store, the ability of the fitters to fit the dresses, and of the tailors to assist in making up the line while the customer is there?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Who is the buyer for Department 330?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: I think that has already been gone over.

Mr. Martin: I think so.

Examiner Bennett: And answered.

Mr. Albert: He has given us only two buyers, your Honor.

Examiner Bennett: Yes.

Mr. Albert: And I do not think he has mentioned the name of the department. 5900

Examiner Bennett: Well, you can ask him if there are any others.

By Mr. Albert.

Q. In addition to Miss Williams and Mrs. Howard; are those the correct names that you have given us? A. Yes.

Q. Are there any other buyers for the departments referred to in Commission's Exhibit 473? A. Yes, for the Department 360, Miss Griffith; 371 and 380, Mrs. Wamser.

Mr. Albert: Would you mind repeating those names, Miss Reporter?

(Answer read.)

5901

By Mr. Albert.

Q. Which particular department does Mrs. Williams handle? A. 335 and 350; Mrs. Howard, 330.

Q. And, of course, that leaves 330 for Mrs. Howard? A. Yes, correct.

Q. How long has Mrs. Howard been the buyer of Department 330?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. How long has Mrs. Wamser been the buyer for Departments 371 and 380?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5903 *By Mr. Albert.*

Q. Now, is it not part of your duties, Mr. Miller, as divisional merchandise manager, to generally supervise the holding of promotional sales, the advertising budget, the distribution of display tables, the mark-up, the general service in the departments that I have previously asked you about?

Mr. Martin: Objected to, the witness has fully testified three or four times as to what his duties were.

Examiner Bennett: The objection is sustained.

Mr. Albert: Exception.

By Mr. Albert.

5904

Q. Now, Mr. Miller, is it not a fact that the amount of volume in a department is dependent upon size of the stock on hand?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. And is it not a fact that the less stock you have on hand the less, of course, will be the volume?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception to both questions.

Examiner Bennett: Yes.

By Mr. Albert.

Q. Now, Mr. Miller, you testified that the red carding of Taylor's has affected the good will of William Taylor Son & Company; is that not so? A. That is correct.

Mr. Martin: That is objected to; he has gone into that fully before.

Examiner Bennett: I am not——

Mr. Albert: I defy Mr. Martin to show me any 5906
place in the record where I have touched on this subject as yet.

Examiner Bennett: I am not sure that the cross-examiner has touched on it. I am going to let him answer.

The Witness: Will you read the question?

(Question read.)

A. That is correct.

Mr. Albert: May we have a recess, your Honor, the customary afternoon recess?

Examiner Bennett: I beg your pardon?

Mr. Albert: I say, may we have the customary afternoon recess at this time? It is almost time 5907
for it.

Examiner Bennett: Yes.

Mr. Albert: Thank you.

Examiner Bennett: Ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: You may resume.

By Mr. Albert.

Q. Now, Mr. Miller, will you not concede that manufacturing members of the Fashion Originators Guild also had a good will to protect in protecting the style originations from copying and style piracy?

Mr. Martin: Objected to, irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Is not the good will of manufacturers who manufac-
5909 ture original designs affected when those original designs are copied or pirated?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

Examiner Bennett: I understand that that is not in issue, that the merits or otherwise of what the Guild is doing is not in issue.

Mr. Feldman: What was that last statement?

(The statement was read.)

Mr. Feldman: It seems like a question of law to me.

5910 *By Mr. Albert.*

Q. Mr. Miller, will you concede that the program of the Fashion Originators Guild is of assistance to the industry in eliminating a recognized evil?

Mr. Martin: Objected to as being immaterial and irrelevant.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Mr. Miller, does William Taylor Son & Company presently—the question is withdrawn. Have you any objection to telling me whether or not William Taylor Son & Company presently protect style originations?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: May I have that question?

(The question was read.)

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert. 5912

Q. Is style piracy an evil in the industry?

Mr. Martin: That is objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception. No further questions.

Mr. Martin: I have just one question I would like to ask the witness on redirect examination.

Redirect examination by Mr. Martin.

Q. Mr. Miller, referring to Respondents' Exhibits Nos. 24, 25, 26, 27, 28 and 29, also Nos. 30 and 31, 32, all relative to orders which were outstanding with Guild manufacturers at the time of the red carding of Taylor's store, were in fact any of those orders filled? 5913

Mr. Albert: That is objected to, if it please the Court, as having been previously answered.

Mr. Martin: Now, if your Honor please, I think that is a very proper question. The respondents produced a number of exhibits dealing with that question and I simply want to ask this one question as to whether or not the orders with which the respondents' exhibits dealt were in fact filled.

Mr. Albert: Now, if it please the Court, I went into and exhausted the examination of the witness with respect to that very matter, and in addition I was curtailed in my cross-examination by Mr. Martin's objection to the effect that the witness had testified that none of the orders had been filled. Now we are opening it up all again. I have stopped at the point that I have stopped because of the fact that the Commission has indicated its desire to be in Detroit, and if we are going to Detroit, I want to leave as early as possible. If Mr. Martin is going to open up this examination again, I will resume
5915 my cross-examination where I left off at this time in an endeavor to co-operate with the Commission's desire to go to Detroit.

Mr. Martin: I have only that one question.

Mr. Albert: Well, if the Court pleases, if that is the only thing that Mr. Martin believes that the witness needs rehabilitation on after all the errors that this witness has shown to exist in his testimony, I withdraw my objection.

Examiner Bennett: All right.

Mr. Martin: Go ahead and answer the question.

The Witness: No, none of the orders were filled.

(Witness excused.)

Mr. Martin: Now, at this time I will call upon the respondents to produce all correspondence be-
5916 tween the Fashion Originators Guild of America with the Fashion Originators Guild manufacturers who are listed in Respondents' Exhibit No. 24 and referred to in Exhibits 25, 26, 27, 28, 29, 30 and 31 and 32 and relative to the filling of unplaced orders which were outstanding at the time Taylor was red carded.

Mr. Albert? May I suggest to Mr. Martin that I think it would be much more conducive to our not

producing those records if he waited until we got to Minneapolis for them. This is a fine time to ask us to produce records of that sort on the last day of the hearing when we are ready to go to Detroit without a single warning of what he might want with respect to that matter.

Mr. Martin: I don't think——

Mr. Albert: I say, we haven't got the records here, and I think that it is most unseemly of the Commission to attempt to put us in the position of refusing to give them any evidence of any kind whatsoever. We have been most solicitous in giving the Commission every piece of paper that they thought was relevant to the matter. 5918

Mr. Martin: I don't think——

Mr. Albert: Which is more than I can say for the Commission with respect to the evidence that they have presented, and I certainly don't think that any notice to produce of that kind should be made by the Commission at this stage of the proceedings.

Mr. Martin: I don't think that counsel for the respondents should be unduly worried, your Honor. He has not yet produced one single piece of paper during this entire hearing at the request of the Commission, so I don't see why he should get all excited over this now, if your Honor pleases.

Mr. Albert: Mr. Martin seems to forget the hundreds of exhibits that were put in in New York which were supplied—— 5919

Mr. Martin: They came from our files.

Examiner Bennett: Just a moment. One at a time.

Mr. Martin: Which came from our files, your Honor, but that is beside the point.

Mr. Albert: If your Honor pleases, they came from the Commission's files, but they were given to the Commission by us.

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 14, 1936.

Met, pursuant to adjournment, 11 A. M.

Before: JOHN W. BENNETT, *Examiner.*

(Same appearances.)

PROCEEDINGS.

Examiner Bennett: Are you ready to proceed?

Mr. Martin: Yes.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Martin: Will you come around, Mr. Sappington?

Mr. Meder: If your Honor please, at the opening of this case, I would like to enter my appearance. I am Albert E. Meder, M-e-d-e-r, of Beaumont, Smith & Harris of Detroit, counsel for J. L. Hudson Company, one of the respondents in this case.

Examiner Bennett: All right.

LOUIS B. SAPPINGTON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Now, Mr. Sappington, will you state your name and address, please, sir? A. Louis B. Sappington, 487 Arlington Drive, Birmingham, Mich.

Q. What is your occupation, Mr. Sappington? A. Assistant general merchandise manager.

Q. For whom? A. J. L. Hudson Company.

Q. In what business is J. L. Hudson Company engaged? A. Retail department store business. 5924

Q. Where is its place of business? A. Woodward Avenue, 1201 Woodward Avenue.

Q. In the city— A. Detroit.

Q. Do they operate more than one store? A. Just one store.

Q. What general type of merchandise does Hudson handle? A. Furnishings for the home, clothing for men, women and children.

Q. Do you carry a full line of ladies' garments? A. Yes. By "full," we carry a very comprehensive line.

Q. Mr. Sappington, what are your duties as the assistant general merchandise manager of the Hudson store? A. My duties are principally to supervise the women's and misses' ready-to-wear and accessory departments. 5925

Q. Do your duties include the buying of ladies' dresses? A. Not the buying, no.

Q. Do you have anything to do with the buying? A. Yes, the buyers and the merchandise managers report to me.

Q. Your store has a class of employees known as merchandise managers for ladies' dresses? A. Yes.

Q. Will you name them and give their departments—the names of your merchandise managers for ladies' dresses

with their departments? A. I have two assistants. Mr. Walter Simmons, S-i-m-m-o-n-s.

Q. All right, sir. A. Mr. Walter Simmons, who merchandises women's dresses at all price lines. Do you want the names of the departments, and so forth, or just the merchandise that covers it?

Q. I think that will cover it, sir. A. Women's and misses' dresses in all price lines, women's and misses' sportswear.

Q. All right, sir. A. Mr. Herbert Dunham, the other assistant, merchandises women's and misses' coats, women's and misses' suits, furs, and sportswear accessories. These
5927 two men are known as assistant merchandise managers—assistant divisional merchandise managers.

Q. Now, what, if any, contact do you have with Mr. Simmons and Mr. Dunham? A. Almost constant contact during business hours.

Q. Do they report to you? A. Directly.

Q. Do you supervise their activities? A. Yes, sir.

Q. Now, Mr. Sappington, do your buyers have anything to do with the sales end of their respective departments, and if so, what? A. They are responsible for the volume of business that they get; that is, they share the responsibility.

Q. Are they supposed to see to it that the merchandise which they have bought is disposed of in the usual course
5928 of business? A. Yes.

Q. Do you supervise the selling end of your departments as well as the buying end? A. Do you mean the sales people? I do not quite understand the question.

Q. You have testified that your buyers report to you and are supervised by you? A. That is right.

Q. You have testified that the buyers are also responsible for the disposal in the usual course of business of the merchandise which they have bought? A. That is right.

Q. Now, do your duties place you in supervision of the buyers as regards the disposal of goods? A. Right.

Q. Now, Mr. Sappington, in the regular course of business, in your position as assistant general merchandise manager of J. L. Hudson Company, do you, from time to time, make checks of the business of Hudson & Company to determine the trend of sales? A. Yes.

Q. Have you ever heard of the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first hear of this organization? A. Some time in the latter part of 1932.

Q. Did your store ever sign the Fashion Originators Guild "Declaration of Co-operation in Anti-Piracy"? A. 5930
Yes.

Q. When did you sign that declaration? A. In June, 1933.

Q. Do you have a copy of that declaration with you? A. I have the original declaration with me.

Q. Let me see it, please.

(Witness hands paper to counsel.)

(The "Declaration of Co-operation" was marked for identification "Commission's Exhibit 475.")

By Mr. Martin.

Q. I hand you Commission's Exhibit 475 for Identification, and ask you if you can identify that paper? A. Yes, 5931
this is the original.

Mr. Albert: If you will permit me to see it, Mr. Martin, I may concede it is a declaration, and you can offer it in evidence. You can save some time.

(Mr. Martin hands paper to Mr. Albert.)

Mr. Albert: No objection.

Examiner Bennett: Received in evidence.

Mr. Martin: I offer this in evidence as Commission's Exhibit 475.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification "Commission's Exhibit 475," was marked as an exhibit and received in evidence.)

Mr. Keller: What is the date of it?

Mr. Martin: Apparently the only date is marked "June 22, Received."

Mr. Post: Is there a date at the bottom?

Mr. Martin: No, there is no date at the bottom.

5933 Mr. Post: Well, all right.

Mr. Martin: It is marked up here "June 22, Received."

Mr. Post: 1933, that is correct, is it not?

The Witness: Yes, 1933.

Mr. Martin: 1933.

By Mr. Martin.

Q. Is the declaration of co-operation, which is in evidence as Commission's Exhibit 475, between the Hudson Company and the Fashion Originators Guild of America, now in effect? A. No, it is not.

Q. When did that cease to be in effect? A. On the 14th of February, 1936.

5934 Q. Now, Mr. Sappington, from the time your firm started the declaration of co-operation, June 22, 1933, until that declaration became no longer effective, on February 14, 1936, did you, in any way, co-operate with the Fashion Originators Guild in its activities? A. Yes.

Q. Did you ever co-operate with them prior to the signing of the declaration? A. No, sir.

Q. Now, in what way did you co-operate with the Guild after you signed the declaration? A. We removed dresses

from sale and returned dresses to manufacturers which were adjudged to be copies by the Guild.

Q. Did you place on the orders for merchandise given by your store the Guild warranty stamp? A. Yes, sir.

Mr. Martin: Will you hand me Commission's Exhibit 306?

Mr. Albert: While you are looking for that exhibit, may I suggest that the best evidence of the stamp used on the order is the order bearing the stamp, and in order to save time I suggest that you put in evidence a copy of the order which will be just as satisfactory.

5936

By Mr. Martin.

Q. I show you Commission's Exhibit 475 and refer you to the last paragraph thereof, and ask you is that the stamp which you placed on your orders?

Mr. Albert: I object to the question, if it please the Court, upon the ground that the best evidence of the stamp they placed on their orders is an order bearing the stamp.

Examiner Bennett: That is true, I believe, if you have the stamp.

By Mr. Martin.

Q. Have you with you any orders bearing that stamp? 5937
A. No, I have not.

Q. Can you testify as to the identity of that? A. I believe that our stamp which we placed upon our orders was taken from this and is exactly the same (indicating).

Q. Now, did you place that stamp on all orders, Mr. Sappington? A. Yes, on all orders placed from the Ready-to-Wear Division.

Q. Ready-to-Wear Division? A. Coats, suits and dresses.

Examiner Bennett: Fix the time.

By Mr. Martin.

Q. That is, from the time you signed the declaration until February 14, 1936, this year? A. From approximately the time that we signed the declaration. I believe there were a few days elapsing until we could have the stamp made, and up to the time that we—that our declaration was returned.

Q. Did the manufacturers accept your orders with the stamps on them? A. Yes.

Q. Now, in the fall of 1935, Mr. Sappington, did any manufacturers refuse to accept orders which were placed by your firm and which contained this stamp? A. Not
5939 that I know of.

Q. Does the Fashion Originators Guild of America employ a shopper in Detroit? A. Yes, sir.

Q. Do you know her name? A. Her name is Mrs. Miller.

Q. Did you ever meet her, or do you know her personally? A. Yes, sir.

Q. Have you ever encountered her in any of the departments of your store, in the performance of her duties? A. I have seen her in the store, yes.

Q. What was she doing? A. Walking through the floor, looking at merchandise, about the same as a customer would do. I have also talked with her in my office about copies of Guild merchandise, and I have gone over sketches with her that the Guild has sent to her for identification,
5940 and so forth.

Mr. Albert: I ask that the latter part of the answer be stricken out, if the Court please, as not responsive to the question.

Mr. Martin: If your Honor please, I think it is.

Examiner Bennett: What is the question, please?

(Question read.)

Mr. Albert: In the store.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

By Mr. Martin.

Q. In what departments in your store have you encountered her? A. I couldn't say. I don't remember, except that they were on the garment floor; they were in the garment departments, in the dress departments.

Q. Now, did Mrs. Miller ever advise you or request you to return any of the garments which you have in stock to the manufacturer? A. Yes, sir.

Q. Can you testify as to the number of garments, or as to the number of instances in which garments were returned to the manufacturer at the request of the Guild shopper? A. No, sir.

5942

Mr. Albert: What was that answer?

The Witness: "No."

By Mr. Martin.

Q. Were any garments ever returned at her request? A. Yes, sir.

Q. Can you give the dates and occasions of any of these returns? A. No, sir.

Q. Can you give the names of any manufacturers to whom dresses were returned at her request? A. No, sir.

Q. Mr. Sappington, when was the J. L. Hudson Company red carded? A. On the 14th of February. We received word on the 15th.

5943

Mr. Albert: I ask that the answer be stricken out, if it please the Court, as unintelligible. I don't know what he means by "On the 14th, we received word on the 15th."

Mr. Martin: I think the answer is fully responsive to the question, your Honor, and perfectly intelligible to any man of reasonable intelligence.

Examiner Bennett: Denied.

Mr. Albert: I press my objection, if it please the Court.

Examiner Bennett: It is denied.

Mr. Albert: Exception.

By Mr. Martin.

Q. Mr. Sappington, will you tell me briefly what was the first knowledge which the J. L. Hudson Company had that it had been red carded?

Mr. Martin: May I ask that that question be repeated?

(Question read.)

5945 Mr. Albert: That is objected to as being immaterial.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

By Mr. Martin.

Q. Go ahead and answer. A. We received word from the Detroit representative of "Women's Wear."

Q. That was the first knowledge you had of being red carded? A. Yes, sir.

Q. Did you subsequently receive any further notice of being red carded? A. Yes, sir.

Q. Did you receive any notice directly from the F.O.G.A.? A. Yes, sir.

5946 Q. What notice did you receive? A. We received a letter from Mr. Post. No, excuse me. From Mr. Golby.

Q. Have you that letter? A. Yes.

(A letter was marked for identification Commission's Exhibit 476.)

Q. I hand you Commission's Exhibit 476 for Identification, and ask can you identify that? A. That is the notice

that we received from the Fashion Originators Guild of America that we had been red carded.

(Letter was handed to Mr. Albert.)

Mr. Albert: No objection.

Examiner Bennett: Received as Commission's Exhibit 476.

(Letter referred to, heretofore marked for identification Commission's Exhibit 476, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Mr. Sappington, what, if anything, did you do after 5948
you received the notice of red carding as set out in Commission's Exhibit 476?

Mr. Albert: May I ask that that question be repeated?

(Question read.)

A. We attempted to go ahead in our buying just the same as we had in the past.

By Mr. Martin.

Q. Did you have any correspondence with the Fashion Originators Guild in reply to their letter of February 14 as set out in Commission's Exhibit 476? A. Yes. We wrote a letter to the Guild—wrote a letter to the Guild 5949
on the 27th of February. This is a copy of the letter which was written.

Mr. Martin: Mark that for identification, will you, please, sir, 477-A and B.

(Letter was marked for identification Commission's Exhibits 477-A and 477-B.)

5950 *Louis B. Sappington—For Commission—Direct.*

By Mr. Martin.

Q. I hand you Commission's Exhibits 477-A and B for Identification, and ask if you can identify them? A. Yes. This is a copy of the letter which was sent to the Guild acknowledging the receipt of their letter of February 14.

Q. What is Commission's Exhibit 477-B? A. This is a return receipt signed by the Guild, return receipt for the registered letter.

Mr. Martin: I offer this in evidence, Commission's Exhibits 477-A and B.

(Papers were handed to Mr. Albert.)

5951 Mr. Albert: No objection.

Examiner Bennett: Received as Commission's Exhibits 477-A and 477-B.

(Documents referred to, heretofore marked for identification Commission's Exhibits 477-A and 477-B, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, after you had gotten this notice and had written to the Fashion Originators Guild, as set out in Commission's Exhibit 477-A, what happened then? A. When our buyers went into the market to buy merchandise those houses which belonged to the Guild
5952 refused to sell them. Also, all merchandise that was on order with Guild houses at the time that we were blacklisted——

Mr. Albert: If it please the Court, I ask that the latter part be stricken out.

Mr. Martin: Now, if your Honor please——

Examiner Bennett: There is no need of argument. Denied.

By Mr. Martin.

Q. Go head.

Mr. Albert: Exception.

A. At the time that we were blacklisted, those houses with which we had merchandise on order refused to deliver.

Q. Did your buyers attempt to gain access to the manufacturers who were members of the Guild? A. They——

Q. Were they denied access by these Guild manufacturers? A. Yes, sir.

Q. Can you testify as to which buyers tried to obtain access? A. Yes, sir. 5954

Q. Who were those buyers?

(Witness searches files.)

A. Miss Costello, who buys junior wear; Miss Reicke, who buys suits.

Mr. Albert: Sorry. I didn't get that name.

The Witness: Reicke.

Mr. Albert: Reicke?

The Witness: R-e-i-c-k-e.

Mr. Albert: What was she the buyer for?

The Witness: Suits.

By Mr. Martin. 5955

Q. Was that Miss Costello? A. C-o-s-t-e-l-l-o.

Q. What does she buy for? A. Junior wear.

Q. All right, sir. Miss Briggs, B-r-i-g-g-s, who buys coats and evening wraps; Miss Hromek, H-r-o-m-e-k, who buys sportswear; Miss Kimball, who buys women's dresses; Miss Fowler, who buys for our gown sheet; Mr. Touff, T-o-u-f-f, who buys for three departments, women's and misses' dresses.

Q. Now, is that all, Mr. Sappington? A. Yes.

Q. Now, Mr. Sappington, what manufacturers refused access to Miss Costello? A. Miss Costello was refused access by Aywon Dress Company and Junior Guild Frocks.

Q. Any others? A. That is all.

Q. Who refused access to Miss Reicke? A. Grossman-Seigel.

Q. Any others? A. That is all.

Q. What Guild manufacturers refused access to Miss Briggs? A. Aaron's, Bernstein & Aaron; Carmel Brothers; Delmonte Hicke; Bender, Shell & Company; Louis Gold-
5957 stein; Grossman-Seigel; Philip VanGon.

Q. What manufacturers refused access to Miss Hromek? A. Gane; Wile; Adler & Adler; Star Maid; Sport Craft; Mutual; Rosenbloom; Bernard Appel.

Q. What Guild manufacturers refused access to Miss Fowler? A. Max Heit; Rose Sperrick & Laum; Herman Beispell; Perlas & Gilbeft; Straus; Miller.

Q. What Guild manufacturers refused access to Mr. Touff? A. Lila Modes; Aywon Dress; International Dress; Whitlan & Schneider; C. H. D. Robbins.

Mr. Albert: Take it a little easy, Mr. Sappington.

The Witness: International Dress. Got that one?

5958 Mr. Albert: Yes.

The Witness: Whitlan & Schneider, C. H. D. Robbins, Brentner & Swessman, Milton Altmark, Mary Lee, Frank Starr-Friedlander, A. Goodman, Caplan Moskowitz, Henry Ganz, Eastman & Bard, Robinson Brothers, Matthes-Seckutzky.

Mr. Albert: Thank you.

The Witness: I have some additional manufacturers here on the junior line.

By Mr. Martin.

Q. Well, are those all of the manufacturers who refused access to buyers? A. No.

Q. How? A. Here are some more for the Junior Miss Department, under Miss Costello: Ashley Frocks—in addition to the two I gave you, there are Ashley Frocks, Bon Ray, Daytime Frocks, R. Goldfarb, and Jo-Ann Junior, or Jo-Anne, I think some people call it, Joane.

Q. Is that all? A. Yes.

Q. Now, Mr. Sappington, can you testify as to the names of the Guild houses from whom your store purchased dresses in 1935? A. Yes, sir.

Q. Have you a list of those? A. I think so. 5960

(A paper was marked for identification Commission's Exhibit 478-A.

By Mr. Martin.

Q. I hand you Commission's Exhibit 478-A for identification, and ask you can you identify that list? A. Yes, this is a list of the Guild houses that we used, that were used by our dress departments in 1935, also indicating those houses that are not with the Guild now but were in 1935.

Mr. Martin: I offer this in evidence as Commission's Exhibit 478-A.

Mr. Albert: May I question on the voir dire, your Honor? 5961

Examiner Bennett: Yes.

By Mr. Albert.

Q. Mr. Sappington, who prepared this list (indicating)? A. That was prepared by the clerical staff in the stock control office of our garment division

Q. Did you check it for accuracy? A. I didn't check it against our records myself, no.

Q. Except for the fact that it was presented to you as having been prepared in your stock control room, you know nothing as to its accuracy? A. Well, I am familiar with a great many of the houses that are on that list. I know that we did business—I know offhand that we did business with a great many of those houses without having to check it.

Q. But you do not know that you did business with all of those houses, do you? A. Not with every one.

Q. And you do not know whether or not any of the
5963 houses have been omitted, do you? A. Only as this list was given to me by our own employees who checked it.

Q. What period does this list encompass? A. From 1935.

Q. From when to when? A. From the 1st of February, 1935, to the 31st of January, 1936; that is our fiscal year, 1935.

Q. From whence was the information taken with respect to the houses allegedly not in the Guild at the present time? A. Either from word that we received from those houses, or information that was given to our office by our buyers.

Q. Where did your buyers get the information from? A. From the houses.

5964 Mr. Albert: May it please the Court, I object to the introduction of this list at the present time on the ground that no proper foundation has been laid; on the further ground that no foundation has been laid whatsoever as to the truth or accuracy of the notations of certain houses that have resigned from the Guild.

Mr. Martin: If your Honor please, may I ask a few more questions?

Examiner Bennett: Yes.

By Mr. Martin.

Q. Mr. Sappington, was this list prepared for you by your employees at your request, in the usual course of business? A. Yes, sir.

Q. It is such information as is relied on by you in the usual course of business? A. Yes.

Q. Do you believe this to be a true and accurate list? A. Yes, sir.

Mr. Martin: I offer it in evidence, your Honor, Commission's Exhibit 478-A.

Mr. Albert: I renew my objection.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception. 5966

(List of Guild houses used by dress departments in 1935, heretofore marked for identification Commission's Exhibit 478-A, was marked as an exhibit and received in evidence.)

(List of "Guild Houses with whom we did business during 1935 in the Better Coat Department and Evening Wrap Department" was marked for identification Commission's Exhibit 478-C.)

(List of "Guild Houses with whom we did business in the Suit Department in 1935" was marked for identification Commission's Exhibit 478-B.)

By Mr. Martin. 5967

Q. I hand you Commission's Exhibit 478-B, for identification, and ask can you identify that? A. It is a list of Guild houses with whom we did business in our suit department in 1935.

Q. Was that list prepared by you? A. No, sir.

Q. Was it employed for you by your employees at your request? A. Yes.

Q. In the usual course of business? A. Yes, sir.

Q. It is relied on by you in the usual course of business? A. Yes, sir.

Q. You are satisfied as to its accuracy and correctness? A. I am.

Mr. Martin: I offer that in evidence, your Honor, Commission's Exhibit 478-B.

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: Same ruling; overruled; received.

(The list referred to, heretofore marked for identification Commission's Exhibit 478-B, was marked
5969 as an exhibit and received in evidence.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 478-C, for identification, and ask you if you can identify that? A. This is a list of Guild houses with whom we did business in 1935 in the Better Coat Department and in our Evening Wrap Department.

Q. Was that prepared by you? A. No, sir.

Q. Was it prepared for you by your employees at your request in the usual course of business? A. Yes, sir.

Q. And, as such, is relied on by you? A. Yes, sir.

Q. And you believe it to be correct? A. Yes, sir.

5970 Mr. Martin: I offer this in evidence, your Honor.

Mr. Albert: Same objection as has been previously made to the admission of Commission's Exhibit 478-A.

Examiner Bennett: Same ruling; overruled; received.

Mr. Albert: Exception.

(List referred to, heretofore marked for identification Commission's Exhibit 478-C, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, at the time the J. L. Hudson Company was red carded on February 14, 1936, were there any orders outstanding with manufacturers who were a member of the Guild? A. Yes, sir.

(Papers were thereupon marked for identification Commission's Exhibits 479-A, 479-B and 479-C.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 479-A, B and C, and ask you if you can identify that? A. This is a list of outstanding orders with Guild houses on the 15th of February, 1936. 5972

Q. Was that list prepared by you? A. No, sir.

Q. By your employees for you at your request in the usual course of business? A. Yes, sir.

Q. And, as such, is relied on by you? A. Yes, sir.

Q. You are satisfied as to the accuracy of that paper? A. Yes, sir.

Mr. Martin: I offer that in evidence, your Honor, as Commission's Exhibits 479-A, B and C.

Examiner Bennett: Do you have quite some more of this examination?

Mr. Martin: Yes, I have quite a good deal.

Examiner Bennett: All right, I think we had better take a recess pretty soon—give you a rest of a few minutes. 5973

The Witness: Yes.

Mr. Albert: I renew my objection to Commission's Exhibit 479 upon the same grounds previously interposed with respect to Commission's Exhibit 478-A.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(Documents referred to, heretofore marked for identification Commission's Exhibit 479-A, B and C, were marked as exhibits and received in evidence.)

Examiner Bennett: We will take a recess of not exceeding ten minutes.

Mr. Martin: Yes, your Honor.

(There was a short recess taken.)

By Mr. Martin.

Q. Now, Mr. Sappington, referring to Commission's Exhibits 479-A, B and C, which is a list of merchandise on order with Guild houses and outstanding as of February
5975 15, 1936, were these orders filled by the Guild manufacturers with whom they were placed? A. No, sir.

Q. Were any of them filled? A. Yes, sir.

Mr. Albert: Is that "yes, sir" or "no, sir"?

The Witness: Yes, sir.

By Mr. Martin.

Q. Do you know how many of these orders were filled? A. No, sir.

Q. Can you tell me approximately how many of them were filled, about? A. About $2,000 out of the total amount.

Q. Do you know the manufacturers who filled these orders? A. No, sir.

5976

Q. With the exception of approximately $2,000 of these orders as shown on this list, your testimony is that the balance were not filled? A. Yes, sir.

Q. At the time of the red carding—withdraw that question. Are you familiar, Mr. Sappington, with what is meant by the term "hot numbers" in the trade? A. Yes, sir.

(There was a discussion off the record.)

Mr. Martin: What is that question?

(The question was read.)

By Mr. Martin.

Q. Did you have any hot numbers which had been supplied by Guild manufacturers? A. Yes, sir.

Q. Did you attempt to place any reorders? A. Yes, sir.

Q. Were the reorders accepted? A. No, sir.

Q. Since the time you were red carded on February the 14th, 1936, have you been able to buy any garments from Guild manufacturers from whom you had previously been buying? 5978

The Witness: May I ask you to repeat that, please?

(The question was read.)

A. Yes, sir.

Q. To what extent? A. Slightly.

Q. Do you know when you last attempted to obtain merchandise from Guild sources? A. Not exactly.

Q. Can you state approximately the time? A. February and March of 19—of this year.

Examiner Bennett: This document hasn't been offered, has it (indicating Commission's Exhibits 479-A, B and C)?

Mr. Martin: Yes, that has been offered and received. 5979

Mr. Albert: That is 479-A, B and C.

Examiner Bennett: I know what it is.

Mr. Martin: It was offered just before recess.

By Mr. Martin.

Q. Mr. Sappington, did your ladies' ready-to-wear business—is your ladies' ready-to-wear business divided into departments? A. Yes, sir.

Q. Will you give me the names of those departments? A. Women's suits, women's inexpensive coats, women's better coats, women's better dresses, inexpensive evening gowns, misses' inexpensive coats, misses' better coats, misses' better dresses, the Gown Shop, women's inexpensive dresses, women's moderate priced dresses, misses' inexpensive dresses and misses' moderate priced dresses.

Mr. Albert: I think that is a repetition.

A. (Continuing) Junior apparel, sports accessories. I believe that department is called blouses and sweaters. Excuse me. Blouses and sweaters. Sportswear, furs.

5981 Mr. Albert: Just a minute, Mr. Martin. Would you mind repeating those?

(The answer was read.)

By Mr. Martin.

Q. Mr. Sappington, what, do you know, is the department number of women's suits? A. 300.

Q. What department number is women's inexpensive coats? A. 311.

Q. Women's better coats? A. 312.

Q. Women's better dresses? A. 338.

Q. Women's inexpensive evening gowns? A. 339.

Q. Misses' inexpensive coats? A. 345.

Q. Misses' better coats? A. 346.

5982 Q. Misses' better dresses? A. 358.

Q. The Gown Shop? A. 359.

Q. Misses' inexpensive dresses? A. 366.

Q. Misses' moderate priced dresses? A. 367.

Q. Misses' inexpensive dresses? A. 368.

Q. Misses' moderate priced dresses? A. 369.

Q. Junior apparel? A. 371.

Q. Blouses and sweaters? A. 381.

Q. Sportswear? A. 385.

Q. And furs? A. 400.

Q. Mr. Sappington, in what price range did you buy dresses from the Guild manufacturers? A. $10.75 up.

Q. At what price were the bulk or the majority of dresses bought from Guild manufacturers?

Mr. Albert: That is objected to, if it please the Court, calling for the conclusion of the witness, no foundation has been laid, and it is entirely too indefinite in general to be of any particular worth. I don't think the Commission is——

Examiner Bennett: If he knows.

By Mr. Martin. 5984

Q. Do you know? A. At what price?

Q. At what price line the bulk of your F.O.G.A. business was? A. No.

Q. You can't testify as to that? A. I can testify as to what the price line——

Mr. Albert: If it please the Court, I think the witness should be subjected to questioning and not the volunteering of any information. He has testified that he can't tell us what price line constituted the bulk of his purchases. Now, if Mr. Martin has any further questions, I suggest that he ask them and that the witness not volunteer anything. I object to any volunteering of any information. 5985

Examiner Bennett: You were going to say what knowledge you had. What is it?

Mr. Albert: Exception.

By Mr. Albert.

Q. Go ahead. A. I could tell you that at $10.75 we buy more pieces than at any other price line.

Q. You buy more pieces at $10.75?

Mr. Albert: Objected to. The answer is not responsive, and I ask that it be stricken.

Examiner Bennett: I have ruled on the objection.

Mr. Albert: Exception.

Examiner Bennett: You may have an exception.

By Mr. Martin.

Q. To the best of your knowledge, Mr. Sappington, how long has the Guild membership included manufacturers in the brackets below $10.75?

5987

Mr. Albert: That is objected to as calling for the conclusion of the witness, no proper foundation has been laid qualifying this man in Detroit as an expert on what the Fashion Originators Guild has done in New York.

Examiner Bennett: Well, you may lay a foundation, and find out about it.

Q. Do you know whether or not Guild merchandise has any manufacturers who manufacture garments in the price brackets below $10.75?

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial; no proper foundation

5988 has been laid; merely a repetition of the previous question. This man is not an expert on what the Guild comprises.

Examiner Bennett: Overruled; he may answer.

Mr. Albert: Exception.

A. I don't know now, no.

By Mr. Martin.

Q. Do you know whether they ever had any manufacturers below $10.75?

Mr. Albert: Same objection.

Examiner Bennett: Well, I will find out what he knows.

Mr. Martin: You may answer.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

A. Yes, sir.

Q. Do you know when they first had manufacturers in the brackets below $10.75? 5990

Mr. Albert: Same objection.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

A. No, sir.

By Mr. Martin.

Q. Have you ever bought any garments from Guild manufacturers at cost, less than $10.75?

Mr. Albert: That is objected to as having been previously answered, if it please the Court.

Mr. Martin: I think it is a perfectly proper question, your Honor; it has not been answered. 5991

Mr. Albert: The question was once given; there was a previous specific answer.

Mr. Martin: Refer to the record and see if there was an answer.

Mr. Albert: Well, refer to the record, Mr. Martin.

Examiner Bennett: Just a moment; objection overruled; you may answer.

Mr. Martin: You may answer.
Mr. Albert: Exception.

A. Yes, sir.

By Mr. Martin.

Q. When did you buy garments from Guild manufacturers at prices less than $10.75? A. During the year 1935.

Q. What part of the year 1935? A. I believe in both the spring and fall seasons.

Q. How long have you been assistant general merchan-
5993 dise manager of the Hudson Company? A. Six years.

Mr. Albert: Congratulations, Mr. Martin.

By Mr. Martin.

Q. How long have you been in the employ of the Hudson Company? A. About eight and one-half years.

Q. Now, in your position as assistant general merchandise manager, are you familiar with the policies of the Hudson Store: that is, the general merchandise? A. Generally, yes.

Q. The general policies of the store? A. Yes.

Q. Prior to the time that the Hudson Company signed the declaration of co-operation, what was the policy of your store relative to the purchasing of garments which
5994 were alleged to be copies of other garments? A. We had no policy.

Q. Did you buy garments without regard as to whether or not they were copies? A. Yes.

Mr. Albert: What was the answer?
The Witness: "Yes."

Q. Did Hudson & Company volantarily sign this declaration?

Mr. Albert: Now, if it please the Court, Mr. Martin certainly has sufficient experience in the trial of a case to know that that question is not only objectionable, but obnoxious to every single court. It calls for a conclusion of the witness as to a matter of law. It is the most leading question that could possibly be asked of a witness, and the only purpose of asking that question of the witness in the face of my having gotten up and informed Mr. Martin and told him of the fact that it was leading was in order to apprise the witness 5996
of exactly the answer Mr. Martin wants to his succeeding question.

I think that type of questioning on the part of the Commission should be absolutely cut off by your Honor, and that Mr. Martin should be admonished to ask his questions in proper legal form. I do not think there can be one iota of doubt about the fact that the sole purpose of that question was to warn and apprise the witness of the answers that were necessary and were wanted by the Commission as to future questioning, because I do not think Mr. Martin, for whom I have great respect as to his legal ability, thinks for one moment that that question will be sustained by the 5997
Commission.

Examiner Bennett: I will sustain the objection to that particular question.

Mr. Martin: All right.

(Question read as follows: "Q. Now, Mr. Sappington, you have testified that Hudson & Company signed a declaration of co-operation in June; I believe it was the 22nd of June, 1933; what were the reasons for signing this declaration?")

5998 *Louis B. Sappington—For Commission—Direct.*

By Mr. Martin.

Q. Do you know the reasons they signed the declaration?

Mr. Albert: That is objected to as immaterial, and he certainly knows the reasons now after that last question of Mr. Martin's.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

By Mr. Martin.

Q. Do you know why you signed the declaration? A.
5999 Yes, sir.

Q. Why did you sign the declaration.

Mr. Albert: That is objected to as calling for the operation of the witness' mind; calling for a conclusion of the witness; no proper foundation has been laid.

Examiner Bennett: All right.

Mr. Albert: As being irrelevant to the complaint of the Commission.

Mr. Martin: Go ahead and answer.

Examiner Bennett: I am going to hear what he has to answer.

Mr. Albert: Exception.

6000 A. We signed the declaration of co-operation because we received a letter from the Fashion Originators Guild, signed by Mr. Rentner, stating that the members of the Fashion Originators Guild would not show their lines to buyers, unless the store which those buyers represented signed the declaration of co-operation prior to July 5, 1933.

Mr. Albert: Now, if it please the Court, I move that the answer be stricken on the ground that the best evidence of the letter referred to in the answer

is the letter itself, and I renew my objection and ask that the answer be stricken upon the previous grounds interposed with respect to the question.

Examiner Bennett: Yes. Well, I am going to deny the motion.

Mr. Albert: Exception.

By Mr. Martin.

Q. Have you a copy of the letter you referred to? A. Yes, sir.

Q. Will you let me see it?

Mr. Martin: Mark this the next number, A, B, C and D. 6002

(Document was marked for identification Commission's Exhibits 480-A, 480-B, 480-C and 480-D.)

By Mr. Martin.

Q. I show you Commission's Exhibits 480-A, B, C and D for identification, and ask if you can identify that letter? A. Yes.

Q. What is it? A. It is a letter addressed to me by Maurice Rentner of the Fashion Originators Guild stating the Guild——

Mr. Albert: If it please the Court, I object to any statement of what is in the letter.

Examiner Bennett: What is the date? 6003

By Mr. Martin.

Q. What is the date? A. June 16, 1933.

Q. Does it contain any enclosures? A. Yes, sir.

Q. What are they? A. Enclosures: Memorandum on the Guild's resolution and its significance.

Mr. Martin: I offer that in evidence, your Honor, as Commission's Exhibits 480-A, B, C and D.

Examiner Bennett: We will take a recess for luncheon until 2.15.

Mr. Martin: Until 2.15?

Examiner Bennett: Yes.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2.15 o'clock P. M. of the same day.)

6005 AFTERNOON SESSION, 2.15 P. M.

(The documents referred to, heretofore marked for identification Commission's Exhibits 480-A, 480-B, 480-C, and 480-D, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, referring to Commission's Exhibits 479-A, B and C, which is a list of orders with Guild houses outstanding at the time of red carding, were any of these orders cancelled by J. L. Hudson Company? A. No.

Q. Are they still outstanding as far as Hudson Company records show? I mean by that, that they have not
6006 been cancelled on your records? A. They have not been cancelled.

Q. Would you have accepted delivery of these orders if the same had been tendered? A. Within reasonable time, yes.

Q. Mr. Sappington, have you in the ordinary course of your business, made any study to determine the effect on Hudson's business in the affected departments of being red carded by the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court. There is no testimony in the evidence that any department has been affected.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. Yes, we have.

Q. What study did you make? A. We have made a study of comparative volume for a group of departments as a whole, and we have made various price line studies comparing volume at various price lines during the period since the red carding with the corresponding period a year ago.

6008

By Mr. Martin.

Q. Has the red carding of Hudson & Company had any effect on its business? A. Yes.

Q. Now, in the light of your answer, and in the light of your previous answers that you have made a study, will you tell me what has been the effect on Hudson's business of the inability to obtain garments from Fashion Originators Guild manufacturers as you observed it?

Mr. Albert: I renew my objection, if it please the Court, on the ground that there was no foundation laid showing that this witness has made any study. There is no foundation laid showing what study has been made, nor has any evidence been presented showing that any reports of any studies have been made by this witness. 6009

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

By Mr. Martin.

Q. Go ahead, Mr. Sappington. You may answer. A. Could I have the question repeated?

Q. (Question read.) A. We have been unable during this spring season to obtain certain types of garments in order to complete our assortments or in order to make our assortments up to our standard. We have been unable to supply certain—to obtain certain types of garments, and we have been unable to obtain garments in certain price lines.

Q. Any other effect? A. We have been forced to seek new resources which heretofore were unfamiliar and untried, as far as we are concerned, which involves considerable risk, we felt.

Q. Any other effect? A. We believe that all of this has
6011 an effect on the volume of business we were able to do this spring.

Q. Has it had any effect on your——

Mr. Albert: Now, if it please the Court, I move that the answer be stricken on the ground that it is not responsive. The answer to the question was a simple one, "Yes, it affected our volume." Instead of that, we get a long explanation from the witness as to what his opinion is, without any basis or foundation in fact showing the justice of the facts upon which the opinion is predicated.

Examiner Bennett: Denied.

Mr. Albert: Exception.

6012 *By Mr. Martin.*

Q. Did this inability to secure F.O.G.A. garments have any effect on your business so far as the good will of your customers is concerned?

Mr. Albert: If it please the Court, I object to the question on the grounds that the previous answer of the witness did not restrict his inability to obtain certain merchandise as having been confined to

Guild houses. Mr. Martin in interpreting the witness has included something in his question which was not contained in the answer.

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

Q. Answer. A. Yes, we think it did.

Q. What effect?

Mr. Albert: Exception.

A. Well, in the case of certain—in certain instances where our customers wished to have a special order of garment that we had in stock, which we could not do. 6014
Some of these customers were very important to our business.

Q. Have you been enabled to display and offer for sale goods of the comparable grade and quality with which you formerly carried in stock?

Mr. Albert: That is objected to as a conclusion of the witness, if it please the Court; no proper foundation has been laid as to what is a garment comparable to any other garment. There is nothing whatsoever in the record to support any conclusion or any opinion or any wild guess that the witness may make in answer to that question of the Commission's Attorney. I respectfully object to the question upon that ground. 6015

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

By Mr. Martin.

Q. You may answer. A. We were not able to maintain the assortments, our assortments in certain respects as we had maintained them in previous seasons, or as we have maintained them had we had free access to the entire market.

Mr. Albert: I ask that the latter part be stricken out as purely a conjecture of the witness, if the Court please, "as we would have."

Examiner Bennett: Well, I will let it stand.

Mr. Albert: Exception. May I have the answer repeated?

(Answer read.)

By Mr. Martin.

Q. Now, Mr. Sappington, you have referred in your testimony, or, rather, you have described the various departments of your dress business, dress and coat business, by
6017 name as well as by departments; have you, in the ordinary course of business, in the performance of your duty, made, or caused to be made, any study with reference to those particular departments which you have outlined, as to the effect on those departments of being red carded? A. Yes, I have.

Your Honor, may I add to my testimony of this morning? In giving a list of the departments in the Ready-to-Wear Division, I left out one department.

Examiner Bennett: All right, you may add it.

The Witness: No. 386—the name is "Home Frocks."

Mr. Feldman: How do you spell that?

Mr. Martin: Frocks, F-r-o-c-k-s.

6018 Mr. Post: You should know after this trip.

By Mr. Martin.

Q. Now, with particular reference to those various departments, which one of them was most affected by being red carded?

Mr. Albert: If it please the Court, we would seem to have a principal thought to be established by the

attorney for the Commission, that merely from the fact that he asked the witness whether he had made a study of it, and the witness says "Yes," that that makes him thoroughly competent to tell us what he finds.

Mr. Martin: All right, I will ask him another question if you want me to.

Mr. Albert: You knew what was coming. Let us have a foundation for it.

By Mr. Martin.

Q. Have you determined from your study which one of the departments was affected? 6020

Mr. Albert: That certainly cures it! I think the death is worse than the cure. If it please the Court, before we get an opinion from this witness as to what he believes to be the effect, I would like to know what his study was. I do not want to hear that he read a Detroit "Journal" or that he read the "Readers Digest."

Examiner Bennett: You may have the cross-examination.

Mr. Albert: But, if your Honor please——

Examiner Bennett: I have ruled.

Mr. Albert: I object.

Examiner Bennett: I have that, and I have ruled.

Mr. Albert: Exception. 6021

The Witness: May I have the question?

(Question read.)

A. Yes, we have.

By Mr. Martin.

Q. Now, which one of those departments was affected?

A. Departments 312, 338, 346, 358, 359, 367, 369, 371, 385.

Mr. Albert: Will the reporter please repeat those? (Answer read.)

(A paper was thereupon marked for identification Commission's Exhibit 481.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 481 for Identification, and ask can you identify that paper? A. Yes.

Q. What is it? A. This is a memorandum sent to me by Mr. Touff, buyer for Department 338, giving an analysis——

6023 Mr. Albert: Wait. If it please the Court, I ask that it be not described.

Mr. Martin: All right.

Examiner Bennett: It may not.

By Mr. Martin.

Q. Was this memorandum prepared for you at your request? A. Yes, sir.

Q. It was done in the ordinary course of business? A. Yes, sir.

Q. And in the ordinary course of business is relied on by you? A. Yes, sir.

Q. To the best of your knowledge and belief, this is correct? A. Yes, sir.

6024 Examiner Bennett: Who is the gentleman that prepared it?

Mr. Martin: Mr. Touff, who is one of their buyers, T-o-u-f-f.

Examiner Bennett: All right.

Mr. Martin: I offer this in evidence as Commission's Exhibit 481.

Mr. Albert: Is this another exhibit being offered in evidence, Mr. Martin?

Mr. Martin: It is; yes, sir.

Mr. Albert: I object to the particular figures going into evidence upon the ground that no proper foundation has been laid.

Examiner Bennett: Received.

Mr. Albert: Exception.

(Paper referred to, heretofore marked for identification Commission's Exhibit 481, was marked as an exhibit and received in evidence.)

(A paper was marked for identification Commission's Exhibit 482-A and 482-B.)

By Mr. Martin: 6026

Q. I hand you Commission's Exhibits 482-A and 482-B for Identification, and ask you if you can identify those? A. Yes, sir.

Q. What are they? A. Memorandum from Mr. Touff to myself.

Q. Was that prepared for you at your request? A. Yes, sir.

Q. In the ordinary course of business? A. Yes, sir.

Q. And as such relied upon by you in the ordinary course of business? A. Yes, sir.

Q. And, to the best of your knowledge and belief, those figures are accurate and correct? A. Yes, sir.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibits 482-A and 482-B. 6027

Mr. Albert: Now, if it please the Court, I wish to object to Commission's Exhibit 482, particularly that portion which contains a record of figures, on the ground that no proper foundation has been laid demonstrating by competent evidence the method in which the figures were reached and the accuracy thereof. I also object to the further admission of

Commission's Exhibits 482-A and B upon the ground that it contains self-serving declarations in no way binding upon the respondents. It contains interoffice communications as between Mr. Sappington and Mr. Touff, one of his buyers, with respect to opinions of Mr. Touff on matters that are before the Commission, and that to permit the introduction into evidence of this exhibit will forestall any cross-examination by the respondent with respect to the self-serving declarations, opinions, hearsay matters, and the wild guesses of Mr. Touff in which he was making his alleged report to Mr. Sappington.

6029

Examiner Bennett: I do not believe I can accept that, Mr. Martin.

Mr. Martin: Sir?

Examiner Bennett: I do not believe I can accept that. There is a wrong argument there. I don't mind the figures. I will admit the figures if you will cut the rest out. There is a long argument there by a man that is not subject to cross-examination, and I think it is going too far.

Mr. Martin: Well, will your Honor admit it as far as the figures are concerned?

Examiner Bennett: Yes, I will admit the figures and you can draw your own conclusions.

Mr. Martin: All right, sir. I offer it with that.

6030

Mr. Albert: Now, if it please the Court, in the light of the analysis, so-called analysis of the figures that is revealed in the opinions of Mr. Touff, which are subjoined to the figures——

Examiner Bennett: Yes.

Mr. Martin: We will tear them off from there right now.

Mr. Feldman: No, don't.

Mr. Albert: Don't destroy the Commission's exhibit.

Mr. Martin: I don't mean tear them up. I mean separate them, because the Examiner is admitting part and he is not admitting the other part.

Mr. Albert: I ask that the figures contained on Commission's Exhibit 482-A not be admitted in evidence in addition to the grounds which I have urged.

Examiner Bennett: I will overrule you as to the figures and admit the figures. I shall not admit those arguments.

Mr. Martin: Now, is it satisfactory to you—this part of the exhibit, Exhibit 482-B does not contain any figures—is it satisfactory to remove that from the exhibit? 6032

Mr. Albert: It is satisfactory to me to remove it from the exhibit provided the Commission makes Commission's Exhibits 482-A and 482-B, in so far as it contains an alleged interoffice communication available to me.

Mr. Martin: It is immaterial to me whether it is removed or not. We will just let it go in like that, on that basis.

Mr. Feldman: May I see it just a moment?

Mr. Albert: Just a minute.

Mr. Martin: I understand that the exhibit is admitted as far as the figures are concerned; is that correct, your Honor? 6033

Examiner Bennett: Yes.

Mr. Albert: And no further.

Examiner Bennett: No further.

Mr. Albert: Further information contained on the exhibit to be deemed in evidence?

Examiner Bennett: No.

Mr. Martin: That is perfectly satisfactory to me.

Examiner Bennett: You may draw your own conclusions as to that.

Mr. Albert: If your Honor pleases, as I understand it; we have two papers here marked for identification, Commission's Exhibit 482-A and Commission's Exhibit 482-B.

Examiner Bennett: The figures tabulated at the head of the document.

Mr. Albert: On Commission's Exhibit 482-A.

Examiner Bennett: Yes.

Mr. Albert: And so much thereof is going into evidence and the remainder of the paper can still be referred to as Commission's Exhibits 482-A and 482-B for Identification.

6035

Examiner Bennett: Yes.

Mr. Feldman: Not to be destroyed.

Examiner Bennett: Yes.

Mr. Martin: Perfectly satisfactory with me.

(The documents referred to, heretofore marked for identification Commission's Exhibits 482-A and 482-B, were marked as exhibits and received in evidence.)

Mr. Martin: Will you mark this the next number, please?

(Documents were marked for identification Commission's Exhibits 483-A and 483-B.)

6036

By Mr. Martin.

Q. Now, I hand you Commission's Exhibits 483-A and B for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. It is a memorandum to me from Mr. Dunham.

Q. Mr. who? A. Mr. Dunham.

Q. Who is Mr. Dunham? A. He is one of the assistants—assistant merchandise managers in the garment division. I gave you his name this morning.

Q. Was that prepared for you at your request in the ordinary course of business? A. Yes, sir.

Q. Is it relied and acted on by you in the ordinary course of business? A. Yes, sir.

Q. To the best of your knowledge and belief, it is a true and accurate statement? A. Yes, sir.

Mr. Martin: I offer this in evidence, your Honor.

Mr. Albert: Objected to, if it please the Court, upon the grounds previously urged with respect to Commission's Exhibits 481 and 482. 6038

Examiner Bennett: Mr. Martin, do you want to strike out this paragraph (indicating)?

Mr. Martin: All right, sir.

Examiner Bennett: If you do, why, it may go in evidence.

Mr. Martin: This is offered in evidence as Commission's Exhibit 483-A, with the understanding that the paragraph in single space just below the figures at the top of the page, and which have pencil brackets around them, are not to be taken as part of the exhibit, and I now offer it in evidence.

Mr. Albert: Which one is that?

Examiner Bennett: Merely commentary.

Mr. Albert: I wanted to check up on that. Exception. 6039

Examiner Bennett: All right.

By Mr. Martin.

Q. Now, Mr. Sappington, have you had any figures prepared for you at your request, or have you personally prepared any figures showing the net piece sales for the year 1935? A. Yes, sir.

(Documents referred to, heretofore marked for identification Commission's Exhibits 483-A and 483-B, were marked as exhibits and received in evidence.)

Mr. Albert: If I am not too inquisitive, may I ask what piece sales, of what department?

(A document was marked for identification Commission's Exhibit 484.)

By Mr. Martin.

Q. I hand you, for identification, Commission's Exhibit 484, and ask can you identify that paper? A. Yes, sir.

6041 Q. What is it? A. Net piece sales of dresses by departments for the year 1935.

Mr. Albert: Thank you, Mr. Sappington.

Mr. Martin: I offer that in evidence, Commission's Exhibit 484.

Mr. Albert: May I ask a question in voir dire, if it please the Court?

Examiner Bennett: All right.

By Mr. Albert.

Q. Does this constitute all of your ready-to-wear dress departments in 1935? A. Let me see it.

Mr. Martin: Let him see the exhibit.

6042

A. All ready-to-wear dress departments.

By Mr. Albert.

Q. That is, there were no other dress departments in 1935, as I understand? A. In the store?

Q. Yes. A. Yes.

Q. Why do you say "in the store"? A. Because there are departments in the store that are not in what we con-

sider the ready-to-wear division; our house dress department, for example.

Q. You mean by that the home frocks? A. No, that is a separate department; I mean house dresses.

Q. Then in so far as all departments you have been referring to thus far are concerned, house dresses have not been included? A. That is right.

Mr. Albert: I renew my objection, if it please the Court, on the ground that no proper foundation has been laid.

Examiner Bennett: I do not see its relevancy. Can you indicate the relevancy of it?

Mr. Martin: Yes, I am going to hook it up to 6044
show a comparison of what has taken place prior to being red carded and after being red carded.

Examiner Bennett: That is part of the offer?

Mr. Martin: Yes, sir.

Examiner Bennett: All right; received.

(Document referred to, heretofore marked for identification Commission's Exhibit 484, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. With reference to this Commission's Exhibit 484, I notice it is marked for the year 1935. You have previously testified that your fiscal year runs February 1 until January 31. Am I to understand from that that this list 6045
refers to the period February 1, 1935, to January 31, 1936? A. Yes, sir.

(A paper was marked for identification Commission's Exhibit 485.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 485 for Identification and ask can you identify that paper? A. Yes, sir.

Q. What is it? A. It is a comparative study of business in the departments which I just enumerated as affected by the Guild for the months of February, March, April, May, and June and July, 1935, against 1936.

Q. Was that prepared by you? A. No, sir.

Q. Was it prepared by your subordinates or employees for you at your request? A. Yes, sir.

Q. In the usual course of business? A. Yes, sir.

Q. And as such is acted upon and relied upon by you? A. Yes, sir.

Q. To the best of your knowledge and belief, is that a correct statement? A. Yes, sir.

6047 Q. And is relied upon by you in the ordinary course of business as being correct? A. That is right.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit 485.

By Mr. Albert.

Q. Mr. Sappington, does Commission's Exhibit 485 represent the percentage in increase or decrease in the dollar volume of the departments therein mentioned? A. Yes, sir.

Q. You are quite certain of that? A. Yes, sir.

Q. And this is accurate? A. Yes, sir.

Q. Taken from the reports of J. L. Hudson Company? A. Yes, sir.

6048 Mr. Albert: I object to it, if it please the Court, on the ground that no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception. That is Commission's Exhibit 485?

Mr. Martin: 485 is correct.

(Document referred to, heretofore marked for identification Commission's Exhibit 485, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, with reference to Commission's Exhibits 480-A to D, which is a letter from Mr. Maurice Rentner, together with an enclosure therewith, did you have any communication, or did you receive any communication from Mr. Bergdahl with reference to that letter?

Mr. Albert: Just a moment, if it please the Court. I object to any such testimony at the present time, on the ground that it is immaterial and not binding upon the respondents herein, and certainly is inadmissible unless some connection is 6050
shown between Mr. Bergdahl and J. L. Hudson & Company. We have had no testimony thus far from this witness as to who the estimable Mr. Bergdahl is.

Examiner Bennett: I think you should identify him.

By Mr. Martin.

Q. Do you know Mr. Bergdahl? A. Yes, sir.

Q. Who is he? A. Mr. Bergdahl is Mr. Reilly's assistant in our New York office.

Q. Now, I renew my question—did you have any communications——

Examiner Bennett: Who is Mr. Reilly? 6051

Mr. Martin: He said Mr. Reilly's assistant in his New York office.

The Witness: I mean in the office of the A.M.C.

By Mr. Martin.

Q. Well, I will ask the question: Is the J. L. Hudson Company affiliated with the Associated Merchandising Corporation? A. Yes, sir.

Q. Did you have any communication from Mr. Bergdahl relative to Mr. Rentner's letter which is in evidence as Commission's Exhibits 480-A to D? A. Yes, sir.

Q. Did you get a letter from him, or telegram, or what? A. Telegram.

Q. Have you the telegram with you? A. Yes, I think so.

(A paper was marked for identification Commission's Exhibit 486.)

Q. I hand you Commission's Exhibit 486 for Identification, and ask can you identify that letter? A. Yes.

6053 Q. What is it? A. A telegram from Mr. Bergdahl to myself.

Mr. Martin: I offer the same in evidence as Commission's Exhibit 486.

Mr. Albert: May I inquire voir dire, if it please the Court, with respect to this exhibit?

Examiner Bennett: All right.

By Mr. Albert.

Q. What is the connection, Mr. Sappington, between J. L. Hudson Company and the A.M.C.?

Mr. Martin: Objected to as being immaterial. He has testified that they were affiliated.

6054

By Mr. Albert.

Q. I would like to know what you mean by "they are affiliated." Your store may be affiliated with a great number of different organizations and have no bearing or relevancy in this proceeding as regards this telegram. What is the affiliation of J. L. Hudson & Company with the A.M.C.?

Mr. Martin: The same objection.

Examiner Bennett: I will let him answer.

Mr. Martin: All right, sir. Go ahead.

A. We are a member of the A.M.C.

By Mr. Albert.

Q. What do you mean by "you are a member of the A.M.C."? What is the A.M.C.? You see, we don't know what the A.M.C. is. A. It is an association of stores.

Q. Yes. A. Of the Associated Merchandising Corporation.

Q. Yes. A. Associations of stores in this country for 6056
the purpose of buying merchandise, doing work in the New York market.

Q. Well, has the A.M.C. any control or any influence in your buying?

Mr. Martin: Objected to now, your Honor. I think he has sufficiently identified who the A.M.C. was and the connection between the two.

Examiner Bennett: Sustained.

Mr. Albert: If your Honor please, it may be an association of stores for——

Mr. Martin: It is sustained.

Mr. Albert: —for the support of the Olympic Games or something.

Examiner Bennett: He said for the purpose of 6057
buying. I think we have gone far enough on the voir dire.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I sustain the objection.

Mr. Albert: I object to the introduction of Commission's Exhibit 486 upon the ground that no proper foundation has been laid with respect thereto, and there has been no sufficient explanation

given of the relationship between J. L. Hudson Company and Mr. Bergdahl and Mr. Merriam of the A.M.C. What do those initials stand for, Mr. Martin?

Mr. Martin: You ought to know by now?

Examiner Bennett: It is in the record rather elaborately.

Mr. Albert: May I point out to your Honor that Mr. Martin has at various times objected to any questions about this A.M.C. upon the ground that there was nothing in the record with respect thereto.

6059 Mr. Martin: May Mr. Martin point out to your Honor that he has already advised Mr. Albert on numerous occasions that he would conduct his case as he saw fit and not as Mr. Albert saw fit.

Mr. Albert: Well, that is just the point. I object to the fitness of the conduct of the case.

Examiner Bennett: All right. Overruled.

Mr. Albert: Exception.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 486, was marked as an exhibit and received in evidence.)

Examiner Bennett: We will have a recess of ten minutes.

6060 (There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed.

By Mr. Martin.

Q. Now, Mr. Sappington, did you ever have any correspondence with the Fashion Originators Guild relative to styles which had been adjudged copies, and to the efforts, if any, being made by the F.O.G.A. to prevent these styles

being shown by stores which were not members of the F.O.G.A.?

Mr. Albert: Object to the form of the question, if it please the Court. There are two questions there, and it also includes a state of facts not in evidence.

Examiner Bennett: Yes. Make two separate questions of it, please. Get an answer to the first question.

Mr. Martin: Answer that first part.

The Witness: What is the first part, please?

(Question read as follows: "Q. Mr. Sappington, did you ever have any correspondence with the Fashion Originators Guild relative to styles which had been adjudged copies?") 6062

A. Yes.

Mr. Martin: Now repeat the second part of the question.

(Question read as follows: "Q. And to the efforts, if any, being made by the F.O.G.A. to prevent these styles being shown by stores which were not members of the F.O.G.A.?")

A. Yes.

Mr. Martin: Mark that, please, sir. 6063

(A document was marked for identification Commission's Exhibit 487.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 487 for Identification, and ask you if you can identify that? A. A letter from myself to Mr. Jack Goldston.

Q. What is the date of it? A. January 31, 1935.

Mr. Martin: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 487, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. With reference to Commission's Exhibit 487, which is a letter from you to Mr. Jack Goldston of the Fashion
6065 Originators Guild of America, did you receive any reply thereto? A. Yes, sir.

Q. Have you that letter with you? A. Yes, sir.

(Letter was produced by the witness.)

Mr. Martin: Mark that for identification, if you please, sir.

(Letter was marked for identification Commission's Exhibits 488-A and 488-B.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 488-A and 488-B—

Mr. Albert: It will save time if you will let me see it.

6066 No objection, if it please the Court.

Mr. Martin: I offer this in evidence as Commission's Exhibits 488-A and B.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Commission's Exhibits 488-A and 488-B were marked as exhibits and received in evidence.)

Mr. Martin: The same being a letter from Albert N. Post to L. B. Sappington, dated February 4, 1935.

By Mr. Martin.

Q. Now, Mr. Sappington, do you know Mr. Albert Post of the Fashion Originators Guild? A. Yes, sir.

Q. Did you have any correspondence or conversation with him in May of 1935? A. Yes, sir.

Q. Do you recall what the subject of that conversation was? A. Yes, sir.

Q. What was it? A. Relative to the $10.75 houses joining the Guild. 6068

Q. Now, did you have any correspondence with Mr. Bergdahl relative to the same subject? A. Yes, sir.

(A paper was marked for identification Commission's Exhibit 489.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 489 for Identification, and ask can you identify that? A. Yes, sir.

Q. What is it? A. A copy of telegram from myself to Mr. Bergdahl, May 8, 1935.

Mr. Albert: This is objected to, if it please the Court, as not binding upon the respondents; self-serving declaration. 6069

Examiner Bennett: This is a part of a chain, is it?

Mr. Martin: Yes, sir.

Examiner Bennett: All right, I will receive it as such. I will expect supporting documents to show its relevancy.

Mr. Albert: Exception.

6070 *Louis B. Sappington—For Commission—Direct.*

(Telegram referred to was marked for identification Commission's Exhibit 489 and received in evidence.)

By Mr. Martin.

Q. Now, did you receive a reply to that telegram? A. Yes, sir.

Q. Have you the same with you? A. Yes, sir.

Q. Will you produce it, please?

(Witness produces paper.)

(A paper was marked for identification Commission's Exhibit 490.)

6071

By Mr. Martin.

Q. I hand you Commission's Exhibit 490 for Identification, and ask can you identify the same? A. Yes, sir.

Q. What is it? A. It is a telegram from Mr. Bergdahl to myself.

Mr. Albert: Same objection, if it please the Court.

Mr. Martin: I offer this in evidence, Commission's Exhibit 490.

Examiner Bennett: Received.

Mr. Albert: Exception.

6072 (Telegram referred to, heretofore marked for identification Commission's Exhibit 490, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, did you make any reply to Mr. Bergdahl? A. Yes, sir.

Q. Have you your reply with you? A. Yes, sir.

Q. Will you produce it?

(Witness produces paper.)

(Papers were marked for identification Commission's Exhibits 491-A and 491-B.)

Q. I hand you Commission's Exhibits 491-A and B for identification, and ask can you identify it? A. Yes, sir.

Q. What is it? A. A copy of a letter written by myself to Mr. Bergdahl, May 9, 1935.

Mr. Martin: I offer the same in evidence, Commission's Exhibits 491-A and B, without the pencil notations on the top there; I will rub that out.

Mr. Albert: No objection, your Honor.

Examiner Bennett: Received. 6074

(Letter referred to, heretofore marked for identification Commission's Exhibits 491-A and 491-B, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Do you recall, Mr. Sappington, whether or not there was a meeting held in your offices between representatives of your company and the Fashion Originators' Guild at any time in the fall of 1935? A. Yes, sir.

Q. When was that meeting held; do you recall? A. About the middle of November.

Q. Did your company ever receive any communication from the Fashion Originators Guild relative to that meeting? A. Yes, sir. 6075

Q. Have you the letter? A. Yes, sir.

Q. Will you produce it?

Mr. Martin: Mark this the next exhibit, please, sir.

(Document was marked for identification Commission's Exhibits 492-A, 492-B and 492-C.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 492-A, B and C for Identification.

Mr. Albert: Let me see it. We might save time. No objection.

Mr. Martin: I offer into evidence Commission's Exhibits 492-A, B, C, the same being a letter from Albert M. Post to Michael F. Dowley of the Hudson Company, under date of November 18, 1935.

Examiner Bennett: Received.

6077 (Document referred to, heretofore marked for identification Commission's Exhibits 492-A, 492-B and 492-C, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Was any record of the meeting held in your office on November 16, 1935, which has just been referred to, made by any member of your organization? A. Yes, sir.

Q. Have you a copy of the record? A. Yes, sir.

Mr. Martin: Mark this for identification.

(Document was marked for identification Commission's Exhibits 493-A and 493-B.)

Mr. Martin: That is 493-A and B.

6078 Mr. Martin: Commission's Exhibits 493-A and B.

By Mr. Martin.

Q. Do you recall, Mr. Sappington, whether or not there was any conference between officials of your store and Mr. Post of the F.O.G.A. in the fall of 1935 with reference to co-operation on the part of your store? A. Yes, sir.

Q. Do you recall when that meeting took place? A. There was a meeting December 5, 1935.

Q. Did you have any correspondence with your New York representative relative to that meeting? A. We had some correspondence with Mr. Bergdahl.

Q. Have you that letter available? A. Yes, sir.

(Paper was marked for identification Commission's Exhibits 494-A and 494-B.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 494-A and 494-B, and ask can you identify the same? A. Yes, sir.

Q. What is it? A. A copy of a letter from Mr. Oscar Webber to Mr. Bergdahl, dated December 5. 6080

Q. Who is Mr. Oscar Webber? A. Vice-president and general manager of the J. L. Hudson Company.

Mr. Albert: This is offered as a letter from Mr. Bergdahl to Mr. Webber of J. L. Hudson Company, having been sent on December 5, 1935, Mr. Martin?

Mr. Martin: Yes.

Mr. Albert: Not the slightest objection.

Mr. Martin: O.K., I did not think you would.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Commission's Exhibits 494-A and 494-B, were marked as exhibits and received in evidence.)

By Mr. Martin. 6081

Q. Now, Mr. Sappington, you have testified that from time to time the Guild shopper appeared in your store and directed you to return garments which were found in your store and had been adjudged to be copies of styles registered with the Fashion Originators Guild of America.

Mr. Albert: Would you be good enough to read that back to me?

(Question read.)

Mr. Martin: How did she give these instructions? Were they written or verbal?

The Witness: Sometimes written, sometimes verbal.

By Mr. Martin.

Q. Did she ever give you any—withdraw the question. Have you with you a copy of a written instruction? A. Yes, sir.

Q. Will you produce the same?

6083 (A document was marked for identification Commission's Exhibit 495.)

Mr. Albert: No objection.

Examiner Bennett: Received.

Mr. Martin: I offer this in evidence as Commission's Exhibit 495.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 495, was marked as an exhibit and received in evidence.)

Mr. Martin: Now, if your Honor please, the hour of 4.30 having arrived and I having quite a good bit more of testimony with this witness, I suggest that this is a good stopping point.

6084 Examiner Bennett: Well, let's put it over until Monday.

Mr. Martin: Until when?

Mr. Albert: Monday, your Honor?

Examiner Bennett: Monday morning.

Mr. Martin: At 10 o'clock?

Examiner Bennett: At 10 o'clock.

(Whereupon, at 4.30 o'clock P. M., August 14, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 17, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Mr. Martin: If your Honor please, at this time Mr. Sappington has not shown up and I am going to ask Mr. MacDonald to come around just a few moments and be sworn. I want to ask just a few questions of him. 6086

Examiner Bennett: Be sworn, please.

GARFIELD R. MACDONALD was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the first name?

The Witness: Garfield.

Direct examination by Mr. Martin. 6087

Q. State your name. A. Garfield R. MacDonald.

Q. Where do you live, Mr. MacDonald? A. 640 Washington Road, Grosse Point.

Q. What is your occupation? A. Ready-to-wear merchandise manager in Hudson's Basement Store.

Q. How long have you been employed by Hudson Company? A. Twelve and a half years.

Q. How long have you held your present position? A. Three and a half years.

Q. Did you attend a meeting in Mr. Dowley's office on November 16, 1935, at which meeting Mr. Dowley, certain other representatives of Hudson's Store and Mr. Goldston of the F.O.G.A. were present? A. I did.

Q. Just tell us what happened at that meeting. A. An agreement was reached in the meeting that in case of a garment selected from our stock by the Guild shopper with the request that we return it, if we so desired we had the privilege of shopping the town, and if we found the garment selling in our competitors' stores we were to
6089 call the shopper, showing her the condition; she had the privilege of re-shopping and finding the condition as we represented it, we were to be allowed to continue selling the garment.

Q. Now, pending this period of shopping, what was to be done with the garment in question? A. It was to remain on the floor.

Q. Did you enter into any agreement not to re-order the particular dress in question?

Mr. Albert: That is objected to, if it please the Court, as leading.

Examiner Bennett: Well, if you can get the witness to tell what further occurred, why, it would be more satisfactory.

6090 Mr. Albert: I doubt whether he can do it without leading.

By Mr. Martin.

Q. What else happened at that meeting? Was any further agreement entered into? A. No further agreement was entered into, to my knowledge.

Q. Now, what did you do after that meeting, Mr. MacDonald? A. I left the office of Mr. Dowley, took the elevator to the main floor to return to my own office.

6091

Q. Were you by yourself or did somebody go with you? A. I was alone.

Q. What happened then? A. As I got off the elevator on the main floor of the former building, I met Mr. Goldston and Mrs. Miller, the Guild shopper.

Q. Who is Mr. Goldston? A. F.O.G.A. representative that attended the meeting in Mr. Dowley's office.

Q. All right, sir, what happened then? A. I stopped, and in my presence Mr. Goldston verbally gave his shopper the same instructions as I have related as being the agreement, adding she was to report all such instances to the Guild.

6092

Mr. Martin: That is all.

Mr. Albert: May we have Commission's Exhibit 5, Mr. Martin? It is not in evidence.

Mr. Martin: I have not—let me see. I do not think I have that.

Mr. Hayeraft: Here it is.

Mr. Martin: Here it is.

Mr. Albert: If it please the Court, may I have Commission's Exhibit 493-A?

Mr. Hayeraft: It is not offered.

Mr. Martin: These are not offered in evidence yet.

Mr. Albert: That is quite true. I know all about it.

6093

Mr. Hayeraft: This witness has not seen it.

Mr. Albert: Maybe I want to offer them, Mr. Martin.

Examiner Bennett: It was marked?

Mr. Albert: Now, your Honor please, I notice that Mr. Sappington has come in, and rather than interfere with the due course of the proceedings and to have the respondents' position in any way prejudiced by the fact that cross-examination has commenced with Mr. MacDonald before cross-exam-

ination is commenced with Mr. Sappington, I respectfully request that the Commission proceed with Mr. Sappington and that Mr. MacDonald be brought back for cross-examination after Mr. Sappington's cross-examination has been concluded. I do not think that there is very much harm to the witness. He is here in Detroit, and he certainly can come back again after Mr. Sappington has concluded.

Mr. Martin: If your Honor please, Mr. MacDonald was put on at this time for a very specific reason. He is going out of town. He was only
6095 asked relative to one instance here, and there certainly cannot be any exhaustive cross-examination of this witness on what he has just testified to——

Mr. Albert: In the first place——

Mr. Martin: Just a moment, please, sir.

Mr. Albert: I am sorry.

Mr. Martin: And, as I said, this witness is anxious to get away from town, and I respectfully request that such cross-examination as counsel for the respondent wishes to make with this witness be had at this time.

Mr. Albert: In the first place——

Examiner Bennett: When does he expect to be back?

6096 Mr. Albert: Your Honor——

Examiner Bennett: I say, when does the witness expect to be back?

Mr. Martin: My understanding is—I thought he was going to be away all week. I do not know. You can ask the witness, your Honor, when.

Mr. Albert: In the first place, your Honor——

Examiner Bennett: Just a moment. I want to get that from the witness.

Mr. Martin: Mr. MacDonald, when did you expect to be back?

The Witness: I am planning on being back Friday morning, although it is not definite; otherwise, it will be Saturday morning.

Mr. Martin: Friday morning he expects, though he says it is not definite, and he may not get back until Saturday morning.

Examiner Bennett: I see.

Mr. Albert: Your Honor, please——

Examiner Bennett: Very well; go ahead and make your statement.

Mr. Albert: As far as the witness being out of town is concerned, every witness prior to cross-examination has stated that he is preparing to leave town—— 6098

Mr. Martin: This does not seem to be just prior to cross-examination.

Mr. Albert: Will you let me complete my statement, Mr. Martin?

Mr. Martin: Certainly.

Mr. Albert: Thank you.

Mr. Martin: You are welcome.

Mr. Albert: Secondly, we now learn the witness is going out of town; Mr. Martin, very naively, when he put the witness on the stand, made the statement that Mr. Sappington had not come in, and to save time he was going to put Mr. MacDonald on the stand.

In the third place, Mr. Martin obviously forgets 6099
a great deal of information that Mr. Sappington gave us about certain connections with Mr. MacDonald with certain affairs of the Fashion Originators Guild and J. L. Hudson Company, about which Mr. Sappington is going to be put through a very rigid cross-examination, and about which I frankly reveal that I do not wish to give him any warning by having to cross-examine Mr. Mac-

Donald first, and I cannot permit Mr. MacDonald to go on the stand and get off the stand without cross-examining about the matter that Mr. Sappington has testified to which concerns Mr. MacDonald.

Examiner Bennett: You cannot cross-examine him about that so you may just as well make up your mind about it. You cross-examine this witness on his testimony here this morning, if you cross-examine, so just go ahead with your cross-examination if you have any.

Mr. Albert: Well, now, if your Honor please—

6101 Examiner Bennett: Well, now, I am through with that. I am not listening to any further—

Mr. Albert: In other words, your Honor insists that I cross-examine Mr. MacDonald now?

Examiner Bennett: Yes, right now, right now, on this testimony this morning.

Mr. Albert: Exception.

Examiner Bennett: All right.

Mr. Albert: May I have Commission's Exhibits 493-A and B?

Mr. Martin: They are not——

Mr. Albert: 493——

Mr. Martin: 493-A or B are not either one in evidence.

6102 Mr. Albert: I did not say that.

Mr. Martin: Give them back, then.

Mr. Albert: You want the Commission's exhibits back? I am sorry, I refuse to give them back to you. I want to use Commission's Exhibits 493-A and B for cross-examination.

Mr. Martin: Your Honor, I respectfully insist that neither 493-A or B are either one in evidence.

Examiner Bennett: Not yet.

Mr. Albert: These are Commission's exhibits, your Honor please.

Examiner Bennett: Not yet, not yet. The exhibits which are marked for identification are still the property and remain in the custody of the persons who have had them marked.

Mr. Albert: Are they not, if it please the Court——

Examiner Bennett: Yes.

Mr. Albert: —in the custody of the Court when they are marked for identification?

Examiner Bennett: No, they are in the custody —no, not under our rules. They are in the custody of the person who offers them. 6104

Mr. Albert: If it please the Court, Commission's Exhibits 493-A and B——

Mr. Martin: Are not in evidence.

Mr. Albert: —have been marked.

Examiner Bennett: As a matter of fact, there are no such documents. They are two documents—

Mr. Albert: Marked for identification.

Examiner Bennett: —marked for identification, right.

Mr. Albert: Have been marked for identification by the Commission; they are intra-office communications of J. L. Hudson Company.

Examiner Bennett: Yes.

Mr. Albert: Which allegedly contain the precise information which this witness has just testified to, and which the Commission could not get into evidence. Now, do I understand that Mr. Martin refuses to permit me to compare this witness' oral testimony with the written instrument that he made in his official capacity as an employee of J. L. Hudson Company? 6105

Examiner Bennett: Well, I will see what you are——

Mr. Albert: May I have Commission's Exhibits 493-A and B?

Mr. Martin: You may not. You may when they are in evidence.

Examiner Bennett: Not except they be given to you with the consent of the person in whose custody they belong. I am simply carrying out the rules of the Commission.

Mr. Albert: Do I understand that the Commission is refusing to permit me to cross-examine this
6107 man on them?

Examiner Bennett: The rule of the Commission is just as I have stated, and whether you understand it or not, that is what the rule is.

Mr. Martin: Now I ask for the return of those two papers.

Mr. Albert: Mr. Martin——

Examiner Bennett: Please give them up to Mr. Martin.

Mr. Albert: Exception.

Cross-examination by Mr. Albert.

Q. Mr. MacDonald, did you make any written report to any executive of J. L. Hudson Company about the mat-
6108 ter you have just testified to? A. Yes, I did.

Q. Have you that report here? A. No.

Q. You have not? A. No.

Q. Did you not just hear me discussing it with Mr. Martin? A. Yes.

Q. Is that report not in Mr. Martin's possession at the present time? A. I don't know that it is the report; I did not see it.

Q. You did not see the report that you gave to Mr. Martin? A. Not when you had it.

Q. Did you not discuss that report with Mr. Martin before you came in here this morning? Why do you hesitate? A. I read the report.

Q. I beg your pardon? A. I read the report.

Q. Then Mr. Martin handed it to you? A. No, Mr. Martin did not.

Q. What report did you read this morning? A. My copy.

Q. Your copy of the report that you gave Mr. Martin? A. Right.

Q. So you do know what Mr. Martin has, do you not? A. I know if that is the report, I know what it is.

Q. You did not hand him anything else, did you? A. 6110
I didn't hand him that report.

Q. Have you your copy of it here? A. No.

Q. Do you know whether Mr. Martin has his copy? A. I don't know.

Q. I show you Commission's Exhibits 493-A and B and ask you if that is a copy of what you handed Mr. Martin?

Mr. Martin: You mean you want me to show it to him?

Mr. Albert: Will you be good enough to show it to him?

Mr. Martin: Do you mean that you want me to show it to him, or are you going to show it to him?

Mr. Albert: I asked, will you be good enough to show it to him?

(Mr. Martin hands paper to witness.) 6111

A. That is the report.

By Mr. Albert.

Q. You knew what I was referring to all along, didn't you, Mr. MacDonald? A. (No response.)

Mr. Albert: May I have Commission's Exhibits 493-A and B?

Mr. Martin: You may not.

Mr. Albert: How do you know I don't want to put them in evidence?

Mr. Martin: Offer them in evidence.

Mr. Albert: I cannot offer them in evidence until I have seen them.

Mr. Martin: You have seen them.

Mr. Albert: I ask for a ruling of the Court. Here is a report that has been rendered by an employee of J. L. Hudson Company who is on the stand now, who has testified that he has not got his copy of the report. The best evidence, therefore,

6113 is the copy that he has given Mr. Martin.

Examiner Bennett: Just a moment. Just a moment. Mr. Martin, did you examine this witness from that report?

Mr. Martin: I did not, sir.

Examiner Bennett: All right.

Mr. Martin: I have no objection giving that to him if you will offer it in evidence.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Albert: May it please the Court, I ask the Court to direct Mr. Martin to show me Commission's Exhibits 493-A and B, which is a report allegedly prepared by this witness who says that

6114 he has not the copy with him, and who says that the report is in the possession of the Commission's attorney, and is a copy of the report that he made out, that is a statement of what he has testified to, and from which written report of what occurred I would like to cross-examine him. I think that is certainly within the province of cross-examination.

Examiner Bennett: Well, if he had examined from that report, I would ask the attorney for the Commission to submit it to you.

6115

Mr. Albert: If your Honor please, may I most respectfully request—I urge that I can cross-examine the witness in order to contradict him from any written piece of paper which contains a statement made prior to the time he became a witness. I do not think I am bound by the fact that the man did not refer to that piece of paper. Supposing that this gentleman had by chance written to me telling me something directly contrary to what he has testified to on the stand.

Examiner Bennett: Well, if it fell into your possession, of course you could; there is no doubt about it. We will not argue that. The question is, it does not seem to be in your possession.

6116

Mr. Albert: Is not this in custodia legis now, your Honor?

Examiner Bennett: I think the Commission should make those papers available. I think it is childish not to——

Mr. Martin: Your Honor please——

Examiner Bennett: —not for permanent custody, but available for this examination.

Mr. Albert: No, your Honor, I just want to examine them and see what is in them.

Mr. Martin: At this time, I offer this paper in evidence.

Mr. Albert: I object, if your Honor please. There has been no foundation laid for it.

6117

Mr. Martin: You laid it yourself.

Mr. Albert: I laid what myself?

Examiner Bennett: I will receive it in evidence subject to motion to strike.

Mr. Albert: Exception.

Examiner Bennett: That may be further qualified by questioning this witness.

(Document referred to, heretofore marked for identification Commission's Exhibits 493-A and 493-B, were marked as exhibits and received in evidence.)

Mr. Albert: I ask your Honor's indulgence for just a moment. We want to compare a letter.

Examiner Bennett: Certainly.

By Mr. Albert.

Q. Mr. MacDonald, what is the letter of November 12, 1935, written by Mr. Post to J. L. Hudson Company?

6119 Mr. Martin: Now, if your Honor please, I object to any cross-examination on these exhibits by Mr. Albert. He identified the exhibits, and he certainly cannot cross-examine them on his own cross-examination.

Mr. Albert: I suppose I put them into evidence, your Honor?

Mr. Martin: You identified them.

Mr. Albert: It is really a sad state of affairs when the respondent has to identify things for the Commission in order to have the Commission put them into evidence.

Examiner Bennett: Go ahead with your cross-examination.

6120 (Question read.)

Examiner Bennett: If you want to do anything with that letter show it to the witness.

Mr. Martin: Sir?

Examiner Bennett: I say, if you want to ask him anything about that letter, show it to the witness.

Mr. Albert: If it please the Court, may I point out that he mentioned it in his report, Commission's Exhibits 493-A and B?

Examiner Bennett: It does not make any difference.

Mr. Martin: He did not in his direct examination.

Examiner Bennett: I should like him to see any documents you ask him about.

Mr. Albert: I want to know what his knowledge is, since he contradicts the letter.

Examiner Bennett: There is an objection to that letter, and I sustain it.

Mr. Albert: Then I move that Commission's Exhibit 493 be stricken from the record. Commission's Exhibit 493-B specifically says, according to 6122
his interpretation, to ignore the letter—I want to know what his interpretation of the letter of November 12 is.

Examiner Bennett: Let him have the letter if you want him to interpret it.

Mr. Albert: May I have a ruling on my motion to strike Commission's Exhibit 493?

Examiner Bennett: Oh, no, if you want to be headstrong here——

Mr. Albert: I am not attempting to—if I am mistaken, I want to preserve my record on what my meagre rights are.

May I have a ruling?

Examiner Bennett: You will not have a ruling on that until you either submit the letter or with- 6123
draw that question. If you want to be headstrong about it, we will just stop there.

Mr. Albert: I very respectfully differ from your Honor's interpretation of what I am attempting to do.

Examiner Bennett: You may have your exception.

Mr. Albert: On the basis——

Examiner Bennett: You may have your exception. You may show him the letter.

Mr. Albert: That is all I want is an exception, your Honor. Very well.

Examiner Bennett: Go ahead and show him the letter.

Mr. Albert: I did not know your Honor had granted me an exception. That is why I was—

Examiner Bennett: I think I told you about four times.

Mr. Albert: I am sorry.

6125 (A paper was marked for identification Respondents' Exhibits 43-A and 43-B.)

Mr. Albert: At this time, may it please the Court, may I ask that Mr. Sappington be requested to leave the proceedings during the cross-examination of Mr. MacDonald?

Examiner Bennett: There isn't any objection to that. I think I will ask Mr. Sappington to—there is an open court room down here, you will find a comfortable place that you can wait, if you will do that, please.

(Thereupon Mr. Sappington left the court room.)

Examiner Bennett: All right. Proceed.

By Mr. Albert.

6126 Q. I show you Respondents' Exhibits 43-A and 43-B for Identification, Mr. MacDonald, and ask you if that is the letter of November 12 referred to in Commission's Exhibit 493-B?

Mr. Martin: Now, if your Honor please, I respectfully submit that this is not proper cross-examination. This witness gave no testimony whatsoever about any written communications or any

letters in his direct testimony. He testified that he was present at a conference and what took place at the conference, and what took place immediately after the conference, and I respectfully submit that this is not proper cross-examination.

Mr. Albert: May I call to your attention Commission's——

Examiner Bennett: Show me Commission's Exhibit 493, please.

Mr. Albert: Here it is, in the very first paragraph.

Examiner Bennett: What is the other document?

(Papers were handed to the Examiner.) 6128

Examiner Bennett: I will ask you to qualify the witness, to qualify that question before you go further. Sustain the objection to it at the present time. If you make any foundation for it I will let him answer it. You have not thus far.

By Mr. Albert.

Q. Mr. MacDonald, have you seen the letter of November 12, 1935, Respondents' Exhibit 43-A?

Examiner Bennett: That is, did you see it before this morning?

Mr. Haycraft: Has the witness seen it yet?

Mr. Albert: Withdraw it.

6129

By Mr. Albert.

Q. I show you Respondents' Exhibit 43-A, and ask you if you saw that letter before? A. Not since the meeting in Mr. Dowley's office referred to.

Q. But you saw it at the meeting in Mr. Dowley's office, did you not? A. Prior to that meeting.

Q. You saw it prior to that meeting? A. Upon receipt of the letter.

Q. In other words, the letter was shown to you—this letter was addressed to you, was it not? A. Yes.

Q. Well, didn't you get it? A. That is what I said; I saw it prior to that meeting.

Q. And you read it prior to the meeting? A. Right.

Mr. Albert: I offer Respondents' Exhibit 43-A in evidence.

Mr. Martin: Your Honor please, we have no objection to it being offered in evidence, except that it is not proper cross-examination.

Examiner Bennett: 43-A and B. Well, it may be, if he makes a foundation for it. I wish you

6131 would find out from this witness if he made a report to a meeting; he was cross-examined about it. Let us connect those things up, if they have any connection, and let us get to it.

Mr. Albert: If it please the Court, unless the record thus far shows that he made a report upon the conference that was had, may I respectfully urge to the Court that Commission's Exhibits 493-A and 493-B are improperly in evidence. I thought they were admitted by reason of the fact they were a written report of the conference.

Examiner Bennett: All right. I will sustain the objection to your question. You will do one thing or the other.

6132 Mr. Albert: If your Honor please, I am frankly puzzled as to what——

Examiner Bennett: I have asked for further qualification of those papers.

Mr. Albert: May I respectfully suggest of the Court that I am puzzled as to what is meant—if I know I will be glad to comply——

Examiner Bennett: There was a motion to strike. Now, if you are just trying to kill time

haggling about every point that comes up, why, that is one thing; I suppose there is nothing can prevent you except some idea of your responsibility. If you want to get along, why, I would advise you to follow the suggestions of the Examiner.

Mr. Albert: Let me say this, your Honor. I am not attempring to kill time, and thus far any time that has been killed this morning I believe has been through the Commission's attorneys' childish acts so characterized by your Honor in refusing to permit me to see Commission's Exhibits 493-A and B.

Now, very frankly, I do not quite understand what your Honor wants me to do with this witness with respect to bringing out the information—— 6134

Examiner Bennett: I want you to find out whether he made a written report, as I told you, whether he made a written report upon this meeting he was cross-examined about. I want to connect those papers up with that meeting, if they have any connection.

By Mr. Albert.

Q. Now, Mr. MacDonald, did you make any written report of the conference about which you have just testified? A. I made a written memorandum of my understanding of what had transpired in my presence in this meeting and submitted it to Mr. Dowley.

Q. When did you make that written report? A. Immediately after the meeting, as soon as I returned to my office. 6135

Q. Well, which is a correct recital of what occurred at that conference; your oral testimony this morning or the written report which you made?

The Witness: Kindly repeat the question.

(Question read.)

A. I believe they are both correct.

Q. So that if one is in error they are both in error; is that so? A. I don't know.

Q. Well, if they are both correct, meaning that one is equal to the other, then if one is in error they both are in error, are they not?

Mr. Martin: I object to any assumption on his part that they are in error, your Honor.

Mr. Albert: I think it is a perfectly valid question, your Honor. I am laying a foundation. I think your Honor has shown—has been shown of what value these reports are thus far of the various A.M.C. stores.

6137

Examiner Bennett: The witness may answer.

By Mr. Albert.

Q. Answer the question.

The Witness: What is the question?

(The question was read.)

The Witness: Your Honor, I don't know how to answer that question.

By Mr. Albert.

Q. Now, Mr. MacDonald, you have testified that both recitals, your oral recital on the witness stand, and your written recital, Commission's Exhibit 493-A, 493-B, are equally correct; have you not? A. Yes.

6138

Q. So that each one——

Examiner Bennett: Is that the testimony, or is it that both were correct? Not equally correct. I wish you would go back—the reporter is gone.

By Mr. Albert.

Q. Which do you say, Mr. MacDonald, are they both correct; substantially correct, or are they both equally correct? A. Written——

Mr. Martin: I object to that, your Honor. He has already asked him the question and the witness has testified that they were both correct.

Mr. Albert: I am simply trying to enlighten your Honor.

Examiner Bennett: That is what I was trying to find out, whether that was his testimony.

Mr. Albert: Mr. Martin doesn't even want to enlighten the Court, now. 6140

Examiner Bennett: I wanted to find out whether they were correct, unqualifiedly.

The Witness: The written report made immediately after the meeting is undoubtedly more detailed than the oral report given this morning.

Examiner Bennett: But they are both correct?

The Witness: To the best of my knowledge.

Examiner Bennett: All right.

By Mr. Albert:

Q. Have you omitted from your oral testimony anything that you reported in your written testimony? A. My oral testimony was not as complete.

Q. Did you omit to refer in your oral testimony to any matter aside from the details of the matter that you have reported in Commission's Exhibit 493-B? 6141

Mr. Martin: Now, if your Honor please, at this time I would like to resume my objection. Here Mr. Albert is trying to cross-examine the witness on his own cross-examination, papers that I identified, and I submit that is entirely and wholly improper.

Examiner Bennett: Yes.

Mr. Albert: May I call to the Court's attention that these are Commission's exhibits in evidence and have been placed into evidence by the Commission and not by me, your Honor? And that your Honor has specifically, despite the fact that these exhibits are in evidence as the Commission's exhibits, asked me to identify them further? Well, I don't see what I am supposed to do here. I am supposed to do one thing for the Commission's attorneys and your Honor has asked me to qualify them further and yet they are already in evidence as Commission's exhibits.

6143 Examiner Bennett: They are in evidence. Go ahead with your cross-examination.

By Mr. Albert,

Q. Now, Mr. MacDonald——

Examiner Bennett: I think the documents and the testimony speak for themselves, so far as I can see. You are asking a rather futile question but—

Mr. Albert: If the witness—the witness seems to have some difficulty in answering them, your Honor. I would like to proceed, if I may.

Examiner Bennett: All right. Overruled. You may answer. You may answer the question.

Read the question.

6144 (The question was read.)

A. Only to the statement made in the written report that we were to be allowed to sell out the dresses remaining in stock; also request had been made by Mr. Goldston of the Guild that we not reorder.

Q. Except for that you have testified orally to everything that is contained in the written report, being Commission's Exhibit No. 493-B? A. Yes, as I remember the report.

Q. And, of course, you have testified fully as to all of the important matters in Commission's Exhibit 493-B; have you not? A. As I remember them.

Q. Did you tell us on oral examination anything at all about a letter of November 12, 1935?

Mr. Martin: Objected to. He wasn't asked any such question as that.

Mr. Albert: He was asked, if it please the Court, for a report on the conference.

Mr. Martin: He——

Mr. Albert: And his written report shows that the letter of November 12 was referred to and it was deliberately omitted from the witness' report in 6146
order to make it difficult for the respondents to bring out anything about that letter, which completely changes the whole character of this conference. I don't think I am bound by the fact that the witness deliberately omitted something which is important.

Mr. Martin: If your Honor please——

Mr. Albert: It is a new philosphy of cross-examination, if it please the Court. I humbly submit that merely because the witness doesn't say something about a matter, I can cross-examine him about a matter which is particularly germane to the matter in hand. Under such a species of philosophy with respect to cross-examination, I don't think that 6147
anybody can cross-examine anyone about anything.

Mr. Martin: I respectfully renew my objection.

Examiner Bennett: Overruled.

Mr. Martin: On the ground that it is not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

Mr. Martin: Read the question.

(The question was read.)

A. No, I didn't.

By Mr. Albert.

Q. As a matter of fact, Mr. MacDonald, when you completed your oral testimony with respect to this conference about which you now testify, you have omitted orally to tell us of two matters? Didn't you specifically say that there was nothing further spoken about it to your knowledge? A. No.

Q. Didn't you say that in your oral testimony? A. No.

Mr. Martin: He did not.

By Mr. Albert.

Q. Didn't you say there was no further agreement, "to
6149 my knowledge"? A. I don't remember that I did.

Q. You don't recall what you testified to ten minutes ago? A. Not to that extent.

Q. You are not certain of what you are testifying to, is that it? A. Yes.

Q. Well, if you are certain, have you any less knowledge now of the actual facts than you had when you testified ten minutes ago? A. No.

Q. Now, you read Respondents' Exhibit—Commission's Exhibit 493-A before you went into the conference with Mr. Goldston; did you not? A. I read it in receipt of the letter.

Q. Well, that was before you went into the conference with Mr. Goldston; wasn't it? A. Yes.

6150 Q. Then you read it before you went into the conference with Mr. Goldston; didn't you? A. Yes.

Q. You were fully aware of the contents before you went into that conference; weren't you? A. I presume so.

Q. And that letter was the subject of that conference, was it not? A. I can't recall the letter. I would like to see the letter.

Q. Well, in that conference with Mr. Goldston—by the way, who was at that conference? A. Mr. Dowley, Mr. Preston, Mr. Simmons, myself and Mr. Goldston.

Mr. Albert: Would you mind repeating that answer?

(The answer was read.)

By Mr. Albert.

Q. You stated, did you not, that prior to coming into court to-day you read your written report? A. Not to-day.

Q. When did you read that written report last? A. Last week.

Q. Last week? A. Right.

Q. Just prior to coming in. How long after the conference did you make this written report? 6152

Mr. Martin: Objected to. He has already testified when he made it.

Mr. Albert: May I ask the indulgence of the Court, if he has testified, to have him repeat it. It will take less time than Mr. Martin's objection.

Examiner Bennett: Overruled. You may answer.

The Witness: Really on ~~my~~ return to the office.

By Mr. Albert.

Q. That is, when you left Mr. Dowley's office and went to your office you dictated this? A. Right.

Q. How long would you say that it took you to go from your office—from Mr. Dowley's office to your office? Are they both together? A. No. 6153

Q. Where are they? A. One is on the eleventh floor and one is in the first basement.

Q. You went right down? A. I stopped, as I related, on the main floor to speak to Mr. Goldston and then Mrs. Miller, the shopper.

Q. You followed them down? A. No.

Q. And they preceded you to the main floor? A. Yes.

Q. How is it that you stopped at the main floor when you were going down to your office in the basement? A. The elevators don't run to the basement.

Q. You have to get off at the main floor in order— A. That is right.

Q. —to go downstairs to the basement? A. Walk down, yes.

Q. In walking from the elevator on the main floor to the basement you saw Mr. Goldston and Mrs. Miller there? A. I did.

Q. That is how you happened to meet them at the time; is that it? A. That is right.

6155 Q. Now, Commission's Exhibit—withdrawn. Respondents' Exhibit 43-A and B was discussed at this conference on November 16, 1935; was it not?

Mr. Martin: Objected to as there is no such exhibit in evidence that I know of.

Examiner Bennett: What was the question?

(The question was read.)

Examiner Bennett: That has been asked once. Hasn't it been answered?

Mr. Haycraft: He said he hadn't seen the letter.

Mr. Albert: No, the question was withdrawn, I think.

Examiner Bennett: All right. Overruled. You may answer.

6156 The Witness: I can't recall what the letter is your Honor.

By Mr. Albert.

Q. You don't know what is contained in that letter of November 12, 1935? A. I don't recall.

Q. —1936? A. I don't recall.

Q. Wasn't that letter of November 12, 1935, discussed at the conference on November 16, 1935?

Mr. Martin: Objected to, your Honor. He has already testified he doesn't know what that letter is.

Examiner Bennett: Has he examined it during this examination?

Mr. Albert: Now, if it please the Court——

Examiner Bennett: To interpret it?

Mr. Albert: I am trying to lay a foundation for this letter, and I would like to bring it out in my own way. Is the objection sustained?

Examiner Bennett: I will sustain the objection unless you show him that letter so that he can read it.

By Mr. Albert. 6158

Q. What do you mean, Mr. MacDonald, in your written report of the conference on November 16, when you said, "It was agreed by Mr. Goldstone that we were to ignore the letter written us on November 12, 1935"?

Mr. Martin: Objected to until the witness is given an opportunity to see that letter.

Mr. Albert: Oh, ridiculous. He has got a written report here, the letter of November 12. Didn't he know what he was talking about when he put it in his written report? If you want to concede that I will take that concession.

Examiner Bennett: I will overrule the objection. Let him answer. 6159

The Witness: Will you repeat the question?

(The question was read.)

The Witness: I meant that the agreement reached on November 16 was to supersede any prior communications or agreements.

By Mr. Albert.

Q. Didn't you discuss the letter of November 12, 1935, at that conference? A. I did not.

Q. Wasn't it discussed by those present? A. I can't recall. I don't know what the letter is.

Q. What are you doing, fencing with me now, Mr. MacDonald? A. I am not fencing. I can't answer a question about something that I know nothing about.

Q. You know nothing about the letter of November 12? A. I can't recall that communication of November 12.

Q. And despite the fact that by an oral conference allegedly between Mr. Goldston and Mr. Dowley, Mr. Preston and Mr. Simmons, you were to ignore a written communication from the Fashion Originators Guild under the signature of Albert M. Post, about which you thought sufficient to make a written report to Mr. Dowley, you mean to tell us that you don't know what was in that letter of November 12? A. It was in the——

6161

Mr. Martin: Objected to. The witness has already answered.

Examiner Bennett: I will sustain the objection. You show him the letter and treat the witness fairly in that respect.

By Mr. Albert.

Q. Well, now, I show you Respondents'——

Mr. Albert: Exception.

6162

By Mr. Albert.

Q. I show you Respondents' Exhibit 43-A, and ask you if that is the letter referred to?

Examiner Bennett: Read the letter and then answer questions about it.

(The witness reads the letter referred to.)

Examiner Bennett: All right. Proceed.

6163

By Mr. Albert.

Q. Is that the letter of November 12, 1935, that is referred to in your written report? A. It is.

Mr. Albert: I offer Respondents' Exhibits 43-A and 43-B into evidence.

Examiner Bennett: It has been received, I think.

Mr. Albert: Mr. Martin objected to my referring to it before upon the grounds that it was not in evidence.

Examiner Bennett: It was received in evidence.

Mr. Albert: Thank you.

Examiner Bennett: As I remember. Anyway, it is received.

6164

Mr. Albert: Thank you.

Mr. Martin: If your Honor please, at this point there is one more question I would like to ask the witness on direct examination.

Mr. Albert: May I be permitted to complete my cross-examination, your Honor, before Mr. Martin wants to attempt anything?

Examiner Bennett: Ask it on redirect examination.

Mr. Martin: All right, sir.

By Mr. Albert.

Q. Now, Mr. MacDonald, does the letter of November 12, 1935—was the letter of November 12, 1935, discussed at that meeting? A. It was.

6165

Q. You are certain of that? A. Yes.

Q. Before you couldn't recall? A. No.

Q. Did you discuss it? A. No.

Q. Did you have a copy of this letter? A. No.

Q. You have never seen a copy of the letter before? A. I didn't say I didn't see a copy. I didn't have the copy at the meeting.

Q. At the meeting? A. (Witness nods head affirmatively.)

Q. In connection with reading the report, Commission's Exhibit 493-B, before you came into court, that you stated you read last week, did you read Respondents' Exhibit 43, the letter of November 12? A. No.

Q. So that you didn't refresh your recollection with respect to this letter of November 12 before you came into court? A. No.

Q. You didn't want to be able to testify about that; did you? A. I can't answer that, your Honor.

Q. Didn't you know whether or not you wanted to be
6167 able to testify about it?

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Sustained.

Mr. Albert: If your Honor pleases, the witness has already told me that he can't tell me whether he wanted to testify about it.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. What was said about this letter of November 12, 1935, at the conference? A. I can't recall.

Q. What was said about Mr. Goldston's alleged agreement? What did Mr. Goldston say? A. All the recollection I have of the meeting is the final agreement
6168 reached.

Q. And you have no recollection whatsoever as to what was said about ignoring this letter of November 12; have you? A. No.

Q. Well, now, don't you think that the written instructions and an agreement sent to you by Mr. Post pursuant to the letter of November 12, 1935, is at least equally important with what took place at that conference as regards what Mr. Goldston told you? A. It wasn't my duty to answer that letter.

Q. It wasn't your duty to answer the letter? A. No.

Q. Don't you answer letters that are addressed to you? A. Not when they confirm policies.

Q. So, in other words, you confirmed the policy? A. When it concerns policies.

Q. Not on concerned policies? A. When it concerns policies of the store.

Q. Somebody else answers them? A. Right.

Q. With whom did you take up Respondents' Exhibits 43-A and 43-B? A. Mr. Dowley.

Q. What was the result of that discussion? A. The meeting.

Q. The meeting? A. (No answer.)

Q. How was the meeting called? 6170

Mr. Martin: Objected to as irrelevant and immaterial as to how the meeting was called.

Mr. Albert: I think it is important, your Honor.

Examiner Bennett: For what purpose?

Mr. Albert: Because I believe that this meeting was not called as a result of this letter of November 12. He stated that it was, and I want to examine him about it.

Mr. Martin: The letter itself says so.

Mr. Albert: I don't think I am bound by this witness' statement that it was so. I want to find out what makes him believe it was so. Of course, by now, the witness is thoroughly prepared to answer the questions. 6171

Examiner Bennett: Well, I will let him answer. Overruled.

The Witness: Would you repeat the question?

(The question was read.)

The Witness: Do you mean what notification did I have of such a meeting?

By Mr. Albert:

Q. Beg your pardon? A. Do you mean what notification did I have of such a meeting?

Q. Didn't you call the meeting? A. I didn't call that meeting.

Q. Who called it? A. Mr. Dowley.

Q. Didn't you discuss with him the necessity for such a meeting? A. No, I did not.

Q. He didn't tell you anything at all about it? A. No.

Q. How did you get to the meeting? A. Just what did you mean?

Q. Mr. Dowley wasn't present at that meeting and you
6173 were. You mean to sit there and tell us that he didn't tell you anything at all about this meeting before it occurred, and yet you represented him at that meeting?

Mr. Haycraft: Object to that question.

Mr. Martin: Objected to.

Examiner Bennett: He hasn't made any such statement.

Mr. Martin: He said Dowley was there. He not only testified to that but the minutes show that they were there.

By Mr. Albert.

Q. What did Mr. Dowley say to you about this meeting
6174 before you went in? A. There was no comment made to me about the meeting before I went in.

Q. Do you know how the meeting was called by Mr. Dowley? A. I know I was notified by his secretary over the telephone to appear in his office at such a meeting.

Q. And aside from that, you don't know how that meeting arose: is that so? A. I don't know how the meeting arose outside of that.

Q. Why did you say that the meeting was called as a result of the letter of November 12? A. Because that is

the agreement Mr. Goldston reached with Mr. Dowley as the reason of the meeting.

Q. You mean that out of the meeting there resulted an agreement which you say differs from the letter of November 12; is that not so? A. That is correct.

Q. But you testified that the meeting was called in order to discuss the letter of November 12, but you still haven't told us how you know that that was the reason for the meeting being called? A. I heard the statement made in the meeting.

Q. Yes? A. That was the reason for it.

Q. Is Mr. Dowley present here this morning? Mr. Dowley is present here this morning, isn't he? 6176

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Is Mr. Dowley in Cleveland? A. I don't know.

Q. In Detroit? I am sorry.

Mr. Martin: Objected to.

Mr. Meder: As attorney for the company, I will admit he is in the courtroom.

Mr. Albert: Thank you. Is Mr. Dowley available to testify in this proceeding?

Mr. Meder: As attorney for the company, I will admit he is. 6177

Mr. Albert: Thank you. May I also ask as to whether or not he is going to testify?

Mr. Meder: That is not up to me, sir.

Mr. Albert: I would also like to ask Mr. Martin if he will tell me as to whether or not Mr. Dowley is going to testify. If he is, I would like to move that he be excluded from the proceedings.

Mr. Martin: I don't know whether he is going to be called or not, Mr. Albert, to tell you the truth.

Mr. Albert: Now, if your Honor pleases, do you mean to tell me that we have been brought from New York through Boston, Philadelphia, and Cleveland, have been in Detroit for one hearing, and Mr. Martin doesn't know who he is going to call?

Examiner Bennett: Go ahead with your examination.

Mr. Albert: Very well. Then, under the circumstances, since Mr. Martin does not know whether he is going to call Mr. Dowley or not, I respectfully
6179 move that Mr. Dowley be excluded from the hearing room during the further cross-examination of Mr. MacDonald about matters which concern Mr. Dowley.

Examiner Bennett: Is he going to be called upon this point?

Mr. Martin: No, sir; not on this point.

Examiner Bennett: All right. Go ahead with your cross-examination.

Mr. Albert: Ha, ha! May I ask the indulgence of the Court?

Mr. Martin, are you going to ask Mr. Dowley anything at all about this agreement of November 16, 1935?

6180 Mr. Martin: I don't even know that I am going to put him on the stand. I certainly am not going to ask him anything about this matter, if I do.

Mr. Albert: Well, now, if your Honor pleases, since the attorney for the Commission seemingly refuses to be frank with the respondent as to what Mr. Dowley is going to do——

Mr. Martin: Now, I object to that statement.

Mr. Albert: ——I ask that he be excluded from the courtroom.

6181

Examiner Bennett: The Examiner——

Mr. Martin: I object to any further statements.

Examiner Bennett: Go ahead with your cross-examination. That is a matter of discretion of the Examiner, and in his discretion he refuses to exclude him on the assurance that he is not going to be called on this point.

Mr. Albert: Exception.

Examiner Bennett: All right.

Mr. Albert: I ask the attorney for J. L. Hudson & Company as to whether or not Mr. Simmons is present.

Mr. Meder: He is, sir.

6182

Mr. Albert: Now, I ask the Commission as to whether or not they are going to call Mr. Simmons?

Mr. Martin: Mr. Simmons will be called.

Examiner Bennett: On this point?

Mr. Martin: I don't think so, your Honor.

Mr. Albert: Well, since——

Examiner Bennett: If there is any doubt about it, I would prefer to have him excluded.

Mr. Albert: Is Mr. Preston——

Mr. Martin: It is perfectly agreeable to us for him to go out. I have no objection to his going out, to save you a lot of time on that.

Mr. Albert: Is Mr. Preston here?

Mr. Meder: Mr. Post knows him. He is telling you who is here?

6183

Mr. Albert: I didn't ask him about Mr. Preston. I asked you directly.

Mr. Meder: He is the one that has been giving you this information.

Mr. Albert: I am telling you I didn't ask him about Mr. Preston. He didn't tell me about him.

Mr. Meder: I do not know that Mr. Preston is here.

Mr. Albert: That is all I asked you, sir.

Mr. Meder: I answered the question in the first place.

Mr. Albert: You volunteered information.

Mr. Meder: I am not on the stand, sir. I do not desire to be talked to in that way by you.

Mr. Albert: Neither do I desire to be talked to by you, which is very simple—we are even.

Mr. Meder: Not by a long ways.

Mr. Albert: Well, there is plenty of time before the week is out.

Examiner Bennett: Off the record.

6185 (There was a discussion off the record.)

Examiner Bennett: Now on the record.

By Mr. Albert.

Q. Mr. MacDonald, did the J. L. Hudson Company ask the Fashion Originators Guild when—withdrawn. Was there any further communications from J. L. Hudson Company to Fashion Originators Guild relative to this conference of November 16, 1935?

Mr. Martin: Objected to as not proper cross examination.

Examiner Bennett: Sustained.

By Mr. Albert.

6186 Q. Prior to the receipt of Commission's Exhibit 492-A in evidence, is there any correspondence or communications between J. L. Hudson Company and the Fashion Originators' Guild of America?

Mr. Martin: Objected to.

Mr. Albert: I may point out to the Court that Commission's Exhibit 493-B is November 16, 1935; that there was correspondence dated November 18,

1935, both exhibits being the Commission's exhibits, and I would like to inquire of this witness as to whether or not there are any other communications. Does the Commission refuse to permit me to find that out?

Mr. Martin: Objected to, your Honor, as not being proper cross-examination, outside of the scope of direct examination.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. MacDonald, did J. L. Hudson & Company ask 6188
the Fashion Originators' Guild for any confirmation of the oral agreement entered into between—allegedly entered into—between Mr. Goldston and representatives of J. L. Hudson & Company?

Mr. Martin: Objected to as being improper cross-examination.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know, Mr. MacDonald, what position Mr. Goldston held in the Fashion Originators Guild as of November 16, 1935? A. I don't know his position.

Q. Haven't you any idea as to his official capacity with the Fashion Originators' Guild? A. No, I haven't. 6189

Q. And despite that fact, you sought no confirmation of the alleged agreement entered into between Mr. Goldston and the representatives of J. L. Hudson & Company?

Mr. Martin: Objected to; improper cross-examination.

Examiner Bennett: Sustained. It is a misstatement of fact. That is the trouble.

By Mr. Albert.

Q. Do you know whether or not you or J. L. Hudson & Company or anyone representing J. L. Hudson & Company, wrote to the Fashion Originators Guild to confirm your thought that Mr. Goldston had in any way modified the condition set forth by Mr. Post in his letter of November 12, 1935?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Martin: Now, I would like to state at this time that Mr. Sappington is coming back on the

6191 stand and in order to save time, all of this is going to be gone into thoroughly with Mr. Sappington.

Mr. Albert: Mr. Martin, may I ask you this: Will Mr. Sappington definitely, specifically, and in detail, testify with respect to these matters and not hand it on to subordinates?

Mr. Martin: We are going to put Mr. Sappington back on the stand and he will testify as to matters of policy on behalf of the J. L. Hudson Company.

Mr. Albert: I am not questioning him now on matters of policy.

Mr. Martin: All right, sir.

Mr. Albert: I am questioning him now on this letter of November 12.

6192 Mr. Martin: You just asked him a question on policy.

Mr. Albert: Well, Mr. Sappington testified fully with respect to Commission's Exhibits 493-B, 492-A Respondents' Exhibit 43-A. If you say he will, then I will be through with this witness very shortly; if you say he won't, why, then, of course, I am forced to examine this man. I am willing to save time, but you simply won't concede what Mr. Sappington will testify to. I don't want to be met

with the proposition when Mr. Sappington gets on the stand that he is going to refer me to somebody else.

Mr. Martin: I don't see how he can refer you to a subordinate on a matter of policy.

Mr. Albert: May I point out to Mr. Martin that Mr. Sappington is nowheres mentioned in the report, Commission's Exhibit 493-B?

Mr. Martin: You are asking questions——

Mr. Albert: I am sorry, your Honor. I will have to proceed with this witness.

Mr. Martin: Go ahead.

By Mr. Albert. 6194

Q. Now I show you Commission's Exhibit 492-A, Mr. MacDonald, and ask you if you saw that letter?

Mr. Martin: Objected to as being improper cross-examination; outside of the scope of direct examination.

Mr. Albert: I don't see how the materiality of it can, for one moment, be seen by Mr. Martin until I ask further questions about the letter. I am laying a foundation.

Mr. Martin: It was not referred to, either in his testimony, nor in these written minutes.

Examiner Bennett: Sustained.

Mr. Albert: Exception. 6195

Mr. Martin: If your Honor please, I would like to point out that this exhibit was identified by Mr. Sappington, this particular exhibit, No. 492-A, and he was cross-examined by Mr. Albert.

Examiner Bennett: Not on cross-examination.

Mr. Martin: I think that was one of the questions on voir dire.

Examiner Bennett: Voir dire. I see. All right.

By Mr. Albert.

Q. Now, Mr. MacDonald, will you be good enough to tell the Court what there is in the letter of November 12, 1935, that was to be ignored?

Mr. Martin: Objected to; improper cross-examination. He is seeking to cross-examine him on his own cross-examination.

Mr. Albert: We have a most mystifying objection here by Mr. Martin, if your Honor pleases. These exhibits are Mr. Martin's exhibits.

Mr. Martin: That letter is my exhibit?

6197 Mr. Albert: I am referring to his written report, Commission's Exhibit 493-B, in which, for some unaccountable reason, unexplained in the report, unexplained in oral testimony, he states that he is supposed to ignore the solemn written communication of Mr. Albert M. Post. Now, for the enlightenment of the Commission, I am asking him what he is supposed to ignore rather than leave it in the very ineffective state that the Commission's attorneys have left it at the conclusion that something is to be ignored. I want to know what is to be ignored.

Mr. Martin: You didn't ask him as to that.

Mr. Albert: I know darn well—I beg your Honor's pardon. I know very well you didn't ask him

6198 anything about it. That is exactly why I am doing it.

Examiner Bennett: I think the witness has testified affirmatively as to what the agreement was, or alleged agreement, and you have the letter.

Mr. Albert: Well, if your Honor pleases, may I not——

6199

Examiner Bennett: Well, if you want to have him interpret in detail, give him the letter and ask him about it.

Mr. Albert: Very well, your Honor.

By Mr. Albert.

Q. Now, I show you Respondents' Exhibit 4? I show you Commission's Exhibit 493-B, and ask you what your understanding of the matter was which led you to write in your written report that the letter of November 12, 1935, was to be ignored, and ask you what was to be ignored? May I ask you a further question before you answer that one? Are you unable to tell us, to give me the answer to my first question without looking at the Commission's exhibit and respondents' exhibit?

6200

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, you may answer the first question, Mr. MacDonald?

The Witness: Will you repeat it?

(Question read.)

A. My interpretation of the letter of November 12 was that it was a misunderstanding between myself and the firm as to the exact policy I was to pursue in the conduct of my business regarding the Guild. My reference in my written report is to the letter, is to clarify this misunderstanding.

6201

Q. Is that your answer, Mr. MacDonald?

The Witness: Will you give me the question again, please?

(Question again read.)

A. Also absorption of mark-downs of higher-priced garments and a 5 per cent. return of our stock.

Mr. Albert: Would you mind repeating that?

(Answer read.)

By Mr. Albert.

Q. I do not think that is quite clear, Mr. MacDonald. What do you mean? A. The absorption of the mark-
6203 downs of the original referred to in the letter, the original garments.

Q. You mean that that was referred to in the letter? A. November 12.

Q. Of November 12? That was to be ignored? A. Right.

Q. What else was to be ignored? A. That we were to be expected to return 5 per cent. of our stock in any given month.

Q. What was to be ignored in the letter of November 12? A. That we were not to remove dresses from sale pending a reply from the Guild as to their authorization of being copies.

Q. Did you ignore that? A. Yes.

Q. Was that in any way modified, or was it to be ig-
6204 nored completely? A. We were to ignore it. We were to be allowed to keep our merchandise on sale.

Q. Unqualifiedly? A. Pardon?

Q. Unqualifiedly you were to be permitted to keep it on sale? A. Until—while the shopper was getting instructions from New York, yes.

Q. It was to be on sale during the time that any check was made? A. Yes.

Q. On whether copies were being sold? A. Yes.

Q. Are those the only other things that were to be ignored, Mr. MacDonald? A. As far as I know.

Q. And you state that— A. Relative to my departments.

Q. And you state that you didn't continue to sell dresses, and you did continue to sell dresses while investigation was being made as to whether or not they were copies? A. Right.

Q. Well, then, why have you, in Commission's Exhibit 493-B, your own written report, of the following language, and what does it mean?

Mr. Martin: Objected to, being two questions.

Mr. Albert: Very well. 6206

By Mr. Albert.

Q. What does the following language mean, and I read to you from Commission's Exhibit 493-B: "When the F.O.G.A. representative selects a dress and asks us to return it because it is a copy, if we so desire we are to have the privilege of telling her to come back in two hours in order to give us an opportunity to shop the competition to find out if the dress is generally sold by them"? A. It means exactly what it says.

Mr. Albert: The question is withdrawn.

Examiner Bennett: What does it mean?

Mr. Albert: The question is withdrawn, your Honor. 6207

By Mr. Albert.

Q. Well, now, Mr. MacDonald, when complaint is made to J. L. Hudson & Company for selling a copy pursuant to Commission's Exhibit 493-B, and the dress is shopped for the two-hour period, then what is the procedure that was to be followed? A. The shopper was to be notified.

Q. Yes. A. We were to tell her where we found this dress and she was to re-shop it.

Q. Yes. A. Upon such proof we were to be allowed to continue the sale.

Q. Was there to be any verification of that with the New York office of the Fashion Originators' Guild? A. She was to report the incident.

Q. Yes. A. To the New York office. Our verification came from the shopper.

Q. Was there not to be a request for an exemption by J. L. Hudson Company? A. Not under the new agreement.

6209 Q. Not under the agreement. You mean referred to in Commission's Exhibit 493-B? A. I mean the agreement of November 6; if that is the Commission's number.

Q. Yes, November 16.

Mr. Haycraft: November 16.

Mr. Martin: November 16.

By Mr. Albert.

Q. Now, did you ever see a letter dated November 18 from the Fashion Originators Guild of America to Michael F. Dowley, being Commission's Exhibit 492-A, specifically referring to the conference with Mr. Goldston held on November 16, and further clarifying the position of the Fashion Originators Guild with respect to that conference?

6210

Mr. Martin: Objected to; outside of the scope of direct examination——

Examiner Bennett: Sustained.

Mr. Martin: —and already ruled upon by his Honor.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. To your knowledge, was the alleged agreement referred to in Commission's Exhibit 493-B ever further modified?

Mr. Martin: Outside too, as being outside of the scope of direct examination.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Is it your contention, Mr. MacDonald, that the agreement referred to in Commission's Exhibit 493-B is the 6212
agreement that existed between J. L. Hudson Company and the Fashion Originators Guild up to the time of the red carding?

Mr. Martin: As to your department.

The Witness: Repeat the question.

(Question read.)

Mr. Martin: As to your department.

A. In my department, yes.

By Mr. Albert.

Q. So that this Commission's Exhibit 493-B, and this conference that you referred to, was only with respect to your department? A. I can't answer as to the rest of the 6213
store; I have no jurisdiction over it.

Q. Well, then, you don't know that it referred to any other department, do you?

Mr. Martin: Objected to.

Mr. Albert: Now, if it please the Court, we have just had a great deal of enlightenment with respect to this agreement that did not appear before.

Mr. Martin: Objected to. This witness is only in a position to testify as to his particular department.

Mr. Albert: And he now——

Mr. Martin: Wait a moment until I finish.

Examiner Bennett: The witness may say he does not know as to other departments.

Mr. Martin: He has already stated that.

Examiner Bennett: Read the question.

(Question read.)

By Mr. Albert.

6215 Q. What is the answer?

Examiner Bennett: You may answer if you know.

A. My understanding was that it was to be the policy of J. L. Hudson——

Q. With respect— A. —to the Guild.

Q. With respect to all departments? A. Right.

Q. Yes.

Mr. Albert: Now I ask if the reporter will be good enough to repeat that question which was qualified by Mr. Martin attempting to get you to testify that it referred only to your own department.

6216 Examiner Bennett: I think the matter has been fully disclosed.

Mr. Albert: Will the reporter please read the question?

(Question read as follows: "Q. Is it your contention, Mr. MacDonald, that the agreement referred to in Commission's Exhibit 493-B is the agreement that existed between J. L. Hudson Company and the Fashion Originators Guild up to the time of the red carding?")

Mr. Martin: As to your department.

Mr. Albert: What did Mr. Martin say?

(Remark read as follows: "Mr. Martin: As to your department.")

Mr. Albert: What did the witness say?

(Answer read as follows: "A. In my department, yes.")

Examiner Bennett: Now he has modified it that it is general in its effects as to his understanding of it.

By Mr. Albert.

Q. Now, was this the agreement—you contend that this 6218
was the agreement, in so far as your department was concerned, up to the time of the red carding, without qualification?

Mr. Martin: Objected to; he has already testified to that two or three times.

Mr. Albert: Very well.

By Mr. Albert.

Q. By the way, what is your department?

Mr. Martin: He has already testified to that, your Honor.

Mr. Albert: One word will be his answer. You just took about fifteen.

Examiner Bennett: All right. 6219

Mr. Martin: I feel real talkative this morning.

Examiner Bennett: You may answer.

A. Department 843, basement dresses, referring to this uestion.

Examiner Bennett: We will take a recess of ten minutes.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

By Mr. Albert.

Q. What is the price line in the basement? A. The price line in the basement runs from $2. In the summer time. It changes with seasons. In the summer time it starts from $2 to $6.95.

Q. That is retail? A. Retail, and in the fall from $2.95 to $10.95, and $13.95 on woolens.

Q. That is all right. A. Or suits, or things of that
6221 nature.

Q. That is all right; that is sufficient. A. Which are not considered dresses.

Q. Now, Mr. MacDonald, just what was your reference to these 5 per cent. returns that was to be ignored; what was that provision that was to be ignored?

Mr. Martin: Objected to as being outside of the scope of direct examination.

Mr. Albert: If it please the Court, in his written report in Commission's Exhibit 493-B, he refers to the letter of November 12, and he has testified as to why his letter of November 12 is to be ignored. He has testified that certain statements with respect to 5 per cent. returns are to be ignored, and I think
6222 for the enlightenment of the Commission and the record the witness should explain what he means by 5 per cent. return should be ignored.

Examiner Bennett: I will let him answer.

A. The paragraph in the letter stating that up to 5 per cent. of our stock was to be returned each month to the manufacturers.

Q. Are you referring to the last sentence on Respondents' Exhibit 43-A, which reads as follows: "Also, that

stores were expected to return copies up to 5 per cent. of their stock in any individual department for any given month." Is that what you are referring to? A. Right.

Q. And that was to be completely ignored? A. As far as my departments were concerned.

Q. Well, now, as a matter of fact, is not the reference to that 5 per cent. the following: That J. L. Hudson & Company protested that if they had to return all the copies in their store at that time it would deplete their stock to too great an extent, and therefore they asked that they be not required to return not more than 5 per cent. of their stock in any one given month?

Mr. Martin: Objected to as being improper cross- 6224
examination.

Mr. Albert: Your Honor please, I want to know what he understands——

Examiner Bennett: Sustained. Let you bring out all that I cared about hearing in that line.

Mr. Albert: Exception. That is all.

Redirect examination by Mr. Martin.

Q. Mr. MacDonald, with reference to this agreement of November 16, and the instructions to the Guild shopper, Mrs. Miller, as set out in Commission's Exhibits 493-A and B, was that agreement carried out by the Guild shopper?

Mr. Albert: That is objected to as improper re- 6225
direct; no proper foundation has been laid.

Mr. Martin: I submit it is a perfectly proper question, your Honor.

Mr. Albert: There is not a single bit of testimony, your Honor——

Examiner Bennett: Is that the question we are asked about?

Mr. Martin: Yes.

Mr. Albert: May I point out the additional objection, that this witness has not testified to a single bit of knowledge on his part as to the activities of the Guild shopper. He has restricted his examination—rather, Mr. Martin has restricted his examination specifically to the conference.

Examiner Bennett: I think the record is filled with what the Guild shoppers do, and——

Mr. Albert: That may be, but not with regard this witness' knowledge of it.

Examiner Bennett: Well, I know—well, we are not so prolific with the record as you seem to be.

6227 There isn't any use of piling up the same matter over and over again on the record. I will let you recall the witness for further direct examination to that extent, and will instruct him to answer the question, and overrule the objection.

Mr. Albert: Exception.

The Witness: Repeat the question.

(Question read.)

A. It was.

By Mr. Martin.

Q. Did you have to return any garments? A. No, we did not.

6228 Mr. Martin: That is all.

Recross-examination by Mr. Albert.

Q. Did you return any garments at all, Mr. MacDonald, during that period? A. Not after the conference.

Q. But was there any investigation as to whether or not there were copies being sold in your department? A. Yes.

Q. And you maintain, then, that the only reason that dresses were not returned was because none were adjudged to be copies; is that it?

Mr. Martin: He did not testify——

A. Well——

Mr. Martin: Go ahead.

The Witness: Let me hear the question.

(Question read.)

A. No, we were exempted on the dresses in question as being sold generally in town.

6230

By Mr. Albert.

Q. Do I understand you to mean, Mr. MacDonald, that as each case came up you would then get an exemption? A. Right.

Q. But investigation was made— A. That is right.

Q. —in each case, first? A. That is right.

Q. And you applied for exemption to the Fashion Originators Guild? A. To the shopper.

Q. To the shopper. And, so far as you know, the shopper communicated with the Fashion Originators Guild, and as the result of that communication an exemption was granted with respect to whatever the shopper was complaining about; is that it? A. I don't know what action the shopper took with respect to the Guild. My exemption came directly from the shopper. 6231

Q. I see. About how many such cases, asking for an exemption, would you say arose after this conference of November 16, and down to the date of the red carding?

A. A total number of dresses involved?

Q. Yes. A. Or total number of styles?

Q. Total number of dresses and total number of styles.

A. The total number of dresses was fifty-seven.

6232

Q. Yes. A. The total number of styles——

The Witness: May I refer to my notes, your Honor?

Examiner Bennett: Yes.

A. (Referring to paper) Six styles.

By Mr. Albert.

Q. How many instances would you say that covered? A. You mean how many times did the shopper visit us?

Q. And how many exemptions would you say that covered? A. Six exemptions, six styles.

6233

Q. At six different times? A. At—six separate exemptions, although there was more than one style sometimes at one period.

Q. Yes. What I mean is this, and I want to be sure that we understand each other perfectly, that while there were fifty-seven dresses that were involved, only six times during the course of the period between November 16 and the time of the red carding was it necessary to appeal for exemption on the ground that you had copies; is that what you mean? A. That is right.

Q. And there were no complaints of copies other than these complaints that you have referred to? A. There were other shoppings. At one other time the shopper checked for a style without leaving any definite instruc-

6234

tions as to whether it was a copy or not.

Q. I see. And did you— A. She wrote to the Guild asking for a confirmation. At the time the confirmation came back the dress had been sold out.

Q. I see. And with the exception of these matters that you have referred to, there were no complaints that the basement was handling any copies? A. No complaints.

Q. And except for those instances, the basement was complying with the policy with respect to not using copies; is that so?

The Witness: Read the question.
(Question read.)

A. The basement complied to the copies, or to the dresses, which the shopper had judged were copies.
Q. That is what I say.

Mr. Martin: That is not what you said.

By Mr. Albert.

Q. When you say the shopper adjudged them copies, you do not mean specifically that the shopper passed on whether they were copies or not, and nobody else, do you?
A. Well, as far as her instructions, the shopper, together with her information, adjudged whether the dresses were copies or not. 6236
Q. That is, preliminarily, the shopper would state that it was her belief that the copies were being sold in other stores?

Mr. Martin: Objected to.

Q. Is that not so?

Mr. Martin: Objected to.
Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

6237

Q. That is, it was merely a preliminary investigation by the shopper?

Mr. Martin: Objected to.

Q. And the final question as to whether a dress was a copy or not was not to rest with the shopper, was it?
Mr. Martin: Objected to.

6238

Examiner Bennett: Sustained. I do not think we are going into that.

Mr. Albert: Exception.

(Whereupon, at 12 o'clock noon, a recess was taken until 1.30 o'clock P. M. of the same day.)

AFTERNOON SESSION, 1.30 P. M.

Examiner Bennett: Be in order, please. You
6239 may proceed.

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Martin.

Q. Mr. Sappington, do you remember whether or not Mr. Post of the Fashion Originators Guild was in Detroit in May of 1935? A. Yes, sir.

Q. Did you see him at that time? A. Yes, sir.

Q. Did you have any meeting with him? A. Yes, sir.

Q. What took place at that time? A. There was a dis-
6240 cussion about the Guild policies and J. L. Hudson Company's co-operation with the Guild. There was also a discussion of change in policy of the Guild as far as the $10.75 houses were concerned, $10.75 dress houses.

By Mr. Martin.

Q. Do you remember having a conversation at this time with Mr. Post? A. Yes, sir.

Q. Do you remember what the conversation was about? A. Yes, sir.

Q. Do you remember what Mr. Post told you? A. Yes, sir.

Q. All right. What did Mr. Post tell you? A. Mr. Post stated that the buying offices in New York, the Association of Buying Offices, had agreed that all price restrictions were to be removed on Guild copies. In other words, that there was no restriction at all, as to what price line the Guild could adjudge copies. Also, that definite arrangements had been made for $10.75 houses to become affiliates with the Guild, or, at least, join the Guild in some respect or another.

6242

Mr. Albert: If your Honor please, may I ask that the witness not refresh his recollection from the exhibit that he has referred to, since he has testified that it needs no refreshment? During all of this period, I believe—I am not certain—he has been looking at that exhibit and refreshing his recollection. I would like his independent recollection. He has before him, I believe, the copy of the exhibits that have been placed in evidence, and I think he is reading from it; I am not certain.

Mr. Martin: Now——

Mr. Albert: May I have a ruling on my request, Mr. Martin?

Mr. Martin: I think his Honor has already ruled on it. 6243

Examiner Bennett: All right. I will let the examination continue.

By Mr. Martin.

Q. Mr. Sappington, had anything occurred prior to this time which caused you and Mr. Post to have any discussion along these lines?

(There was a short pause.)

A. I am not certain. I believe Mr. Post's visit followed up a visit on the part of Mr. Goldston with reference to a copy which was in dispute; that is, on which we hadn't agreed first. I believe Mr. Post, when he first came into my office, discussed that matter.

Q. With reference to the question of $10.75 houses, had there been anything prior to this meeting which caused you to bring that subject up? A. Yes. We had—we had raised that question with the Guild a number of times regarding the control of copies in the lower price lines.

(A document was handed to the reporter by Mr. Martin.)

6245

(A certain document was thereupon marked Commission's Exhibit No. 496 for Identification.)

By Mr. Martin.

Q. What question has been raised with reference to that? A. Well, the question——

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and irrelevant to the Commission's complaint.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

6246 A. The question had been raised what was—what the Guild was doing or would do with respect to our competitors who were selling dresses which we were asked to remove from sale.

Q. And in what price line would that be? A. Well, that would be at that time—that would be $10.75 cost and below.

Q. What was the original agreement with the Guild with reference to that? A. May I ask that the question be repeated?

6247

Q. (The question was read.) A. Our understanding of the original agreement with the Guild was that——

Mr. Albert: If it please the Court, the question has been asked, what was the original agreement, not what their understanding was.

Mr. Martin: I think it is a very proper answer to the question.

Examiner Bennett: Overruled.

By Mr. Martin.

Q. Go ahead, sir. A. Our understanding of the original agreement with the Guild was that it would not cover dresses under $16.75 cost.

6248

Q. Had you been requested to return any garments that cost less than that? A. Yes, I believe we had.

Q. Did your firm have any objection to including the lines below $16.75?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid, calling for the conclusion of the witness.

Examiner Bennett: You mean "have" or "make"?

Mr. Martin: Made to the Guild.

Examiner Bennett: "Make objection to the Guild," is that what you are trying to get?

Mr. Martin: Yes.

Examiner Bennett: All right.

6249

The Witness: May I have the question.

Mr. Martin: Read the question.

(The question was read.)

Mr. Albert: I think the question has been amended.

Mr. Martin: Change the word "have" to "make."

By Mr. Martin.

Q. Did your firm make any objection?

Mr. Haycraft: To the Guild.

Mr. Martin: To the Guild to include the lines below $16.75?

The Witness: Yes.

By Mr. Martin.

Q. Why? A. Because our competitors——

6251 Mr. Albert: If it please the Court, I object to that, asking for a conclusion of the witness, no foundation has been laid, and certainly the question shouldn't be asked prior to a determination to what objection was made and when it was made and how it was made.

Examiner Bennett: Well, I will sustain an objection until you make further foundation.

By Mr. Martin.

Q. To whom was the objection made? A. The objection was made to the A.M.C. and to the Fashion Originators Guild. Mr. Post——

Q. All right. A. Mr. Post, in our discussions with him.

Q. Now, why did you make objection?

6252 Mr. Albert: May I ask, if it please the Court, some preliminary questions before we proceed, in order to further lay a foundation?

Mr. Martin: Just a minute.

By Mr. Martin.

Q. When did you make objection? A. I don't recall the exact time because we made many.

Q. Now, why did you make the objection?

Mr. Albert: May I further ask Mr. Martin most respectfully to ask whether these objections were made orally or in writing?

Examiner Bennett: Well, all right. I wish you would bring that out.

By Mr. Martin.

Q. What form did your objections take? Were they oral objections or were they written objections? A. Both.

Q. Now, when—and you say you don't recall when? A. (Witness shakes head negatively.)

Q. Now, why did you make objection?

Mr. Albert: If it please the Court, I object to 6254
that. The best evidence ostensibly on the testimony thus far adduced are the written objections.

Examiner Bennett: No, I think not. You may answer. They are both written and oral. You may answer. Overruled.

Mr. Albert: Exception.

A. We objected because dresses that we were asking to —that we were asked to take out of our stock and send back to manufacturers were on sale in competing stores in Detroit.

(A document was handed to the Reporter by Mr. Martin.)

(Whereupon a certain document was marked 6255
Commission's Exhibits Nos. 497-A, 497-B and 497-C for Identification.)

Mr. Haycraft: Commission's Exhibit 496 is being re-marked, the original being substituted for the copy.

Examiner Bennett: Yes.

By Mr. Martin.

Q. I hand you Commission's Exhibit 496 for Identification, and ask if you can identify that letter? A. Yes, sir.

Q. What is it? A. It is a letter written by Mr. Bergdahl to me April 10, 1935.

Q. I hand you Commission's Exhibits Nos. 497-A, B and C and ask can you identify that? A. Yes, sir.

Q. What is it? A. This is a letter written to Mr. Oscar Webber by Mr. Bergdahl, dated December 4, 1935.

Q. Is that the letter referred to as being the letter of December 4th, in Commission's Exhibit No. 494-A? A. Yes, sir.

6257 Q. Were these original letters received in your office? A. That one was, yes, sir. (Indicating.)

Q. Commission's Exhibit 496 for Identification? A. (Witness nods head affirmatively.)

Q. Was this letter received by the J. L. Hudson & Company, Commission's Exhibits 497-A, B and C? A. Yes, sir.

The Witness: May I correct a statement that I made, your Honor?

Examiner Bennett: I beg your pardon?

The Witness: May I correct a statement that I made?

Examiner Bennett: Yes, certainly.

The Witness: I stated that in our original agreement with the Guild we would not go below

6258 $16.75; that should have been $10.75 cost.

Examiner Bennett: $10.75?

The Witness: It was $10.75 instead of $16.75; yes, sir.

Examiner Bennett: All right.

The Witness: In the return of merchandise.

Examiner Bennett: Yes, I see.

Mr. Albert: May I have that statement read?

(Statement read.)

Mr. Albert: In other words, that was an error in your original testimony, Mr. Sappington?

The Witness: That is right.

Mr. Martin: He has so testified.

(Papers were marked for identification Commission's Exhibits 498-A, 498-B, 498-C, 498-D and 498-E.)

By Mr. Martin.

Q. Mr. Sappington, I hand you Commission's Exhibits 498-A to E, inclusive, for identification, and ask can you identify them? A. Yes.

Q. What is it? A. Order form of the J. L. Hudson 6260 Company.

Q. Is that the form of order you use in placing all of your orders? A. Yes, sir.

Q. Does that order contain any stamp on it?

Mr. Albert: That is objected to, if it please the Court, as being entirely immaterial and irrelevant, and merely the same type of testimony as Mr. Sappington has previously given. He has testified that a stamp was placed upon the order. He now brings in a blank order slip with a stamp on it which has not been used and states that is the type of stamp that they placed on the order, and that is the type of order that they used.

Mr. Martin: He has not stated that is the type 6261 of stamp.

Examiner Bennett: Overruled.

Mr. Martin: Will you let me ask the question?

Examiner Bennett: You may complete it.

By Mr. Martin.

Q. Is that stamp placed on the order the same stamp that was placed on all of your orders in pursuance to your signed declaration of co-operation?

Mr. Albert: That is objected to as immaterial. The best evidence of the stamp that was used upon the orders that were placed is a copy of the order containing the stamp and not an illustration of it.

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

A. Yes, sir; exactly.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibits 498-A to E, inclusive.

Examiner Bennett: Received.

6263

(The documents referred to, heretofore marked for identification Commission's Exhibits 498-A, 498-B, 498-C, 498-D and 498-E, heretofore marked for identification, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, with reference to Commission's Exhibits 493-A and 493-B, was that matter brought to your attention? A. You mean the matter covered in this (indicating)?

Q. Covered in the exhibit. A. Yes, sir.

Q. Was the agreement therein referred to in effect in other departments of Hudson's Store than the basement store? A. Yes, sir.

6264

Q. Now, Mr. Sappington, do you know what brought about the red carding of the Hudson Company?

Mr. Albert: May I ask that the question be repeated.

(Question read.)

Mr. Albert: "Yes" or "no."

A. Yes, sir.

By Mr. Martin.

Q. Well, what was it? A. We were advised by the Guild shopper in the early part of February, and our buyer was advised, that he had on sale a dress that was a copy of a Guild registered style. There were several visits between the Guild shopper and the buyer and the department, but the result of those visits—it was agreed during those visits that we would have two hours, or about that length of time, to shop our competitors to find out whether or not that dress was on sale; which we did, and we found the dress in three other stores. That matter was called to my attention as a result of a telegram from the Guild to a buyer of the department in which the dress was found. 6266
Following out the instructions which I had had, as a result of the meeting held in Mr. Dowley's office regarding exemptions, I wrote a letter to Mr. Post, or at least to the Guild—I think the letter was addressed to Mr. Post—asking for an exemption on this dress for it was being offered for sale by competing stores.

Following the writing of that letter I was away from Detroit for two or three days. What transpired after that letter was written——

Mr. Albert: You refer to subordinates?

Mr. Martin: Now, I object to any interpolation or interruption on the part of counsel. Counsel knows full well that these remarks by him are not proper, and I have been inclined to be charitable 6267
towards such interpolations, but I am at last driven to the point where I am forced to believe that they are willfully and maliciously made on his part.

Examiner Bennett: Make a motion to strike.

Mr. Martin: I move that his remarks be stricken.

Examiner Bennett: They may be stricken.

A. What transpired following, or during the period I was away from Detroit, I will have to tell you, because of the telegrams, and so forth, which I read, which were sent back and forth between the J. L. Hudson Company and the Guild.

Mr. Albert: Now, if it please the Court, I object to any testimony by this witness as to what happened while he was away. Mr. Dowley, his superior, is right here in court. Mr. Simmons has been called away. Other buyers of J. L. Hudson Company are right here in Detroit and are perfectly competent to tell us from firsthand knowledge
6269 what occurred at this particular time, and I object to this witness giving us such unnecessary hearsay as to what occurred while he was away.

Mr. Martin: Your Honor please, I think this witness is fully competent to testify as to what took place in his departments for which he was directly responsible. This was information which came to him. I will ask him the question first——

By Mr. Martin.

Q. Did this information come to you in the usual course of business?

Mr. Albert: That is objected to as immaterial.
6270 Why is the Commission afraid to put Mr. Dowley on——

Mr. Martin: The Commission will handle its case as it sees fit, Mr. Albert.

The Witness: Mr. Dowley was away, too.

Examiner Bennett: The witness may answer.

By Mr. Martin.

Q. Did this information come to you in the usual course of business? A. Yes.

Mr. Martin: I think it is perfectly competent for him to testify, your Honor.

Mr. Albert: I press——

By Mr. Martin.

Q. Was relied upon by you? A. Yes.

Q. And acted upon? A. Yes.

Mr. Albert: I press my objection.

Examiner Bennett: There was final action take, was there?

The Witness: While I was present; yes, sir.

Examiner Bennett: All right, I will overrule the objection. 6272

Mr. Albert: Exception.

Mr. Martin: Go ahead.

Examiner Bennett: Go ahead and tell your story.

A. There was a telegram sent between—there was an exchange of telegrams between J. L. Hudson Company and the Guild.

By Mr. Martin.

Q. Have you the copy of those telegrams with you? A. Yes, sir.

Q. All right, sir, go ahead. A. Following that a letter was written to the J. L. Hudson Company by the Guild 6273 stating that they would deny——

Mr. Albert: If it please the Court, I object to any qualification or description of any written document not in evidence.

Examiner Bennett: Yes. Well, that is sustained.

By Mr. Martin.

Q. Have you the letter which they wrote? A. Just a minute. I will have to look and see.

Q. All right, sir. Take your time. A. Yes, sir; I have this letter.

(Paper handed to the reporter by Mr. Martin.)

(Whereupon a document was marked Commission's Exhibits No. 499-A, 499-B and 499-C for Identification.)

(Several papers were handed to the reporter by
6275 Mr. Martin.)

(Whereupon certain documents were marked Commission's Exhibits Nos. 500, 501-A and 501-B, 502 and 503, respectively, for identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 500 for Identification, and ask you, can you identify that? A. Yes.

Q. What is it? A. It is a telegram from the Fashion Originators Guild to the buyer of the dress department in which the copy was found by the Guild shopper.

Q. Was this telegram referred to in your testimony a few minutes ago? A. That is right.

Q. I hand you Commission's Exhibits No. 501-A and
6276 501-B for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is it? A. It is a copy of a letter which I wrote to Mr. Post February 8, 1936.

Q. Is that referred to in your testimony of a few minutes ago? A. Yes, sir.

Q. Was this letter written in reply to the telegram, Commission's Exhibit No. 500? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 502 for Identification and ask, can you identify that? A. Yes, sir.

Q. What is it? A. It is a telegram from Mr. Post addressed to me in reply to my letter to him.

Q. Was that referred to as part of the correspondence concerning which you testified? A. Yes, sir.

Q. Was this telegram received in reply to Commission's Exhibits No. 501-A and B? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 503 for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is that? A. This is a telegram from Mr. Oscar Webber to Mr. Post.

Q. Is it a copy of a telegram? A. Copy of a telegram, yes, sir.

Q. Is that part of the testimony which you gave a few minutes ago? Is that part of the correspondence referred to? A. Yes, sir. 6278

Q. Was this telegram sent in reply to Commission's Exhibit No. 502? A. Yes, sir.

Q. I hand you Commission's Exhibits No. 499-A, B and C for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is that? A. That is a letter from Mr. Post to Mr. Oscar Webber dated February 11.

Q. Now, is that part of the correspondence referred to in your testimony? A. Yes, sir.

Q. Was that letter written in reply to Commission's Exhibit No. 503? A. Yes, sir.

Q. Mr. Sappington, was any reply made to this letter from Mr. Post to Hudson & Company, which is Commission's Exhibits No. 499-A, B and C for Identification? Was there any reply made? A. That is the last letter I looked at? 6279

Q. Yes. A. No reply was made to this letter; no, sir.

Mr. Martin: Now, if your Honor please, I offer in evidence these exhibits, Commission's Exhibits No. 499-A, B and C, No. 500, 501-A and B, 502 and 503.

(The letters immediately referred to above were handed to Mr. Albert.)

Mr. Martin: If your Honor please—off the record.)

(There was a discussion off the record.)

Mr. Alber: May I have this on the record? May I be permitted to make objection to having something withdrawn?

Mr. Martin: Nothing is being withdrawn that you have any right to object to, sir.

Mr. Albert: I would like to know, I would like to be appraised of what is going on.

6281 Mr. Martin: All right. You are being appraised of it.

Examiner Bennett: Make a statement.

Mr. Martin: If your Honor please——

Mr. Albert: I don't know what is going on, your Honor.

Examiner Bennett: Make a statement definitely of the situation, a full statement.

Mr. Martin: If your Honor please, Commission's Exhibits No. 481 and 482 are statements containing figures and also certain matter on the bottom of the statements in typewriting. These exhibits were received in evidence by your Honor only in so far as the figures are concerned. The other matter was deemed extraneous and was refused acceptance in evidence.

6282

Examiner Bennett: Yes.

Mr. Martin: I now hand your Honor two statements which contain the exact figures as contained on these two exhibits without the other matter thereon which was not accepted in evidence, and ask that these two new sheets be substituted in place of the old. They are the exact same figures

Mr. Albert: Now, if it please the Court, there is absolutely no necessity for the substitution of Exhibits 481 and 482 by any other sheets of paper, by reason of the fact that it affirmatively appears in the record——

Mr. Martin: I might say that the exhibits are not a part of the record, do not appear in the record. You are simply being furnished copies of those by the stenographer at your request, but that is not a part of the record in this case.

Mr. Albert: Well, then, accepting Mr. Martin's statement, if it please the Court, I again submit that the Commission has offered Exhibits 481 and 482—— 6283

Mr. Martin: And they were not received——

Mr. Albert: And they should be received and remain in the record exactly in the manner that they are at the present time, and there is no reason for substituting anything for it. The record affirmatively and clearly shows as to what is contained in the exhibit as a part of the record.

Mr. Martin: Only the figures were accepted.

Examiner Bennett: These documents which are now submitted have been verified as to the figures; have they?

Mr. Martin: They have, sir.

Examiner Bennett: All right; objection, if there is an objection, is overruled. 6285

Mr. Albert: Exception. Now, may I ask if it please the Court——

Examiner Bennett: Just a moment.

Mr. Albert: I am sorry.

Examiner Bennett: If you please. The reporter is instructed to mark these two new papers the same as the originals and substitute them for the copies which were originally offered.

Mr. Martin: And to return the originals to the Commission's attorneys?

Examiner Bennett: Yes, exactly.

(The papers referred to were marked by the reporter Commission's Exhibits 481 and 482-A and B; and substituted for the copies which were originally offered.)

Mr. Albert: Now, if it please the Court, may I ask that Commission's Exhibits 481 and 482-A and B, as they presently appear, remain in the custody of the Federal Commission's attorneys and not be
6287 returned to J. L. Hudson & Company by reason of the fact we wish those exhibits, which have been identified now as inter-office communications between J. L. Hudson & Company employees, to be made available to the respondents and I don't believe that the Commission wishes to in any way make it impossible for us to get a hold of relevant material of very vital importance, of very vital information.

Examiner Bennett: Well, that is a request to the attorneys. There was an offer pending.

Mr. Albert: May I have an answer, if your Honor please, with respect to my previous request?

Examiner Bennett: You made it to the attorneys. Your request is in the record.

6288 Mr. Albert: I haven't received an answer. I would like to know what course to pursue.

Examiner Bennett: Yes. Well, the attorneys heard you, I imagine.

Mr. Albert: May I have an answer to my request, Mr. Martin?

Mr. Martin: I beg your pardon?

Mr. Albert: May I have an answer to my request with respect to Exhibits 481 and 482?

Mr. Martin: Would your mind stating your request over again?

Mr. Albert: Yes. Would you like it in simple language?

Mr. Martin: Yes.

Mr. Albert: The simple language is that I don't want those exhibits to go back to J. L. Hudson & Company. They contain information which is very substantially in favor of the respondents' case herein, and I am not desirous that anything should happen to those exhibits, and by reason of the fact that they are marked as Commission's exhibits, I most respectfully request you to keep those exhibits and make them available to the respondents 6290 at the proper and appropriate time.

Mr. Martin: Which is evidence which you are not entitled to have, and I will take such care of these exhibits as I see fit.

Mr. Albert: Am I to understand, then, that you refuse to assure me that those exhibits will remain with the Federal Trade Commission?

Mr. Martin: That is satisfactory to me.

Mr. Albert: All right. If it please the Court, I offer in evidence Commission's Exhibit 481 and Commission's Exhibits 482-A and B, not as conclusive or as proof of the statements therein contained, but as evidence of inter-office communications from J. L. Hudson & Company. 6291

Mr. Martin: Objected to.

Mr. Albert: You mean to tell me that the Commission is going to object, your Honor, to the admission of evidence which they produced and originally offered in evidence and to which I objected? What are they trying to conceal?

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

Examiner Bennett: Read the record as to the pending documents beginning with Nos. 499-A, B and C.

(The record was read.)

Mr. Martin: Now, if your Honor please, I would like to call to your attention Commission's Exhibit No. 483-A.

Examiner Bennett: Will you wait until we get through?

Mr. Martin: I beg your pardon.

Examiner Bennett: The respondents have before them certain exhibits that were offered in evi-

6293 dence.

Mr. Albert: Now, if it please the Court, I withdraw my previous objection to the offer into evidence by the Commission of Commission's Exhibits 481 and 482-A and B and ask that they be marked in evidence in their entirety.

Mr. Martin: I think your Honor has already ruled.

Examiner Bennett: We are all through with that so far as I am concerned. You have before you a certain matter now. I should not have permitted those exhibits to have been injected in this matter, but I thought that I had missed something in the record, but it has been injected and it has been disposed of now. Let's go ahead.

6294

Mr. Albert: Exception.

Mr. Feldman: Judge, I think we ought to have a conference on this off the record. There is one thing I would like to point out to you.

Examiner Bennett: Off the record, then.

(There was a discussion off the record.)

(Documents referred to, heretofore marked for identification Commission's Exhibits 499-A, 499-B, 499-C, 500, 501-A, 501-B, 502 and 503 were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, you have testified that no reply was made by your firm to the letter of February 11 from Mr. Post to Mr. Webber, which is in evidence as Commission's Exhibits 499-A, B and C. Why was no reply made to this letter?

Mr. Albert: That is objected to, if it please the Court, as immaterial, calling for a conclusion of the witness, not binding upon the respondent——

Examiner Bennett: Overruled.

Mr. Albert: —no proper foundation has been laid.

6296

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

A. We were red carded before we could reply.

By Mr. Martin.

Q. Was it right after this time, Mr. Sappington, that your firm was red carded? A. After which time, please? Q. After the period of this correspondence which has just been admitted into evidence? A. Yes, sir.

Mr. Martin: Mark those for identification, please.

(Documents were marked for identification Commission's Exhibits 504 and 505.) 6297

By Mr. Martin.

Q. Now, I believe that you testified on Friday that studies were made showing the effect of the red carding on the different departments of your dress business. I hand you Commission's Exhibit 504 for Identification, and ask can you identify that paper? A. Yes, sir.

6298 *Louis B. Sappington—For Commission—Direct.*

Q. What is it? A. This is an analysis of piece sales at certain price lines for Department 358.

Q. Was it made by you? A. Yes, sir.

Q. In the regular course of business? A. Yes, sir.

Q. And those figures are correct, to the best of your knowledge and belief? A. Yes, sir.

Mr. Martin: I offer that in evidence, Commission's Exhibit 504.

Mr. Meder: What department was that in?

Mr. Martin: 358.

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 504 unless further
6299 explanation is made of what these figures mean. I believe the exhibit is perfectly unintelligible in so far as the figures are concerned as to what the figures refer to. I further object to the gratuitous inclusion in the exhibit of certain remarks "We don't know where that came from"; "We don't know who made that"——

Mr. Martin: The witness has testified he made them.

Mr. Albert: ——"We don't know what they are predicated upon"; and, further, upon the ground that no proper foundation has been laid.

Examiner Bennett: I think there should be some further explanation of this exhibit.

6300 Mr. Martin: All right, your Honor. I will have it further identified.

Examiner Bennett: If it can be done by the witness to advantage, and I would object to general statements.

Mr. Martin: Under the heading of "Remarks"?

Examiner Bennett: Statements made as to June and July.

Mr. Martin: I am perfectly willing——

Examiner Bennett: Where they are definite statements of results of figures, I think that they may be taken as——

Mr. Martin: If your Honor please, we have several exhibits here referring to all of this same type, referring to the different departments.

Examiner Bennett: Yes.

Mr. Martin: Now, if you would like us to, we are perfectly willing to cut those remarks off, just leaving the figures and let the witness explain it.

Examiner Bennett: Yes. I don't object to statement of figures where it is made, a statement of figures and that alone. I don't see that there is 6302
any objection to these general statements. I suggest that we take those remarks off of all of them.

Mr. Martin: Yes, we will do that.

Examiner Bennett: Well, just as you choose. Just as you choose.

Mr. Martin: That being the case.

(The remarks referred to were cut off.)

Examiner Bennett: What I had reference to as to further explanation, Mr. Martin, was the meaning specifically, the meaning of those columns.

Mr. Martin: Yes. I will ask him that, sir.

Examiner Bennett: Yes.

By Mr. Martin.

Q. Now, Mr. Sappington, with reference to Commission's Exhibit for Identification, 504, will you explain to me just what this first column of figures under the heading '35, '36 volume change means? A. That is the volume change, 1936, compared with 1935, for the months designated in this column (indicating). For example, in February—— 6303

Mr. Albert: Do you mind if I follow?

Mr. Martin: Certainly not. Come around.

A. For instance, in February, 1936, the volume in dollars was 11.6 per cent. below the volume in dollars for February, 1935.

By Mr. Martin.

Q. And so on down? A. So on down that column.

Q. Down the line? A. Yes.

Q. Now, what does the next line refer to? A. The next column referred to the piece sales, the difference in piece sales on the same basis. In other words, in February of 1936 we sold fifty-nine more pieces in that department than we did in February, 1935.

6305 Q. And so on down the line? A. Minus is designated as minus, whereas nothing is designated as plus. I can put plus in there if you want plus put in each case.

Q. Now, what do— A. These are retail price lines, $29.75, $35, $39.75; and these figures designate the same comparison as the figures in this column (indicating)?

Mr. Albert: Column 2?

The Witness: In column 2.

Mr. Albert: So that under $29.75——

The Witness: We have sold nine more pieces—eight more pieces.

Mr. Albert: Meaning that you sold eight more?

The Witness: Eight more. Seventeen less (indicating). (Indicating) Thirteen more.

6306 Mr. Albert: I see.

The Witness: Yes.

Examiner Bennett: All right.

Mr. Martin: With that explanation, I offer this in evidence.

Examiner Bennett: All right.

Mr. Albert: If it please the Court I object. May I question on the voir dire first, your Honor.

Examiner Bennett: Beg your pardon?

Mr. Albert: May I question on voir dire?

Examiner Bennett: Yes. Go ahead.

By Mr. Albert.

Q. Did you personally prepare this record, Mr. Sappington? A. Yes, sir.

Q. That is, you took the figures off the books of J. L. Hudson & Company yourself? A. That is right.

Q. Now, aside from the fact that these are a comparison of the total figures, have you made any study to determine the cause of the change?

Mr. Martin: I object to that, as to these exhibits, as far as these exhibits are concerned. That 6308
is objected to.

Examiner Bennett: The exhibit, so far as it appears, is merely a statement of fact for what it is worth, for whatever it may be worth.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I think it is not yet connected with this particular card ing, as I see it. It is merely a statement of the two years for whatever that may mean. I will overrule the objection. Received.

Mr. Albert: Exception.

(Document referred to, heretofore marked for identification Commission's Exhibit 504, was marked as an exhibit and received in evidence.) 6309

By Mr. Martin:

Q. Now, Mr. Sappington, I hand you Commission's Exhibit 505 for Identification, and ask can you identify that paper? A. Yes, sir.

Q. What is it? A. This is an analysis of figures for Department 369.

Q. Does the same explanation that was given as to the various columns of figures in Department 358, which is Commission's Exhibit 504, apply equally to this exhibit? A. No, sir.

Q. All right, sir. Will you explain what these are? A. In these, the first two columns do. The third, fourth, fifth, and sixth do not, because these are cost prices while those are retail.

Q. All right. A. Otherwise they are the same, except that in this column (indicating)——

Mr. Meder: Don't say "this." Say the number of the column.

6311 The Witness: One, two, three, four, five. Except in column 5, instead of listing the difference in piece sales we have listed the actual piece sales, 104 in 1935, 14 in 1936.

By Mr. Martin.

Q. I see. Who prepared this analysis? A. I prepared that.

Q. That was done in the usual course of business? A. Yes, sir.

Q. Relied on by the store? A. Yes, sir.

Q. It is correct? A. Yes, sir; so far as I know.

Mr. Martin: I offer that in evidence as Commission's Exhibit 505.

6312 Mr. Albert: I object, if it please the Court, to the introduction of Commission's Exhibit No. 505 upon the grounds previously urged with respect to Department 358; and I further object to the inclusion of explanatory matter without any testimony with respect thereto as set forth after the star on the exhibit.

Examiner Bennett: Do you want to remove that note in the exhibit and bring it out in the testimony? You may bring it out in the testimony.

Mr. Martin: Yes, sir.

Examiner Bennett: You may bring it out in the testimony.

(The note referred to was crossed out by Mr. Martin.)

Examiner Bennett: All right. The explanatory matter that has been objected to has been eliminated. The other objections are overruled and the document is received in evidence as Commission's Exhibit 505.

(Document referred to, heretofore marked for identification Commission's Exhibit 505, was marked as an exhibit and received in evidence.) 6314

(A document was marked for identification Commission's Exhibit 506.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 506 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. Analysis of figures for Department 338.

Q. Who prepared it? A. I prepared it.

Q. In the usual course of business? A. Yes, sir.

Q. And it is information relied on in your store in the ordinary course of business? A. Yes.

Q. And is correct? A. To the best of my knowledge.

Q. Will you explain just what those figures represent? 6315
What are the figures in the columns? A. The same as Department 358, which was the first exhibit in this group.

Q. In other words, the same explanation? A. The same explanation.

Q. As was given for Department 358 will apply to this? A. In all cases. I mean, in all columns.

Q. Which was Commission's Exhibit No.— A. 504.

Q. 504? A. Yes.

Mr. Albert: What do the top figures refer to, $29.75, $35?.

The Witness: Retail price lines.

Mr. Albert: That is the retail selling price of the dresses in Department 338?

The Witness: Yes, of these dresses.

Mr. Martin: I offer this in evidence as Commission's Exhibit No. 506.

Mr. Albert: Now, if it please the Court, may I ask that counsel for the Commission, if they desire any explanation from the witness of any exhibits which they intend to present, that that
6317 explanation appear in the record, that there not be colloquy between counsel for the Commission and the witness while I am reading other exhibits? The same objection to Commission's Exhibit 506 as to the previous exhibits.

Examiner Bennett: The same ruling. Received in evidence.

(The document referred to, heretofore marked for identification Commission's Exhibit 506, was marked as an exhibit and received in evidence.)

(A document was marked for identification Commission's Exhibit 507.)

By Mr. Martin.

6318 Q. I hand you Commission's Exhibit 507 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. This is an analysis of piece sales for Department 369, February to June, inclusive.

Q. Who prepared it? A. It was prepared for me by our office staff.

Q. Was it relied upon by you? A. Yes, sir.

Q. Used in the regular course of business? A. Yes.

Q. Believed to be correct? A. Yes.

Q. Will you further describe what those columns there represent? A. I believe that is clear. These are cost prices (indicating). The years are definitely designated.

Mr. Meder: Designate it so the record will show what it is all about.

By Mr. Martin.

Q. What does the top row of figures refer to? A. Cost price, cost prices.

Q. And the next row refers to what? A. The two years, 1935, 1936.

Q. Now, coming down the page, what do the figures in the first column refer to? A. Piece sales by months for the year 1935. 6320

Q. And the second column? A. Piece sales for the same month for the year 1936.

Q. And those piece sales for 1935 and 1936 are in which price range? A. $8.75.

Q. And the other columns across the page refer to the same thing in different price ranges? A. Yes, sir.

Mr. Martin: I offer in evidence Commission's Exhibit 507.

Mr. Albert: Objected to upon the ground that no proper foundation has been laid, immaterial and irrelevant.

Examiner Bennett: Overruled. Received. 6321

Mr. Albert: Exception.

(Document referred to, heretofore marked for identification Commission's Exhibit 507, was marked as an exhibit and received in evidence.)

(Documents were marked for identification Commission's Exhibits 508 and 509.)

6322 *Louis B. Sappington—For Commission—Direct.*

By Mr. Martin.

Q. I hand you Commission's Exhibit 508 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. These are the net piece sales in dresses for the spring season, February through July, 1935, for these departments listed in the first column.

Q. Who was that prepared by? A. Prepared by our office staff.

Q. For you at your request? A. Yes.

Q. In the ordinary course of business? A. Yes.

Q. And as such relied upon by you? A. Yes, sir.

Q. And believed to be true? A. Yes.

6323 Q. I hand you Commission's Exhibit for Identification 509, and ask, can you identify that paper? A. Yes, sir.

Q. What is that? A. These are the net piece sales of dresses for the spring season of 1936, February through July.

Q. And the same explanation as was given with regard to Commission's Exhibit 508 will apply equally to this one? A. Except that this is for 1936; that is for 1935.

Q. Was this prepared for you at your request? A. Yes, sir.

Q. In the ordinary course of business? A. Yes.

Q. And relied upon by you? A. Yes.

Q. And believed to be correct? A. Yes, sir.

Mr. Martin: I offer Commission's Exhibits 508
6324 and 509 in evidence.

Mr. Albert: The same objection.

Examiner Bennett: Received in evidence.

(Documents referred to, heretofore marked for identification Commission's Exhibits 508 and 509, were marked as exhibits and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, have you formed any opinion as to the effect of the red carding upon store?

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness, and no proper foundation has been laid demonstrating what studies he has made or what tests he has taken into consideration.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer as to whether you have formed an opinion.

6326

By Mr. Martin.

Q. Have you formed an opinion? A. May I ask a question?

Q. Have you formed an opinion of the effect of red carding on your store? A. Yes, sir.

Q. Now, Mr. Sappington, with reference to Commission's Exhibits Nos. 481, 482-A, 483-A, 485, 504, 505, 506, 507, 508 and 509, will you tell me what has been the effect on Hudson's Store of the red carding by the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court; calling for the conclusion of the witness, and no proper foundation has been laid; and, in addition thereto, the exhibits now in evidence speak for themselves and the question goes beyond the information contained in the exhibits. 6327

Examiner Bennett: Well, I will ask the witness to give his opinion on that if he wants to connect it up with the exhibits which have been presented to him we will hear him upon that point. Overruled.

Mr. Albert: Exception.

6328 *Louis B. Sappington—For Commission—Direct.*

By Mr. Martin.

Q. Go ahead, sir. A. The question is what effect? May I have the question?

Q. (Question read.) A. To cause a loss of business.

Q. Will you——

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Well, it may be stricken. I wish that you would follow the usual course about opinion evidence, ask him what his opinion is, and then let him make his explanation; if he wants to

6329 use these documents in making an explanation, why——

By Mr. Martin.

Q. Will you tell me what is your opinion as to what effect red carding has had on Hudson's Store?

Mr. Albert: That is objected to, if it please the Court, as immaterial, and not binding; no weight; no probative force or effect unless we know what factors the witness took into consideration in forming his opinion.

Examiner Bennett: Overruled. That is a matter for cross-examination.

Mr. Albert: Exception.

6330

A. Because of the red carding we were denied admittance to certain houses. Because of that it was impossible for us to get certain types of garments in certain price lines which we needed to take care of a business that we had already developed.

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Overruled; that is what he is telling about, what effect.

Mr. Albert: Exception.

By Mr. Martin.

Q. Will you just go ahead and explain what effect these things have had, explain their effect on Hudson's Store?

Mr. Albert: Now, if it please the Court, I strenuously object to this witness being given carte blanche to say whatever he wants to. I suggest that if the Commission seeks to elicit any information from this witness that it be done in the usual customary manner of question and answer and 6332
not a speech by the witness. I don't know what the witness is going to testify.

Mr. Martin: Do you want me to lead the witness?

Mr. Albert: You mean to tell me he does not know what to tell you unless you want him, that he does not know what the effect is?

Examiner Bennett: Make any objection you wish to make, not a speech.

Mr. Albert: All right. I make an objection on the ground it is not specific——

Examiner Bennett: Overruled. Go ahead and give your opinion.

Mr. Albert: Exception. 6333

Examiner Bennett: At such length as you see fit, but keep to the point as to what effect it had on the store and its business.

A. Well, as these analyses show, in certain of these departments——

By Mr. Martin.

Q. Name those departments.

A. Well, in Department 358, for example——

Mr. Albert: What exhibit is that, Mr. Sapping ton?

The Witness: 504.

Mr. Albert: Do you mind if I follow you while you are talking from that exhibit?

Mr. Haycraft: You say 358?

The Witness: 358.

By Mr. Martin.

6335

Q. All right, sir, go ahead and tell us what effect it had on Hudson's Store? A. This shows a loss in volume of 11.6 in February; 8.7 in March; 19.4 in April; 21.2 in May. Increase of 10.6 in June; increase of 23.5 in July. Those figures pertain to the dollar volume. Now, it is my belief that our inability to obtain merchandise from Guild houses was responsible for this showing. The showing that this department made in February, March, April and May.

Q. Have you any explanation as to the June and July figures? Yes, sir.

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid. I do

6336 not think the Court is interested in the witness' explanation unless we know how he reached it. Anybody can look at the figures and give some kind of explanation.

Examiner Bennett: If it is his opinion that that was caused by the red carding, why, we are willing to hear him. That is what he seems to be testifying to.

By Mr. Martin.

Q. What is your explanation for the figures of June and July?

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: All right, overruled.

Mr. Albert: Exception.

A. The figures of increase of 10.6 in June were caused by promotions at lower price lines not affected by the Guild houses. The increase of 23 per cent. in July was due to earlier sales of custom suits that we had a year ago, thus increased sales of reduced merchandise accumulating from 6338 the previous months.

By Mr. Martin.

Q. Now, turn to the next department, Department No. 369. A. All right.

Q. All right, go ahead and explain what effect the red carding has had on Department 369?

Mr. Albert: If it please the Court, may I point out to the Court that the witness is seemingly reading from a piece of paper that is right in front of him. I respectfully suggest that a foundation be laid to determine whether or not this witness needs in view of his testimony, to read what the effect 6339 was, rather than to tell his own opinion on it. We are not asking him to read what somebody else prepared.

Examiner Bennett: Overruled. You may answer. Go ahead.

By Mr. Martin.

Q. Go ahead, sir.

Mr. Albert: Exception.

A. The——

Mr. Albert: May I point out for the record, your Honor, that the witness is now reading?

Examiner Bennett: Go ahead.

Mr. Martin: Also have the record——

Mr. Albert: In fairness to the witness, I will say that he has now put the paper aside.

Examiner Bennett: You have your objections; overruled. Let the witness state his answer.

6341 A. (Resumed) Department 369. This analysis shows a decided drop in piece sales for every month except the month of March for the spring season of this year compared with the spring season of a year ago. At $10.75 cost we had a decided drop in pieces sales for February, March, April and May. At $11.75 cost we had a very heavy drop in piece sales, during February, March, April and May. For example, in February, we dropped from 104 pieces to 14; in March, we dropped from 123 pieces to 3.

Now, the drop in piece sales at $10.75 for these four months was due to our inability to buy misses' daytime street dresses from certain Guild houses that we had done business with for a considerable period, and for whose
6342 merchandise we had developed a definite demand on the part of our clientele in Detroit.

The heavy loss at $11.75 cost was due to the loss of one resource, a member of the Guild, with whom we did business almost entirely at the price line, and whose merchandise we were unable to replace.

Mr. Albert: May we have the name of that resource, your Honor?

The Witness: C. H. D. Robbins.

By Mr. Martin.

Q. Go ahead, Mr. Sappington, let us have the explanation. A. In the $12.75 cost price line, our comparatively good showing there is because of merchandise which we obtained from a Guild resource who sold us following the red carding, and who subsequently resigned from the Guild according to his statement to us.

Mr. Albert: May we have the name of that resource, your Honor?

Mr. Haycraft: I object to that.

Mr. Martin: Your Honor please, I object to the witness being forced to divulge his source of supply. 6344
That is a question which is of great moment to these merchants, and I do not think, in fairness, that they should be required to divulge their trade secrets.

Mr. Albert: Well, now, if it please the Court——

Examiner Bennett: Wait. The matter is not——

Mr. Albert: Very well.

Examiner Bennett: We will go ahead and get the answer.

Mr. Albert: Very well, your Honor.

Examiner Bennett: You may bring it up again on cross-examination.

By Mr. Martin.

Q. Go ahead and answer the next question. A. In De- 6345
partment 338 we show a volume loss of 11.6 for February; an increase of 1.5 for March; a loss of 18.6 for April. We show a loss in piece sales for February of 1, an increase of 9 piece sales for March; a loss of 112 piece sales for April. At $29.75 we show a loss of 40 pieces.

Mr. Albert: May I suggest, if it please the Court, that the witness not read off the figures? They are on the exhibit.

Mr. Martin: Your Honor please, I object to this. This witness has a perfect right to refer to anything that is in evidence in making any explanation.

Mr. Albert: He is not making an explanation, your Honor. All he is doing is reading off the figures which are in evidence.

Mr. Martin: If you will quit interrupting and give him a chance——

Examiner Bennett: Go ahead. Go ahead with your answer.

6347 A. I should be very glad to make this just as short as possible. The figures contained in columns 1, 2, 3, 4 and 5, for the months of February, March and April, show that this department did not keep pace with the store as a whole, and we believe this was due to the lack of our inability to buy Guild merchandise—with one exception, the piece sales, or column 5, for the month of March, under the heading $39.75, show an increase of seventeen pieces. This, we believe, is due to a carry-over of dresses which we had from the month of February, which were delivered to the store before the red carding took place, and which we sold in the month of March.

The other figures I don't think have any bearing on the Guild situation, inasmuch as by that time in this department we had been able to develop some resources which
6348 replaced those we had done business with formerly.

By Mr. Martin.

Q. All right, sir.

Examiner Bennett: Is it your contention, Mr. Sappington, that there was no other factor which might have accounted for your fall off in sales?

The Witness: There is no other factor that we know of, your Honor, that caused the falling off in sales in these particular cases.

Examiner Bennett: I see.

By Mr. Martin.

Q. Now, Mr. Sappington, did Guild activities have any effect on any of the other departments of your store?

Mr. Albert: That is objected to, if it please the Court, calling for a conclusion of the witness; and no proper foundation has been laid.

Mr. Martin: I think this witness has testified he has made a complete study of the situation to 6350
determine what effect the Guild activities have had upon this store, and that he has formed an opinion, and I think he is——

Mr. Albert: That is about all we know, what he predicates his opinion——

Mr. Martin: I think he is fully qualified—well, you can bring that out on your cross-examination, Mr. Albert.

Examiner Bennett: All right, you may answer, Mr. Sappington.

Mr. Albert: If it please the Court——

By Mr. Martin.

Q. Answer the question. 6351

Mr. Albert: The attorney for the Commission is seeking to qualify his witnesses——

Examiner Bennett: Complete your question.

By Mr. Martin.

Q. Did the Guild activity have any effect upon the other departments of your store?

Examiner Bennett: You have your objection and it is overruled.

Mr. Albert: Exception.

A. Along the same lines our inability to buy merchandise that we needed in order to make our assortments comprehensive in order to put us in a competitive position in the retail field in Detroit, and in order to take care of the demands of our particular clientele who had expected to find certain things in our store in the spring season of 1936, because of their previous experience.

6353 Mr. Albert: Now, if it please the Court, I move that the entire latter part of the answer be stricken out as not responsive to the question.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: Denied.

By Mr. Martin,

Q. Has it had any effect on your customers, so far as their good will towards Hudson is concerned?

Mr. Albert: That is objected to, if it please the Court, as calling for the conclusion of the witness, and no proper foundation has been laid.

Examiner Bennett: Well, if he knows.

6354 *By Mr. Martin.*

Q. If you know.

Mr. Albert: Exception.

A. I believe it has, yes.

Q. What effect? A. Well, they have—they have not been able to find the kind of garments in our stocks that

they would expect to find from their previous experience with us; they have been unable to order the special order for merchandise that we had in stock during the month of February which we had always—which service we had always given our customers.

Q. Have you formed any opinion as to the effect it has had on your competitive standing with the other stores in Detroit?

Mr. Albert: That is objected to as being immaterial—unless a foundation is laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

6356

A. No, I have not.

Q. Have you formed any opinion as to what effect it has had upon your ability to compete with other stores?

Mr. Albert: Objected to, unless a foundation is laid.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. Well, we know that certain merchandise that is on sale being displayed and advertised by competing stores is not available to us.

Mr. Albert: I ask that the answer be stricken out as not responsive. 6357

Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Martin.

Q. Now, Mr. Sappington, do you know whether or not any effort was ever made to organize a local Guild in Cleveland as an affiliate of the Fashion Originators Guild?

Examiner Bennett: Cleveland or Detroit.
Mr. Martin: I mean in Detroit.
Examiner Bennett: Yes.
Mr. Albert: That is objected to.

By Mr. Martin.

Q. Among retail dealers as an affiliate of the Fashion Originators Guild? A. Yes, sir.

Mr. Albert: That is objected to, if it please the Court, as leading, no proper foundation having been laid; testifying to matters which are not in evi-
6359 dence. Mr. Martin knows very well the vice in that question.

Examiner Bennett: Overruled.
Mr. Albert: Exception.

By Mr. Martin.

Q. What efforts were made, if you know? A. J. L. Hudson Company was asked to send representatives to a luncheon held at the Hotel Statler at which Mr. Post and Mr. Golby talked to us about the formation of a retail Guild, or branch, whatever it was, in Detroit.

Mr. Albert: May it please the Court, I ask that the answer be stricken unless we have a statement
6360 from the witness as to the substance of what Mr. Post said, when he said it, and who was there, and not his opinions and conclusions as to what was said.

Examiner Bennett: Overruled.
Mr. Albert: Exception.

By Mr. Martin.

Q. Well, were those the only steps taken to your knowledge, towards the formation of a local guild among the retailers here in Detroit?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: I wish you would determine whether Mr. Sappington was there or not, whether he attended that meeting.

Mr. Martin: I did not hear, your Honor; I beg your pardon.

By Mr. Martin.

Q. Did you attend the meeting? A. Yes, sir.

Mr. Martin: He has testified.

By Mr. Martin. 6362

Q. Who else was there?

Mr. Albert: Now, if it please the Court, I object to the entire line of testimony and ask it be stricken out upon the ground it forms no part of the Commission's complaint, being entirely irrelevant to this proceeding.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

By Mr. Martin.

Q. Go ahead. A. The question is, who was there?

Q. Yes. A. They were——

Q. To the best of your recollection. A. Three other 6363
people from the J. L. Hudson Company. Do you want the names of the people, or just the general statement?

Q. The names. A. Mr. Himelhoch was there of Himelhoch Brothers. Mr. Siegal was there.

Q. Who does he represent? A. Siegal's.

Q. All right, sir, any others? A. There was a representative there from—no, I cannot recall any of the other individuals. There was quite a large number of tables.

Q. Can you recall what other stores were represented, to the best of your recollection? A. I believe Tuttle & Clark was represented; Russek's——

Mr. Albert: May it please the Court, I ask that this latter testimony be stricken. The witness has testified he was not certain who was there. We certainly do not want his best recollection to something he is not certain of. I think the Commission has made the same cross-examination repeatedly.

Examiner Bennett: Denied.

Mr. Albert: Exception.

6365 *By Mr. Martin.*

Q. Go ahead, Mr. Sappington. A. Well, there was a group of, I should say, fifteen people from the downtown retail section.

Q. Were any other meetings held, to the best of your knowledge and belief, in an effort to organize a local guild among the retailers?

Mr. Albert: If it please the Court, I object to the question upon the ground it is leading; upon the further ground it assumes a state of facts not in evidence; and I ask that the latter part of the question in particular be stricken out as to the organization of a retail guild.

6366 Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Martin.

Q. Go ahead, sir. A. There was a second meeting held.

Q. Were you present at that meeting? A. I was not.

Q. Do you recall what Mr. Post said at the first meeting at which you were present?

Mr. Albert: May we have the time fixed, if it please the Court? We still have not had that fixed.

By Mr. Martin.

Q. When were these meetings held, do you recall? A. I think I could determine if I could refer to my notes, but I don't remember.

Q. Go ahead, sir, and refer to your notes. A. The second meeting was held about the 8th of May.

Q. Do you recall when the first meeting was held? What year was that? A. 1935.

Q. Do you recall when the first meeting was held? A. 6368
The first meeting was previous to that.

Q. Approximately how long? A. Oh, I couldn't tell you.

Mr. Albert: In other words, you recall the second meeting at which you were not present better than you do the first meeting at which you were present.

Mr. Martin: I ask that that remark be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Albert: May it please the Court, in the light of the fact that after all this testimony has been going in, we now find it refers to incidents that occurred at least in May of 1935, and to all intents and purposes from the witness' testimony, some of 6369
it may have occurred in 1934; I ask that the entire line of testimony be stricken out as in no way relevant to this proceeding or to the complaint of the Commission, especially in the light of the fact, I believe—I am not certain of this statement—that the witness has testified that nothing happened with respect to it thereafter. I do not see what earthly purpose this line of questioning can have.

Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Martin.

Q. Do you recall what Mr. Post said at the meeting at which you attended? A. In general, yes.

Q. What did he say? A. He outlined the purposes, and——

Mr. Albert: If it please the Court, I ask that the witness be instructed——

Mr. Martin: Your Honor, please——

6371 Mr. Albert: To tell us what Mr. Post said.

Examiner Bennett: Let the witness testify; you are moving to strike it out.

By Mr. Martin.

Q. Go ahead, Mr. Sappington.

Mr. Albert: Exception.

A. Mr. Post outlined the purposes, the purposes of the Guild, why it was organized and what it was attempting to do, and also told us that the Guild would be interested in having a local guild formed in Detroit to regulate the—some of the activities of the merchants here with respect to any agreement that they might reach locally, and with

6372 respect to the administration of the Guild's affairs in Detroit.

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken out as not responsive to the question. The question was: What did Mr. Post say? That means that the witness should tell us exactly or in substance the words that were used by Mr. Post and not his interpretation of the meaning of the words by saying that he outlined this

and he outlined that, and by reason of the testimony of the witness, I believe that the answer should be stricken out as not responsive to the question.

Mr. Martin: If your Honor please——

Mr. Albert: We are not interested in his opinion of what was said.

Mr. Martin: I don't think it is necessary for me to reply to such quibbling as that.

Mr. Albert: Far from quibbling. I don't want his interpretation of what was said. The witness was asked, "What did Mr. Post say?"

Examiner Bennett: All right. Denied.

Mr. Albert: Exception. 6374

By Mr. Martin.

Q. Now, Mr. Sappington, as a result of this meeting which you attended, and of the other meeting which you did not attend, was a local guild established in Cleveland?

Mr. Albert: Now, if it please the Court——

Mr. Martin: I mean in Detroit.

Mr. Albert: Now, I ask the Court to admonish Mr. Martin to cease from leading this witness? The question certainly should be phrased in a very proper legal form, which is well known to Mr. Martin: What was the result of this conference, and not a statement of what he wants the witness to say. 6375

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

Q. Go ahead.

Mr. Martin: I withdraw that question temporarily.

By Mr. Martin.

Q. Did Mr. Post make any representation as to the advantages to be achieved from a local guild? A. He did.

Q. What were those advantages? A. He stated that by the organization of a local guild we would be able to reach certain agreements in Detroit among ourselves, and that——

Q. As to what? A. Well, as to alteration charges, for example.

Q. What else? A. As to the time we would hold promotions; sales. As to the time we would hold clearances; as to the time we would hold our August fur sale; as to
6377 the time we would hold our August coat sale; any agreement that might be reached among retailers as to their activities, either in maintaining certain prices or in maintaining certain times for doing certain things.

Q. What other advantages did he outline? A. He stated that if a local guild were formed that local guild could agree among themselves to do certain things.

Q. Such as what? A. Such as I have just enumerated. They can agree that they would not hold their August fur sale until a certain time; they could agree that they would not cut the price of a $16.95 retail dress below a certain figure in a sale, for example; they could agree that they would make—get certain prices for alterations; this—they could—this retail body could make any agree-
6378 ment that they wanted to among themselves regarding any of their business activities.

Mr. Albert: You didn't need Mr. Post to tell you that—didn't need Mr. Post to tell you that, did you Mr. Sappington?

Mr. Martin: I object to that statement. I ask that it be stricken out.

Mr. Albert: I am sorry.

By Mr. Martin.

Q. What was the result of—were there any other representations made by Mr. Post as to advantages which would accrue to the— A. Yes. Mr. Post pointed out that if this retail organization were formed among the retailers in Detroit that the Fashion Originators Guild would assist the local organization in enforcing its regulations.

Q. In what way?

(There was a short pause.)

Mr. Albert: May we have the witness' answer, your Honor? He has remembered pretty quickly everything else.

Mr. Martin: Now, if your Honor please, I object to this constant interpolation of Mr. Albert here. The witness has got a perfect right to answer this question in his own time. He is not obliged to jump off the minute I ask the question. He has a right to refresh his memory. 6380

The Witness: I am not certain.

By Mr. Martin.

Q. Did he make any representations as to any other part that the Guild could play in the local field?

Mr. Albert: May we have the question?

(Question read.)

A. I don't remember. 6381

Q. Did he make any representations as to a local shopper? A. Not at that meeting that I recall? We had a local shopper at that time.

Q. Was any discussion had as to how the expenses of the local shopper were to be borne? A. Not at that meeting.

Q. Did you ever have at any meeting that you ever attended? A. Not at any meeting that I attended, no, sir.

Q. Were any representations made at this meeting as to any other local guild as to what they were doing?

Mr. Albert: Oh, that is objected to, if it please the Court, as entirely immaterial and irrelevant. How far are we going with this mess? May we not have the most important question, which Mr. Martin has refused to put to this witness, as to what was the result of all of this, your Honor? Certainly, if nothing resulted from this conference, the entire thing is immaterial and irrelevant, but seemingly the Commission doesn't want to ask that question.

6383 Mr. Martin: I asked it and counsel objected to it.

Mr. Albert: And the question was withdrawn.

Mr. Martin: And the question was objected to by counsel.

Mr. Albert: I objected to the form of it.

The question was withdrawn completely. Ask him the question, "What was the result of this conference?"

Mr. Martin: I will conduct this examination as I see fit, and subject to his Honor's rulings, not as you see it. The sooner you get that through your head the better off we will be and the quicker we will progress in this case. Will you read the question, please?

6384 (Question read.)

By Mr. Martin.

Q. By Mr. Post. A. As I recall it, he referred to other local guilds, which ones I couldn't say.

Q. Did he state that guilds had proved successful in other cities?

Mr. Albert: Now, if it please the Court, the witness has testified that he doesn't know what Mr. Post said about other local guilds. In the light of my objection to Mr. Martin, he has the audacity to put the words right in the witness' mouth.

Mr. Martin: He did not say——

Mr. Albert: Now, I say, if it please the Court, there is a time beyond which Mr. Martin should be not permitted to lead this witness.

Mr. Martin: He made no such statement.

Examiner Bennett: You have made an objection?

Mr. Albert: I object to the question as leading.

6386 Examiner Bennett: All right. I will sustain the objection.

By Mr. Martin.

Q. What did he say?

Examiner Bennett: I think we have gone as far as——

Mr. Albert: I could tell you what the answer is now, Mr. Martin.

The Witness: I don't recall.

Mr. Martin: Your intelligence overwhelms me.

Examiner Bennett: I sustain the objection to the question.

6387 The Witness: I don't recall what Mr. Post said about other local guilds except that he mentioned that there were other local guilds.

By Mr. Martin.

Q. What was the result of these meetings? A. No action was taken in Detroit.

Mr. Albert: Now, if it please the Court——

By Mr. Martin.

Q. Do you know why? A. Yes.

Mr. Albert: Just a moment. If it please the Court——

By Mr. Martin.

Q. State why.

Mr. Albert: If it please the Court, I move that this entire line of testimony be completely stricken out as bearing absolutely no relevancy whatsoever to the complaint of the Commission or to anything
6389 that has occurred in Detroit with respect to any relationship between the Fashion Originators Guild and J. L. Hudson & Company; as forming no part of the complaint whatsoever.

Examiner Bennett: Overruled.

Mr. Albert: Now, I also——

By Mr. Martin.

Q. State why.

Mr. Albert: I also ask that the answer of the witness be stricken out as not responsive, upon the ground that Mr. Martin in every single question that he put to the witness on this particular matter
6390 asked whether or not Mr. Post made certain representations, and Mr. Martin knows that the word "representations" has a legal connotation, and in every single answer the witness refused to say that Mr. Post made any representations of any kind, but merely stated what it was, that Mr. Post suggested or said, or what the discussion was.

Mr. Martin: I think your Honor has already fully ruled on those objections.

Mr. Albert: May I have a ruling on my motion, please?

Examiner Bennett: Yes. It is denied.

Mr. Albert: Exception.

Mr. Martin: Will you read the question?

(Question read.)

Mr. Albert: I object to that as being irrelevant, no proper foundation has been laid whatsoever; calling for a conclusion of the witness and asking for the operation of the witness' mind.

Examiner Bennett: Overruled.

Mr. Martin: Go ahead and answer.

A. The J. L. Hudson Company was not willing to go 6392
ahead with the formation of a local guild. In view of the fact that we stated that we were not interested, the other merchants said—some of them said to us that they would not be interested unless we were, and we were not.

Mr. Martin: That is all.

Mr. Albert: Now, if it please the Court, I ask that the entire testimony be stricken out by reason of the fact that seemingly there was some very vital and important reason why this alleged local guild program was not adopted, and we find that the innocuous and logical reason that nobody was interested in it, and certainly under such a statement of circumstances there can be no relevancy or bearing whatsoever upon this complaint of the Federal 6393
Trade Commission, which mentions nothing about it in their complaint as to the fact that a local retail guild was discussed for some time and nothing was ever done about it.

I ask that the entire line of testimony of the witness with respect to this local guild be completely stricken from the record.

Examiner Bennett: Denied.

Mr. Albert: Exception.

If it please the Court, we have gone about roughly speaking, a half an hour beyond the usual time. Does your Honor——

Examiner Bennett: Oh, no, we haven't.

Mr. Martin: I don't think so.

Examiner Bennett: We haven't gone to our usual time.

Mr. Albert: We started a half an hour sooner.

Examiner Bennett: We stopped a half an hour sooner in the morning.

Mr. Albert: I am sorry, your Honor.

6395 *Cross-examination by Mr. Albert.*

Q. Now, Mr. Sappington, you testified, did you not, that with respect to certain matters which were brought up by the Commission that you obtained certain information from "Women's Wear"; isn't that so? A. I don't know what you mean.

Q. Didn't you testify that you learned of something from "Women's Wear," from a reading of "Women's Wear"? A. No, sir.

Q. Didn't you testify that you first learned of the red carding of J. L. Hudson & Company from a reading of "Women's Wear"? A. No, sir.

Q. Did you testify that you learned it from the local
6396 representative of "Women's Wear"? A. Yes, sir.

Q. You read "Women's Wear"? A. Sometimes.

Q. You have read it rather assiduously of late, have you not?

Mr. Martin: Objected to as irrelevant and immaterial.

Mr. Albert: I am laying a foundation, if it please the Court.

A. No, sir.

By Mr. Albert:

Q. You have not been reading the reports in "Women's Wear" of this trial thus far?

Mr. Martin: Objected to as irrelevant and immaterial and not in proper form.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. You attended the commencement of these hearings in New York, did you not, Mr. Sappington?

Mr. Martin: Objected to as irrelevant and immaterial.

6398

Mr. Albert: If it please the Court, I want to show that this witness has thoroughly prepared himself with respect to the type of cross-examination that he is going to meet.

Mr. Haycraft: Well, I hope so.

Mr. Meder: He has.

Mr. Haycraft: We will concede that.

Mr. Meder: We will concede that.

Examiner Bennett: Sustain the objection. Go ahead and cross-examine, if you have any.

By Mr. Albert.

Q. Have you had the minutes of the hearings thus far as regards the examination of Taylor & Company and Strawbridge & Clothier? 6399

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, Mr. Sappington, will you turn, if you please, to your copy of Commission's Exhibit No. 481? I am

sorry. May I change that to 479 and 478? Was that prepared in the ordinary course of your business, Mr. Sappington? A. This was prepared at my request.

Q. Specifically for this hearing, was it not? A. Specifically for our information.

Q. To be used on this hearing? A. If necessary.

Mr. Martin: Objected to. He has answered the question.

By Mr. Albert.

Q. You vouch for the accuracy of it, do you not? A. I believe it is accurate.

6401

Q. Well, now, do you wish us to impute any qualifications to the use of the word "believe," or do you mean that you vouch for the accuracy? A. I accept it as accurate, yes.

Q. All right. Now, with respect to Commission's Exhibit 479, let's save time. I assume you will give the same answers as to its accuracy, will you not? A. Yes.

Q. Those are the outstanding orders as of February 15, 1936? A. Yes.

Q. In the main, when were these orders placed in January of 1936? A. Oh, I should say starting with December.

Q. Back in December, perhaps— A. December of 19—

Q. '35? A. Let's see. Yes, December, 1935, and January, 1936.

6402

Q. Just to be certain of my position, if you will, Mr. Sappington, Commission's Exhibit 478 is a complete list of the Guild houses with whom you did business on February 1, 1935, to January 31, 1936, is that correct? A. 478-A, B, C?

Q. Yes. A. (Witness nods head affirmatively.)

Q. Will you turn to Commission's Exhibit 479-A?

Mr. Martin: Now, I object to the incorrect statement by counsel for the respondent. The exhibit

speaks for itself. It says "Guild Houses Used." Now he puts in the word "complete" list of Guild houses.

Mr. Albert: You don't mean to infer for one moment that this is an incomplete list, do you?.

Mr. Martin: I don't——

The Witness: This is a list of houses——

Mr. Martin: Just a second. It is not a question of what he infers. I just don't want an improper statement made for the record. He can testify as to what it means.

The Witness: I mean that this list, 478-A, B and C——

6404

By Mr. Albert.

Q. Yes? A. Is a list of houses that our buyers visited and from—and in some cases—I can't testify in all cases—we bought merchandise from, but I know that in the majority of cases, I should say in 99 per cent. of the cases, we bought merchandise from houses listed on Commission's Exhibits 478-A, B and C, and that in all cases we visited them.

Q. Let me make this certain. In the light of, I think, what is Mr. Martin's confusion and objection, you haven't omitted from Commission's Exhibit 478-A any Guild houses from whom you purchased dresses in 1935, have you? A. In 1935?

Q. Yes, down to January 31, 1936? A. I don't think 6405
so.

Q. Well, don't you know? A. Not positively.

Q. You don't? A. Not positively.

Q. Are you afraid that the same thing is going to happen to you as happened to Taylor in Cleveland, Ohio, their list of Guild houses? A. I don't know what happened to Taylor in Cleveland.

Mr. Martin: Objected to.
Examiner Bennett: Sustained.

By Mr. Albert.

Q. Well, now, turn to Commission's Exhibit 479. A. All right.

Q. Show me where the Dolces dresses are. A. Very well.

Q. Show me where Dolces dresses is listed in Commission's Exhibit 478-A. A. Under Antman & Barick.

Q. Well, that is a different name? A. Well, we call him John and the other fellow calls him Jack, but Dolces
6407 and Antman & Barick are the same house.

Q. Antman & Barick and Dolces are the same house? A. That is right.

Mr. Martin: Ha, ha.

By Mr. Albert.

Q. You say you didn't see the Taylor testimony? A. I did not.

Q. Now, will you look at Commission's Exhibit 479-A under Department 369?

Mr. Martin: What?
Mr. Albert: Under Department 369.
The Witness: 479.
6408 Mr. Albert: 369.
Mr. Martin: Page X-1190.
The Witness: All right. I have it.

By Mr. Albert.

Q. Will you find for me, if you please, unless that also is under a different name, the house of H. N. Fried Company as a Guild house with whom you did business as listed under Commission's Exhibit No. 478-A? A. Well

in the case of Department 379, it doesn't necessarily have to be on that list.

Q. Now, will you please find for me that name on the list? A. Because——

Mr. Albert: I ask that the witness be directed to answer my question, your Honor. I have asked him to find me the name "Fried" on the list—that is, Commission's Exhibit 478-A. If Mr. Martin wants to take him on redirect, he may do so.

Examiner Bennett: All right.

Mr. Albert: All I want to know is whether it is on that list.

Mr. Meder: The list speaks for itself. 6410

The Witness: I will have to go on through every other item.

By Mr. Albert.

Q. Yes, go through the list.

Mr. Martin: Just a second, Mr. Witness. Counsel has stated all he wants to know is whether it is on that list. I respectfully submit that the list is in evidence and speaks for itself.

Mr. Albert: I asked him to find it on the list, your Honor.

Mr. Martin: You did not. You just made the statement that all you wanted to know was whether it was on that list or not. 6411

Mr. Albert: If Mr. Martin concedes that it is not on the list——

Mr. Martin: I am not conceding anything.

Mr. Albert: I will ask the witness to find it for me.

Mr. Martin: I object, your Honor.

The Witness: I don't see it.

Mr. Martin: The list speaks for itself.

The Witness: I don't see it.

By Mr. Albert.

Q. Now, Mr. Sappington, is H. Lipman listed as a Guild house with whom you did business in 1935?

Mr. Martin: If your Honor please, I object to this line of cross-examination. It is highly irrelevant and immaterial as to whether——

Examiner Bennett: I am going to overrule your objection. Go ahead.

The Witness: Answer?

6413

By Mr. Albert.

Q. Is it there? A. I don't see it.

Q. I ask you whether or not you can find Radiant Dress listed as a house from whom you had outstanding orders on Commission's Exhibit 479-A listed on your Exhibit 478-A, which is your complete list of the houses? A. I don't see it. The complete list for 1935.

Mr. Martin: He didn't—your Honor, I object to his using the words "complete list" again. That has been brought to counsel's attention once.

Mr. Albert: And it is——

Mr. Martin: It is stated here. Here is the heading of the exhibit. I think it is highly improper for counsel to keep trying to put words in the exhibit which are not there.

6414

Mr. Albert: Now, if it please the Court, the witness has just this moment said that it is a complete list for 1935, and it is so complete that they put in houses whom they approached during the year but with whom he is not certain that they even bought merchandise. That is how complete 478-A

is supposed to be, for the information of this Commission, and for this Commission to form findings on.

Examiner Bennett: I think he was uncertain. I think he was somewhat uncertain as to its completeness.

Mr. Albert: Yes. He certainly became uncertain after I went for it.

Examiner Bennett: I got that impression at least. And I don't think you are adding anything to the question by putting in that implication.

By Mr. Albert. 6416

Q. Now, Mr. Sappington, will you turn to Commission's Exhibit No. 479-B at page X-1191? A. Right.

Q. Then you see Joseph La Vay listed as a house with whom you had an outstanding order on February 15, 1936? A. Right.

Q. That order was placed, roughly speaking, either in January, 1936, or December of 1935? A. Not necessarily.

Q. It could have been placed before then? A. No; it could have been placed later.

Q. It could have been placed later when? A. It could have been placed in February.

Q. About what time? A. It could have been placed February 1. I don't know what time but it could have been.

Q. And was that the first order that you ever gave to Joseph La Vay & Company? 6417

Mr. Martin: Objected to.

A. I don't know.

Mr. Martin: As being irrelevant and immaterial.

Examiner Bennett: I will overrule the objection.

By Mr. Albert.

Q. Did you do business with them before February 1, 1936? A. I don't know.

Q. You haven't the slightest knowledge? A. No, sir.

Q. Can you find that out for me? A. I think so.

Q. Will you do so?

Examiner Bennett: Well, now, we will adjourn until 10 o'clock to-morrow morning at this place.

(Whereupon, at 4.40 o'clock P. M., August 17, 1936, the hearing in the above-entitled matter was adjourned.)

6419

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 18, 1936.

Met pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may re-
6420 sume the stand, Mr. Sappington, please.

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Now, Mr. Sappington, did you find out on what day your order was placed with Joseph Levay & Company? A.

That information, I think, will be here this morning. We were not able to get it before we left the store.

Q. May I ask whether you have that information with respect to the balance of the concerns listed on Commission's Exhibit 479-B, or are you only bringing it over with respect to Joseph Levay & Company? A. Well, we hadn't —we didn't leave any instructions to that effect at the store, no.

Q. Can you tell me when your order was placed with Bernard Appel? A. No.

Q. Have you any objection to having one of the gentlemen who are here with you call the store and ask them to bring that information over when they come over? A. Well, could I address the Court, please? 6422

Examiner Bennett: Why, yes.

The Witness: I would like to ask to add to my testimony of yesterday afternoon regarding the list which we submitted showing the house, the Guild houses that we used in 1935. Now, there has been some objection to that list because it did not contain some of the names that were used on the list of Guild houses that were—which we had merchandise on order at the time of our red carding. I went through my files and I drew out the list from which we compiled our list of Guild houses in 1935. Now, that list is on the back of a letter written to Mr. Dowley by Mr. Post, November 8, 1935, and 6423 that is the basis of our list, the only means we had of obtaining a list that we thought would be at all authentic. Now, this list is headed "Fashion Originators Guild of America, Inc.," and lists dress members, affiliated members, and so forth, does not contain the names which Mr. Albert referred to yesterday afternoon.

By Mr. Albert.

Q. Well, now, Mr. Sappington, with respect to H. N. Fried, H. Lipman, Radiant, Joseph Levay and Bernard Appel, you did know that they were Guild houses, whether or not they were on the list which you just referred to, didn't you? A. I can't tell—I can't say definitely that we did know. We did at the time.

Q. You included them on Commission's Exhibit 479-B, which is a list of— A. That is right.

Q. —of orders on hand with Guild houses? A. That is a list of orders on hand with Guild houses.

Q. When— A. As of that time. I can't—I cannot tell
6425 you whether those houses were members in 1935 or not. They were members then apparently because they refused to deliver us what we had on order, stating that they would not deliver because the Guild told them and they couldn't deliver.

Q. Well, now, they obviously were members of the Guild at the time that the order was placed, were they not? A. That may not necessarily be true. I don't know.

Q. You made no effort to check it? A. At the time we placed the orders?

Q. Yes. A. I don't think—I don't know that.

Q. You made no effort to check it at the time you submitted this list, Commission's Exhibit 479-B? A. At the time we made up our 1935 list——

6426 Q. 479-B? A. No.

Q. You made no effort to check it, then? A. We used this list. We thought this list was the best basis of information.

Q. May I see that list that you are referring to? A. Certainly.

Q. So that you now say that in order to determine whether or not you had certain houses outstanding—certain orders outstanding with Guild houses on or about

February 15, 1936, you checked with a certain list upon a letter from the Fashion Originators Guild dated November 8, 1935?

Mr. Martin: I object to that as an incorrect statement. The witness did not state that.

By Mr. Albert.

Q. What is the fact, Mr. Sappington, as regards your determination of what houses were Guild houses as set forth in Commission's Exhibit 479-B, in which exhibit you have set forth a list of certain houses from whom you could not obtain merchandise after the red carding by reason of the fact that they complied with the Guild program? 6428

Mr. Martin: I object to that as an incorrect statement. Commission's Exhibit 479-B is a list which is headed "Merchandise on order with Guild houses at the time of red carding."

By Mr. Albert.

Q. Well, I will simplify it, then: From what source did you determine that the houses listed on Commission's Exhibit 479-B were Guild houses at the time in question? A. From what source?

Q. Yes. A. From the houses themselves.

Q. At that time? A. At that time.

Q. So that you didn't obtain that from this list that you have referred to? 6429

Mr. Martin: Objected to. The witness did not testify to that fact.

Mr. Albert: I am asking him affirmatively if that is so. I don't care whether he testified to it or not.

Mr. Martin: Don't put the words in his mouth.

Examiner Bennett: You may answer.

A. The list of houses with whom we had merchandise on order at the time of red carding——

By Mr. Albert.

Q. Yes. A. Is a separate and distinct list taken from our records plus a check with the houses themselves as to their reasons for not delivering.

Q. When was that check made? A. That check was made very shortly after our red carding, within ten days or two weeks.

Q. During the course of 1935 had you made any purchases from Bernard Appel? A. I don't know.

6431 Q. Had you made any purchases from Joseph Levay? A. I don't know.

Q. Had you made any purchases from Dolces Dress? A. Yes.

Q. During 1935? A. Yes.

Q. Had you made any purchases from Milton Altmark? A. Yes.

Q. Had you made any purchases from H. Lipman? A. Can't answer that definitely.

Q. Had you made any purchases from Radiant? A. I don't know.

Q. Had you made any purchases from H. N. Fried? A. I don't know.

Q. So that the only one that you don't know whether or not you made any purchases from during 1935 are the

6432 houses which I have attempted to demonstrate have been improperly omitted from Commission's Exhibit 478? A. Not necessarily.

Q. Those are the only houses that you don't recall. You definitely recall the others that I have mentioned. A. You haven't asked me all of the houses that we bought from on this list. You simply picked out one or two.

Q. Those that I asked you about you have remembered, haven't you? A. Yes.

Q. Would you be good enough to turn to Commission's Exhibit 481? Now, Mr. Sappington, will you be good enough to explain the meaning of that particular exhibit, what the figures stand for? First, what does the first line of figures stand for in which you have $12.75 to $13.75, $14.75, $15.75? Are those cost prices or sales prices? A. Cost price.

Q. Cost prices. And what do the figures with respect to the months represent? A. Piece sales.

Q. Actual piece sales in the department for that period; is that it? A. (Witness nods head affirmatively.)

Mr. Martin: Answer so that the stenographer can get it. 6434

The Witness: Yes, sir.

By Mr. Albert.

Q. Is this an accurate compilation of the piece sales? A. To the best of my knowledge and belief, it is.

Q. Are you trying to qualify your answer in any way?

Mr. Martin: I object to that statement. The witness made a complete statement. He was asked, was the list correct, and he said it was to the best of his knowledge and belief.

Mr. Albert: Well, now, if it please the Court, I do not think that the Commission wants to take anything that this witness won't subscribe to as being accurate on direct examination. Then, on direct examination, in order to get this exhibit into evidence, the witness testified very affirmatively that it was accurate. 6435

Mr. Martin: I don't see——

Examiner Bennett: Yes. Well, I don't see any discrepancy in his testimony.

Mr. Albert: Very well, your Honor.

By Mr. Albert.

Q. Now, have you a copy of Commission's Exhibit 481 in front of you?

Mr. Martin: Yes, he has.

A. Yes.

By Mr. Albert.

Q. Will you be good enough, please—it is a very simple computation—to total the first line of figures in that exhibit? A. Which way, this way or—vertically or hori-
6437 zontally?

Q. Vertically. A. Vertically.

(Witness figures.)

Q. What total did you get? A. Two hundred and seven.

Q. Will you try the third line of figures? A. Three hundred and fifty-seven.

Q. Three hundred and fifty-seven? A. That is right.

Q. And what total is given there? A. It is pretty indefinite here. It looks like 337.

Mr. Martin: Get the exhibit and refer to it.

The Witness: That is right. 337.

6438 *By Mr. Albert.*

Q. What total did you get? A. Three hundred and fifty-seven.

Q. Now, will you total the fifth column, please? A. Six hundred and thirty-four.

Q. Six hundred and thirty-four? A. That is right.

Q. Will you be good enough, please, to re-add the third column? You have made a mistake in adding it. A. No. I get 337.

Q. Three hundred and thirty-seven is correct? A. Yes.

Q. You added it the first time and you got 357? A. That is right.

Q. The fifth column you have added and gotten the same answer as contained in the exhibit. Now, will you add it again, please, and see that you have made a mistake in adding that column? A. Six hundred and twenty-four.

Q. Instead of 634? A. That is right.

Q. So that your addition of the third column was incorrect and the present computation is correct; and your addition of the fifth column was incorrect and the present column is incorrect; isn't that so? A. That is right.

Q. And is the—— 6440

Mr. Martin: Now——

Q. Are the rest of the figures on Commission's Exhibit 481 equally accurate? A. I will check them if you wish.

Q. Well, Mr. Sappington, you realize this is a judicial hearing, don't you? A. Sure.

Mr. Martin: I object to that.

By Mr. Albert.

Q. Weren't these figures thoroughly checked and rechecked before they were submitted to this Commission for its attention? A. I understood so.

Q. But you don't know? A. I was told so, yes.

Q. And quite obviously somebody here in preparing 6441
these figures is making errors; isn't that so? A. It is possible.

Q. I mean, you want to be fair about it, don't you? It is quite obvious that some errors have been made in that computation?

Mr. Martin: I object to that. It is quite obvious that an error has been made.

The Witness: One.

By Mr. Albert.

Q. One error, but where we find one error, God knows where the other errors are; isn't that so?

Mr. Martin: Suppose you look for them?

Q. Isn't that so, Mr. Sappington? A. I don't know.

Mr. Martin: Instead of asserting that they are there.

By Mr. Albert.

Q. You don't know. All right, sir. By the way, I no-
6443 tice in Commission's Exhibit 483-A the department number referred to is not contained in the exhibit. What department is that, the junior miss dress department? A. 483-A; yes. Department number?

Q. Yes. A. 371.

Q. That is 371. I mean, I wasn't certain. I wanted to check it. Now, will you turn, if your please, Mr. Sappington, to Commission's Exhibit 483-A? Will you be good enough to tell me, please, as to the meaning of the figures that are contained after the statement "After red carding and during red carding"? You see that during red carding there is an itemization there that the department made a 1 per cent. gain. What does that refer to? A. It refers to the month of February.

6444 Q. I mean, what type of gain does it refer to? Is it on dollar volume, on piece sales, on volume of sales, or what? A. It is on the total dress volume.

Q. In that department? A. In that department.

Q. For February? A. For February.

Q. As compared with 1936? A. With——

Q. With 1935? A. With 1935; that is right.

Q. And Commission's Exhibit 485 contains the same comparative percentages as regards net increases or de-

creases in dollar sales for the various departments referred to for 1936 over 1935; is that not correct? A. That is correct.

Q. Will you look at Department 371 on Commission's Exhibit 485? A. Yes, sir.

Q. And we find that for February the department went ahead of 1935 32.4; is that not correct? A. That is correct.

Q. Now, will you turn to Commission's Exhibit 483? A. Yes, sir.

Q. And we find that the department went ahead, according to Commission's Exhibit 483, for the month of February, only 1 per cent.? A. Not the department.

Q. What is it? A. Total dress volume. 6446

Q. Did you not just tell me that the 1 per cent. gain referred to the— A. Total dress volume.

Q. —total dollar volume? A. Total dress volume in dollars.

Q. Yes. A. Total dress volume in dollars, yes; that is correct.

Q. What does Commission's Exhibit 485 refer to? A. Total department volume.

Q. Now, let me understand this: Is Commission's Exhibit 483 only a part of Department 371? A. That is right.

Q. That is, you have just taken— A. Just the dresses.

Q. —a portion of that department? A. Taken just the dresses.

Q. Well, what else is there in that department? A. Coats and suits. It is the junior wear department. 6447

Q. Well, then, when you entitle Commission's Exhibit 483 as the junior miss dress department; is that not incorrect? A. Well, I might have said junior miss dress section in the junior wear department.

Q. Yes, that would have been a great deal more frank. A. Would have been a little more specific, but I think it is specific enough here where we refer only to the total dress volume, it is clear to us.

Q. It is clear to you? A. Yes.

Q. But, necessarily, it must be clear to the Commission. A. Well——

Q. Your inaccurate figures in Commission's Exhibit 481 were likewise clear to you, were they not?

Mr. Martin: I object to any such proceedings.

By Mr. Albert.

Q. Now, when I asked you what Commission's Exhibit 483 was, you stated what that department was; without qualification you told me that that was Department 371, did you not?

6449

Mr. Martin: I object, your Honor; he asked him what department it was and he replied..

Mr. Albert: Precisely. And I think that the witness, if he had been frank and fair in his answer, should have told me that that was a subdivision of Department 371.

Mr. Martin: I do not know that the Commission is interested in what you think, either..

Mr. Albert: The Commission will most certainly be, Mr. Martin.

Mr. Martin: I will be surprised if they are.

Mr. Albert: It is about time that you got a few surprises.

Mr. Martin: I think so; you have not given me any yet.

6450

By Mr. Albert.

Q. What does the fourth column of figures in Commission's Exhibit 483-A, the fourth and fifth columns, refer to? A. You mean the one beginning 23 per cent. gain, or the one beginning 95? I mean, do your count the months as a column, or just the figures?

Q. No, the one beginning 95.—A. The one beginning 95?

Q. Yes. A. Those are piece sales of dresses in 1935 at $10.75 and $12.75 cost.

Q. That is, actual piece sales? A. Net piece sales.

Q. What do you mean by net piece sales? A. I mean the sales after the credits are taken off.

Q. You mean by units? A. Units.

Q. So that in 1935, in November, you sold 95 dresses in this subdivision of Department 371; is that what you mean? A. That is right, at $10.75 and $12.75 cost.

Q. Right. And in 1935 you sold 225 dresses? A. That is right.

Q. And your 95 dresses in 1935 brought in a net or a 6452
gross volume of $12,491? A. No.

Q. Well, how do you explain the meaning of the figures? A. The figures in column 1?

Q. Yes. A. $12,491 are the figures for the total dress volume in the department.

Q. That is, without referring to Junior Miss Dress Department? A. The total sales of dresses in the Junior Miss Dress Department 371.

Q. Yes. A. The figures in column 5 are the piece sales for the $10.75 and $12.75 cost dresses only.

Q. So that the figures in columns 1, 2 and 3 have absolutely no relationship to the figures in columns 4, 5 and 6? A. Well, they have some relationship, they contain the 95-piece sales at these two cost prices, yes.

Q. But you cannot contrast the figures in columns 1, 2 6453
and 3 with the figures in columns 4, 5 and 6 in order to reach a particular result, can you? A. No.

Q. And there is no explanation on this exhibit as to what these figures mean, is there? A. I think so.

Q. Under— A. Under "Before Red Carding" we have total dress volume covering the first, second and third sections; we have cost dress piece sales, $10.75 and $12.75, heading the remainder of the space, the third, fourth, fifth and sixth columns.

Q. Yes, but you do not specifically say that columns 4, 5 and 6 are again only a part of the subdivision of Department 371?

Mr. Martin: I object, your Honor; the exhibit is perfectly plain and speaks for itself. He has described what it is, and with the description and the exhibit itself, I see no need of going into those far off fields that my friend is trying to get into.

Mr. Albert: They are not particularly far off fields, if it please the Court. I think it is quite obvious when an exhibit of this kind is presented, taking contrasting theories, of determining per-
6455 centages and volumes, it is quite obvious that the only purposes in presenting an exhibit of this kind is to confuse the Commission.

Mr. Martin: I object to that statement, your Honor, and ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

(Question read.)

Mr. Martin: Objected to.

Examiner Bennett: He may answer that question.

A. No, we do not make any statement there that—other than appears on the exhibit.

By Mr. Albert.

6456

Q. And when you have five figures running right across a line, both referring to periods of 1934 and five and five and six, and two of the five referring to percentages of gain or loss, do you not think it is reasonable for the party that is reading that exhibit to infer that those figures have some relationship, one to the other? A. Oh——

Q. —without a detailed explanation on it? A. I don't think so. I think it is perfectly clear.

Q. You think it is? A. Yes, I think so.

Q. From merely a reading of that? A. Yes.

By Mr. Albert.

Q. Now, Mr. Sappington, looking to March, on this subdivision of Department 371; and turning over to column 4, which refers to a subdivision of the subdivision, how many dresses were in the subdivision of the subdivision of that department in March of 1935? What was the total stock volume at that time? A. I can't tell you.

Q. You have not any idea? A. No.

Q. What was the total stock volume in 1936? A. I don't know. 6458

Q. So that in so far as these figures are concerned, it is impossible to tell the percentage of dresses sold of the stock on hand at the time in question, is it? A. There are no stock figures on this sheet, no.

By Mr. Albert.

Q. Now, Mr. Sappington, were there any unusual conditions in the dress industry at the beginning of 1936 that would affect your store volume? A. I believe that at about that time there was considerable talk about a strike.

Q. Was there not a little bit more than a talk about a strike? A. Not from the results.

Q. Not from the results? A. There was no strike.

Q. There was no strike. Was there anything that accomplished a result similar to a strike in so far as your ability to obtain merchandise was concerned? You seem to be quibbling about the word "strike." 6459

Mr. Martin: I move that that be stricken, your Honor.

Examiner Bennett: What was the last remark?

Mr. Martin: Read the remark.

(Remark read.)

Examiner Bennett: It may be stricken.

The Witness: What is the question?

(Question read.)

A. We had plenty of merchandise as far as delivery or—with the exception of—in the early part of the year—with the exception of our inability to get merchandise from Guild houses.

By Mr. Albert.

Q. Was not there a stoppage in February and March of 1936? A. There was a slowing up on delivery.

6461 Q. And did not that affect your volume? A. No.

Q. On hand? A. We don't think so.

Q. Have you got the figures of your volume on hand? A. I can get them.

Q. Will you be so good as to? A. I will. May I ask my assistant to get those figures now, or would you prefer them later?

Examiner Bennett: Yes, if you prefer to.

The Witness: Would you take care of the stock figures, Mr. Simmons? In 371 dresses on $10.75 and $12.75 costs? I think you know about the way I would like to have it prepared.

Mr. Albert: If your Honor pleases, I do not know what the witness means by "I think you would know

6462 about the way I would like to have it prepared."

The Witness: I mean the form.

Mr. Albert: We want the figures as they are.

The Witness: I mean the form; I mean the form, so that I can understand.

Mr. Albert: Yes.

Mr. Meder: That is silly. Justice Court stuff. We will bring the original, if you would like to have it.

Mr. Albert: I would like it very much.

Mr. Meder: We will be glad to.

By Mr. Albert.

Q. Now, will you turn to Exhibit 505? A. That is in yesterday's?

Q. That is in yesterday's.

Mr. Martin: Yes.

By Mr. Albert.

Q. Have you Commission's Exhibit 505? A. Yes, sir.

Q. Will you look at the third column, please? A. 6464
Headed "149"?

Q. Right. What does that 149 refer to? A. It refers to the increase in piece sales.

Q. In Department 369? A. In Department 369 at——

Q. For 1936 over 1935? A. For the month——

Q. For the month of February? A. At $8.75 cost.

Q. At $8.75. Now, will you turn to Commission's Exhibit 507? This exhibit, I presume, is equally accurate with the other exhibits? A. I believe so.

Q. Will you be good enough to add the first column of figures under 1935 in the $8.75 piece line? A. 1569.

Q. And the exhibit is "1570"; is that correct? A. That is correct.

Q. Now, as a matter of fact, will you not be good enough 6465
to add that, you will find that it adds up to 1579? A. That is right, 1579.

Q. So that the first column is a mistake; isn't that correct? A. That is correct.

Q. Now, on your own figures for the first and second columns, you have that in 1935, 1570 dresses were sold, and in 1936 2656 dresses were sold—not the corrected figure I have given you, but using your own figures—to

figure off the percentage of increase—will you be good enough to figure out the percentage of increase? A. You mean 1570 against 2656, or 1579 against 2656?

Q. Oh, no, use your own figures, not my percentages. Use 1570, the figures your auditors used to figure out the percentage. It would not be much of a trick to find a difference in percentage if we take different totals, Mr. Sappington. A. Sixty-nine per cent.

Q. Sixty-nine per cent.? A. That is right.

Q. And on your own figures, your auditors have presented a figure here of 67 per cent.? A. That is right.

Q. That is correct? A. That is correct.

6467 Q. So that they have made a mistake there. Will you turn to the $12.75 column, and add your figures for 1935, and in order to save time, Mr. Sappington, will you take my statement of the fact that that column does not add up to 586, as set forth in the exhibit, but adds up to 583? A. That is right.

Q. You can check it. Is that correct? A. That is correct.

Q. So that on Commission's Exhibit 507 there are three mistakes in simple computation of the figures that have been presented; is that not so? A. That is right.

Q. Now, on Commission's Exhibit 505, in the difference in piece sales between 1935 and 1936, we have the first figure for February as minus 57. Does that mean that for the $8.75, $10.75, $11.75 and $12.75, the net difference
6468 in amount of piece sales is 57 in favor of 1935, that you sold 57 less pieces in 1936 than you did in 1935? A. No, that is for the total department.

Q. For the total department? A. Yes.

Q. So that in heading Commission's Exhibit 505, analysis of Department 369, again you have not told the whole truth, have you?

Mr. Martin: Objected to. The exhibit speaks for itself, as to what it is, if it has a heading to it.

By Mr. Albert.

Q. What does Commission's Exhibit 505 refer to? A. Well, all the columns are marked; it is an analysis of Department 369.

Q. Well, that is what I am saying. A. But you can——

Q. Does not 57 refer to the price lines that you have there? A. It refers to the piece sales for the total department, the same as 1.6 refers to the volume for the total department.

Q. Then the figures under $8.75, $10.75, $11.75 and $12.75 had no relationship to the first two columns of figures; is that true? A. Yes; they are included in the first two columns. 6470

Q. They are included but you can't tell, you can't possibly compare them in order to get the figure 57; can you? A. It wasn't our intention that you should do so.

Q. You didn't explain that to the Court, did you? A. It wasn't asked.

Mr. Martin: Object.

By Mr. Albert.

Q. In other words, you don't intend to make clear anything that the Commission's attorneys don't ask you about?

Examiner Bennett: It is in for what it is worth.

By Mr. Albert. 6471

Q. Mr. Sappington, let's get it straight. What does the first column refer to? A. The first column was the percentage of volume change in dollars, '35 against '36.

Q. For what price lines? A. All price lines.

Q. All the price lines. All types of garments? A. All types of garments, everything in 369.

Q. Everything in the department? A. That is right.

Q. No matter where it is in the store? A. That is right.

Q. What does the second column refer to? A. It refers to the comparison, to the different piece sales.

Q. Yes. A. For the entire department.

Q. For the entire department? A. (Witness nods head affirmatively.)

Q. All price lines? A. All price lines.

Q. All types of garments? A. All types of garments.

Q. Wherever situated in the store? A. Wherever situated in the store.

Q. Do you sell anything else in that department aside from ready-to-wear? Do you sell any hose or accessories
6473 of any kind? A. No.

Q. You are quite certain? A. Yes.

Q. Now, the first two columns then completely refer to the whole department? A. That is right.

Q. All price lines? A. That is right.

Q. What does the third column refer to? A. $8.75 cost dresses.

Q. And the second column—the next column, the fourth column? A. $10.75 cost dresses.

Mr. Meder: Keep your voice up.

By Mr. Albert.

Q. Are there all types of ready-to-wear merchandise included in that $8.75 cost of your third column? A. All
6474 types of ready-to-wear? No, sir.

Q. So that again we have another subdivision of the department in that you have eliminated coats and ready-to-wear suits from your third column, and your third column refers solely to your $8.75 dresses; isn't that right? A. There are no suits or coats in that Department 369. There are nothing but dresses in there.

Q. Very well. And your $10.75 cost column, which is the fourth column, what does that refer to? A. That refers to the difference in piece sales at $10.75 cost.

Q. Solely in the dress line? A. Solely in the dresses. That is all there are in 369, nothing but dresses.

Q. Nothing but dresses in the whole department? A. What we consider dresses. There might be a technical differentiation if you get to an item called a four-way suit, which is a trade term. We consider that a dress. And everything in Department 369 comes under our dress classification at the J. L. Hudson Company.

Q. Your $11.75 and your $12.75 column, I presume your answers would be the same as to those? A. That is right.

Q. Now, what have you omitted in listing in your last four columns that was included in your first two columns' computations? A. Well, there might have been some——

6476

Q. I don't care what there might have been, Mr. Sappington. You stated that the last four columns referred to specific subdivisions of the department, and that the first two columns referred to the entire department. Now, what have you omitted to spread out on the record for the Commission after the first two columns that are included in the first two columns?

Mr. Martin: I object to that question, your Honor. It hasn't been shown that anything has been omitted. I suggest he lay a foundation and ask him if anything has been omitted.

Mr. Albert: The witness has been differentiating between the first two columns and the last four columns, your Honor, ever since I started on this exhibit. I don't think any greater foundation need be laid. I think he sunk himself far enough.

6477

Examiner Bennett: What is the pending question?

(The question was read.)

Examiner Bennett: I will let him answer.

A. I would have to consult the records in that department in order to answer that question. There are times

when additional price lines are included. I cannot tell you without looking at the records whether any additional price lines to those listed on this page were included in February, March, April, May, June and July, or not.

Q. But you were quite certain that something had been omitted when I first started to question you about this, didn't you? A. No.

Q. Weren't you, Mr. Sappington? A. No.

Q. Well, now, it is possible, then, that the last four columns of Commission's Exhibit 505 do reflect the total change in piece sales for Department 369 for 1935-1936; isn't that so? A. They have a bearing on the total piece sales, yes.

6479

Q. Of course, they would have a bearing on it. I am asking you whether or not—let me put it this way. The question is withdrawn. If there have been no additional price lines in that department for that period, you state that you are not certain whether there were or not, then the last four columns in Commission's Exhibit 505 contain the difference in piece sales for the entire department; isn't that so? A. I don't know whether they do or not.

Q. What do they contain? A. They contain the piece sales for the price lines that have been indicated. The column 2 contains the difference——

Q. You have stated— A. —in piece sales for the total department.

Q. Right. A. Now, whether or not the piece sales at

6480 $8.75, $10.75, $11.75 and $12.75 cost comprise the total piece sales in the department in the month of February, I cannot tell you without looking at the record in the store.

Q. In order to see whether any other price lines were sold, is that so? A. During that month, yes.

Q. Right. Now, if no other price lines were sold during that month, then the figures here will constitute the difference in piece sales for that department for the entire

department; isn't that so? A. If we had no other merchandise in the department in the month of February except $8.75, $10.75, $11.75 and $12.75 cost, then the pieces given on this sheet should total—correspond with the total pieces for the department, if that is true.

Q. Right. Well, now, will you be good enough, please, between now and this afternoon, or now and to-morrow morning, to determine for us, rather, for the Commission, what price lines were sold in these departments in February, March, April, May, June and July in 1935 and 1936 in addition to the ones here listed? A. If we can get that. If we can get that information. I believe we can.

Q. Therefore, Mr. Sappington, to make it perfectly 6482
clear—and with the indulgence of the Court at the expense possibly of some repetition—there is no relationship as far as the determination of how the figure was arrived at between column 2 of Commission's Exhibit 505 and the other four columns? A. Column 2 contains the other four columns.

Q. Naturally, but it also contains other figures? A. Possibly; I don't know.

Q. Will you compute, if you please, the total difference in piece sales between 1935 and 1936 for February for Department 369 in the price lines indicated, and see if you get minus 57? A. I don't think that is necessary because we don't know that that includes the whole department.

Q. So that if you do not get minus 57, Mr. Sappington—
I am trying to get at a simple method of checking up on 6483
your figures merely from the figures that are in the exhibit. If you don't get minus 57, that means that there were other subdivisions of this department that were taken into consideration; is that not so? A. I don't know. I told you that we would have to look at the record to find out what it shows.

Q. In other words, when you say you don't know, you are not taking any chances that the computation of the

price lines indicated on 505 haven't been inaccurately made; is that not so? You just want to see if you can check on it?

Mr. Martin: Objected to. The witness answered the question fully and fairly.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Will you be good enough to find out for us exactly what other price lines were sold in the Department 369 for the months indicated, because obviously without that we cannot check on the figures even as presented in this ex-
6485 hibit? A. (Witness nods head affirmatively.)

Q. Now, Mr. Sappington, is the same philosophy for the preparation of Commission's Exhibit 506 prevalent in that exhibit as is prevalent in Commission's Exhibit 505? A. Yes.

Q. That was prepared in the same way? A. Yes, sir.

Q. So that the last three columns in addition, or subtraction of the last two columns, or any manipulation of the last three columns will not necessarily give you the computation that is set down in the exhibit in the second column? A. Yes, sir.

Q. Will you obtain the figures for us, please? A. Yes, sir.

Q. Now, will you turn, Mr. Sappington, to Commission's
6486 Exhibit 507?

Mr. Albert: May I ask the indulgence of the Court for a minute or two?

Examiner Bennett: All right.

Mr. Martin: Your Honor please, the witness indicated a desire for a short recess.

Examiner Bennett: All right. We will give him a recess of five minutes.

The Witness: Thank you.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may resume.

By Mr. Albert.

Q. Now, coming back to Commission's Exhibit 505, Mr. Sappington, and turning to the column "$11.75 cost," we again find a different sort of computation of figures than is contained in the rest of the exhibit. Will you explain that, please, as to what you mean by 104 to 14? A. I mean that the piece sales, "$11.75 cost," dropped from 104 pieces in February of 1935, to 14 pieces in February of 1936.

Q. So that the figure 14 in that column corresponds to the figure minus 191 in the $10.75 column; is that it? A. Oh, no. 6488

Q. Will you explain that, please? A. I just stated that under $11.75 cost the figures indicated that the piece sales dropped from 104 pieces in February of 1935 to 14 pieces in February, 1936.

Q. Yes. You are correct. That is my mistake. The difference between 104 and 14 corresponds to the figure in 191 in $10.75 cost? A. That is right.

Q. That is right. Now, turning to Commission's Exhibits 508 and 509, what do those figures constitute? They constitute—if I may paraphrase it for you—correct me—the difference in the net piece sales in the departments listed for all types of merchandise for all price lines between 1935 and 1936; is that correct? A. No. 6489

Q. What then? A. Exhibit 508 gives the actual net piece sales.

Q. Yes. A. For the spring season of 1935, February to July.

Q. Yes. A. For the departments listed in the first column.

Q. Including all price lines and all types of merchandise sold in the department? A. That is right.

Q. And 509 gives it for 1936; is that not right? A. That is right.

Q. So that addition or subtraction of the comparative figures for the respective months for departments listed will give you the difference in the net piece sales for those departments between 1936 and 1935; isn't that so? A. That is right.

Q. All right. A. With the exception of Department 331, inasmuch as this is for dresses only.

Q. I don't quite understand that. A. Well, you see, this Exhibit 508 is headed "Dresses" and Exhibit 509—

Q. 508 is headed "Dresses"? A. Yes. Commission's
6491 Exhibit 508, "Dresses, Net Piece Sales, Spring, 1935."

Q. Go ahead. A. 509, "Dresses, Net Piece Sales, Spring, 1936."

Mr. Meder: Ha, ha!

The Witness: Now, in Department 371 and in Department 385 we carry merchandise which is not dresses.

By Mr. Albert.

Q. So that— A. This is for dresses only. Now, in Departments 338, 358, 359, 367, and 369, all the merchandise we carry in those departments we consider as dresses.

Q. So that when you head up this Exhibit 508 and 509 as "Dresses"— A. It means dresses.

6492 Q. And the inclusion of Departments 371 and 385 refers only to the subdivision of those departments and not to the entire department? A. Only to dresses in those departments.

Q. And refers to the dress subdivision? A. Well, if you choose to call it a subdivision. We have no subdivision of the department.

Q. But you haven't included, in Commission's Exhibits 508 and 509, everything that is sold in Departments 371 and 358, have you—385, have you? A. No, sir.

Q. So that to that extent the exhibits are not perfectly clear, are they? A. It pertains to dresses.

Mr. Martin: If your Honor please, I think the exhibit is perfectly clear. It is headed "Dresses" on both exhibits. The exhibit speaks for itself.

Mr. Albert: Yes, the exhibit is clear now.

By Mr. Albert.

Q. Now, Mr. Sappington, you have headed Commission's Exhibits 508 and 509, "Net Piece Sales"? A. That is correct.

Q. Will you turn to Commission's Exhibit 505, and will you turn to the second column? How is that headed up? 6494
A. Piece sales.

Q. What is the difference? A. No difference.

Q. Well, then, shouldn't you have headed the second column of Commission's Exhibit 505, "Net Piece Sales"?

Mr. Haycraft: Ha!

A. Possibly, but all of these figures are net. We deal only in net figures.

By Mr. Albert.

Q. Yes, but you are using two contrasting— A. No, there is no contrasting——

Q. —figures here. One is piece sales and one is net piece sales. A. They mean the same thing. 6495

Q. You didn't explain that, did you?

Mr. Albert: The witness shakes his shoulders.

The Witness: Took it for granted.

By Mr. Albert.

Q. You took it for granted? A. It is obvious to us. We deal only in net figures, every figure.

Q. If you deal only in net figures, why was it necessary to head up Commission's Exhibit 508 as "Net Piece Sales"?

Mr. Haycraft: Ha! I object to that, Mr. Examiner; no sense to it, nonsensical and farcical, these questions are getting to be now.

Mr. Albert: If it please the Court, we have here two exhibits with different titles on them, and I assume that when two exhibits are placed into evidence, one with one title and one with another, that we are referring to different things.

Examiner Bennett: Will you let me see those exhibits, please?

6497 (The exhibits referred to were handed to the Examiner.)

Mr. Haycraft: That is 508 and 509.

Mr. Albert: Has your Honor 505?

Examiner Bennett: Yes.

Mr. Albert: The second column is headed "Piece Sales." Now, the figures which correspond to that is the difference between the figures presented on Commission's Exhibit 508 and the figures presented on Commission's Exhibit 509, but Commission's Exhibit 508 and 509 are headed "Net Piece Sales." I don't think that is clear unless it is brought out.

Examiner Bennett: What is the pending question?

6498 (The question was read.)

Examiner Bennett: You may answer.

A. It wasn't necessary. It could have been headed "Piece Sales."

By Mr. Albert.

Q. Now, Mr. Sappington—question withdrawn.

Mr. Albert: Mr. Martin, will you turn to page 3528 of the record? I am going to refer to that.

Mr. Martin: I haven't yesterday's copy of the record.

Mr. Albert: Do you want to follow it with me?

Mr. Post: Sit over here. Do you want to sit over here?

Mr. Martin: No, that is all right.

By Mr. Albert.

Q. Now, Mr. Sappington, referring to Commission's Exhibit 504. A. Yes, sir.

Q. What does the figure —59 in the second column, the first line, mean? A. The difference in piece sales for the month of February between 1935 and 1936. 6500

Q. Does that mean that you sold 59 less units in that entire department during that time? A. That is right.

Q. Now, I read you the question and answer with reference to that column propounded by Mr. Martin, and ask if you wish to change your testimony: "Now, what does the next line refer to? Answer: The next column referred to the piece sales, the difference in piece sales on the same basis. In other words, in February of 1936 we sold 59 more pieces in that department than we did in February, 1935"? A. That is wrong. That is a misstatement.

Q. You want to correct your statement to say that it is 59 less pieces, is that correct? A. 59 less pieces in 1936 than in February, 1935.

Q. All right. 6501

Mr. Martin: Is that all from that?

Mr. Albert: Yes.

By Mr. Albert.

Q. Now, Mr. Sappington, you have testified that you have made a study of the trend of sales. What elements did you take into consideration in making that study? A.

Stock on hand, advertising, sales help, all the factors tha pertain to getting business in a retail establishment.

Q. And those factors enter into the question whether o not a department goes ahead of a prior year or falls be hind a prior year; isn't that so? A. They may. The may, yes.

Q. There is no question of that in your mind, is there A. No.

Q. Would you say that the physical space allotted to department is also something to be taken into considera tion? A. It might have an effect.

Q. The promotional sales in a department? A. The
6503 might have an effect.

Q. The amount of mark-up? A. That might have a effect.

Q. The window space allotted to a department? A That might have an effect on the volume.

Q. And all those things are the various elements whic will or may affect the volume in a department, is that no so? A. Some of the elements.

Q. Of course, another very vital element to be taken int consideration is the change of the personnel of the depart ment, if any; is that not so? A. Well, it depends o which personnel you mean.

Q. Well, let us say, for instance, if a buyer changes there was one buyer in January and a new buyer in Feb ruary; that may perhaps affect the volume of the depart
6504 ment? A. It might; it might.

Q. And if there are any physical alterations made i the department, that also might affect the department is that not so? A. It might help; it might hurt.

Q. At least, during the time that the physical altera tions in a department are being made, would you say tha that might tend toward a lessening of the efficiency o the department; that is, during the course of time whe repairs were being made? A. I think that is a matter o opinion.

Q. Well, what is your opinion? A. Why, I have no definite opinion one way or another.

Q. How do you feel about it? A. In my experience I have seen departments that were moved about do an excellent business.

Q. Yes. A. Seemed to stimulate them.

Q. And— A. And we usually consider it a matter, if a department claims that it loses business because it is being moved or changed, we consider that a matter largely from the standpoint of alibi.

Q. I see. A. We don't take that seriously in our business.

Q. Yes. But I was not referring to that, was I, Mr. 6506
Sappington? A. Referring to what?

Q. Was I referring to the fact that departments are being moved around, or was I referring to the fact that physical alterations and repairs are being made in a department where it is situated? A. Well, I understood that you meant moving around.

Q. Let me have your answer. A. Yes, physical alterations and moving around usually go hand in hand.

Q. I will go with you on that. But now let me have your opinion as to whether or not repairs and improvements, physical improvements being made in a department, in its particular situation in a store, will not affect the volume of that department, while alterations, physical improvements, and repairs are being made? A. Not nec- 6507
essarily.

Q. So that with workmen working around the department, and tools cluttered around, and woodwork thrown around, and hammering going on, and show cases being torn down and replaced, you say that that would not affect the customer volume any in the department? A. We don't throw woodwork around, and we don't tear down show cases, and we don't tear plaster in the customer's—in front

of a customer and that sort of thing. Where we have alterations, we handle them in a very orderly manner, and we do it to the least possible disturbance of business, and——

Q. But there is some disturbance? A. —and we rebuilt almost our entire store, and our volume increased steadily.

Q. Well— A. —and I can show you plenty of figures.

Q. Yes, but there was some disturbance, was there not? A. There was some disturbance, but not necessarily a loss in business.

Q. Now, with respect to Department 338, Mr. Sappington, where was that located in 1935? A. In 1935 Depart-
6509 ment 338 was located on the sixth floor of J. L. Hudson & Company, on the Woodward Avenue side of the building about 70 or 80 feet from the south wall.

Q. Was it located in the same place in 1936? A. Approximately.

Q. What do you mean by approximately? How far was it moved back, forward, or sideways? A. I could not tell you without looking at the plans.

Q. But it was not in its identical space, was it? A. Not in the exact location.

Q. Now, with respect to Department 358, where was that located in 1935? A. In just about the same place as 338.

Q. Both— A. They used the same room.

6510 Q. Both side by side? A. No, this way (indicating).

Q. Or were they inter— A. Intermingled.

Q. Intermingled? A. That is right.

Q. The dresses of the department were intermingled? A. No, some of the dresses were on one side of the room and some on the other. These two departments, 338 and 358, used two rooms. Certain price lines were in one room, certain price lines in another room, in both departments. Certain wardrobes were established in one department and certain wardrobes were established in the other department.

Q. Was one whole side of the room Department 358, and the other whole side of the room Department 338? A. I cannot tell you exactly.

Q. Or were the showcases intermingled? A. There weren't any showcases.

Q. What do you call them? A. Wardrobes.

Q. One wardrobe was 338 and one wardrobe 358, and perhaps two 358 and two 338? A. Perhaps; not always; there was no definite arrangement of stock.

Q. Do both departments handle the same price lines of merchandise? A. Approximately, yes, for the most part of the stock.

Q. What is the difference in the type of merchandise 6512
handled by the departments? A. One was women's and one was misses'.

Q. One was women's and one was misses'? A. Yes.

Q. Was Department 358 moved in the same way? A. 358 and 338 were moved about together.

Q. Both together? A. Yes.

Q. They were not in the same space they had previously occupied, and you are not certain where they were moved to? A. Well, I know where they are now.

Q. Well, didn't you say that you had to have the plans in order to tell how far they were moved? A. You asked me how far, yes.

Q. Did you mean by that that you did not know the exact number of feet they were moved? A. That is right.

Q. Have you any rough idea? A. They are almost in 6513
exactly the same place that they were before.

Q. But not in exactly the same place? A. Well, I can't tell you, I say, without looking at the plans.

Q. Right. A. But almost.

Q. Now, at any time during the period from February 1, 1935, to the present time, were Departments 338 and 358 in any other part of the store, or part of the floor, than where they are at the present time?

Examiner Bennett: Well, I think we will assume that there has not been any thimble rigging of the departments.

Mr. Albert: If it please the Court, with all due respect, I do not think we can assume that, unless the witness testified that it has not been moved.

Examiner Bennett: Well, I am going to assume it.

Mr. Albert: Exception.

By Mr. Albert.

Q. Have any alterations or repairs or improvements
6515 been made with respect to Departments 338 and 358, in so far as their physical condition is concerned?

Mr. Martin: Objected to, as being too indefinite. Let him fix a time.

Mr. Albert: Any time covered by the period to which your figures relate, Mr. Sappington.

Mr. Martin: I still object to it. Let him name the specific time to which he refers.

Examiner Bennett: Well, I will overrule the objection.

Read the question.

(Question read.)

A. What period do you mean, Mr.——

6516

By Mr. Albert.

Q. Any period. I am seeking information from you. A. I am not clear. Our schedule of improvements on the sixth floor covered quite a long period. Now, I cannot recall without consulting our schedules in our superintendent's office when the departments in which you are interested were affected. It is quite possible that Departments 338 and 358 were completed, all changes made, before the 1st of February.

Q. Yes. A. 1936. That is quite possible.

Q. But you are not certain? A. I am not certain, and I could not answer exactly without consulting the schedules which are undoubtedly available in our superintendent's office.

Q. Will you consult those schedules, please? A. I will consult them.

Q. And is——

Mr. Haycraft: Much ado about nothing.

Examiner Bennett: So far as I recall, you have the facts as to what was done with these departments for the last two years—that is, they seem to remain in practically the identical positions in 6518
J. L. Hudson Company's place of merchandising. Now, you are asking about fixing of a time with more definiteness when some sort of a slight change took place, and I am going to instruct the witness to do as he pleases about getting that information. I think it is of no particular consequence, and I am not going to put a burden on him if he does not feel like doing it.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Sappington, is not it a matter of fact that the alterations and the improvements that have been made with respect to the departments in question have been of 6519
such a radical nature and of such a vital nature that merchandise men from all over the country have been visiting J. L. Hudson Company in order to examine these improvements?

Mr. Martin: Objected to.

Mr. Albert: If it please the Court, I believe he has stated that there has been a little change made.

I want to prove that these changes have been very vital and of quite a sizable amount, and must, of necessity, have had some effect upon their department.

Examiner Bennett: Well— I want to ask a question or two.

By Examiner Bennett.

Q. Mr. Sappington, have you a recollection as to the approximate time that you began any changes which might have been made in those departments in the physical location and physical conditions under which they were
6521 operated? A. Yes, your Honor. I believe the changes were begun late in 1935. Whether that came in November or December, I am not certain, but I believe it was in November.

Q. Can you give the approximate date when they were finished? A. No, sir; I cannot do that without consulting records, because the departments were finished in rotation.

Q. Within a month or two? A. Yes, they were finished in rotation. There was a definite schedule applied as to when certain departments were to be completed.

Q. Would they run longer into 1936 than the period during which changes were made in 1935? A. Oh, no, they were completed by March, 1936.

Examiner Bennett: I see. All right.

6522

By Mr. Albert.

Q. As a matter of fact, Mr. Sappington, was not there a new department just completed last week in the store, and an announcement made of it in the newspapers?

Mr. Martin: Objected to.

Examiner Bennett: Sustained. The way the question was asked does not mean anything.

Mr. Albert: Exception.

By Mr. Albert.

Q. When did you finish air conditioning the departments, Mr. Sappington?

Mr. Martin: Objected to.

A. I couldn't tell you.

Examiner Bennett: Sustained.
Mr. Albert: Exception.

By Mr. Albert.

Q. Is it fair to say, Mr. Sappington, that with respect to most of the figures that have been presented with re- 6524
gard to the various departments, without going specifically and technically into each department for each month, that most of the departments, if they fell behind during February, March and April, picked up in May and June—is that a fair statement? A. I couldn't answer that without looking up the records.

Q. At the particular figures? A. Yes, I would have to consult the figures before answering that question.

Q. Well, would you say that if alterations were not completed generally until March of 1936, as you testified in answer to the Court's questions, and if the records reveal that there was a decrease up until March, in either your dollar volume or your total volume of sales, and that that decrease lessened in May and June, would you not 6525
say, in your opinion, from your experience in the dress line, that the alterations made in the departments possibly had some effect on the volume? A. Not necessarily, no, I wouldn't say that.

Q. Very well. Now, Mr. Sappington, will you turn, please, to Commission's Exhibit 483-A again, and on the second page of that exhibit we find there a list of resources—do you follow me? A. Yes, sir.

Q. Is that a list of resources from whom merchandis was purchased during all of 1935? That does not cove any particular period of time, does it? A. It says, "Fal season of 1935."

Q. What period does that take in? A. That takes i from the 1st of August to the last of June.

Q. Is Joan Junior known under any other name? A That is the only name that I know of.

Q. Now, will you show me, please, Joan Junior liste as a Guild house with whom you did business, or whos dresses you used during 1935, as contained in Commi sion's Exhibit 478-A? A. The list of Guild houses wit
6527 whom we did business in 1935 was listed on a separat sheet, the same as the list of Guild houses with whom w did business in the suit department, as illustrated in Com mission's Exhibit 478-B. In giving this information, o in submitting these exhibits, the list of Guild houses fo the junior department was left out.

Q. All junior department? A. For the junior depar ment. I found that in my file this morning.

Q. So that in comprising Commission's Exhibit 47 you omitted entirely dresses purchased in a particula department? A. Accidentally.

Q. Is that it? A. We accidentally——

Q. Well, accidentally or not, it is no less an error, is it

Mr. Martin: Objected to.

6528 A. It is not included.

Mr. Martin: Object to that statement.

Mr. Albert: Now——

Mr. Martin: And ask that it be stricken fro the record. There is no evidence that it is in erro at all, the witness stated that it was not offered i evidence——

Examiner Bennett: Well, it may stand.

Mr. Haycraft: Ruling?

Examiner Bennett: Let it stand.

By Mr. Albert.

Q. Now, Mr. Sappington, referring again to Commission's Exhibit 483-A, in the list of resources we find Dalton—do you see that? A. Yes.

Q. Am I correct in saying that the asterisk under the column heading "Guild" means that that is a Guild house? A. That is what it seems to indicate, yes.

Q. Now, can you tell me from what source you determined that Dalton was a member of the Guild? A. Well, 6530
either from the buyer or from the merchandise manager, I do not know which, but that is the way we got most of our information about the members of the Guild, either—

Q. Did you not look at that list? A. Either from the list on the back of your—of the Guild stationery, or from our market contacts.

Q. Would you be good enough, please, to look at the list you referred to and see if you can find Dalton listed as a Guild house? A. No, it does not seem to be here.

Mr. Martin: What is that list you referred to?

The Witness: It is under the junior miss houses, I suppose; it is not under the junior miss houses or in the other listing.

6531

By Mr. Albert.

Q. When the buyer told you——

Mr. Martin: What date does the list refer to?

The Witness: As near as I can tell, it refers to 1935.

Mr. Martin: What particular time in 1935?

The Witness: This letter is dated November 8.

By Mr. Albert.

Q. When a buyer told you that a particular house was a Guild house, did you check that with the list to which you have referred to see if the buyer was correct? A. No, not always.

Q. You took the buyer's word for it, and you have taken the buyer's word for all the testimony that you have given that you have not had personal knowledge of, but that was communicated to you by the buyer; is that not so? A. Not necessarily.

Q. As a matter of fact, Mr. Sappington, do you not know personally that Dalton is not a Guild house? A. I
6533 do not.

Q. And never was a Guild house? A. I do not.

Q. Now, Mr. Sappington, coming back to Commission's Exhibit 505, which refers to Department 369, you stated that column 2 refers to the net piece sales of the department. Is that correct, despite the fact that the column is headed "Piece Sales, 3536"?

Mr. Martin: Objected to. It is repetition; he is going over the same ground.

Mr. Albert: I wish to point out another discrepancy. Your Honor please. I am merely recalling to the witness' memory what he testified to.

Examiner Bennett: All right.

6534 A. Piece sales or net piece sales, they mean the same thing.

By Mr. Albert.

Q. Right. Now, turning to Commission's Exhibit 507, which is likewise headed "Analysis of Department 369." We find there the total piece sales; is that not right? A. That is right.

Q. But that designation of piece sales does not refer to the net piece sales of Department 369, but rather refers to the piece sales in the price lines indicated in that exhibit; is that not right? A. That is right.

Q. So that piece sales is used on Commission's Exhibit 505, in one sense, and is used on Commission's Exhibit 507, in another? A. Exhibit 505, the piece sales, meaning the piece sales for the whole department.

Q. Right. A. Commission's Exhibit 507, the piece sales mean the piece sales for the four cost prices set forth on that sheet.

Q. So that, as I said, the designation "Piece Sales" in Commission's Exhibit 505 is different than the designation "Piece Sales" in Commission's Exhibit 507? 6536

Mr. Martin: That is objected to.

A. Piece sales are always piece sales, they cannot be anything else.

Q. Yes, but piece sales in Commission's Exhibit 505 refers to an analysis of Department 369, and in Commission's Exhibit 505 piece sales refers to an analysis of Department 369, meaning the net piece sales of the entire department, and piece sales referring to analysis of Department 369 on Commission's Exhibit 507——

Mr. Martin: Now——

By Mr. Albert. 6537

Q. ——refers solely to the price lines indicated, and not to the whole department as the exhibit is headed; is that not so?

Mr. Martin: I object to this long peroration on the part of counsel for the respondent. If your Honor please, the witness has stated two or three times exactly what these figures and designations

refer to, and the exhibits speak perfectly clear for themselves. So, I object to any continuance of keeping on going into that same question, asking him the same question over again.

Mr. Albert: If it please the Court, I want to urge it, and I think it has been demonstrated now that black on an exhibit means one thing, in one place, and black on an exhibit referring to the same department means something else in another place, and how can anybody check up on these figures when terms are used indiscriminately and interchangeably with respect to the same terms which
6539 appear as to the same department.

Mr. Martin: Objected to.

Examiner Bennett: All right. Objection sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Sappington, do you know whether or not Department 338 occupied more physical space in 1936, or less physical space in 1936 than it did in 1935? A. No, sir. I don't know whether or not I found more or less. I know that it was adequate at both times.

Q. So that physical space of Department 338 in reaching your conclusion or opinion as to what caused the differ-
6540 ence between the volume in 1935 and 1936 is unknown to you? A. I am quite sure that the space had nothing to do with it. It was adequate at both times.

Q. Will you please answer my question? You don't know what the difference in the amount of physical space is, whether it had any effect or not?

Mr. Martin: Now, if your Honor please, I object to that. There hasn't been anything shown that there was any difference.

Examiner Bennett: Sustained.

Mr. Albert: He hasn't answered that that is so. That is exactly the answer I want.

Examiner Bennett: Sustained. There is no foundation for further questioning along that line. He doesn't know.

By Mr. Albert.

Q. Did Department 358 occupy more or less space during the period from February 1, 1935, to July, 1935, as contrasted with the period February 1, 1935, to July, 1936? A. I do not know.

Q. You have no knowledge of that. And is the answer 6542
the same with respect to Department 359? A. I don't know the exact space occupied by any of the departments during 1935 or 19—or at present, the exact square feet.

Q. I am not asking you that. I am asking you generally, did the departments—were the departments allotted more or less space in 1936 over the space that they were allotted in 1935?

Mr. Martin: Objected to. The witness has already answered that.

Mr. Albert: He has answered, your Honor, in a very quibbling fashion that he doesn't know it in feet and inches. I didn't ask him that.

Examiner Bennett: Yes. Well, he doesn't know.

Mr. Albert: Very well. 6543

Examiner Bennett: I will sustain an objection to further asking of that question.

By Mr. Albert.

Q. Mr. Sappington, do you know how many sales were held in Department 338 in the period of February, 1935, to July, 1935? A. The number of sales?

Q. I am not referring to specific itemized sales of articles, Mr. Sappington. You understand that.

Examiner Bennett: You mean promotional sales?

By Mr. Albert.

Q. Promotional sales. A. No.

Q. Do you know how many promotional sales were held in Department 338 in the period of time referred to in 1936? A. No.

Q. And do you know the information along that line for any of the departments? A. No.

6545 Q. So that that element was not taken into consideration in reaching your opinion; is that right? A. Yes, it was taken into consideration in reaching my opinion.

Q. Do you know what the volume of stock was in Department 338 in the period referred to in 1935? That is, in my question which I asked you at the present time I am referring to the period for which you submitted figures. A. From February to July.

Q. From February to July, 1935, and from February to July, 1936. A. Yes.

Q. So that I won't repeat the time. A. (Witness nods head affirmatively.)

Q. Do you know what the volume of stock was in Department 338 for that period? A. Well, I don't keep that

6546 figure in my head, but I have it with me.

Q. You have the figures with you at the present time? A. Yes, the price lines covered in the testimony, yes.

Q. Will you give us those figures, please? A. Department 338, first?

Q. If you please. A. Now, I would like to—our figures—I would like to make a slight explanation here, if I may?

Examiner Bennett: Yes.

The Witness: Please. Our figures on stocks are made up by weeks so that I will have to give you the weeks in February and the weeks in March, April, May, June, July and so forth.

By Mr. Albert.

Q. You haven't up to the present time, totaled those figures? A. Well, no. We don't total them. They are of no use to us totaled because we operate by weeks.

Q. Did you attempt to obtain or find any one figure demonstrating the volume of stock on hand? A. We have no figure that could do that. I couldn't give you any 6548 figure, single figure that would show our stock on hand.

Q. In that department? A. No.

Q. Wouldn't the addition of the various weeks give you that? A. No.

Q. Wouldn't you be able to deduct, carry over of each week in order to get the figure? A. (Witness shakes head negatively) No.

Q. Couldn't you strike an average? A. No, average wouldn't mean anything.

Q. Well, then, as a matter of fact, wouldn't giving us the weekly figure not mean very much? A. Oh, yes, it means a great deal. It tells us exactly what we had. That is the shortest period of time to which we can bring these figures down.

6549

Q. But wouldn't the figure of a second week of a month also include, let us say, some dresses that were in the department in the first week? A. Oh that is possible, but our—we—we develop these figures to show our ability to take care of business at these price lines as nearly as figures can by indicating the number of pieces we have to take care of our business during that week.

Q. Well, let's simplify it, Mr. Sappington. Well, now, Mr. Sappington, averages with respect to your volume in

1936 you have testified wouldn't mean a thing; isn't that so? A. Oh, no.

Q. I mean, averaging each week in order to obtain a single figure? A. Well, averaging——

Q. For 1936? A. Average the figures, averaging the weekly stock figures indicating the number of pieces on hand.

Q. Yes. A. The weekly figures for any given period of time, a month or a season or a year, wouldn't mean anything to me.

Q. Right. That is what I thought you said. A. Yes.

Q. But contrasting your average for 1936 and your aver-
6551 age for 1935 would give you a proper figure to compute by? A. It wouldn't mean anything to me. It would be just a figure, as far as I am concerned.

Q. Wouldn't that in some way permit you to determine the sales trend? A. You mean that number of pieces on hand?

Q. No, your average number of pieces on hand in 1936 as contrasted with your average number of pieces on hand in 1935, each figure being computed by the same method. A. Oh, it would be a figure, but I don't know what it would mean.

Q. Very well. That is all I wanted to get. A. I have never seen such a figure.

Q. All right.

6552 Mr. Haycraft: Let the record show, Mr. Examiner, that the witness has not been allowed to answer the question as propounded to him about this stock on hand. He has the figures here ready to answer the question but the question has not been pressed.

By Mr. Albert.

Q. Now, Mr. Sappington, did you make any investigation of the amount of advertising by J. L. Hudson & Com-

pany with respect to the departments on hand as contrasted between 1935 and 1936? A. Yes, sir.

Q. What did you find? A. I can't answer that because I don't carry those figures in my head, but I have them here.

Q. Can you tell us approximately what you find? A. Oh, no, no, sir.

Q. Well, look at your figures and let us have them. A. Which departments?

Q. Department 369. A. Department 369. Which month? Right straight across?

Q. Yes. A. Our advertising figures and all the figures that we handle on advertising are on the basis of comparison and are in percentage. Department 369, January of 1936, 5.9 per cent. 6554

Q. What does that mean, Mr. Sappington? A. 5.9 per cent. of the sales.

Q. Right. A. In January, 1935, 5 per cent. of the sales; in February of 1936, 5.3 per cent. of the sales; in February of 1935, 3.1 per cent. of the sales; in March of 1936, 4.5 per cent. of the sales; March of 1935, 6.6 per cent. of the sales.

In each case the first figure I will give '35 in order to avoid repeating. The second figure is '36. I am wrong again. The first figure will be '36. The second figure will be '35.

March, 4.5, 6.6; April, 4.0, 5.0; May, 4.6, 3.3; June, 3.7, 3.2; July, 4.9, 3.5. 6555

Q. The first figure given in each case— A. The first figure given in each case is 1936; the second figure given in each case is 1935.

Q. Now, Mr. Sappington, do those figures refer to the entire Department 369, or do they refer to the various subdivisions with respect to which you have— A. The entire department.

Q. The entire department?. A. The entire department.

Q. So that in so far as their figures are concerned, there is no specific direct relationship to the particular department for which you have given figures? I mean, they are naturally included? A. Yes, in this department there happens to be because the figures we have given on these exhibits from $8.75, $10.75, $11.75 and $12.75 cost——

Q. Yes. A. —are the important price lines in this department, and are the price lines to which we restrict practically all of our advertising, I would say over—90 per cent. or over, except during clearance periods and our month-end periods, which is our clearance for each

6557 month.

Q. Have you got any figures to prove that? A. Oh, I know that to be a fact.

Q. Well, now, then, if those price lines are the most important things in the department, and most of your business in that department is restricted to those price lines, and most of that merchandise is Guild merchandise, why, in Commission's Exhibit 369, have you split your figures to include the total department of the net piece sale and haven't given us the figures with respect to those particular price lines?

Mr. Haycraft: Objected to that.

A. I don't believe—I am sorry——

6558 *By Mr. Albert.*

Q. Take a look at Commission's Exhibit 505.

Mr. Martin: You just referred to another exhibit. You referred to Exhibit 369. What exhibit are you referring to?

Examiner Bennett: Will you read the question?

(Question read.)

Mr. Albert: Make that Exhibit 505.

Mr. Martin: I object to the question. It is unintelligible.

By Mr. Albert.

Q. With respect to your advertising, Mr. Sappington, you just stated that the advertising figures that you have presented apply to the particular price lines that you have —for which you have presented figures for that department, because those price lines comprise most of the business that is done in that department, and the rest of the business is very little; is not that so, and that is why——

Mr. Martin: No. 6560

By Mr. Albert.

Q. —your advertising figure covers the price lines for which figures have been presented?

Mr. Martin: I object to any such statement as that.

Mr. Albert: I am asking the witness if that is what he said.

Mr. Martin: Well, that is all right.

Mr. Albert: He can contradict me.

Mr. Martin: And I am objecting to the question. The witness did not state that. He testified that his advertising referred to the entire department, that in this particular instance those price lines 6561 were the main items in that particular department to which he was referring.

Mr. Albert: And we——

Mr. Martin: And that, therefore, 90 per cent. of the advertising did directly refer to those particular lines.

Mr. Albert: And so I am asking him whether or not the merchandise in Department 369 not in-

cluded in $8.75, $10.75, $11.75 and $12.75 is not an insignificant portion of that department.

Examiner Bennett: Is that your question now?

Mr. Albert: Yes.

Mr. Haycraft: We have no objection to that.

The Witness: Nothing is insignificant in Department 369. It may be a small proportion, but, after all, "small" is a relative term, and I told you that I couldn't tell you exactly without consulting the record. Now, I don't know how much additional merchandise there was in that department in February. I do know this, that our advertising policy
6563 with respect to Department 369 confines itself to the promotion for the most part, for the very large part, to the price lines $8.75, $10.75, $11.75 and $12.75 cost.

By Mr. Albert.

Q. So that the figure in column 2 of Commission's Exhibit 505 in February, minus 57, some of that decrease is due to the fact that no advertising, or very little advertising effort was put behind the merchandise in Commission's Exhibit 505, which was not in the price lines $8.75, $10.75, $11.75 and $12.75; doesn't that follow? A. Very little advertising was put behind that merchandise in either 1935 or 1936. It has no bearing on the figure for either
6564 year. Our policy was just the same in 1935 as it was in 1936.

Q. About how many units would you be leaving out of the computation if in computing piece sales for '35 and '36 in February, the Department 369 entirely omitted all price lines not in compass with the $8.75 and $12.75 price lines?

Mr. Martin: Objected to. He has already testified that he couldn't answer that question without the figures.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

Mr. Martin: Now, if your Honor please, let the record show that the figures, advertising figures, were produced for all departments at the request of Mr. Albert, and the question was not followed up.

Mr. Albert: Let the record also show, if it please the Court, that thus far the figures that have been presented are total figures for departments, and they have not been explained as to how they specifically apply to the subdivisions of various departments which have been presented here; and let the record also reveal that they don't show the price 6566
lines, the breakdown of the price lines for which figures have been submitted.

Mr. Martin: I move that the statement be stricken as an incorrect statement of fact.

Examiner Bennett: I am going to let both statements stand. I think there is no special obligation on the part of the cross-examiner to put anything in that he does not see fit to put in, whether it is produced or not produced, because I do not think it means anything to call attention to that fact in the record.

By Mr. Albert.

Q. Mr. Sappington, you knew Mrs. Miller, did you not? 6567
A. I have met Mrs. Miller.

Q. She is the Guild shopper? A. Yes, sir.

Q. What was her customary method of operation in the store?

Mr. Martin: Objected to; no proper foundation.

Examiner Bennett: I will let him answer if he knows; if he doesn't know, he may say so.

A. I don't believe I had enough contact with Mrs. Mill to know her method of operation. I saw her at certain times. I didn't see her regularly. Whether or not she did—she always did what she did when I saw her—I couldn't say.

By Mr. Albert.

Q. She was known to you, wasn't she, before she commenced her duties as a shopper of the Fashion Originators Guild?

Mr. Martin: Objected to as being irrelevant and immaterial, and having no bearing on this issue, 6569 also, outside of the scope of direct examination.

Mr. Albert: Does the Commission wish to withdraw the paragraph in its complaint in which it charges that Guild shoppers spied? Do you mean to tell me that the Commission's attorneys don't know what they are charging in their complaint?

Mr. Martin: Oh, yes, we know. Read the question.

Mr. Albert: That is what the question has been about ever since we left New York, to demonstrate that the Guild shoppers openly went into the various retail establishments, made themselves known, and acted with the full consent and co-operation of every retailer and did nothing in an underhanded 6570 or spying manner.

Mr. Martin: I think if you will read the question back, you will see that you asked what she did before she was a shopper.

Mr. Albert: That wasn't the question at all. The question was——

Mr. Martin: Read the question.

Mr. Albert: Your Honor, please, the question was, "Did you know her before she was a shopper?"

Mr. Meder: Read the question back.

Mr. Martin: Read the question back.

Examiner Bennett: Never mind. You may answer the question.

A. I did not. I did not know Mrs. Miller before she was a shopper for the Guild.

By Mr. Albert.

Q. Do you know whether or not she was known to J. L. Hudson Company?

Mr. Martin: Objected to.

By Mr. Albert. 6572

Q. Or to any executives or buyers in J. L. Hudson Company?

Mr. Martin: Objected to as irrelevant and immaterial and calling for the opinion of this witness, which he absolutely couldn't know.

Examiner Bennett: I will let him answer, if he knows; if he doesn't know, why, he may say so.

A. I don't know.

By Mr. Albert.

Q. Don't you know as a matter of fact that Mrs. Miller was at one time employed by J. L. Hudson Company? 6573

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: I will let him answer.

A. I don't—I didn't know, no.

Examiner Bennett: We will take a recess for luncheon until 2.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please. You may proceed.

By Mr. Albert.

Q. Mr. Sappington, in order to curtail cross-examination on this, can you answer this question: Would you say that Mrs. Miller's activities in shopping J. L. Hudson Company were not in any way surreptitious or secretive or underhanded, and that J. L. Hudson & Company were at all times generally aware of the fact that she was shopping
6575 the various departments?

Mr. Martin: Objected to.

Examiner Bennett: Overruled. You may answer.

A. I would say that there were times when we didn't know what Mrs. Miller was in the store for, whether she was there to detect copies, whether she was there as a matter of general observation, or what; and there were often—after she had completed her work, she announced what she had come to find out and not when she first arrived.

By Mr. Albert.

Q. But you knew Mrs. Miller? You knew she was a
6576 shopper? She didn't conceal the fact at any time that she was the Guild shopper, did she? A. No, she didn't conceal the fact that she was a Guild shopper.

Q. Do you mean by your previous answer that there were times when she might have come into the store and, without first seeing the buyer, started to shop the particular department? A. That is right.

Q. But after she shopped the department, she would generally speak to somebody about it, if she found anything? A. Sometimes she did.

Q. And as a general rule, you knew what she was doing and what she was there for? A. No. We didn't know whether she was there—what she was there for until she told us what she was there for.

Mr. Albert: May I have Commission's Exhibits 475, 480 and 486?

(The exhibits were handed to Mr. Albert.)

By Mr. Albert.

Q. Mr. Sappington, in connection with Commission's Exhibit 475, which is the declaration of co-operation, that declaration of co-operation is signed specifically by G. R. MacDonald for the basement store, is it not? A. That is right. 6578

Q. Mr. MacDonald is the man who was on the stand here yesterday; is he the man, the MacDonald that is referred to? A. Yes.

Q. This declaration of co-operation was to apply to your ready-to-wear department, isn't that so? A. That is right.

Q. In connection with Commission's Exhibit 475, was any letter sent, or any communication had with the Fashion Originators Guild of America prior to the signing of the declaration of co-operation? A. Before we signed the declaration of co-operation, we received a letter from the Guild or from Mr. Rentner, at least—from Mr. Rentner, on Guild stationery, stating the policy of the Guild.

Q. That is Commission's Exhibit 480? A. 480-A. 6579

Q. Right. A. 480-A, right.

Q. Was any communication from you—by "you" I mean either yourself personally or J. L. Hudson & Company, as you will—to the Fashion Originators Guild in answer to Commission's Exhibits 480-A and B? A. Not that I recall.

Q. And in addition, Commission's Exhibit 486, in evidence, is advice from the A.M.C. to you to sign the decla-

ration of co-operation, is it not? I am referring to the telegram from Bergdahl to you personally, Commission's Exhibit 486. A. I think Exhibit 486 states what it states.

Q. Yes. Now, is there any restriction of any kind contained in Commission's Exhibit 475?

Mr. Martin: Objected to, your Honor. The exhibit is in evidence and will speak for itself.

Examiner Bennett: Read the question, please.

(Question read.)

Examiner Bennett: I think I will sustain the objection unless it is made more specific.

6581 *By Mr. Albert.*

Q. In connection with the signing of Commission's Exhibit No. 475, being the declaration of co-operation of J. L. Hudson & Company, was there ever any request by J. L. Hudson & Company for any exceptions with respect thereto? A. Yes.

Q. Prior to the signing of the declaration of co-operation? A. Not prior to the signing.

Q. You received the letter of Mr. Rentner—withdrawn. The letter of Mr. Rentner, Commission's Exhibit 480, is dated June 16, isn't that so? A. That is so.

Q. Is it your understanding that you had until approximately July 5 to sign the declaration of co-operation if you wanted to sell the fall lines, roughly speaking? A. I
6582 suppose we could have waited until July 5. There was no penalty attached to our not waiting.

Q. You have anticipated my next question, Mr. Sappington. And despite the fact that you had until July 5, and probably received Mr. Rentner's letter on or about June 17, your declaration of co-operation signed without exception was delivered to the Fashion Originators Guild on June 22; is that not so? A. I cannot answer as to that definitely. There is a date there, June 22, which I assume was put there by the Guild office.

Q. Have you any reason to believe that that declaration of co-operation was not signed and received by the Fashion Originators Guild at the time stated? A. No; I would say that is approximately correct.

Q. Right. Now, I do not suppose—and I mean no inference of any kind by this question—that J. L. Hudson affixes its signatures to any documents or representations of any kind without being sincere with respect thereto, does it? A. No, sir.

Q. And, of course, when you signed the declaration of co-operation you meant everything that was contained in there to be a statement of J. L. Hudson's policy; is not that so? A. Yes, sir. 6584

Q. So that you believed, when you signed the declaration of co-operation, that the elimination of style piracy was for the protection of the public, didn't you?

The Witness: Your Honor, it is difficult for me to answer that question "yes" or "no" without explaining how we felt when we signed this declaration of co-operation and sent it in to the Guild.

By Mr. Albert.

Q. Now, you have testified——

Mr. Martin: Now, just a minute. You asked him——

Mr. Albert: I will bring it out, Mr. Martin. If it please the Court—— 6585

Examiner Bennett: The question isn't being pressed?

Mr. Albert: No.

Examiner Bennett: As I understand it.

Mr. Martin: All right, sir.

By Mr. Albert.

Q. When you signed the declaration of co-operation, that was sincerely meant to be a declaration of policy of the J. L. Hudson & Company, was it not? A. Well, again I can't answer that question without explaining the background for our signing the declaration of co-operation with the Guild.

Q. When the J. L. Hudson Company signed the declaration of co-operation, was that not a sincere representation of the policy of J. L. Hudson & Company? I think that question can be answered "yes" or "no."

6587 Mr. Martin: If your Honor pleases, the witness has already testified that he could not answer that "yes" or "no," and he can answer it with explanations. He said that three times now.

Mr. Albert: Well, now, I will put it this way:

By Mr. Albert.

Q. Do you mean that in signing the declaration of co-operation, J. L. Hudson & Company departed from its policy of not signing anything which was not a sincere representation of its policy? A. I cannot make our position clear unless I am allowed to explain what we discussed and what we decided before we signed this declaration of co-operation.

6588 Q. In submitting the declaration of co-operation on direct examination you made no explanation thereof, did you? A. I don't know. My testimony is in the record.

Q. Well, as a matter of fact, don't you recall what you testified to? A. No, I don't remember it exactly.

Q. Well——

Mr. Martin: As a matter of fact, he was not asked the question.

By Mr. Albert.

Q. I do not want to know exactly. I want to know generally. Do you not know that you made no explanation of the point of whether or not J. L. Hudson & Company was sincere in their representation of the matter contained in the declaration of co-operation?

Mr. Martin: Objected to. That question was not asked of him.

Mr. Albert: In other words, if the lantern is not lit when it is swinging when the train is approaching, he is not going to testify that it wasn't lit when somebody gets hit when they cross the crossing, is that it? 6590

Mr. Martin: I object to that and ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

By Mr. Albert.

Q. Mr. Sappington, in June of 1933 how many manufacturers would you say were members of the Fashion Originators Guild of America? A. I don't know.

Q. Do you recall whether or not you tried to determine how many there were?

Mr. Martin: Objected to as immaterial and irrelevant. 6591

A. I believe the——

Mr. Albert: I am laying a foundation, if it please the Court. I believe the Court knows exactly where I am going and I think the witness knows.

Examiner Bennett: Overruled. You may answer.

A. I believe that the manufacturers that belonged to the Guild in 1933 were listed on the Guild stationery.

By Mr. Albert.

Q. Quite right. A. And were listed on Mr. Renther's letter.

Q. Quite right. And did you make any tabulation of the number that there were? A. We were familiar with them at the time.

Q. No, I mean— A. No, I didn't count them.

Q. You didn't count them? A. I thought that I could count them at any time.

Q. Yes. Will you accept for the purpose of further questioning my statement that there are approximately thirty-five houses listed on that letterhead? A. I would
6593 like to see the letter.

Q. Thirty-five garment houses? A. I would like to see the letter.

Q. Go ahead and count them. A. I would say that is about right.

Q. Roughly? A. Yes.

Q. As a matter of fact, isn't it exactly thirty-five, Mr. Sappington? A. I don't know. I didn't count them. I just glanced at the list.

Q. How many manufacturers of garments would you say that there were in the industry in 1933, roughly speaking? A. All types of garments?

Q. In the price lines that we have been discussing. I do not want any definite figure, just an approximate
6594 figure? A. I wouldn't know.

Q. Would you say that there were 5,000? A. I wouldn't know.

Q. Would you say that there were 4,000? A. I wouldn't know.

Q. Would you say there were only thirty-five? A. I wouldn't know.

Q. Have you any idea whatsoever? A. I don't——

Mr. Martin: Objected to, your Honor. The witness has already said that he wouldn't know; that he had no idea.

By Mr. Albert.

Q. Won't you give me your estimate as divisional merchandise manager, or assistant, of J. L. Hudson & Company, where you have been employed now for the last number of years, about which you have testified that you have had complete charge of the industry, of the number?

Mr. Martin: Objected to.

6596

By Mr. Albert.

Q. —of the manufacturers?

Mr. Martin: He has not testified——

By Mr. Albert.

Q. —of the number of manufacturers that there were in June of 1933? A. I don't know.

Q. Did you make any investigation at that time when you received Mr. Rentner's letter of June 16? A. Any investigation of what?

Q. Of the number of manufacturers that there were in addition to the thirty-five listed on Commission's Exhibit 480? A. No.

Q. Well, now, Mr. Sappington, do you know how many members there are in the Fashion Originators' Guild of America to-day—manufacturers? A. No, I would not know that. 6597

Mr. Martin: Objected to as being immaterial and irrelevant as to how many manufacturers there are in the Guild to-day.

By Mr. Albert.

Q. Do you know——

Examiner Bennett: I overrule the objection.

The Witness: Pardon me?

Examiner Bennett: I think you have answered, I say; I overrule the objection.

By Mr. Albert.

Q. Do you know that all the members of the Fashion Originators Guild at the present time were in business and operating in June of 1933? A. Pardon me, I did not
6599 get the first part of the question, I am sorry.

(Question read.)

A. No, I do not.

Q. Without stretching your modesty too greatly, Mr. Sappington, would you not say that in June of 1933, J. L. Hudson Company was one of the leading department stores in the United States? A. That is right.

Mr. Martin: Well, we are willing to stretch it, if necessary.

By Mr. Albert.

Q. Doing a great volume of business? A. That is correct.

6600 Q. And, as a matter of fact, with respect to the total volume of business done under one group, was not J. L. Hudson Company among the first three department stores in the United States? A. Well, I don't know, because I don't know what the other store figures are.

Q. Well— A. I knew that it was somewhere near the top.

Q. Pretty nearly the top. A. Somewhere near the top.

Q. Perhaps the first five? A. Might be among the first five.

Q. That is, you would be willing to include them in the first five, but you do not want to say it was the first three, but at least it was pretty nearly that close to the top? A. Approximately.

Q. Is that correct? A. Approximately.

Q. And in 1933 the J. I. Hudson Company were members of the Associated Merchandising Corporation, were they not? A. That is right.

Q. And at that time was not the combined sales of member stores of the A.M.C. in the neighborhood of $300,000,000 annually? If you know. A. I don't know.

Q. Was it near that figure? A. I haven't any idea.

Q. Would you say it was $200,000,000 annually? A. I don't recall ever having seen a combined figure for any year. 6602

Q. For any year. A. For the A.M.C. stores.

Q. Let me read to you from this letterhead of the Associated Merchandising Corporation the following: "The combined sales of member stores represent nearly $300,000,000 annually."

Mr. Martin: Objected to. Is that letter in evidence?

Mr. Albert: Yes.

Mr. Martin: What is it?

Mr. Albert: It is the photostatic copy.

Mr. Martin: I will see what it is.

6603

By Mr. Albert.

Q. Would you now change your testimony to the effect that you have never seen a statement with respect to the combined sales? A. I don't recall ever having seen any such statement.

Q. Well, you have received letters from the Associated Merchandising Corporation, have you not? A. Oh, yes.

6604 *Louis B. Sappington—For Commission—Cross.*

Q. Did you receive a copy of the Phil Reilly letter that went out to all associated stores of the Associated Merchandising Corporation approximately February 14, 1936? A. To whom was the letter addressed?

Mr. Martin: Objected to. There was no evidence in the record that this witness ever received any such letter from Mr. Reilly, and I move that any reference to that letter be stricken.

Examiner Bennett: Well, unless——

By Mr. Albert.

6605 Q. Have you ever seen——

Mr. Martin: Just a second. Let his Honor rule.

Examiner Bennett: I am going to let him go ahead and see if it develops anything. It certainly is not relevant up to this point.

Mr. Albert: Quite right, your Honor, but I think it will soon appear to be quite relevant.

By Mr. Albert.

Q. And have you ever seen any figures with respect to the capital of the Associated Merchandising Corporation?

Mr. Martin: Objected to as immaterial and irrelevant to the issues in this case; not proper cross-examination.

6606 Examiner Bennett: Yes. Well, I will sustain the objection. I will grant the motion to strike the whole matter from the record.

By Mr. Albert.

Q. Did you ever see any letterhead of the A.M.C. containing the statement "Capital, $1,000,000"?

Mr. Martin: I understood his Honor granted the motion to strike all of this.

Examiner Bennett: Yes.

Mr. Albert: I ask your Honor to bear with me for just a few more questions so that I can tie all this up. I cannot jump into a subject from the middle, and I respectfully ask——

Examiner Bennett: I understand. I thought I had indulged you very liberally in time to get somewhere.

Mr. Albert: May I ask your Honor's further indulgence for just one or two more questions in order that I may tie up the matter which I am driving at in a manner that I deem best?

Examiner Bennett: Well, I will vacate the motion to strike, if that is what you are after, until you ask some more questions in an attempt to connect it up with some thing relevant to the inquiry. 6608

The Witness: The question please?

(Question read.)

Mr. Martin: Objected to as irrelevant and immaterial whether he ever saw it or not.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know what the capital of the A.M.C. is?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained. 6609

Mr. Albert: Exception, your Honor.

Examiner Bennett: Yes.

By Mr. Albert.

Q. Now, Mr. Sappington, coming back to Commission's Exhibit 475, a declaration of co-operation, you personally signed it also, did you not? A. Yes, sir.

(There was a discussion off the record.)

By Mr. Albert.

Q. That was signed by you, was it not, on behalf of the better dress department, so-called? A. Yes, sir.

Q. Now, you have stated that you cannot answer my question as to whether or not you were sincere in signing this declaration of co-operation in supporting the statement that the principle of eliminating style piracy was for the protection of the public, have you not?

Mr. Martin: Now, just a moment, if your Honor please, before he answers this question. I now renew my motion to strike all of these other questions and answers.

6611

Examiner Bennett: All right, they may be stricken.

Mr. Albert: If it please the Court, I have not as yet tied it up.

Examiner Bennett: Well, you have gone to a different subject altogether.

Mr. Albert: If your Honor pleases, the questions that I have propounded are directed at precisely what I am now in the middle of.

Mr. Martin: I fail to see any connection.

Examiner Bennett: It is too mysterious for me. I have not got to it.

Mr. Albert: If it please the Court, I am very grateful if it is mysterious to everybody. I hope it

6612

is mysterious to the witness also, but I do not think it is.

Examiner Bennett: All right.

Mr. Albert: May I explain to your Honor off the record?

Examiner Bennett: Why, yes, if you care to do it, I would be glad to have you do it. I will ask the attorneys to be present.

(There was a discussion off the record.)

Examiner Bennett: All right, if you bring that out. On the showing of the attorney as to what he is going to try to prove, why, I will permit further questions.

By Mr. Albert.

Q. Will you answer the last question?

The Witness: What is the question?

(Question read.)

A. I cannot answer questions regarding our signing the declaration of co-operation unless I can be given the opportunity to explain. 6614

Q. Well, what is your explanation? A. All right. We considered inasmuch as this was a different arrangement from anything that we had ever had experience with before that the declaration of co-operation with the Guild, and the whole Guild idea was largely an experiment—we were sympathetic with the ideals which had been outlined to us—we were will to go along and to try out the idea, in so far as that willingness to go along is concerned we were sincere. The ideas that we received from Mr. Rentner's letter, and the ideas that were given to us regarding the Fashion Originators Guild in its original conception we thought were sufficiently worth while for us to co-operate in attempting to find out whether or not it would work. That was our whole idea in signing the declaration 6615 of co-operation. Mr. Rentner stated in his letter that the Guild was proceeding on the principles that the Guild comprised all the outstanding style houses in the country. That was a very significant statement. If the Guild comprised all the outstanding style houses in the country we were interested in doing a style business, the Guild was trying out a problem which it claimed was important to style houses. We were willing to see what it was all

about, and in so far as that willingness is concerned we were decidedly sincere.

Q. Is that your complete answer, Mr. Sappington? A. Yes.

Q. So that you agree that style piracy is an evil in the industry, do you not?

Mr. Martin: Objected to. He did not make any such statement at all. It also is irrelevant and immaterial as to whether he thinks style piracy is an evil or not.

Examiner Bennett: I understand that that is not in controversy under the theory of the Commission.

6617 Mr. Albert: Do I understand, then, if it please the Court, that the Commission concedes that style piracy is an evil in the industry?

Mr. Haycraft: The statement is in the record as to what the Commission's position is.

Examiner Bennett: That is a matter for the attorneys. I do not know what their theory is, except as I gather it from what they say, that this is not—and from the pleadings—that this is not an issue, that it assumes that it is an evil or assumes that it is not an evil—they still attack——

Mr. Albert: Your Honor please——

Examiner Bennett: They still attack the methods——

6618 Mr. Albert: I wish to——

Examiner Bennett: ——of the respondents.

Mr. Albert: Yes. But may I say this, your Honor? That with all due respect, I do not believe that in the light of what has just been said, that the Commission's attorneys have made their position quite clear on the record with respect to whether or not style piracy is considered to be an evil, and, very frankly, I must throw myself upon the mercy

of the Court, and, frankly, upon the mercy of the Commission's attorneys and state that I am ignorant of their position, and I respectfully beg of the Court, and of them, that if their position has been stated, that it be stated for my benefit, because I frankly have no knowledge of their position on that subject whatsoever, and I believe we can save a great deal of time if it is repeated as to what it is. I do not see why there should be such a mystery about it.

Mr. Haycraft: I am not going to be put in the position of repeating anything, Mr. Examiner. Counsel for the respondent was present when the 6620
statement was made on previous occasions. He can refer to the record and find out what it was. So far as concession is concerned, there is no concession as to style piracy, or anything else. We merely stated what we conceded to be the issues, and that was not one of the issues. The record will stand as to what was stated before. I have no wish to repeat it, because I might not use the exact same wording I used before, and there might be some misunderstanding from that very fact, so I would rather stand on the record as it is now; but there is no concession. I make that statement, that there is no concession on our part that style piracy in the industry is not an evil. It is not an issue.

Mr. Albert: With all due respect to the Commis- 6621
sion's attorney, if it please the Court, I do not intend to be bound by their contentions as to what the issues are in the case. Style piracy, whether an evil or not, is a legal question, and unless information is brought out with respect—except the Commission makes a concession with respect thereto, I respectfully submit that when we got up on the

record, if we have to, that there is nothing in the record as to whether the program is an evil one or not.

Mr. Haycraft: It is not a legal question at all.

Mr. Feldman: I beg to differ on that, your Honor. The question of whether or not a method of competition is fair or unfair involves a number of facts. The inference drawn from those facts is a pure question of law. The facts that go to make up or go to determine whether or not a particular practice is a competitive evil, therefore, becomes not only an issue, but becomes a question upon which

6623 the Courts ultimately must determine, and therefore the problem necessarily becomes a legal one.

Examiner Bennett: I think in view of what seems to be a difference of opinion, or, rather, a radical difference of opinion, as to what is and what is not an evil, whether this thing is or is not in issue, that is, style piracy, I think I will permit the cross-examiner to go into that to a certain extent.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: You may answer. Overruled.

The Witness: May I have the question?

(The question was read.)

Mr. Albert: Yes.

Mr. Haycraft: Objected to.

6624 Mr. Martin: Now, I make the further objection that he is not limiting it as to time or as to price lines.

Mr. Albert: If it please the Court, I don't quite see whether—withdrawn. I don't quite see the distinction Mr. Martin is making. Stealing is stealing at any time, whether it be of a two-cent piece or of a five-dollar piece or of a million dollars.

Mr. Martin: The question of time as of 1933 might be one thing, might be an evil, and in 1936 it might not be an evil, so I——

Mr. Albert: To save time, I will put it this way:

By Mr. Albert.

Q. Mr. Sappington, was style piracy an evil in 1933? A. I don't know because I don't know. I am not sure that there were any styles to pirate? I am not sure that there was any originality in the styles that were claimed to have been stolen. I think that whole question is very much in doubt.

Q. Are you a member of the N.R.D.G.A., Mr. Sappington? 6626

Mr. Martin: Objected to, immaterial and irrelevant as to whether he is a member of the N.R.D.G.A., and it has no bearing on the issues in this case.

Examiner Bennett: What is the N.R.D.G.A.?

Mr. Martin: The National Retail Dry Goods Association.

Examiner Bennett: Yes. I will sustain the objection. I think we are going too far afield.

By Mr. Albert.

Q. So that I may understand you perfectly, Mr. Sappington, as I understand it, you have no opinion one way or another as to whether or not style piracy is an evil in the industry? A. I have no opinion because I am not sure that there are any original styles to steal. 6627

Mr. Martin: Now——

By Mr. Albert.

Q. But you wouldn't say that there were not, would you?

Mr. Martin: Excuse me. Just a minute, Mr. Albert. If your Honor please, at this time I would like to renew my motion to strike all of the evidence relative to A.M.C. Counsel has been allowed full opportunity; it was stricken once and then he came around and made explanation to your Honor and was allowed to proceed and he is going on and on and he still has not shown any relevancy to those questions, and I renew my motion and respectfully ask that that evidence be stricken out.

Examiner Bennett: Are you through with this line, Mr. Albert?

6629 Mr. Albert: No, your Honor. We are still on this declaration of co-operation, and he still hasn't explained it, and I still have to cross-examine him on it.

Mr. Martin: The A.M.C. was in first and now the N.R.D.G.A.

Mr. Albert: That was a subdivision of this particular question that came up as a result of an answer that he gave to the question.

Examiner Bennett: I am going to let you go ahead for a while. You are repeating the ground that you have been over. You are going over it again.

Mr. Martin: What was your Honor's ruling?

6630 Examiner Bennett: I am going to indulge him further. He says he is not through.

By Mr. Albert.

Q. What did you mean, Mr. Sappington, when you said that you were sympathetic with the ideals of the F.O.G.A. when you signed the declaration of co-operation? A. Well, in June, 1933, we felt that if the formation of the Guild could contribute anything that was of value to the better dress business, we would be interested in seeing what could be done, if anything.

Q. What did you expect it to contribute? A. We didn't know. We thought the platform of the Guild was highly idealistic, somewhat indefinite. We didn't know what they would do.

Q. You mean idealistic in the sense it was attempting to elevate the ethics of the industry? A. Idealistic in the sense that it was impractical.

Q. In all phases of it? A. Well, mostly, yes.

Q. And despite the fact that you believed that it was impractical, and by that you mean you didn't believe it would work, you, nevertheless, signed the declaration of co-operation? A. We had to.

Q. What do you mean by you had to? A. If we didn't 6632
we couldn't see the lines of these houses which Mr. Rentner says comprised all of the outstanding style houses in the country when they opened their lines for our buyers on the 5th of July.

Q. Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C.——

Mr. Martin: Objected to. There is no evidence here that they have the backing of the A.M.C.

Mr. Albert: May I be permitted to finish my question, your Honor?

Examiner Bennett: Yes, go ahead.

The Witness: May I have the question read back? 6633

(The question was read as follows: "Q. Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C.——"

By Mr. Albert.

Q. (Continuing) —with the ability to bring pressure to bear in 1933 of the A.M.C., as is being done at the present

time, was forced to sign the declaration of co-operation when in 1933 there were only thirty-five manufacturers in the Guild?

Mr. Martin: I object to this question. I move that the same be stricken. There is no evidence here to show that they had the backing of the A.M.C. at that time or that they have at this time, and that they had these tremendous sources and could bring pressure to bear on these manufacturers. I think the question is highly improper and ask that it be stricken.

6635 Examiner Bennett: Yes. Well, I am going to overrule your objection and let him answer, if he has an answer. You may answer.

The Witness: May I have the question, please?

(The Reporter read the question as follows: "Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C., with the ability to bring pressure to bear in 1933 of the A.M.C., as is being done at the present time, was forced to sign the declaration of co-operation when in 1933 there were only thirty-five manufacturers in the Guild?")

Mr. Martin: Now, if your Honor please, I submit that that part certainly about the pressure being brought at the present time is highly improper.

6636 Examiner Bennett: Well, if the witness disagrees with the statement of facts so that he can't answer, why, that is another thing. Let him say so.

The Witness: Your Honor, that seems to be quite an involved question. There are so many elements included there, I don't believe I can answer such a question.

By Mr. Albert.

Q. Take them one at a time, Mr. Witness, and answer each one in there. A. Will you ask them that way?

Mr. Albert: Will you repeat the question, Mr. Stenographer?

(The question was read again.)

A. We considered this a matter of individual store—we considered this an individual store problem. We were interested in seeing what would be developed, what the Guild could do, what the Guild wanted to do. We were advised by our A.M.C. office as indicated in the telegram submitted in Exhibit—— 6638

Mr. Meder: 486.

A. (Continuing) —486, that they recommended, after full consideration, that we sign up on exactly the same basis.

Q. Is that your answer, Mr. Sappington? A. That is the answer.

Mr. Albert: Now I ask that the answer be stricken out as not responsive and ask that he answer my question.

Examiner Bennett: Denied.

By Mr. Albert: 6639

Q. What did you think the Guild was going to do, Mr. Sappington, when they established this program? A. I didn't know then and I didn't know at any time.

Q. You don't mean to tell me that you joined an organization without knowing what they were going to do, did you, or what their policy was or what their program was? A. I didn't know. My experience has shown that I definitely didn't know.

Q. I am not speaking now specifically; I am speaking generally. You mean to tell me that you didn't know what the program of the Guild was when you signed the declaration of co-operation? A. I read the statement of the declaration of co-operation and we read Mr. Rentner's letter.

Q. Yes. A. And in so far therein we knew what the plan of the Guild was at that time. We didn't know that it was going to be changed; we didn't know how it was going to be administered.

Q. Now, at that time what did you conceive to be the program of the Guild? A. At that time we conceived that
6641 the program of the Guild was to attempt to stop style piracy.

Q. Did you agree with that——

Mr. Martin: Wait a minute.

A. Down to——

Mr. Martin: Let him finish his answer.

A. Down to $10.75 cost.

By Mr. Albert.

Q. Yes. A. In dresses.

Q. Is there anything in the declaration of co-operation that restricts the Guild program or plan of $10.75 and up?
6642 A. No; there is nothing—there is no restrictive——

Q. And you stated that you got your information with respect to the program from a reading of the declaration of co-operation, didn't you?

Mr. Martin: That is not a correct statement, your Honor.

The Witness: Reading of the declaration of co-operation.

By Mr. Albert.

Q. And the Rentner letter? A. And the Rentner letter.

Q. And the declaration of co-operation is specifically signed by G. R. MacDonald of the basement store, isn't that so?

Mr. Martin: Objected to. That has already been testified to.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, Mr. Sappington, will you be good enough to look at Commission's Exhibit 494-A? A. Yes, sir. (Wit- 6644
ness refers to Exhibit 494-A.)

Q. Have you 494-A? A. 494-A, yes, sir.

Q. Did you take any steps in 1933 similar to those mentioned in Commission's Exhibit 494-A, which is a letter from Mr. Webber to Mr. Bergdahl, and which states, "In the meantime, I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement"? A. We had no occasion to, then.

Q. By that do you mean that there was nothing that you feared in 1933? A. There was nothing in 1933. The Guild had not been organized; the Guild had not administered its affairs; the Guild had not enlarged its scope; the Guild had not done things that we had no conception it would do. We went in—— 6645

Q. So that, despite the fact——

Mr. Martin: Let him finish his answer.

Q. (Continuing) —that all of those matters concerning the Fashion Originators Guild at that time, and the fact that it was in its infancy, you still say that you were forced to sign the declaration of co-operation?

Mr. Martin: Just a second. Mr. Sappington, had you finished your former answer?

The Witness: No, I hadn't at the time.

Mr. Martin: Go ahead and finish it, then.

The Witness: Could I have my answer, please?

(The answer was read.)

The Witness: We went in with a clear field. We have had no disagreement at the time. We were willing to see what was going to happen. We were willing to go along.

By Mr. Albert.

6647 Q. So that you voluntarily signed the declaration of co-operation, didn't you? A. We did not. We would not have signed the declaration of co-operation if we had not been told that we could not see the lines on the 5th of July. Now, this matter came up in the latter part of 1932. We didn't know anything the whole first half of 1933. We heard from Mr. Rentner on this proposition as early as December, 1933. We only took action when we were told that if we didn't take action we couldn't see the lines on the 5th of July.

Q. But you took no steps whatsoever in an attempt to counteract what you thought was pressure being brought to bear upon you in asking you to sign the declaration of co-operation? A. There was nothing to counteract.

6648 Q. Now, Mr.— A. Because, as I stated before, the Guild——

Q. That is all, Mr. Sappington. That is satisfactory. A. The Guild had not been formed.

Q. Now, Mr. Sappington, did J. L. Hudson & Company at any time register any protest to the Fashion Originators Guild with respect to its policy and the furtherance of its policy of protecting styles during the year, the balance of the year 1933 and the year 1934? A. I couldn't answer that question without going over our correspondence.

Q. Well, didn't you go over your correspondence before you came in here? A. Not completely. There might be something in it that I didn't see.

Q. Well, after all, you are here to make a good case for the Commission, aren't you?

Mr. Martin: Now, if your Honor please, I respectfully object to any such insinuation as that. The witness is here——

Mr. Albert: It is more than insinuation, your Honor.

Mr. Martin: Will you just wait a second?

Mr. Albert: I am sorry.

Mr. Martin: Until I go ahead, sir? The witness 6650
is here under subpoena of the Commission to testify. He has been sworn to tell the truth. He has been frank and above-board in answer to all questions that have been asked him, and I resent the implication on the part of counsel for the respondents that this witness is here to deliberately make a case for the Commission with the implications contained in his statement, and I move that the same be physically expunged from this record.

Mr. Albert: If it please the Court, there isn't anyone in the dress industry that doesn't know that J. L. Hudson Company is opposed to the Guild and will do everything in its power—properly—I don't in any way—— 6651

Mr. Martin: Well, your question——

Mr. Albert: —mean to impugn their methods to destroy the Guild, for their own selfish purposes.

Mr. Martin: I move that that statement be stricken.

Examiner Bennett: Will you read the first statement?

(The last question was read.)

Examiner Bennett: I will grant the motion to strike both statements.

Mr. Martin: On the last motion, I ask that that be stricken, too.

Examiner Bennett: Well, I have. I granted your motion.

Mr. Martin: Yes, sir.

Examiner Bennett: To strike both statements.

By Mr. Albert.

Q. Isn't it a fact, Mr. Sappington, that J. L. Hudson Company would like to see the Guild disbanded?

6653

Mr. Martin: Objected to.

Mr. Albert: If it please the Court, am I not permitted to show the bias of this witness?

Examiner Bennett: Yes, certainly. Overruled.

Mr. Martin: All right, sir. Go ahead, sir.

A. No, that isn't the fact.

Mr. Albert: Ha, ha, ha!

By Mr. Albert.

Q. You amaze me, Mr. Sappington. Would you like to sign the declaration of co-operation? A. Ha! Because we do not agree with the way the affairs of an organization

6654 are administered, or because we do not agree with their present principles, that doesn't mean we would like to see them wiped out.

Q. Will you concede that in so far as the program of the Guild generally is concerned, aside from the method of its administration, that it is a good program for the industry? A. I won't concede anything without advice.

Q. I am asking you for your opinion, not for someone else's. We have seen what happens when you get figures

from someone else. You don't want to rely on those any more, do you? A. My opinion doesn't count. It is the opinion of the J. L. Hudson Company.

Q. I would like to have your opinion as assistant merchandising manager. You are on the stand. You have given some very widespread opinions here to-day. You are not afraid to tell us your opinion, are you?

Mr. Martin: If your Honor please, the witness has testified that he has no opinion. I think that is a complete answer.

Mr. Albert: If it please the Court, there has been absolutely no such testimony by the witness. He has referred us, not to subordinates this time, to 6656
superiors, his superiors. Now, if Mr. Dowley and Mr. Webber will be called to testify as to the Guild's program, we may leave Mr. Sappington off on this proposition.

Mr. Martin: It is not relevant in this case in any way.

Mr. Albert: I think it is quite relevant, your Honor. Your Honor has already ruled on that point.

Examiner Bennett: He is trying to show prejudice, as I understand.

Mr. Albert: Certainly, your Honor.

Examiner Bennett: If you can show it, it is all right. 6657

By Mr. Albert.

Q. What is your opinion, Mr. Sappington?

Mr. Martin: I renew my motion, your Honor. I thought you just ruled on it, that he had answered.

Examiner Bennett: I think that he said that he had no opinion. That is my understanding.

Mr. Albert: I respectfully differ, if it please the Court. He merely said he couldn't give it without advice.

Examiner Bennett: Go ahead and find out whether he has an opinion.

By Mr. Albert.

Q. Have you an opinion? A. Of what?

Q. What have we been talking about, Mr. Sappington? Of the program of the Guild. A. The present program of the Guild?

6659 Q. The general program of the Guild to eliminate style piracy, aside from the question of its physical administration.

Mr. Martin: Objected to as to form.

By Mr. Albert,

Q. Have you an opinion of the program of the Guild? A. The present program?

Q. Yes. I mean the program for eliminating style piracy is the same as it was when they started.

Mr. Martin: I object.

By Mr. Albert.

6660 Q. Aside from the question of the administration of that program, now, all my question is directed at is, what is your opinion of the program of the Fashion Originators Guild of eliminating style piracy, and not of the method of doing it?

Mr. Martin: Objected to as not being a question, a separable question. It is not in proper form and it is objected to.

Mr. Albert: It is quite separable, your Honor. I think it is quite obvious.

Examiner Bennett: I think the question is too narrow in its scope. I think if you want to ask him for an opinion you will have to cover the policies and the methods of the Guild.

By Mr. Albert.

Q. You have stated, Mr. Sappington, that J. L. Hudson has no desire to eliminate the Fashion Originators Guild because of the fact that you differ merely in the administration of the program, rather than with the Guild program. Is that a fair statement of your previous testimony? A. I said that because the J. L. Hudson Company might differ with the methods or the scope or the changes 6662
in a program does not necessarily mean that the J. L. Hudson Company would like to wipe out the administrators of the program or the people connected with the program.

Q. All right. Now, let me ask you this question: Does J. L. Hudson Company subscribe to the policy of eliminating style piracy?

Mr. Martin: Objected to, your Honor. He has testified that he couldn't tell that, that that was a question of policy.

Mr. Albert: Here is an executive of this firm.

Mr. Martin: Just a minute.

Mr. Albert: If it please the Court, who is offered here instead of his superiors as having full knowledge of the policies of J. L. Hudson & Company. I think it is a perfectly competent question to ask this witness. 6663

Examiner Bennett: I think in view of his answer, I think he has answered two or three times saying that he was not certain, that he was uncertain that there was any such a thing as style piracy, that

there are any styles which are original and can be pirated. I wouldn't think he would be able to answer that question in view of that.

By Mr. Albert.

Q. Well, then, let me ask you this, Mr. Sappington: Does the attempted elimination of style piracy benefit J. L. Hudson & Company in lines above $10.75? A. I don't know.

Q. Is there any benefit obtained by J. L. Hudson & Company from the attempted protection of styles above $10.75?

6665 Mr. Martin: He has testified that he doesn't know.

Examiner Bennett: Well, I will let him answer. He may answer.

A. I don't know.

By Mr. Albert.

Q. Have you discussed this matter with your superiors in J. L. Hudson & Company as to the effect of the Guild program on the better dresses? A. Why, as I recall, I think we have discussed from time to time the Guild policies; whether we have discussed the effect or not, I couldn't answer definitely.

Q. Is it your opinion that the better price lines need
6666 protection from the evils of copying? A. I don't know what the better price lines need. They need more value, I know that.

Q. Well, confining yourself to answering my question—

Mr. Martin: He has already——

Q. (Continuing) —would you say that they need protection?

Mr. Martin: He has already told you that he didn't have any opinion on it.

A. I don't know what they need.

Mr. Albert: Well, now, may I see Commission's Exhibit 491-A?

By Mr. Albert.

Q. Mr. Sappington, to what were you referring when you wrote to Mr. Bergdahl on May 9, 1935: "I believe the idea is sound and that it could be worked"? What did you mean by that? A. That is not the whole statement.

6668

Mr. Martin: Is that the complete statement?

The Witness: I mean, it would be rather difficult for me to say what I meant unless you read the entire sentence.

By Mr. Albert.

Q. Very well, I will read the whole statement: "But not by the methods the organization is now attempting to follow." What was their stand about the program as aside from the methods? A. Well, at that time, May, 1935, it was still my belief that there was something to the idea as originally proposed by the Guild, of attempting to control the copying of high-priced dresses. If, as I have said before, the high-priced dresses are actually copied from an original style which has always—which I have always doubted.

6669

Q. You personally? A. Yes, I personally.

Q. That does not reflect the opinion of the other executives of the store, though, does it? A. Hah! I don't know about that.

Q. You mean to tell me you have not discussed this situation with the other executives? A. That particular opinion?

Q. Yes. A. No.

Q. You have not discussed with Mr. Dowley the question of whether or not style piracy is an evil in the industry?

Mr. Martin: I object to the question as immaterial.

A. The question was whether or not their original styles were copied, is the statement which I made. Now, I have told Mr. Dowley what I thought. I don't know what he thinks.

Q. What do you mean when you refuse to admit that style piracy exists, and that you are doubtful as to whether
6671 or not original styles can be copied?

Mr. Martin: Now, your Honor please, I object to that. He has not refused to admit that style piracy exists. His statement was he did not know whether there were any originals or not.

Mr. Albert: I am sorry. Has there been a ruling?

Mr. Martin: I object to the question.

Examiner Bennett: Yes, I will let him answer.

The Witness: Do I answer? Read the question, please.

Examiner Bennett: He may answer.

Mr. Martin: There are two questions, your Honor. I object to the form of the question. Let
6672 him ask it in proper form.

Examiner Bennett: Well, if the witness questions the accuracy of the facts, why, of course, he can modify his answer.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: Go ahead and answer, if you have an answer.

A. I—in the first place, I don't—I doubt the authenticity of the idea, or I doubt the fact that the styles, which

are claimed to be original styles are original. Now, if the styles are not original, and if they in themselves are adaptations or copies, then you do not have a copy when those styles are reproduced. In other words, I doubt—I question the fundamental principle underlying the whole style piracy idea, which is that the originals are actually originals.

By Mr. Albert:

Q. Have you ever been to manufacturers— A. Oh, yes.

Q. —Mr. Sappington? A. Yes, indeed.

Q. Were you there when they were preparing their lines? A. Well, I imagine so. I imagine that many of 6674
the times I have been in the showrooms.

Q. Do you not— A. There have been lines prepared; they are always developing new numbers for their lines.

Q. New numbers? A. New numbers.

Q. By that, do you mean original numbers? A. I mean different numbers.

Q. Different numbers. Do you know approximately the course of designing a line?

Mr. Martin: Objected to as irrelevant and immaterial, far afield, your Honor.

Mr. Albert: If the Court please, this witness has testified, unsolicited and voluntarily, his opinion that there is no such thing as style piracy.

Mr. Haycraft: Unsolicited? 6675

Mr. Albert: That there is no such thing as an original design to be copied. I want to find out what he knows about the business.

Mr. Martin: If your Honor please, I respectfully submit that the witness has not testified—he says that according to his—counsel has said— He has said that he has serious doubts, and he does not know that there is such a thing as an original design. He has not testified that there was not one.

Mr. Albert: As I understood, the witness does not know one way or another whether there was such a thing as an original style.

Mr. Martin: Nor has he volunteered anything. Everything he has given has been at the questioning of counsel for the respondent.

Mr. Albert: Yes, but his original statement was volunteered thereto——

Mr. Martin: No——

Mr. Albert: I have tried to break it down.

Mr. Martin: His original statement was in answer to a direct statement by you.

6677 Examiner Bennett: I will sustain an objection to that particular question.

By Mr. Albert.

Q. Let me ask you this, Mr. Sappington: Aside from the question as to whether or not certain manufacturers made up original designs, is it true that certain other manufacturers copy the designs that are made up by these first manufacturers?

Mr. Martin: Now, I object to this line of questioning, your Honor. This was brought out by counsel on cross-examination. He asked this witness direct questions, which he answered, and now he is seeking to cross-examine him on his own cross-

6678 examination——

Mr. Albert: Not in the least, if it please the Court.

Mr. Martin: —and I respectfully suggest to the Court, and urge, that these questions are improper and should be excluded.

Mr. Albert: Not in the least, if it please the Court. This witness has t ndered, he has put into evidence certain instruments without explaining

them. He has attempted to attack the Guild upon its question of program as regards style piracy, and I believe that I should be permitted to cross-examine this hostile witness upon that point and find out what he knows.

Mr. Haycraft: Hostile to whom?

Examiner Bennett: Yes. Well, I am going to sustain the objection. I think we are getting into a new field that is of doubtful relevancy.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Sappington, I show you Respondents' Exhibit 44, which is an advertisement in "Women's Wear Daily," dated Tuesday, July 11, 1933, announcing the co-operation of certain manufacturers—— 6680

Mr. Martin: Just a second, if you please.

(A document was marked for identification Respondents' Exhibit 44.)

By Mr. Albert.

Q. Did you see this advertisement in "Women's Wear," Mr. Sappington?

Mr. Martin: Now, if your Honor please, I object to any——

Examiner Bennett: Better ask him in the ordinary way. 6681

Mr. Martin: I further wish to call to your Honor's attention that we have here what purports to be a photostatic copy of something, and I would request that the original be produced if they want to have it identified.

By Mr. Albert.

Q. Well, now, Mr. Sappington, did you see an advertisement appearing in the "Women's Wear Daily" on Tuesday, July 11, 1933——

Mr. Martin: Objected to.

By Mr. Albert.

Q. —containing the information as set forth in Respondents' Exhibit 44?

Mr. Martin: I object to the form of the question, your Honor.

6683 Mr. Albert: I have not asked him to identify any—the originality of any exhibit—I am asking him as regards the information contained in that exhibit, which I am showing him to refresh his recollection, and I can show him anything to refresh his recollection.

Mr. Martin: That is not in evidence, and I object to the form of the question.

Mr. Albert: I cannot very well put it in evidence, your Honor, before the witness gives me the very simple answer as to whether or not he has seen it.

Mr. Martin: You did not ask him that.

Mr. Albert: I certainly did ask him that. I

6684 asked it three times.

Mr. Martin: You know how to get a paper identified if you want it identified, Mr. Albert. I suggest that you ask him the proper questions.

Examiner Bennett: I will sustain the objection as to the form of the question.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Sappington, you are aware of the fact——

Examiner Bennett: Take a recess of ten minutes.

(There was a short recess taken.)

Mr. Meder: May we quit to-day at 4.30 o'clock, your Honor? The witness has an important engagement.

Examiner Bennett: Yes, I think so.

By Mr. Albert.

Q. Now, Mr. Sappington, you were vitally interested, were you not, in following the program of the Guild in 6686
order to determine whether or not it was going to be practical, is that not so? A. Well, we did not hear much from the Guild for quite a long time after June of 1933, except—

Q. What do you mean by "quite a long time"?

Mr. Haycraft: Let him finish.

Mr. Martin: Let him finish his answer.

Mr. Albert: I am sorry.

A. —except in Mr. Post's visits occasionally, and our contacts in New York with manufacturers and——

By Mr. Albert.

Q. Did you not make any attempt to obtain information from the Guild as to how things were going? A. No, 6687
the information that we got came to us, I would say, gratuitously. We were not policing it, and it was not our program, it was not our proposition, and we were pretty doggone busy—excuse me—we were very busy taking care of our own jobs.

Q. As a matter of fact, Mr. Sappington, despite the fact of your testimony, as to your interest in seeing how practical the program would be, you did not even attend

one of the meetings here in Detroit with respect to the program of the Guild; is that not so?

Mr. Martin: That is objected to. His testimony is, as I understand it, that they were willing to give it a trial.

By Mr. Albert.

Q. Will you answer my question, Mr. Sappington?

Examiner Bennett: I will let him answer.

The Witness: Shall I answer?

Examiner Bennett: You may answer.

6689 A. We did not attend the meeting to which you refer, which I imagine is the second meeting which Mr. Post held.

Q. Is that just an example of the old saying, that there are none so blind as those who will not see?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Martin: I move it be stricken.

The Witness: Your Honor, I did not finish my reply to the first question.

Examiner Bennett: All right, go ahead and answer it.

6690 A. We did not attend the second meeting because it was our understanding that the second meeting was to be about practically about the same matters that was covered in the first meeting.

By Mr. Albert.

Q. Well, now, when you say "we"——

Mr. Meder: Have you finished?

By Mr. Albert.

Q. I am sorry. Have you finished? A. And we were not—"we"—I say "we," I mean the J. L. Hudson Company, and myself included, because I was the person who was informed as to the subject-matter to be covered in the second meeting.

Q. Yes. A. We were not interested in the subject-matter covered in the first meeting. We understood that the subject-matter covered—and the meeting was extremely long, lasting from about 12 to 3 o'clock——

Mr. Martin: Go ahead.

A. (Continued) —it took up a great deal of our time. 6692
We understood that the subject-matter for the second meeting was to be similar, if not identical, to the subject-matter for the first meeting. We had heard it; we were not interested; it involved the formation of a local guild. That is the reason we did not attend the second meeting.

Q. Now, are you through with your answer? A. Yes.

Q. Now, in the course of that answer you stated, I believe, generally, that you were the man who was concerned with the Guild program, generally speaking?

Mr. Martin: He did not make——

A. I happen to be the person.

Mr. Martin: —that statement at all. He said he was——

Mr. Albert: I am asking him for an explana- 6693
tion.

The Witness: I happen to be the person who was told what was going to be discussed in the second meeting.

By Mr. Albert.

Q. I see. Very well. Now, was there anybody in J. L. Hudson & Company who attempted to follow the program

of the Guild to see whether or not it was being worked practically?

Mr. Martin: I think he has already testified to that, your Honor.

Mr. Albert: Not in the slightest, your Honor.

Mr. Martin: Yes, he has, and made the statement——

Examiner Bennett: All right, let him answer. Overruled.

Mr. Martin: All right, go ahead, sir.

A. We were all—by "we," I mean the buyers, the divi-
6695 sional merchandise managers, Mr. Simmons and Mr. Dunham and myself—were all interested in the Guild program. We were receiving information from time to time in the course of business as to what was being done. We were not—we did not constitute an investigating committee. We accepted the information that was given to us——

By Mr. Albert:

Q. Now— A. —as I said before, it was not our program, it was not our organization; we were simply going along. When information was given to us, we took the information.

Q. And you were going along without knowing where you were going, aside from what you heard? A. Well, we
6696 received correspondence from the Guild and our buyers were in the market talking with the Guild members and Guild affiliates.

Q. Now, did you, in August, 1933, when you were still a new member of the Guild, or, rather, when you were still a new co-operating retailer, did you learn that the Dress Creators League of America, Inc., the organization of $10.50 manufacturers in the dress industry, were collaborating with the registry division of the Fashion Orig-

inators Guild of America, Inc.? A. We may have. I cannot answer definitely. That is quite a long time ago.

Q. You testified pretty thoroughly and specifically with respect to a great many things that have occurred in that period of time. A. I cannot testify specifically as to that.

Q. And you do not know whether or not the $10.50 manufacturers co-operated with the Guild in August of 1933? A. No, I don't.

Q. Now, all of these people who were interested—of all of these people who were interested in the Guild program that you testified to, the buyers, your assistant divisional merchandise manager, your executives who were superior to you—did not any of them tell you, or did you not learn through them, or did you not learn gratuitously—is the word you used—or did you not learn from any source whatsoever in the dress industry, that in August of 1933 the $10.50 manufacturers started to co-operate with the Guild? 6698

Mr. Martin: Objected to. He has already answered the question. It is needless repetition.

Mr. Albert: This witness, if your Honor please, has been very precise in his definition of words, and I have now made the question most conclusive.

Mr. Martin: He has answered it pretty inclusively.

Examiner Bennett: Read the question.

(Question read.) 6699

A. No, it is my recollection that the $10.50 manufacturers, or $10.75 manufacturers, and I believe they are the same group, that the discussion regarding them becoming affiliated with the Guild took place early in 1935.

By Mr. Albert.

Q. Now, and that there was no discussion with them before that time? A. I don't recall anything specific.

6700 *Louis B. Sappington—For Commission—Cross.*

Q. "Women's Wear" is the Bible of the dress industry, is it not, Mr. Sappington?

Mr. Martin: Objected to.

Mr. Albert: I am laying a foundation, your Honor.

Examiner Bennett: All right.

By Mr. Albert.

Q. Is it not? A. Well, "Women's Wear" is a trade paper.

Q. I mean, every well informed buyer, and divisional merchandise manager, and general merchandise manager,
6701 who wants to learn anything about the industry, and keep informed of the times in the dress industry, reads "Women's Wear" rather assiduously, is that not so? A. I don't know.

Q. Well, do you not? A. Well, I think inasmuch as Mr. Shaffner is in the room, and a representative of "Women's Wear," it is rather embarrassing for me to answer that question.

Q. Do you think it was embarrassing for you to state that Mr. Shaffner told you first about the red carding? A. Not embarrassing to me; it might have been embarrassing to Mr. Shaffner.

Q. And you state that he told you personally about that, is that so? A. I did not state that; no, sir.

6702 Q. But that it was learned first through him; is that it? A. Through a representative of "Women's Wear," I stated.

Q. Well, did you learn it through a representative of "Women's Wear"? A. I did not.

Q. In other words, you were told by someone else in the organization that they had learned it through a representative of "Women's Wear"?

Mr. Martin: Your Honor please, that has been gone into thoroughly, and I do not see any purpose in going——

Mr. Albert: Very well, your Honor, we just went off on a slight tangent.

Mr. Martin: Only a slight one?

By Mr. Albert.

Q. Now, Mr. Sappington, I show you Respondents' Exhibit 45——

Mr. Haycraft: Identification?

Mr. Martin: For identification?

(A document was marked for identification Respondents' Exhibit 45.)

6704

By Mr. Albert.

Q. —for Identification, and ask you whether or not you ever were apprised of the information contained in that advertisement of "Women's Wear"?

Mr. Martin: Objected to. This exhibit is not in evidence.

Mr. Albert: I am trying to lay a foundation for it, your Honor.

Mr. Martin: Well, that is no way to do it. You know the proper way to do it. We just went over that once.

Examiner Bennett: I will sustain the objection in the form of the question as you ask it. You can find out whether he can identify it, and if he can, 6705 let him do it; if he cannot, have it identified in the proper way.

By Mr. Albert.

Q. Mr. Sappington, can you identify Respondents' Exhibit 45 for Identification——

Mr. Martin: Now——

Q. —as——

Mr. Martin: Excuse me. I beg your pardon. I thought you had finished, sir.

By Mr. Albert.

Q. —as an advertisement appearing in "Women's Wear Daily" on Wednesday, August 9, 1933?

Mr. Martin: Now, if your Honor please, that is a photostatic copy. I call for the original of the document.

Mr. Albert: All right. Do I understand that it
6707 is Mr. Martin's procedure hereafter that he refuses to accept the respondents' offer of a photostatic copy of a document upon the ground that he wants to see the original?

Mr. Martin: You understand it as to this particular exhibit.

Mr. Albert: Well, will Mr. Martin accept the production of a photostatic copy at this time upon my assurance, and upon condition that we will produce for him the original advertisement as it appeared in "Women's Wear," which is at the present time back at our office in New York?

Mr. Martin: That is fine, if you will produce the original.

Examiner Bennett: All right
6708 Mr. Albert: Thank you.

By Examiner Bennett.

Q. Can you identify that paper? A. Well, it looks to be a photostatic copy of a page in "Women's Wear." It is about the way the "Women's Wear" pages look.

Q. Do you recognize it as something you have seen before?

Mr. Albert: Do you think I was asking you to identify that——

Mr. Haycraft: I object to that.

Mr. Albert: —copy of the "Women's Wear," and their model and design, Mr. Sappington?

Mr. Martin: I object.

Examiner Bennett: I am asking him if he has seen it before.

The Witness: I cannot testify that I have seen it before; no, sir.

Examiner Bennett: I see. All right.

By Mr. Albert. 6710

Q. Did you become aware in any way of the information that is set forth on that exhibit that is marked Respondents' Exhibit 45 for Identification?

Mr. Martin: Objected to. This document has not been identified.

Examiner Bennett: Yes. Well, I shall sustain an objection——

Mr. Albert: If it please the Court——

Examiner Bennett: He says he cannot testify that he has seen it before. I do not see how you can refresh his recollection by something he has never seen before.

By Mr. Albert. 6711

Q. Do you mean by that, Mr. Sappington, that you never saw this particular ad?

Mr. Martin: Objected to.

Mr. Albert: I am trying to qualify him.

Mr. Martin: That particular ad is not in evidence.

Examiner Bennett: Well, if you want to ask him about something or other, if you have some fact

that is within his knowledge, which you wish to develop, please ask him about that particular fact. That paper evidently does not refresh his recollection, and evidently cannot possibly refresh his recollection.

By Mr. Albert.

Q. Let me ask you just one more question, Mr. Sappington. Were you aware of the fact that on or about August, 1933, the Dress Creators League of America, Inc., which comprises the $10.50 manufacturers, announced their collaboration with the registry division of the Fashion Orig-
6713 inators Guild of America, Inc.?

Mr. Martin: Objected to. He has already testified that he did not know that.

Mr. Albert: If that is his testimony, I will accept it, your Honor.

Examiner Bennett: Go ahead. Answer it, please, if you know.

A. I was not aware of the circumstance mentioned as of that date.

Examiner Bennett: Well, if you don't know, say you don't.

The Witness: I was not aware of the circumstance you mentioned as of that date.

6714

By Mr. Albert.

Q. Well, of what date were you aware of it? A. I cannot tell you exactly. Some time during the fall of 1935.

By Mr. Albert.

Q. Now, Mr. Sappington, what did you mean, and what is your knowledge about the way copies are adjudged to be

such in pursuance of the Guild program? A. Well, the Guild had a committee called the Piracy Committee, I believe.

Q. Yes. A. And in some instances, at least, whether or not in all I couldn't say, the dresses under discussion were referred to this Piracy Committee.

Q. Yes. A. I understand that in some cases there were on this committee dress manufacturers who were members of the Guild. Whether that was true in all cases or not, I do not know. It was my understanding that in some cases that was true. I do not know whether all cases under dispute were referred to this Piracy Committee or not. I do not know whether they ruled in every instance where 6716
a copy was referred to us. I assumed it was—it was my belief that this Piracy Committee was a part of the Guild organization. So that when I stated that the Guild adjudged certain dresses to be copies, I assumed that the workings of this committee were carried, or the functions of this committee were carried out under the Guild administration, that the committee was a part of it.

Q. Is it your belief that this Piracy Committee is a permanent committee? A. I didn't think it was a permanent committee.

Q. Or is it constantly changing? A. I thought the personnel varied.

Q. Constantly changing? A. I do not know how constantly.

Q. Did you know, Mr. Sappington, that the A.M.C. 6717
buyers served on that committee, and Mr. Bergdahl also served on that committee?

Mr. Martin: Objected to as immaterial.

Mr. Albert: It is the last question on the point, your Honor.

Mr. Martin: Object to it.

Examiner Bennett: I will let him answer if it is the last question.

A. I don't know that Mr. Bergdahl served on that committee, or that an A.M.C. buyer served on that committee. I knew that some buyers had served on that committee, some buyers from some retail stores.

By Mr. Albert.

Q. And aside from this general information about which you have no certain knowledge, you do not know how the Piracy Committee worked; is that correct? You know nothing more about the Piracy Committee than what you have told us? Let me put it that way? A. I know that in some cases the Piracy Committee called in the manu-
6719 facturers involved for a statement.

Q. I do not mean as regards as how they actually operated. I mean as to their set-up, as to what you have told us about their set-up, you know nothing further about that? A. No, I know nothing further.

Examiner Bennett: All right. Now, that is a closed chapter.

By Mr. Albert.

Q. Now, Mr. Sappington, when was it that you received this information from a representative of "Women's Wear" to the effect that you had been red carded? A. I believe it was on the morning of the 14th of February, 1936.

Q. And the letter which you received from the Fashion
6720 Originators Guild returning to you your declaration of co-operation is dated February 14, 1936, and I believe you testified that you received it on the 15th; isn't that so? A. (Witness nods head affirmatively.) Yes, sir.

Q. Did you make any reply to that letter of February 14, 1936? A. We didn't have——

Q. You are forgetting. A. Yes. Yes, sir. Excuse me.

Q. You didn't have an opportunity to reply to that other letter? A. That is right. Thank you.

Q. You are welcome. You did make a reply to the letter of February 14? A. Yes. There is a letter in the exhibits from Mr. Richard Webber. I don't recall the date, but it is in the—it is one of the exhibits.

Q. You are referring to Commission's Exhibit 477, dated February 27? A. Oh, that is right. We didn't make any reply to it.

Q. No reply whatsoever? A. When our declaration was returned.

Q. Right. A. Not at that time.

Q. And from February 14 until February 27, J. L. Hudson Company made no inquiry of the Fashion Originators Guild with respect to the red carding? 6722

Mr. Martin: Objected to as being irrelevant and immaterial. They had already been red carded.

Examiner Bennett: I will let him answer. Overruled.

Mr. Martin: You may answer.

Examiner Bennett: Is that true?

Mr. Martin: Read the question.

The Witness: May I have the question? I am not quite clear on it.

(Question read.)

A. Yes, I believe we did during——

By Mr. Albert. 6723

Q. Written communication I said, Mr. Sappington. A. Communication?

Mr. Martin: You didn't say communication.

The Witness: You said inquiry, I believe.

By Mr. Albert.

Q. Well, consider that I have amended my question to mean written communication. A. Not that I know of.

Q. Now, what letter is that that you were referring to, and you thought I was questioning about when you started to say that you hadn't had time to answer? A. Well, that is one of the Commission's——

Q. Just what is the date of the letter? A. It is in the exhibits.

Q. You were so conscious of it I thought you knew it offhand. I am trying to find it, and I cannot find the number.

Mr. Martin: The letter of February 11, wasn't it?

The Witness: It ought to be somewhere around
6725 February 11.

Mr. Martin: Yes. Here it is. It is Exhibit 499-A. Is that the one?

The Witness: It is not in this book.

Mr. Martin: 499. It is a letter from Post to Webber.

The Witness: That is right. February 11.

By Mr. Albert.

Q. That is Commission's Exhibit 499-A? A. 499-A.

Q. That is dated February 11, 1936; is that right? A. Yes, sir.

Q. And between February 12, 1936, and February 15, 1936, you wrote no letter in response to the letter which
6726 you received from the Fashion Originators Guild of America, dated February 11, 1936; isn't that so?

Mr. Martin: That is objected to as an incorrect statement. He has already testified that he had knowledge of the red carding as early as February 14, the morning of February 14. Now he is coming over to the date of the time when he received their letter from the Guild on the 15th.

Mr. Albert: I am not referring to that. Permit me to ask my question the way I want to. I am referring to his answer to this letter.

Mr. Martin: I have no objection——

Examiner Bennett: Read the question.

(Question read.)

Mr. Martin: Now, very obviously what he is trying to prove is that there was a time between the receipt of that original letter and red carding in which he could communicate. Now, the facts are different because he has already testified that on the morning of February 14 he received the notification that they were red carded, and Mr. Albert 6728
is now trying to take two days' advantage.

Examiner Bennett: Yes. Well, the record shows all of that. You may answer. Overruled.

The Witness: We did not reply to the letter because in the last paragraph Mr. Post stated: "We have no doubt that you share our desire to have this matter settled one way or another during the current week. Now, if you will refer to a calendar of 1935 you will see that the current week extends beyond the day on which we were red carded. We assumed that this letter gave us an opportunity to reply up to Saturday night, which would be the close of the current week, so that if a reply was in the hands of the Fashion Originators Guild on the following Monday we would be fulfilling the re- 6729
quest made by Mr. Post.

I believe that the 14th of February comes on Thursday.

Mr. Martin: Here is a calendar.

The Witness: Here is a calendar—no, this is '36. Is there a '35? Oh, excuse me.

Mr. Feldman: You want '36.

The Witness: February 14 is on a Friday. We considered that from the statement made in Mr. Post's letter that we had until Saturday night to discuss the matter and make our reply.

Now, inasmuch as we were informed of the red carding on Friday morning, we assumed that the committee or the decision must have been made extremely early Friday morning or the previous day on Thursday, which was the 13th. Now, the reason we didn't reply is that action was taken before we had an opportunity to reply, because the letter definitely states that we could have during the current

6731 week.

By Mr. Albert.

Q. Now, did you inquire immediately upon receipt of this return of your declaration, in the light of your opinion that you had until Saturday, as to whether or not the Guild or the committee would not permit you to answer by Saturday? You went along on an assumption on a very important thing of red carding, which you stated has affected your business, and which I believe you, as divisional merchandise manager, could have foreseen—do you mean to tell me that you made no inquiry to determine whether or not you could not be given more time to decide whether you wished to continue to co-operate?

6732 Mr. Martin: If your Honor please, I object to any such statement that the witness went along on the assumption, when it had the written physical evidence that they had been red carded.

Examiner Bennett: Yes. I will sustain the objection.

Mr. Martin: And they had returned his declaration.

Examiner Bennett: I will sustain an objection to that.

By Mr. Albert.

Q. Mr. Sappington, when did you first learn that the manufacturers had been apprised of the fact that you were red carded? A. When our buyers went, and Mr. Simmons, the assistant divisional merchandise manager, went into the market.

Q. When? A. I can't give you that exact date, but Mr. Simmons can.

Q. Approximately when? A. I should say about February 16, 19——

Q. The following week? A. Yes.

Q. Isn't that so? A. That is right.

6734

By Mr. Albert.

Q. There wasn't anything additional, any additional information that you had with respect to red carding except Commission's Exhibit 476; isn't that so, Mr. Sappington? A. No, sir.

Q. Is that so, Mr. Sappington? A. No, sir. We had additional information.

Q. Now, you know, do you not, that manufacturers are not apprised of the fact that a retailer has been returned, his declaration of co-operation has been returned, until some time after the declaration of co-operation has been returned; don't you?

Mr. Martin: How would he know that?

6735

Mr. Albert: I am asking him if he knows.

A. No.

By Mr. Albert.

Q. Don't you know, as a matter of fact, that it takes some time to get these red cards out to all of the manufacturers, during which time while you may have your

declaration of co-operation returned to you, the manufacturers are not aware of it as yet; don't you know that? A. No.

Q. Then do I understand it to be your opinion that as regards the letter of February 14, 1936, that was an irrevocable determination as far as you were concerned that you were red carded? A. Yes.

Q. Then why did you write the letter of February 27, in which you create a doubt as to whether or not you thought that that was a definite irrevocable red carding when you say, "If your aforementioned letter did not have the effect of severing our relationship completely,
6737 please consider this letter as doing so"? A. We wanted to be certain.

Q. Then you were uncertain? A. We wanted you to be certain.

Q. Well, weren't you uncertain of the fact? A. We were not.

Q. Isn't that what that means? A. We were not in doubt about it.

Q. Well, now, let me read that to you again. A. We wanted you to know from us.

Q. Yes. A. We had known from you that our relations were severed. In other words, you, the Guild, kicked us out.

Q. Yes. A. Now, we wanted to know that we accepted the kicking out by the Guild, and that we in turn severed
6738 our connections with the Guild.

Q. And is that your best explanation of Commission's Exhibit 477? A. That is my best explanation.

Mr. Martin: Object to the form of that question.

By Mr. Albert.

Q. In other words——

Examiner Bennett: Sustained.

By Mr. Albert.

Q. —you want to inform us of the fact that we should be now aware of the fact that what we did we meant. A. That what you did we understood you meant, and that we meant the same thing in kind.

(Whereupon, at 4.30 o'clock P. M., August 18, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 722,
Federal Building, 6740
Detroit, Michigan,
August 19, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCCEDINGS.

Examiner Bennett: Be in order, please. You may resume.

6741

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Certain of the exhibits, Mr. Sappington, that were placed in evidence with respect to the figures of various departments represent reports prepared by Mr. Touff, do they not? A. Some of them.

Mr. Albert: I would like to ask Mr. Martin if Mr. Simmons is going to take the stand. If he is I respectfully ask that he be excluded during the remainder of the cross-examination. I thought that we had agreed that he was to be excluded prior hereto.

Mr. Martin: I do not recall any agreement. I am perfectly willing for him to be excluded.

Examiner Bennett: All right.

Mr. Martin: You may retire, Mr. Simmons.

Examiner Bennett: You may ask him to retire to another room.

6743 (Mr. Simmons left the hearing room.)

By Mr. Albert.

Q. Have you copies of those reports with you? A. I haven't a copy of all of the reports.

Mr. Martin: Which reports?

A. Of all the reports that Mr. Touff has made to me, no.

By Mr. Albert.

Q. Have you copies of reports that were made to you by Mr. Touff in connection with the specific exhibits that have gone into evidence? A. I have only copies.

6744 Mr. Martin: Just a minute. Which specific exhibits do you refer to? That is rather broad, Mr. Albert.

By Mr. Albert.

Q. Have you any reports, any inter-office communications with you made by Mr. Touff in connection with any of the specific exhibits that have gone into evidence?

Mr. Martin: Objected to as irrelevant and immaterial whether he has got them with him or not.

Mr. Albert: Again Mr. Martin wants me to ask the six questions first.

Mr. Martin: Wait——

Examiner Bennett: Well, that may be strictly true. I am going to let him answer, however.

The Witness: I have copies with me of the reports that are now in the record as exhibits.

By Mr. Albert.

Q. You mean you have copies of the exhibits as they exist in the records? By that you mean the transcription 6746
of the report by the stenographers? A. I think so. I am not sure that I have all of those without making a search.

Q. I see. Have you Commission's Exhibits 481 and 482? A. Yes.

Q. Have you Commission's Exhibits 481 and 482 for Identification— A. You mean the original?

Q. —Mr. Sappington? A. The originals?

Q. The original exhibit which contained the inter-office communication of Mr. Touff. You knew from my very first question what I was asking you about. A. I haven't those.

Q. You haven't those? A. No.

Q. Where are they? A. I don't know.

Q. Who has them? A. I don't know. 6747

Q. Were they returned to you? A. No.

Q. They were not?

Mr. Albert: I call upon Mr. Martin to produce Commission's Exhibits 481 and 482 for Identification, containing the inter-office communication of Mr. Touff to Mr. Sappington with respect to the particular departments, a resumé of the figures of which is contained in evidence as Commission's Exhibits 481 and 482 in evidence.

Mr. Martin: That is objected to. Those exhibits are not in evidence, and I object to the production of them unless I am required to do so by your Honor.

Mr. Albert: May I point out to your Honor the following facts——

Examiner Bennett: A portion of the papers that are in evidence are available.

Mr. Albert: Yes. That is quite right, your Honor.

Examiner Bennett: Yes.

Mr. Albert: But Commission's Exhibits 481 and
6749 482 in evidence, as they exist at the present time, contained inter-office communications to Mr. Sappington.

Mr. Martin: I object to that statement. That is an incorrect statement. Commission's Exhibits 481 and 482 are in evidence.

Mr. Albert: There were certain matters in connection with Commission's Exhibits 481 and 482 that did not go into evidence, if it please your Honor. They were contained on the original exhibits that were presented by the Commission for identification. On those original exhibits there was certain information, certain advice, certain remarks, certain criticism by Mr. Touff for the en-
6750 lightenment of Mr. Sappington in connection with that specific exhibit. Now, I ask the Commission, who is in possession of that exhibit, who is in possession of that inter-office communication, which seemingly throws enlightenment upon an exhibit now in evidence, to produce that exhibit in order that I might cross-examine Mr. Sappington about it.

Mr. Martin: Now, if your Honor please, I respectfully submit that counsel for respondent cer-

tainly has no right to cross-examine this witness on something that is not in evidence. Here is what is in evidence (indicating). He has a full and complete right to cross-examine him on what is in the evidence, the exhibits that were offered and received in evidence; but I respectfully submit that he has no right whatsoever to cross-examine him on exhibits which are not in evidence.

Mr. Albert; If it please the Court, I certainly should be permitted to cross-examine the witness upon information supplied to him by the man who prepared that exhibit which vitally affects that exhibit, but I cannot do it unless the Commission 6752
permits me to see what this man's report to Mr. Sappington is, unless the Commission is seeking to suppress evidence.

Examiner Bennett: Yes.

Mr. Albert: This is an investigation, your Honor. They are not prosecuting us.

Examiner Bennett: I understand that. I think, though, I will leave it to the discretion of the attorneys. It is their case. If they do not want to——

Mr. Albert: Very well. If it please the Court, I offer to prove——

Examiner Bennett: All right.

Mr. Albert: —that if——

Examiner Bennett: Those documents outside 6753
of——

Mr. Albert: I beg your pardon?

Examiner Bennett: The documents, outside of the portions that are in record, are documents which are not competent or anything that can be proved by them, so I do not see how you can offer to prove from those documents.

By Mr. Albert.

Q. Mr. Sappington, was there any inter-office communication to you from Mr. Touff in connection with Commission's Exhibits Nos. 481 and 482 in evidence? A. Yes.

Q. Have you that inter-office communication with you? A. No, sir.

Q. Is it in your office? A. I can't tell you; I don't know.

Q. Do not you know whether or not you have copy of it? A. I do not.

Q. Is it the only copy that you have, the one that was given to the Federal Trade Commission? A. It is the

6755 only copy I know of.

Q. It is the only one that was prepared? A. No; I don't believe it is the only one prepared. We usually prepare two or three duplicates of everything that is typed. Sometimes they are used, and sometimes they are not.

Q. Where are the duplicates? A. I don't know.

Q. Will you be good enough to look for them for me and if you find them will you be good enough to bring them in with you this afternoon? A. I will make a search.

Mr. Martin: I object to that.

Mr. Albert: So now the Commission objects to the witness volunteering to give me information that is in explanation of his own exhibit.

Examiner Bennett: Well, I will give the witness

6756 the same instruction that I have always given, that he is not under obligation to do it, but if he cares to do it for accommodation of the attorneys——

By Mr. Albert.

Q. Have you any objection——

Examiner Bennett: ——you may do it.

By Mr. Albert.

Q. —supplying me with the copy of the inter-office communication from Mr. Touff to you made in connection with Exhibits 481 and 482? You understand that, in fairness, the Commission has instructed you that you are not under compulsion to bring it in if you do not so desire. Now, have you any objection to bringing it in? A. Yes; I think I should prefer not to.

Q. Is that because there is anything in that inter-office communication which contradicts or in any way differs with your interpretation of Commission's Exhibits 481 and 482 as they now exist in the record? A. No.

Q. Does that inter-office communication support Commission's Exhibits 481 and 482 as it now exists in the record? A. No. It contained additional information that was for my information, for me personally. 6758

Q. That information that it contained, that additional information, is that something that in any way contradicts or differs from anything that you have said on the witness stand here to-day? A. It contained some of Mr. Touff's personal opinions.

Q. Which differs from yours? A. Well, I wouldn't know unless I refreshed my memory. They may or may not.

Q. What is your objection in bringing it in if you do not know what is in it? You do not want to take a chance; is that it? 6759

Mr. Martin: Objected to, your Honor. He has already testified as to what his own opinion is. He has testified as to what his own opinion is, and he has testified that he does not care to bring this additional information in. Now, it contains Mr. Touff's opinion. Mr. Touff will be placed on the stand and Mr. Albert can cross-examine Mr. Touff at full length as to his opinion. He will be placed on the stand.

Mr. Albert: Mr. Touff is going to take th stand?

Mr. Martin: He is.

Mr. Albert: Is that what I understood you to say? Very well.

(There was a discussion off the record.)

By Mr. Albert.

Q. Now, Mr. Sappington, the testimony that you have thus far given with respect to various policies and opinions, are the policies and opinions of J. L. Hudson Company, are they not? I mean, you have not interjected
6761 here any personal opinions of yours which are not the policy of J. L. Hudson Company or the opinions of J. L. Hudson Company, have you? A. Some of the statements that I made may be my own personal opinions, yes.

Q. Differing from those of J. L. Hudson Company? A. Not necessarily.

Q. Well, then— A. I would not know unless you told me which opinions you refer to. That is rather a blanket questions, covers a lot of territory.

Q. It certainly does, and so did your answer that some of them were your own personal opinions. What do you mean by that? A. You would have to tell me which opinions—which ones you want in certain cases.

Q. You volunteered the information that some of them
6762 were your personal opinions, certainly, as distinguished from the fact they were the opinions of J. L. Hudson Company.

Mr. Martin: Your Honor please, he did not volunteer anything; he answered the question.

Mr. Albert: All right, he answered the question.

By Mr. Albert.

Q. What were you thinking of when you said that such of your opinions that you have expressed here were per

sonal opinions? A. As I recall your questions yesterday, you were very insistent that I give you my personal opinion——

Q. Yes. A. —if I did so, it was my personal opinion.

Examiner Bennett: I think the record shows.

Mr. Albert: Very we

Examiner Bennett: —w opinions are personal and what are not.

By Mr. Albert.

Q. Will you tell me, please, whether or not there is such a thing as origination in styles? A. There may be, but it goes a long time back in history. 6764

By Mr. Albert.

Q. So that you mean to-day there is no origination in style, that all styles were originated a long time back in history? A. I would not say that there is none; but I would say that there is very little, if any.

Q. To what extent— A. I don't know.

Q. —is there origination in styles? A. I don't know, but in my opinion very, very slight.

Q. Well, then— A. If any. I am not sure that there is any, but I would concede that if there is any, it is very, very slight.

Q. Well, now, Mr. Sappington, you mean by that, when you say that the difference is very slight, that the difference is a change of a button, or a change of a collar, or a slight change of a sleeve? 6765

Mr. Martin: Now, your Honor, please, it is understood that I have an objection to all of this line of inquiry?

Examiner Bennett: Yes. Well, I will sustain an objection.

By Mr. Albert.

Q. Now, Mr. Sappington, what is it that your customers expected to find in your store in the spring season of 1936 because of their previous experience which they could not find? A. Certain types of dresses from certain houses that we have done business with over a considerable period of time.

Q. What types of merchandise? A. Well, that is a detail that I think Mr. Touff could testify on much better than I can.

Q. You mean that you do not know the types of merchandise that are missing, in a general way? A. Oh, yes,
6767 in a general way.

Q. Well, that is all I want. A. Well, misses' daytime dresses principally, certain types of sports dresses and junior dresses at $10.75 and $12.75 cost.

Q. Well, now, your customers did not know those dresses as misses' daytime dresses? A. Oh, yes.

Q. Or this department dress.— A. Oh, yes.

Q. —or that department dress, did they? A. Oh, yes; yes, indeed.

Q. That is, they went to those particular departments? A. Oh, yes.

Q. And they noticed that a certain type of dress in that department, as distinguished from the same type of dress in that department, was not in stock; is that it? A. I
6768 don't understand the question. I am sorry. I don't know what Mr. Albert wants to know.

Q. You have testified, Mr. Sappington, that your customers claimed that they could not get the same type of goods in 1936 that they had previously; is not that correct? A. I testified that we know we are not offering to our customers certain types of merchandise that we have offered previously, and that we know are available on the market, were available on the market during the spring season, and that our competitors offered to our customers.

Q. Well, now, what is there about the merchandise that you are offering this year that differs from the merchandise that you were offering last year? A. Oh, we are not offering it; we cannot get it.

Q. Yes. That is quite true. You have been telling us that for three days, Mr. Sappington.

Mr. Martin: I move that be stricken.

By Mr. Albert:

Q. What is there, Mr. Sappington, in Guild merchandise that is necessary to J. L. Hudson & Company—is that plain language? I think that is reducing it to its most elemental language. Now, if you will be good enough to 6770
give me an equally elemental reply I think we will all be very happy. A. I shall try very hard.

Q. I do not think you have to try very hard; I think you know the answer. A. There are many things in the merchandise, and also in the production of the merchandise——

Q. Well, may I suggest— A. Now, those two things go hand in hand.

Q. Yes. Now, may I suggest that you leave the question of production of merchandise——

Mr. Haycraft: Oh, now——

The Witness: I can't.

By Mr. Albert. 6771

Q. —to the end of your answer and tell us the other things first, if you will?

Mr. Haycraft: That is objected to, your Honor.

A. Those two things go hand in hand. Excuse me, I did not know whether you were listening or not?

6772 *Louis B. Sappington—For Commission—Cross.*

By Mr. Albert.

Q. Oh, yes, I am listening. A. There are certain style features, there are certain types of merchandise that the Guild houses make, that we like, that we have shown to our customers, season after season. One example is $11.75 cost dress made by C. H. D. Robbins. We cannot duplicate that dress.

Now, because a manufacturer makes a desirable dress is not the whole story. His ability to deliver that dress as fast as we want it is equally important, particularly in the misses' daytime field where the turnover is very rapid, where hot numbers develop fast, and it is where it is necessary to get twenty or thirty of the style, and get them in a hurry. Now, the houses that we have selected from the market as the houses best equipped to do that, particularly in the $10.75 cost field, happen to be Guild houses——

6773

Q. Are those what are called preferred resource houses-

Mr. Martin: Let him finish.

Q. —by the A.M.C.?

Mr. Martin: Were you through with your answer, Mr. Sappington?

Mr. Albert: I am sorry, he dropped his voice.

The Witness: Yes, I am through.

6774 Mr. Martin: All right, then.

By Mr. Albert.

Q. Are the latter houses you have referred to the preferred resource houses of the A.M.C.?

Mr. Martin: Objected to as irrelevant and immaterial. His testimony is not as to what is preferred by the A.M.C., but what is preferred to by Hudson.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let him answer.

A. I don't know.

By Mr. Albert.

Q. Mr. Sappington, do you contend that there are no other houses manufacturing a $11.75 dress, aside from C. H. D. Robbins? A. I did not say that.

Q. Well, what is there about C. H. D. Robbins dress that cannot be duplicated? A. Well, there are certain methods of handling, the styling of the dress; there is a certain conception that you, if you are buying and selling 6776
dresses, that you get when you see that dress; there is a certain desirability about that dress that is very hard to describe, because it is involved in the styling of the dress.

Q. And it has a distinctive buying appearance— A. It has.

Q. —which is recognized, and which you cannot get from any other house? A. It has a distinctive appearance, yes.

Q. And you cannot get that from any other house? A. We have not been able to duplicate any resource in the market, to duplicate the $11.75 dresses that we bought from C. H. D. Robbins this spring.

Q. And that is a designing type, a designing element that cannot be gotten from any other $11.75 house—do 6777
you mean to tell us that, Mr. Sappington? A. I don't know whether it is a designing element or not; certainly it is a type of garment——

Q. You said it is a distinctive line, and a distinctive style. Do you mean to tell me that that cannot be copied, that no other house can make it? A. I don't know.

Q. Is that what you mean? A. I don't know whether any other house can make it or not; no other house is making it.

Q. You said you cannot duplicate it, did you not? A. I meant in the market. I cannot find it in the marke

Q. Have you attempted to subsidize any manufacturer to duplicate dresses——

Mr. Martin: Objected to as irrelevant and immaterial and outside of the scope of proper cross examination.

Mr. Albert: I think it is right on the point, your Honor, on this question that it cannot be duplicated.

Examiner Bennett: I sustain the objection to that.

6779

By Mr. Albert.

Q. Have you chipped into the A.M.C. pot?

Mr. Martin: Objected to; same objection.

Examiner Bennett: Sustained. That has been gone into in the record and it has not been shown that the A.M.C. is able to duplicate those things.

By Mr. Albert.

Q. Did the A.M.C. ask you for any contributions to subsidize manufacturers?

Mr. Martin: Objection. Same objection.

6780 Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, what is there, Mr. Sappington, about that C. H. D. Robbins dress that you cannot get any place else? A. Oh, I think you would get a lot more information if you would ask that question of Mr. Touff; he has been buying those dresses for years. I——

Q. Well, is there— A. I have seen them in the department. I have been in the market, but I cannot—I cannot give you those technical—that technical information as well as a dress buyer. Now, you have been told that Mr. Touff is coming on the stand; if you want that information, you can get it from him.

Q. Do you mean, Mr. Sappington, that you have not sufficient information upon which to predicate your opinion that there is no such thing as origination in style?

Mr. Martin: Objected to.

A. Oh, yes.

Q. Now, after all this time that you have had to think, 6782
Mr. Sappington, what is the rest of your answer? A. Yes. I meant to say because I have enough information to form a very definite opinion about the origination of style.

Q. What is that information you have? A. Information I have obtained from my contact with the garment business for a number of years. I know that dresses are designed with a Georgian this, or an Elizabethan that, and claimed original, and those same styles come back from the ages. We have stuff coming from the Chinese—how many thousand years old is that? Somebody makes a dress with a Chinese touch to it? Original style? No. Somebody makes a Georgian dress. Original style? No. They copy a man's coat that was worn in the 1800's. Original style? No. Of course it is not original. That 6783
has been ruled on in courts outside of this country a long time ago.

Q. When did you make a study of those cases?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: Yes. I will sustain an objection. I have gone into that and into it and into

it, and we are not getting anywhere. And what i it, after you get it into the record?

Mr. Albert: If it please the Court, may I inform you what I intend to do with this witness, off th record, on this particular phase?

Examiner Bennett: Oh, you may inform me, bu I—I am rather skeptical. We are not going to tak a recess at this time.

(There was a discussion off the record.)

Examiner Bennett: It is not necessary to argu the case on the record with the witness. All right you may proceed.

6785 *By Mr. Albert.*

Q. Now, Mr. Sappington, is it your contention that when an Elizabethan trend is the fashion for the season, that is in the models without variation of any kind?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Read the question, please.

(The question was read.)

Examiner Bennett: Do you understand the question?

The Witness: Yes, sir.

Examiner Bennett: All right. You may answer. Overruled.

6786 A. No; there are variations applied all along the line, of course, but still you have the distinctive features present. Otherwise it couldn't be recognized. That doesn't mean that the style is an original style.

By Mr. Albert.

Q. Is there anything new under the sun, Mr. Sappington?

Mr. Martin: Objected to.

A. I have heard——

Mr. Martin: As irrelevant, immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Mr. Sappington, do you distinguish between the trend of style and the design of a dress?

Q. Do I understand, then, if it please the Court, along this same line that your Honor will sustain all objections of Mr. Martin to any questions of mine seeking to elicit from the witness upon what he predicates his opinion that there is no such a thing as style origination? 6788

Examiner Bennett: Yes, I think that is a fair statement.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Sappington, did you ever get any hot numbers from houses other than Guild houses? A. You mean by that question to cover every price line we carry?

Q. Yes. A. Yes.

Q. And were those hot numbers equally as hot as anything that the Guild produced?

Mr. Martin: Oh, objected to, your Honor. 6789

Examiner Bennett: Overruled. You may answer.

A. I couldn't answer that without going over our records of re-orders.

Q. Well, will you agree that—I withdraw the question. Who supplied you with hot numbers; have you any idea? A. I couldn't answer that without going over the records.

Q. So that at the present time you have no knowledge as to what houses other than Guild houses have supplied you with hot numbers?

Mr. Martin: Objected to as irrelevant. He has testified that houses other than Guild houses have supplied him with hot numbers, and as to which particular ones I can't see the relevancy of it.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception.

By Mr. Albert.

6791 Q. From whom did you get Guild merchandise after the red carding, Mr. Sappington?

Mr Martin: Objected to.

Examiner Bennett: Overruled. You may answer the question. The question is very general. I presume it calls——

The Witness: Your Honor, I should prefer not to mention the names of the houses that we obtained Guild merchandise from after red carding.

Examiner Bennett: Yes; I shall not insist on that.

Mr. Albert: Exception.

Examiner Bennett: I supposed that the general statement——

6792 *By Mr. Albert.*

Q. Now, Mr. Sappington——

Examiner Bennett: Would be proper to so general a question. I didn't expect that it called for naming individual houses.

A. From various houses.

By Mr. Albert.

Q. Mr. Sappington, you testified that you obtained merchandise from a Guild manufacturer during the time that he was a member of the Guild, that that manufacturer had since resigned; did you not? A. I did.

Q. Will you give us the name of that manufacturer who provided you with Guild merchandise? A. Your Honor, I should very much prefer not to do that.

Examiner Bennett: I will ask you in that connection, Mr. Sappington, whether you think it would be a serious injury to the business of Hudson & Company?

6794

The Witness: And to the manufacturer also, yes, sir.

Examiner Bennett: I see. All right.

By Mr. Albert.

Q. Now, Mr. Sappington, since that manufacturer is no longer a member of the Guild what injury do you think could occur to him by your divulgence of his name?

Mr. Martin: Objected to. The witness has already testified that he thought it would injure both his store and the manufacturer.

Mr. Albert: And I suppose we are supposed to be bound by that answer?

Examiner Bennett: Yes. Well, the fact, of course, goes to the weight of the evidence, but I will not ask the witness or attempt to force him to give up information of that sort.

6795

By Mr. Albert.

Q. Mr. Sappington, is your testimony to the effect that you purchased Guild merchandise from Guild manufac-

turers and your subsequent refusal to reveal the names of those manufacturers interjected into these proceedings for the sole purpose of attempting to cause dissension among the members of the Guild manufacturers?

Mr. Martin: Objected to.

Examiner Bennett: Well, I think the witness should be permitted to comment upon that statement.

Mr. Martin: All right, sir. Go ahead.

The Witness: Could I have the question, please?

(The question was read.)

6797 The Witness: I was asked the question. I gave the true answer.

By Mr. Albert.

Q. In other words, you refuse to tell me whether or not your testimony with respect to these Guild manufacturers having supplied you with merchandise has been interjected maliciously and solely for the purpose and with the knowledge that your testimony would be read in "Women's Wear" and would create the impression among the minds of the Guild that you were able to get merchandise after you were red carded; is that so? A. No.

Q. Well, then, what is your answer to the question? You refused to answer it twice now. A. Simply that I was asked the question and I answered and I gave you

6798 the fact.

Q. You answered that you didn't want to give the names because you thought it might cause injury to the manufacturer; isn't that so? A. I didn't want to give the name because the manufacturer definitely asked us not to give the name.

Q. I see. Wasn't that evidence of the fact, as far as you were concerned, that at the time that manufacturer was

doing an immoral, unethical thing in breaking his agreement with the Guild and that you were aiding him in doing that?

Mr. Martin: Objected to, your Honor.
Examiner Bennett: Sustained.

By Mr. Albert.

Q. At the time that you got this merchandise from the Guild manufacturer, or allegedly obtained this merchandise from the Guild manufacturer, didn't you know that he was breaking his promise to the other manufacturers?

Mr. Martin: Objected to. 6800
Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, I again ask you for the fourth time and I haven't as yet received an answer: Isn't it true that you have testified that certain manufacturers who were Guild members gave you merchandise after you were red carded, and you have declined to give us the names of those manufacturers solely for the purpose of having it appear that Guild members were not abiding by the Guild rules, and by reason thereof cause dissension among the Guild members?

Mr. Albert: Now, if it please the Court, may I ask that Mr. Simmons be requested to leave the 6801
stenographer's room where the minutes are being dictated into a machine in his presence as they are being read off here this morning.

Examiner Bennett: Well, I think Mr. Simmons has excellent powers of concentration if he can get very much from that. I am going to let it stand.

Mr. Albert: Very well, your Honor.

Mr. Martin: Ha, ha.

Mr. Albert: May I ask for the last question.

The Reporter: You were about to make an offe of proof.

Mr. Albert: If it please the Court, that if were permitted to examine the witness with respec to the names of the manufacturers, Guild member at the time of his red carding who allegedly sup plied him with merchandise while they were mem bers of the Guild, the witness would be unable t bring in records demonstrating the ct that manu facturers who were members of the Guild at th time of the red carding furnished him with Guil

6803 merchandise.

Examiner Bennett: All right.

By Mr. Albert.

Q. Did you obtain any Guild merchandise through fic titious accounts, Mr. Sappington?

Mr. Martin: Objected to.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Martin: We withdraw the objection.

A. You—what do you mean—may I ask what you mean by fictitious accounts?

6804 Mr. Albert: Will you read the question and answer?

(The question and answer were read.)

By Mr. Albert.

Q. Well, let me give you this example. Bloomingdale, one of the A.M.C. stores, purchased Guild merchandise through another house. When the merchandise was de livered to that other house, it was redelivered to Blooming

6805

dale's. Now did the J. L. Hudson Company ever do anything like that?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Overruled. I am going to let him answer.

Mr. Martin: All right, sir. Go ahead.

A. We have never bought any merchandise through Bloomingdale's, no, sir.

Q. Did you think that I asked you whether or not you bought merchandise through Bloomingdale's? A. You asked me for——

6806

Q. And did I state that anybody bought merchandise through Bloomingdale's? Isn't it a matter of fact that I stated— A. Yes.

Q. —that I stated Bloomingdale's bought merchandise through a third party? Isn't that what I stated? A. Well, as I recall it——

Q. You know, a good boxer, Mr. Sappington, when he gets hit hard always smiles. Is that why you are smiling?

Mr. Martin: Objected to as being irrelevant and immaterial.

By Mr. Albert.

Q. Well, now, will you answer my question, please? A. I don't know what you mean like that. That is too general I can't answer.

6807

Q. Well, now, look. Let me put it on elemental terms. J. L. Hudson Company is red carded and can't get Guild merchandise according to you; is that right? A. That is right.

Q. There are stores that can get Guild merchandise; isn't that so? A. That is so.

Q. Did J. L. Hudson & Company ever have these stor that can get Guild merchandise order the Guild mercha dise and then transship it, reship it, redeliver it, or go u back alleys and deliver it to J. L. Hudson & Company? A Do you mind if I smile when I say no?

Q. No, but you didn't smile, Mr. Sappington.

Mr. Meder: Ha, ha, ha.

Q. (Continued) You didn't smile, Mr. Sappington. A Well, it is very hard to smile and say "No."

Mr. Meder: Ha, ha, ha.

6809 The Witness: Ha, ha.

Mr. Martin: Ha, ha.

By Mr. Albert.

Q. Watch. No (indicating). A. Your mouth is differ ent than mine.

Q. Now, that we have had a little jesting, which is very acceptable on this hot day, Mr. Sappington, and we all enjoyed it— A. Thank you.

Q. You are quite certain of that?

(There was a short pause.)

Q. Do you have to stop and think or don't you know?

Mr. Martin: Let him answer the question.

6810

A. Ha, ha. That is an important question. I want to be very careful. Yes, I am quite certain.

Q. You are quite certain? A. (Witness nods head affirmatively.)

Q. Did you have to think back as to the manner in which you obtained Guild merchandise? A. Oh, no.

Q. To be certain that that was not one manner of ob taining it? A. No, sir.

Q. But you did take some time to think very deeply on the point, didn't you?

Mr. Martin: Object to that.
The Witness: Ha, ha.

By Mr. Albert.

Q. Mr. Sappington, isn't it a fact, or is it a fact that the alleged Guild manufacturer who has since resigned from the Guild sold you merchandise through Rosenthal-Kallman?

Mr. Martin: Objected to, and I move that the word "alleged" as used in the question be sticken 6812
out, and I object to the answer and the question.

Examiner Bennett: I sustain the objection.

By Mr. Albert.

Q. Well, now, Mr. Sappington, you say that the good will of your customers has been hurt by the Guild program.

Mr. Martin: Objected to. He has gone into that thoroughly on both direct and cross-examination.

Examiner Bennett: Overruled. You may answer.

A. Well, in several ways. We had merchandise on 6813
order, on special order, at the time of the red carding, and had been on order a considerable period of time. As customers came in inquiring about the delivery, we had to tell them that we couldn't get the merchandise. We had merchandise in stock at the time of red carding in the latter part of February and the first part of March in our higher-priced lines where size ranges are not complete. And this is an ordinary way of doing business; it is done in every

store, in every shop; customers would come in and wa
one size or one color we didn't have. She would ask
to special order that size for her. We had to say that w
couldn't do it. We had one very important customer,
very prominent woman in Detroit, who is quite influentia
who is—who was very much upset and couldn't unde
stand why we couldn't give her the kind of service that sh
had been able to get in our store previously, and could ge
at other stores in Detroit. We had plenty of occurrence
like that.

Q. Did you explain why? A. No, we didn't explai
why.

6815 Q. Didn't you give her any reason? A. We told her i
was impossible for us to get merchandise.

Q. Were you ashamed of the reason?

Mr. Martin: Objected to as being irrelevant an
immaterial.

Mr. Albert: He brought it up, your Honor.

Mr. Martin: He didn't bring up anything. He
answered your question.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Sustained.

By Mr. Albert.

6816 Q. Did you tell her that the reason it was impossible
for you to get merchandise was because you refused to
protect her in the style of dress that she wanted, in see
ing to it that that dress could not be copied in the City
of Detroit?

Mr. Martin: Objected to. The witness has al
ready stated fully what he told.

Mr. Albert: He has merely—he has merely given
the ultimate fact; not the reason.

Examiner Bennett: Sustained. I think it is unnecessary to go into these arguments in the examination on cross or direct.

By Mr. Albert.

Q. Of course, Mr. Sappington, the fact that the customer was disgruntled or dissatisfied about something affected the good will of Hudson & Company; did it not? A. We think it did.

Q. So that the good will that you built up with your customer, and—withdrawn. Now, Mr. Sappington, do not you concede that there is any good will to protect on the part of the manufacturer of the dresses which you seek? 6818

Mr. Martin: Read that question back to me.

(Question read.)

Mr. Martin: Objected to as irrelevant and immaterial to the issues in this case.

Examiner Bennett: Overruled. You may answer.

The Witness: I will have to ask for the question again.

Examiner Bennett: Yes.

The Witness: I didn't understand the question when it was first asked.

(Question read.)

The Witness: I am sorry. I can't answer the question. I don't understand it. 6819

By Mr. Albert.

Q. The manufacturers whose dresses you seek? A. Seek?

Q. Seek. A. Seek, s-e-e-k?

Q. The dresses that you want. A. Yes.

Q. S-e-e-k. A. I see. All right.

Q. Have a good will that they have established in their dresses, haven't they? A. Good will with the retailer, I suppose, yes.

Q. Yes. I mean that it is obvious because you are so insistent on getting them; isn't it? Isn't it? A. We are not insisting on getting them because of the good will that the manufacturer has established between himself and us. We want the dresses because we feel that they are desirable for our stocks. They enable us to put—to maintain a competitive position with other retailers in Detroit and enable us to go along with our business as we have established it.

6821 Q. Well, now, isn't it a fact that you want their dresses? A. That is why we want them.

Q. Doesn't that constitute—I am referring to your desire to get their dresses as distinguished from other houses—doesn't that constitute good will that that manufacturer has built up with your store, that you would want his merchandise in preference to somebody else's? A. Well, I don't know.

Q. What is good will, Mr. Sappington? Let us see if you know what good will means, if that isn't good will. A. Well, I suppose the good will is the friendly feeling that exists between an organization and its customers.

Q. Built up as a result of what? A. Of satisfactory dealings over a period of years.

6822 Q. And so, as a result of satisfactory dealings over a period of years, you are very friendly to Guild manufacturers now; is that it? A. We are very friendly with the Guild manufacturers; yes.

Q. And doesn't that constitute good will between the manufacturers and yourself? A. Yes.

Q. Now, if they couldn't satisfy you with their merchandise, that good will would be vitally affected, wouldn't it? You wouldn't be quite so friendly with them, would you? A. Well, we might be.

Q. You mean— A. I think good will is more a matter of ethics, partly a matter of ethics. We might feel just as friendly toward a manufacturer, although we couldn't use his goods.

Q. Well, that isn't good will, is it? That is merely comradeship. A. Well——

Q. Or you merely dislike the man. A. Very indefinite thing.

Q. But manufacturers are in business to make a profit; aren't they? They don't want your good feeling unless you buy goods from them? A. That is right. Not necessarily.

Q. So that— A. No.

6824

Q. You are still friendly with them and don't buy goods from them; it is not good will, is it? A. It could be.

Q. Haven't the manufacturers a substantial item to protect in attempting to preserve their good will with you? A. Yes.

Q. Doesn't that good will consist of preventing it, if possible, the loss of their business to competing manufacturers? A. Yes, I should think so.

Q. And when competing manufacturers copy their styles at lesser prices and make it possible for your customers to get goods from these competing retailers at lesser prices to the loss of your business, does not that affect the good will of your business with the Guild manufacturers? A. I don't know why it should.

Q. Well, now, let us see. Let us assume a hypothetical case. 6825

Mr. Martin: I object to any further questioning along this line, your Honor.

Examiner Bennett: I will sustain the objection. I think it has gone far enough.

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, Mr. Sappington, is it your contention that if you had maintained your volume of Guild merchandise your departments would automatically have gone ahead in dollar volume? A. I can't answer that positively.

Q. Now, Mr. Sappington, were you on active—shall I say—duty, with J. L. Hudson Company all during 1935? A. No, sir.

Q. During what period of time were you not on active duty? A. Well, part of August.

Q. For how long a period of time would you say? A. Well, part of August, September and October.

6827 Q. So that, for, roughly speaking, approximately two and a half months of 1935 you were away from the business; is that what you mean? A. Well, I was at home. I had constant touch with the business through my assistants, through Mr. Dowley. I telephoned; most of the important matters were discussed with me; practically every important decision was discussed with me. I had arthritis which makes it very difficult to move. I don't think it affected my ability to discuss plans and to think; I don't think my ability to think was any worse than it is normally.

Q. And you hope that it has not manifested itself thus far? A. I hope it is not permanent, I can tell you that.

6828 Mr. Feldman: We hope so, too.

By Mr. Albert.

Q. I show you a letter signed by Mr. Bergdahl, and ask you if you recognize that to be his signature? A. Yes, I think that is Mr. Bergdahl's signature.

Q. Mr. Bergdahl is the gentleman whom you refer to in A.M.C. as one authorized to speak for J. L. Hudson Company——

Mr. Martin: Objected to.

By Mr. Albert:

Q. —as being the intermediary between J. L. Hudson Company——

Mr. Martin: Objected to. There is no such statement in the record.

Examiner Bennett: I remember none. The witness would know whether he made such a statement.

The Witness: I don't recall making such a statement. There are occasions when Mr. Bergdahl is given the authority to make arrangements for us, but there is no blanket authority given to Mr. Bergdahl to make arrangements for us. 6830

By Mr. Albert:

Q. And he has generally acted, on numerous occasions, as the zone officer between J. L. Hudson Company and the Guild and other members of the A.M.C. Stores, and the Guild; is that not so, and you have had various conferences with him with respect to Guild policies, and, as a matter of fact, you have placed into evidence some letters and telegrams passing between you and Mr. Bergdahl with reference to Guild policies?

Mr. Martin: I object to the form of the question. He is trying to cover everything in one question. Let him ask separate questions. 6831

Mr. Albert: I think we will do——

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Do you recall the summary——

The Witness: I think so, there are some—I will answer it backwards. I can remember the last part better. There are some exhibits from Mr. Bergdahl to the J. L. Hudson Company. Yes.

By Mr. Albert.

Q. And he has— A. We have asked Mr. Bergdahl's opinion on various matters, yes.

Q. And he has at various times communicated to you the result of conferences that he has had with the Fashion Originators Guild, has he not? A. He has told me personally, and I believe in correspondence, of certain discussions that he has had with the Fashion Originators Guild, or some of its members.

Examiner Bennett: Later on there may be a motion to strike if it is not properly cleared up.

6833 (Photostatic copy of letter from Mr. H. O. Bergdahl, Association of Buying Offices, Inc., by Special Committee, under date of August 3, 1935, to Mr. A. M. Post, Executive Director, Fashion Originators Guild of America, 512 Seventh Avenue, New York City, heretofore marked for identification Respondents' Exhibit 46, was marked as an exhibit and received in evidence.)

By Mr. Albert.

Q. Now, is it a fact, Mr. Sappington, that the sole reason for the refusal of Guild members to sell you merchandise was the result of your policy, of your refusing to cooperate in protecting their originations? A. No, sir.

6834 Q. What other reason is there, Mr. Sappington? A. For the reason that the manufacturers shut——

Mr. Martin: Wait just a second— Ask him whether there is any reason first.

Mr. Albert: I think it is logical, if that is not the only reason there must be some other reason.

Examiner Bennett: All right. Let him answer.

Mr. Martin: Go ahead.

A. The reason the manufacturers refused to sell his merchandise was because we were red carded by the Guild——

By Mr. Albert.

Q. Were you— A. —and they were told not to sell us merchandise.

Q. That is quite true, perhaps, but were you not red carded by reason of your announced policy of refusing to co-operate in protecting the origination of Guild merchandise? A. We were not.

Q. Why were you red carded? A. We don't know.

Q. And after all this testimony you still do not know 6836
why you were red carded? A. We think we were red carded unfairly and unjustly.

Q. And despite the fact that you think you were red carded unfairly and unjustly, you made no request of the Fashion Originators Guild from February 14 down to February 27 to determine why you were red carded? A. We did not. The way we were treated by the Guild we did not want to make any request from him.

Q. So you did not care about it? A. Yes, we cared.

Q. Then why did you not find out about it? A. We were handled in such an unjust and unfair fashion that our firm refused to lower themselves to a point where they would discuss the matter again.

Q. And that despite the fact that you were unaware of 6837
Guild methods, as you testified to, that you had not made very much examination of the Guild methods——

Mr. Haycraft: Read the question.

Mr. Martin: Read the question. We did not quite get it.

(Question read.)

Mr. Albert: Question withdrawn.

Tightly Bound

By Mr. Albert.

Q. Now, Mr. Sappington, do you not know as a matte of fact that if J. L. Hudson Company advised the Fashio Originators Guild of America of its intention to co-opera with the Guild policy of protecting the style of members the Guild, that J. L. Hudson Company can have all of th merchandise that it wants? A. Nobody has told me tha

Q. What is your opinion about it?

Mr. Martin: I object to his opinion.

A. I don't know.

6839 Q. You don't know? A. I don't know what the Guil would do; I know what the Guild has done.

Q. Well, now, Mr. Sappington, I tell you now that i J. L. Hudson Company subscribes to the program of pr tecting Guild merchandise, that J. L. Hudson Company can get all of the merchandise from Fashion Originators Guild members that it desires, are you now willing to sign a declaration of co-operation? A. Are you suggesting that we turn the other cheek? We have been slapped once.

Q. I am not suggesting anything at all, Mr. Sappington A. I cannot decide on that. That is a firm policy. That is a matter to bring before the firm of the J. L. Hudson Company, not to me.

Q. Will you bring it before the firm? A. No.

Q. In other words, you are— A. Not until all this legal

6840 question is settled. We are in doubt as to the legality of the proposition.

Q. Were you not in doubt of the legality of the propos tion when you first joined the Guild? A. No.

Q. You were not? A. No.

Q. You were convinced of it? A. No, we did not tak up the question of the legality of the proposition.

Q. You did not investigate it at all? A. No.

Q. You just joined something without knowing what it was all about? A. No.

Mr. Albert: That is all, Mr. Sappington.

Examiner Bennett: All right. No redirect?

Redirect examination by Mr. Martin.

Q. Now, Mr. Sappington, you were requested by Mr. Albert to obtain certain information with reference to the moving of departments in your store? A. Yes, sir.

Q. Did you bring it here? A. Yes, sir.

Q. Do you have that information available with you now? A. Yes. 6842

Q. What did you find out?

Mr. Albert: That is objected to, if it please the Court, as improper redirect.

Mr. Martin: I suggest that it is highly proper, your Honor. It was brought here at Mr. Albert's request, and brought out by him.

Examiner Bennett: Yes, I think it is proper redirect examination if you want to go into it.

Mr. Martin: All right.

By Mr. Martin.

Q. What did you find out, Mr. Sappington?

Examiner Bennett: I think it is not important. 6843

A. Why, we—I found that Departments 338 and 358, which were the departments under consideration—under discussion yesterday—were located permanently in their present location on the 24th of December, 1935, which was a month and a half before we were red carded, so that all of the disturbing, or alleged disturbing elements that might has been inflicted on these two departments while

their quarters were being rehabilitated, took place befo the 14th of February, 1936, so that they were in an i proved condition, with new rugs, new upholstery, ne appointments in all respects by the 14th of Februar 1936.

By Mr. Martin.

Q. Did they have air conditioning in 1936? A. The had air conditioning; yes, sir; in 1936.

Q. But not in 1935? A. But not in 1935.

Q. Now, with reference to any other affected depar ments, what did you find? A. Department 369, which wa
6845 one of the departments under discussion yesterday, was i its permanent location on the 31st of December, 1935, an has not been disturbed since, and is in almost exactly th same spot in which it is located all of the previous yea that is 1935.

Q. All right. Anything else—wait just a moment. Di you make any further investigation to determine whethe moving of the department had an effect on its busines A. Yes, sir; I did.

Q. What effect? A. I took one, the suit Departmen No. 300, which was moved, moved four times between th latter part of November and the 31st of December, when i was in its permanent location. This department durin these two months when it was moved four times had a
6846 increase of 97 per cent. in November and an increase o 32 per cent. in December. This increase is in dolla volume.

Q. Did you make any further investigation? A. I mad a further investigation of the fur department, which wa moved from the sixth floor, which had been its permanen location, to the—I mean, I beg your pardon—moved fro the fifth floor, which was its permanent location, to th sixth floor, which was a temporary location, was move

back again to the fifth floor, to its new permanent location, which was different from its old location of the fur department. In its new temporary location on the sixth floor following a move late in December, between Christmas and New Years, that department had an increase of 6.8 per cent. In February, part of the time on the sixth floor, part of the time back in the new location, new permanent location on the fifth floor, this department had an increase of 35 per cent., so that it is not necessarily true that moving around makes a department lose business.

Q. Now, with reference to Commission's Exhibit 478—

6848

Mr. Albert: What exhibit is that?

Mr. Martin: 478, and so forth.

By Mr. Martin.

Q. —which is a list of Guild houses used by dress departments in 1935, I believe in your testimony you stated that that list did not contain a list of the junior resources; is that true? A. Yes, sir.

Q. Have you such a list? A. I believe I have.

(List of "Guild houses with whom we did business during 1935 in the Junior Miss Department," under date of August 1, 1936, was marked for identification Commission's Exhibit 510.)

6849

Q. I hand you Commission's Exhibit 510 for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is it? A. It is a list of Guild houses with whom we did business in 1935 in the Junior Miss—in the Junior Miss Department.

Mr. Albert: Which is a subdivision of 371?

The Witness: No, the Junior Miss Department is 371; these are dress manufacturers.

6850 *Louis B. Sappington—For Commission—Redirect.*

By Mr. Martin.

Q. Was this prepared for you at your request? A. Ya sir.

Q. In the ordinary course of business? A. Yes, sir.

Q. And relied upon by you? A. Yes, sir.

Q. And believed by you to be correct? A. Yes, sir.

Mr. Martin: I offer the same in evidence, your Honor, as Commission's Exhibit 510.

Examiner Bennett: Received. I hear no objection.

6851 (List referred to, heretofore marked for identification Commission's Exhibit 510, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Now, Mr. Sappington, you were asked on cross-examination yesterday—did you know that Mrs. Miller, the Guild shopper for Detroit, was formerly an employee of Hudson's? I now ask you how many employees does J. L. Hudson Company have? A. Well, it varies between six and eight thousand.

Q. So that it would be quite reasonable if you were not to remember the particular employee in that number? A. Yes, sir.

6852 Mr. Albert: Does that include its secretaries and stenographers?

By Mr. Martin.

Q. The six and eight thousand includes all employees, does it not? A. It includes all employees; yes, sir.

Q. Now, Mr. Sappington, up until the time Hudson's was red carded, did they co-operate with the Guild from the time they originally signed the Declaration of Co-operation up until the time of red carding?

Mr. Albert: That is objected to.

Q. Did they co-operate?

Mr. Albert: That is objected to as being improper redirect, and fully covered on direct and cross-examination.

Mr. Martin: I suppose you will concede that they co-operated?

Examiner Bennett: Well——

Mr. Albert: I will have to take a leaf from the book of Mr. Martin and Mr. Haycraft. I concede nothing; I admit nothing.

Mr. Martin: All right, sir. 6854

Mr. Albert: I will agree to nothing.

Mr. Martin: O.K.

Mr. Haycraft: Insist on the question.

Mr. Martin: We will insist on the question.

Mr. Albert: I will concede that they don't think that they co-operated.

Mr. Martin: We insist on the question, then, your Honor.

Examiner Bennett: You seem to be opening up a field of inquiry that may go a good ways.

Mr. Martin: I didn't hear you.

Examiner Bennett: I say, you seem to be opening up a field of inquiry that may go a good ways.

Mr. Martin: No, sir. That is the only question I am going to ask him. 6855

Examiner Bennett: All right. I will let him answer. Overruled.

A. Yes, sir.

By Mr. Martin.

Q. Now, Mr. Sappington, with reference to the letter from Mr. Maurice Rentner to Hudson's, which is in evidence——

Mr. Albert: Would you mind repeating the fir part?

Mr. Martin: With reference to the letter fro Mr. Maurice Rentner to Hudson's.

By Mr. Martin.

Q. Which is in evidence as Commission's Exhibit—yo know what the number of that is?

Mr. Albert: 480-A, B and C.

By Mr. Martin.

6857 Q. 480-A, B and C, and with reference to the 35 manu facturers listed thereon, were those manufacturers th principal source of supply for Hudson & Company?

Mr. Albert: That is objected to.

Mr. Martin: At that time.

Mr. Albert: Object to the form of the question as leading, no foundation has been laid; improper redirect, and we are now reopening up the entire case.

Examiner Bennett: I will let him answer. Overruled.

Mr. Martin: All right, sir. Go ahead.

A. Yes, sir. As far as our higher-priced business.

6858

By Mr. Martin.

Q. As far as what? A. As the higher-priced business is concerned in the upper price lines. These were the most important sources of supply.

Q. The witness was asked, referring to page 3701 of the record, was asked this question by Mr. Albert: "Q. Did you take any steps in 1933 similar to those mentioned in Commission's Exhibit 494-A, which is a letter from Mr.

Webber to Mr. Bergdahl, and which states: 'In the meantime, I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement.'" The answer was: "A. We had no occasion, then." Now, I ask you what happened in the meantime at the time which this letter referred to?

Mr. Albert: That is objected to, if it please the Court, as improper redirect; completely covered in the testimony.

Mr. Martin: Not covered in it at all, your

Examiner Bennett: Overruled. You may answer.

The Witness: Yes, sir. The Guild had changed 6860
its policy from the time we had went into it to the time this letter was written. It had included—it had included some of the lower price line manufacturers, and it had extended its scope, and it was requesting us to return copies of dresses down to less than $3 cost, which dresses were on sale in our competitors' stores. There was no such situation in existence at the time we signed the Declaration of Co-operation.

By Mr. Martin.

Q. Mr. Sappington, you just testified that prior to red carding you returned—prior to red carding you co-operated with the Guild? A. Yes, sir. 6861

Q. In such co-operation, did you return any merchandise? A. Yes, sir.

Q. Have you any correspondence relative to that?

Mr. Albert: That is objected to.

A. I think so.

Mr. Albert: If it please, as improper redirect.

Examiner Bennett: Why, I don't see why we should go into it and open up that thing again. My recollection is that it has been covered already.

Mr. Martin: All right, your Honor.

Examiner Bennett: All right. Sustain the objection.

By Mr. Martin.

Q. There are one or two more questions I want to ask you, Mr. Sappington: You made the statement that you made a study of the effect of red carding on Hudson's. You have testified as to what your study was based on, the
6863 opinion you had come to, and what your opinion was based on, and certain figures were produced and offered into evidence.

Mr. Albert: Now, if it please the Court, I ask——

Mr. Martin: Just a minute. Just a minute. Let me finish.

Examiner Bennett: Just a moment.

Mr. Martin: Just wait until I finish my question.

Examiner Bennett: Just a moment until the question is asked.

By Mr. Martin.

6864 Q. Now, certain errors were discovered in these figures which had been corrected, and the figures are now correct. Now, I ask you in view of these changes in the figures, you wish to make any change in your conclusion, or is your conclusion the same as it was formerly? A. Just the same, yes.

Q. Now, this morning you testified that because of Guild activities, you were unable to show goods which some of your competitors in this field carried. Do you

know who any of these competitors are who were showing goods which you cannot show because of being red carded?

Mr. Albert: That is objected to, if it please the Court, as improper redirect; no proper foundation has been laid.

Examiner Bennett: Overruled.

The Witness: Yes, sir.

By Mr. Martin.

Q. Who are they? A. Himmelhochs, Siegal's, Russek's, Kern's. Well, among others there are a large group.

Mr. Martin: That is all, your Honor. 6866

Examiner Bennett: Recross-examination?

Mr. Martin: Your Honor please, I suggest that it is——

Mr. Haycraft: There is ten minutes, yet.

Mr. Martin: Oh, that is all right.

Examiner Bennett: If he has any recross.

Mr. Albert: Yes, your Honor.

Recross-examination by Mr. Albert.

Q. Mr. Sappington, do you not know as a matter of fact that the basis of Guild action of red carding of J. L. Hudson Company was because of the Guild's belief that J. L. Hudson Company were evasive——

6867

Mr. Martin: Oh——

Q. —in their attempted and alleged compliance with the Guild program?

Mr. Martin: Objected to as not proper recross-examination.

Examiner Bennett: Well, I think that was gone into.

Mr. Haycraft: What is that?

Examiner Bennett: That was gone into. He may answer.

A. No, sir.

By Mr. Albert.

Q. Are you aware, Mr. Sappington, in the performance of your duties in keeping in touch with the affairs in the industry, that other retailers throughout the industry are desirous of having the Guild program extended fully?

6869 Mr. Martin: Objected to as irrelevant, immaterial, and not a proper recross-examination.

Examiner Bennett: I will sustain an objection to that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, in answer to Mr. Martin's question with respect to your testimony on page 3701, you stated that your different position arose from the fact that the Guild had changed its policy; is that correct? A. Yes, sir.

Q. You also mean by that that at the present time you are attempting to organize retailers against the program of the Guild?

6870 Mr. Martin: Objected to. There is no such statement that he was doing that then or now.

Examiner Bennett: Well, it was referred to. I will let him answer.

Mr. Martin: Read the question.

(Question read.)

A. No, sir.

6871

By Mr. Albert.

Q. Well, in the letter referred to the following statement is made: "In the meantime I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement." And your answer was: "We had no occasion to then." Now, since it is your contention, if you have occasion now, have you been organizing retailers against the program of the Guild? A. No, sir.

Q. You are quite certain of that? A. We have not been.

Q Have you joined in any program of organizing retailers against the program of the Guild?

6872

Mr. Martin: Objected to. He has already answered the question.

Mr. Albert: He has been quibbling, your Honor.

Mr. Martin: He has not been quibbling at all.

Examiner Bennett: I will sustain an objection to that. Supposing he is. What does it mean to the record?

By Mr. Albert.

Q. Now, Mr. Sappington, you have admitted that there were certain errors in the figures that you have presented; is that correct? A. There were some errors in addition, I believe.

6873

Q. And those errors were merely discovered as a result of an examination of the very exhibit without an examination of the figures upon which the exhibit is found; isn't that correct? A. I don't think the errors in addition have anything to do with the figures submitted. They were simply errors on the sheet which were totaled. To my knowledge, those were the only totals that were ever made of those figures, and the totals were not taken from our records.

6874 Q. Is it not possible that in the light of the fact tha errors were made on the exhibits themselves, do you o do you not admit the possibility that errors may have bee made in taking the figures off your records?

Mr. Martin: Objected to. Well, go ahead.

Examiner Bennett: Overruled. You may an swer.

A. I don't think there is any relation——

By Mr. Albert.

6875 Q. I am not asking if there is any relation, Mr. Sap pington. A. Because——

Q. I am asking you this simple question: Is it your opinion, one way or the other, that since errors were made in the preparation of the particular exhibit, that perhaps errors might have been made in compiling the figures that constitute the exhibit? A. Because there were errors in that exhibit I do not believe that for that reason there may be errors in the original figures.

Q. No possibility of it? A. Because of that I do not think that there were errors in the other figures.

Q. Doesn't it indicate a tendency to err? A. If you are human you have a tendency to err, certainly.

Q. And of course men who prepare those exhibits are human? A. As far as I know.

6876 Q. And they have showed that they erred; isn't that so?

Mr. Albert: That is all, if you don't want to answer.

Examiner Bennett: All right. We will take a recess until 2 o'clock for luncheon. Thank you Mr. Sappington.

The Witness: Thank you.

(Witness excused.)

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Be in order, please.

Have you a witness, Mr. Haycraft?

Mr. Haycraft: Yes, but I will have to wait a minute or two until my brief case gets here.

I will ask Mr. Simmons to come and be sworn at this time.

WALTER E. SIMMONS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows: 6878

Direct examination by Mr. Haycraft.

Q. State your full name? A. Walter E. Simmons.

Q. Where do you live, Mr. Simmons? A. 19987 Renfrew in Detroit.

Q. What is your occupation? A. Assitsant divisional merchandise manager.

Q. Of what firm? A. J. L. Hudson Company.

Q. How long have you occupied that position? A. Since the spring of 1932.

Mr. Albert: What was that?

The Witness: Spring of 1932.

By Mr. Haycraft. 6879

Q. Before that what did you do? A. I was in the research department at J. L. Hudson's.

Q. For how long? A. Since early in 1928.

Q. Now, when you were in the research department what were your duties—just explain generally. A. Well, I was—main merchandise duties around the store, different types of reports, service checks, and that sort of thing, and later research director.

Q. In your present position, what are your duties, and what have been your duties since you assumed that position, if there has been any change? A. I went down there as assistant to Mr. Sappington who had charge of the—of all the ready-to-wear. I had certain of the dress departments, the ones that I had I still have.

Q. What were the dress departments that you had under your supervision? A. You mean the numbers?

Q. The numbers and the description of the articles that you sold? A. Department 338, which was the women's better dresses; Department 339, which is inexpensive evening dresses; Department 358, which is misses' better

6881 dresses.

Mr. Albert: What was that number?

The Witness: 358.

Mr. Albert: 338, 339 and 358?

The Witness: That is right.

Mr. Martin: What was 358?

The Witness: Misses' better dresses. 359, that is the gown shop; 366, women's inexpensive dresses; 367, women's moderately priced dresses.

Mr. Albert: What was that list?

The Witness: 367, women's moderately priced dresses and larger sized dresses, they are both in that department; 368, misses' inexpensive dresses; 369, misses' moderately priced dresses; 385 sports

6882 apparel shop; 386, which is the home frocks department on the street floor.

By Mr. Haycraft.

Q. Now, what are your duties with respect to the operation of these various departments? If they vary, indicate in which way they vary. A. I handle the detail work in connection with the preparation and the checking of buying plans. I handle the advertising, which is sub-

mitted to me by the buyers, window displays and other similar publicity. I have every morning the selling sheets, getting inventories, have stock reports for these departments, go over with the buyers their buying plans when they are ready to go to market, and go over mark-downs with the buyers when they want to take them, anything in a general way, with the merchandising in these dress departments.

Q. Does each department have buyers that work under you? A. All except Department 359.

Q. What is the situation with respect to that department? A. Department 359, the merchandise is bought by Miss Fowler, who is in New York. We have an assistant here who is in charge of the department, locally, an assistant buyer. 6884

Mr. Albert: May I ask that be repeated?

(Answer read.)

Mr. Albert: Thank you.

By Mr. Haycraft.

Q. Now, will you name the buyers for the other departments that you have named already? A. Yes, Departments 338, 358, and 369, Mr. Touff.

Q. Mr. David Touff? A. Mr. David Touff.

Q. All right. A. Departments 339, 368 and 366, Mr. Frank Wilton.

Mr. Albert: What are those numbers again? 6885
366——

The Witness: Yes.

Mr. Albert: What is 366, women's inexpensive—

Mr. Feldman: Women's inexpensive dresses.

The Witness: 367, Miss A. Kimball; 385 and 386, Miss E. Hromek. 359 I have already given.

By Mr. Haycraft.

Q. How often do you contact the buyers in these departments? A. When they are in town, numerous times every day; they are all on the same floor.

Q. Prior to June, 1933, were these same individuals in charge of the department, of the respective departments buying in the respective departments, or have there been changes since that time? A. There have been changes.

Q. Who were the buyers of these departments in June 1933? A. I am not positive of all the buyers.

Q. Was Mr. Touff? A. I can tell you the ones who were not there.

6887 Q. Which of those buyers was not with you in June 1933?

Mr. Keller: Mr. Haycraft, will you speak a little louder, please? I cannot hear.

The Witness: What was the question, please?

(Question read.)

A. Miss Hromek and Miss Fowler was not doing any buying for us.

By Mr. Haycraft.

Q. When did Miss Fowler start to buy for you? A. The fall season of 1935.

Q. And started about in August, would you say? A.

6888 The merchandise that she first brought in came in in the end of July and the first part of August.

Q. Just state briefly what the usual procedure is for the buying of merchandise in your department, say, during the year 1935?

Mr. Albert: Will you please read the question?

Mr. Haycraft, would you mind speaking a little bit louder? We cannot hear the questions.

(Question read.)

A. The buyer first makes up his plan that he has so much that he needs to buy, and then the usual procedure is to go into the market and make those purchases.

By Mr. Haycraft.

Q. What is the market that the buyers go to, or did go to in 1935? A. Principally New York City.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. When did you first learn of that Guild? A. I don't recall exactly.

Q. When did you first learn of that in an official capacity in your store? A. I don't recall that. 6890

Q. Can you give us the year? A. No, not exactly; I think 1934.

Q. How did it come to your attention? A. We were—the buyers received instructions that all the orders that they placed with manufacturers were going to have a Guild stamp on it.

Q. I show you Commission's Exhibit 498-A, and ask you if that is a copy of the stamp that you have in mind? A. That is right.

Q. Was that practice followed throughout that year? A. Instructions that were ordered were that every order book was to be stamped that way before the book was issued to the buyers.

Q. Did anyone check up to see whether that was done or not, to your knowledge? A. It was the duty of the office 6891 manager of the merchandise office there to check that; he had charge of the books.

Q. How long did that procedure follow in your organization? A. From the time we started we did not stop until the time that we were red carded.

Q. Can you fix that time? A. 14th of February, 1936.

Q. I notice that this stamp provides that "this order is placed upon the seller's warranty that the above garments

are not copies of styles originated by the members of th Fashion Originators Guild of America, Inc. The pur chaser reserves the right to return any merchandise whic is not as warranted." I will ask you whether or not an garments were returned in your department pursuant t that warranty? A. Yes, there were.

Q. How did you determine when a garment was to b returned?

Mr. Albert: That is objected to, if it please th Court, as entirely cumulative and covered by Mr Sappington's testimony. I do not think we should have a reiteration by every witness of the practice

6893 Examiner Bennett: Are you pressing the ques tion?

Mr. Haycraft: Yes, sir.

Examiner Bennett: All right; overruled.

Mr. Albert: Exception.

The Witness: Answer?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. Yes. A. We had a Guild shopper who would mak requests that we return copies. Sometimes we returned copies when—of our own volition.

Q. First, as to the Guild shopper, when did the shopper first shop your department? A. I do not recall when she

6894 started.

Q. Do you recall the year? A. No, I don't.

Q. Who was the shopper? A. Mrs. Miller, or Mead, as she was married in the course of her duties, I believe.

Q. Did she shop your store in 1935? A. Yes, sir.

Q. When you returned them of your own volition, what method did you follow to determine whether or not the garments should be returned?

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

A. We had the original—we had a dress in our stocks at one price. We had a dress come in that the buyer of the department having this first dress would come to me and say he thought there was a copy—would be judged, and if we all agreed that it was a copy the dress was returned.

By Mr. Haycraft.

6896

Q. Now, with respect to the shopper, what was the procedure followed there in 1935, say along in the summer or early fall? A. It was not always the same.

Q. Well, can you give us an illustration? A. Sometimes she would come in and she usually had a sheet, a mimeographed sheet with a sketch on it. She would be looking for a dress that looked like this sketch, and sometimes she would come to the buyer, or myself, and sometimes the assistant buyer, and ask us if we had that dress in our stocks. Sometimes she came into the stocks first, found the dress, and came to us and said that she had found this dress which looked to her to be a copy of this report which she had.

Q. Then what was the procedure when she told you that? A. That procedure varied, too. 6897

Q. All right. Can you give an illustration of the different procedure that was followed, the different method of procedure? A. If she brought—eventually, regardless of how it started, the dress would eventually come to me, that she had reported as a copy. That dress was then—sometimes we admitted it was a copy and returned the dress immediately, and the report made to Mr. Sappington as

to what actions we had taken. Sometimes, as they go down into lower-priced dresses when they were shopping for copies in lower-priced dresses——

Q. When you say "lower-priced," what price do you mean? A. $7.75 cost, $6.75 cost—she would come in and say that she had found a copy. We would agree that it was a copy and we would take that dress off sale at that time, and when she reported, and then we would shop to see whether competitors in town had that dress. If the same dress which she was complaining of as being a copy —if that dress, or the same dress, being a copy, was found in our competitors', downtown, around Woodward 6899 Avenue, we were permitted to put that dress back on sale rather than return it. Other times she would come in and say she had a copy and on $10.75 cost, and up, dresses as well as on lower-priced dresses, we would wire the manufacturer and see if he acknowledged that that dress was a copy before we returned it to the manufacturer. Then, later, the dresses which were copies were not taken off sale while we were looking to see if other stores in town had those copies.

Q. When did that last situation, condition that you have just described, first take place? A. Later in the fall of last year.

Q. Were you present at a meeting in Mr. Dowley's office on November 16, 1935, which was attended by Mr. Goldston of the Fashion Originators Guild? A. Yes, I was. 6900

Q. Do you recall who else attended that meeting besides yourself? A. Mr. Dowley, Mr. Goldston, Mr. Preston, Mr. MacDonald.

Q. Do you recall what transpired at the meeting? A. As it affected my departments?

Q. Well, will you testify, then, as to what transpired at the meeting as it affected your departments?

By Mr. Haycraft.

Q. All right. To the best of your recollection what transpired; that is, who spoke and what did they say? A. There was a discussion as to how Mrs. Mead was working in the store on reported copied dresses. Mr. Goldston's request of Mr. Dowley, Mr. Preston; went over the procedure with which Mrs. Miller, Mrs. Mead was going to follow in the future. We were—she was to come in, shop our stocks. If she found a copy that she felt was a copy she was to bring it to the attention of the party in charge of the department. If that person thought that the dress that Mrs. Miller was complaining about was on sale in another store in Detroit, he was to inform Mrs. Mead to 6902
say that we would like to shop these stores and find out if the dress was there, and, if so, what stores had them. We agreed that our comparison shoppers could complete this task in two hours. At the end of two hours then Mrs. Mead was to come back to the party she talked to in the store and get their report. They reserved the right for Mrs. Mead to check this findings that we had and if we all agreed that dress was to stay on sale at the store during the time that we were checking the dress to see what stores had it in that two hour period. We were still to leave the dress on sale.

Q. Was there anything said at that meeting by Mr. Goldston with respect to the right of Hudson's to reorder a dress that was under investigation? A. I don't recall. 6903

Q. Did the representatives of Hudsons, including yourself and Mr. Dowley and Mr. Macdonald, make any agreement not to re-order pending the investigation?

Mr. Albert: If it please the Court, I object to the question. The witness has answered that he doesn't recall, and now Mr. Haycraft is trying to put the answer in the witness' mouth.

Mr. Martin: He said he didn't recall what Gol ston said.

Examiner Bennett: Do you recall anything wit relation to that topic?

The Witness: We didn't agree that we would n re-order because no such instructions were eve issued to the buyer.

By Mr. Haycraft.

Q. Now, prior to this meeting do you recall any specif instance where you notified a manufacturer of garment that it had been alleged to be a copy before it was returne 6905 to the manufacturer?

Mr. Albert: May I have the question?

Q. (The question was read.) A. Yes.

Q. Relate the instance that you have in mind. A. W returned—we had a request for a return of a dress t Bernard Appel.

Mr. Albert: What?

(The answer was read.)

The Witness: Because it was a copy.

By Mr. Haycraft.

Q. What were the circumstances under which tha 6906 claim was made that it was a copy; that is, how did yo arrive at that? A. Mrs. Miller came to me with a sketc of a dress in our stock. The original sketch was from dress by Townley Frocks, and she had a copy which w had purchased from Bernard Appel.

Q. Townley Frocks was a member of the Guild? A Yes, sir.

Q. And Bernard Appel was not? A. That is right.

Q. What was the cost price of that dress; do you re call? A. Not exactly.

Q. Do you know the range that it was in, approximately? A. It was $10.75 or $12.75.

Mr. Albert: Is that retail or cost?

The Witness: Cost.

By Mr. Haycraft.

Q. What did you do? A. We took the dress off sale and wired Bernard Appel stating that we had a complaint that his dress was a copy.

Q. What was the next step? A. Mr. Appel wired us back that positively it was not a copy.

Q. Then what did you do? A. Leaving the dresses that were still on sale, I called Mrs. Miller. I told her that 6908
was the information she had.

Q. You told what? A. Told Mrs. Miller the information that we had.

Q. Oh. Then what did she do? A. She told me that she would get in touch with the Guild in New York and see what they wanted to do about it.

Q. Did you hear from her again? A. Yes. She came back and said there had been an agreement that this dress was—with Bernard Appel. He agreed it was a copy.

Q. What happened next? A. We had never heard from Mr. Appel that he had agreed that it was a copy, so we wired Mr. Appel.

Q. Well, what transpired next? A. Mr. Appel wired that it wasn't the case. This went back and forth and 6909
Mr. Goldston came to Detroit, stopped in Detroit to—Came over to see us about the dress. We had the dress off sale during this period.

Q. How long a period of time transpired? A. About a week, I should say.

Q. What did Mr. Goldston have to say about it? A. We brought the garments which we had over to the large office on the sixth floor, and he told us there had been a.

controversy about this dress as to who had it first, a
that if we would change the buttons on the dress we cou
put it out on sale.

Q. Did you do it? A. We got the buttons from Berna
Appel, changed them and put the dress out on sale.

Q. Was that dress a popular or unpopular number?
Why, I would say it was fair.

Q. Fair? A. (Witness nods head affirmatively.)

Q. Now, after the meeting of November 16, 1935, wh
was the procedure that was followed? A. Well, when
garment was shopped, told us—Miss Mead told us that w
had a copy during the period of the shopping that th
6911 garment was left on sale instead of being put off the flo
off sale, style, the whole style.

Q. How long did that procedure take place? Did
follow in your store, in your department? A. That wa
because we were following that procedure of that the arg
ment came up, and we were red carded.

Q. Are you familiar with the incident which brough
about the red carding? A. Yes.

Q. What was the incident?

Mr. Albert: That is objected to, if it please th
Court, as cumulative.

Examiner Bennett: Overruled. If you know
If you know, tell about it.

The Witness: It was over a complaint of a dre
6912 which we had in our inexpensive dress departmen
which was supposed to be a copy, which we foun
to be on sale in competitive chain stores in dow
town Detroit. Which we did not take off sal
which we did not return.

By Mr. Haycraft.

Q. Did you follow the procedure which you have jus
outlined with the shopper? A. Mr. Wilton did.

Q. When did that take place? A. Early in February.

Q. Now, you said a moment ago—strike that out. When did you first learn that there was any objection to that procedure on the part of the Guild? A. Mr. Wilton received a wire from the Guild.

Q. Do you know the date of that? A. No, I don't.

Q. Do you know where that telegram is? A. No, I don't.

Q. What transpired after the receipt of the telegram? A. I took the telegram to Mr. Sappington.

Q. Then what happened? A. I don't know.

Q. That was the end of it, as far as you were concerned? A. We were told to leave the dresses on sale.

6914

Q. When did you first learn that the store had been red carded? A. At a meeting in a conference room on the eleventh floor.

Q. What date? A. I don't recall.

Q. Did you ever attempt to buy any goods, any merchandise from Guild manufacturers subsequent to that time? A. I didn't.

Q. Did you ever accompany a buyer to the manufacturer's showrooms in an attempt—where the buyer was trying to buy garments from Guild manufacturers subsequent to that time? A. Yes, sir.

Q. When? A. In February, 1936.

Q. Can you give us the date? A. 20th and 21st, I was in New York.

6915

Q. Who was the buyer? A. Mr. Touff.

Q. Where did he go? A. Went to Frank Starr-Friedlander.

Q. Who did you see there? A. Mr. Friedlander.

Q. What did you do? What did Mr. Touff do, or you? A. We were there for two purposes.

Mr. Albert: If it please the Court, I object to the answer as not responsive. He was asked what

he did there. I further object to the question u
the ground that it is not binding upon the respo
ent.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Was Friedlander a member of the Guild at th
time? A. Yes, sir.

Q. All right.

Examiner Bennett: I will overrule the obje
tion. You may answer.

6917 Mr. Haycraft: Give him the question, please.

Q. (Question read.) A. We tried to get delivery
merchandise which we had on order with Frank Star
Friedlander, and wanted to buy more merchandise.

Q. What did Mr. Friedlander tell you? A. He told u
he couldn't sell us any more. He was sorry that h
couldn't deliver us the merchandise that we had on orde

Q. Did he tell you why? A. Because we had been re
carded.

Q. Did he say you had been red carded? A. Yes, sir.

Q. Did he tell you how he knew you had been re
carded? A. No, he didn't.

Q. Did he say anything about a meeting he attended
A. Yes, he did.

6918 Q. What did he say about that? A. He told us that h
had attended a meeting.

Mr. Albert: Now, if it please the Court, n
proper foundation has been laid for this whatso
ever. We are now getting a statement by a thir
party with respect to what occurred at a meetin
somewhere, some time, without the slightest bit o
foundation having been laid, and the answer bein
solely as a result of a leading question by Mr. Ha
craft.

Examiner Bennett: What are you going to show——

Mr. Albert: I object to the question.

Examiner Bennett: What do you expect to prove by this witness in this connection?

Mr. Haycraft: I expect to prove the circumstances under which he was red carded.

Examiner Bennett: Under which what?

Mr. Haycraft: He was red carded.

Examiner Bennett: To prove this member's knowledge of it?

Mr. Haycraft: To prove the knowledge that came to this witness from a representative, a member of the Guild. 6920

Mr. Albert: As to what occurred some place else.

Mr. Haycraft: Yes, sir; occurred in the meeting of the Guild.

Examiner Bennett: Yes. All right. You may answer. Overruled.

Mr. Albert: Exception. If it please the Court——

Mr. Haycraft: Go ahead.

A. Mr. Friedlander told us that he felt that we had placed the order with him in good faith and he would like to deliver the orders of the merchandise which we had on order. He had attended a meeting, however, and a vote had been taken on the question of whether merchandise should be delivered that was on order when stores were red carded, and a vote had been that the merchandise should not be delivered. He had voted to deliver us the merchandise. 6921

By Mr. Haycraft.

Q. Well, what did you do then after he told you that?

A. Well, we left.

Q. Where did you go next? A. Went to Milton Al mark.

Q. Whom did you see there? A. Mr. Altmark.

Q. What did he tell you? A. He was rather evasive he did not want to answer.

Mr. Albert: If it please the Court, I ask tha that be stricken as a conclusion of the witness. H was asked what Mr. Milton Altmark said. Is h afraid to tell us what Mr. Altmark told him?

Examiner Bennett: If you remember.

Mr. Albert: We have a pretty good idea of wha Mr. Altmark will tell this man.

6923 Examiner Bennett: Or tell the substance.

A. Mr. Altmark said he would get Mr. Post on the lin and find out from Mr. Post what the status of our order was.

By Mr. Haycraft.

Q. Well, what did he do? A. He got Mr. Post on th line, and Mr. Post said, "To bring the fellows over."

Q. Well, what did you do next? A. We went over wit Mr. Altmark.

Q. Where did you go? A. Went to the Fashion Orig nators Guild headquarters.

Q. Whom did you see there? A. Mr. Post, Mr. Gold

6924 ston.

Q. Who did the talking? A. Mr. Post.

Q. Did Mr. Altmark say anything? A. Yes.

Q. What did Mr. Altmark say? A. He said that thes two fellows had come down to him to see whether or no they were going to get delivery of merchandise that wa on order, that they had to—they were faced with having merchandise in their store, if they could not get what they had coming from him, that they wanted to go out and try

and buy it some place else, but they did not want to run the risk of getting in another batch from somebody else and double their stocks. He felt that was a very fair question, and that they were entitled to an answer.

Q. What did Mr. Post say to that? A. Mr. Post said that the merchandise was on order, could not be delivered, because the stores that had been red carded had breached their contract in that they had broken their agreement with the Guild. He said he was speaking off the record, that if Hudsons wanted a—testimony and exact legal evidence on that, that they would have to see their lawyers.

Q. Well, whose lawyers? A. Guild lawyers. 6926

Q. Was anything further said by Mr. Post? A. He said that not only could the merchandise not be delivered but that they had counsel which indicated that that merchandise that had been placed, the orders accepted in good faith by the manufacturer, if that merchandise was now in work, that manufacturer had to dispose of that merchandise, that if he took a loss on the disposal of that merchandise, he had grounds to bring suit against Hudsons for the difference between the price which we placed on the order and the price at which he disposed of that merchandise which we had ordered.

Q. Was that all he said? A. That is all.

Q. What did you do then? A. We left with Mr. Altmark.

Q. Did you call on any other manufacturers? A. We 6927
went to A. Goodman.

Q. Whom did you see there? A. Mr. Goodman.

Q. What did you say to him? A. Wanted to know what the chances were of getting the merchandise we had on order.

Q. What did he say? A. He said he was sorry, he could not ship it to us.

Q. Did he tell you why? A. He said that we knew th conditions.

Q. That you knew them? A. That we knew the con ditions.

Q. Anything further said? A. No, he said he had lot on order for other stores that were going to suffer muc worse than we would.

Q. Did he say anything more? A. No.

Q. What did you do then? A. We quit trying to ge delivery of merchandise on order.

Q. Where did you go? A. Back to the office.

Q. Then what did you do with respect to getting mer
6929 chandise to sell in your store? A. That night we tele phoned California and placed an order—open order in the California market for merchandise.

Q. Anything further? A. Mr. Touff placed some orders in New York.

Q. Now, Mr. Simmons, were you successful in replac ing the merchandise that you had on order with Guild manufacturers at the time that you were red carded?

The Witness: Will you repeat that question?

Q. (Question read.) A. No, we were not, not all of it.

Q. Can you give us some illustration of instances? A. Yes.

6930 Mr. Albert: Instances of what, if it please the Court?

Mr. Haycraft: Where he was not able to ge the replaced merchandise which he had on order with Guild manufacturers?

Mr. Albert: That is objected to, if it please the Court, as entirely irrelevant, solely cumulative. I think the record is clear with respect to the matter.

Examiner Bennett: Overruled. You may give instances, if you know them.

Mr. Albert: Exception.

A. We were able to replace the orders we had outstanding with Guild houses of costumes, both untrimmed and fur trimmed in our gown shop.

Mr. Albert: What department was that?

The Witness: 359.

By Mr. Haycraft.

Q. From what Guild manufacturers were you purchasing costumes for your Gown Shop? A. Max Heit, Herman Beispell, and others.

Q. When were those orders placed, approximately? A. I don't recall.

Q. When did you expect to sell the goods that were on order February 14 in your Gown Shop? 6932

Mr. Albert: That is objected to, if it please the Court. It is entirely immaterial, wholly speculative and purely cumulative.

Examiner Bennett: I will sustain the objection to the question in that form. If you want to show when they would go on sale in the regular course of business, and he knows, if there is any regular course of business, well, I will be glad to have you you bring it out.

Mr. Haycraft: That was the intent of the question, if the Court please. I will try it again.

By Mr. Haycraft. 6933

Q. When, in the ordinary course of business, would the goods which you had on order with Max Heit and Herman Beispell be sold?

Mr. Albert: If it please the Court, how can a witness answer that question unless we first have some testimony as to when he might have asked for a delivery date of those dresses? We do not know

what type dress is, how long it would take to manufacture, or anything else. It might take three to six weeks to deliver those dresses—when he is attempting to tell us when they are to go on sale without telling us the first——

Mr. Haycraft: Better let him answer, give him a chance to answer and then we can find out.

Mr. Albert: If the Commission wants an answer of that type, I will have no objection.

Examiner Bennett: I will overrule the objection; go ahead.

Mr. Albert: Exception.

6935

By Mr. Haycraft.

Q. Go ahead. A. They would go on sale when we received them.

Q. Can you be any more definite as to time than that, any recollection of what the situation was in that department at that time? A. We had delivery on part of our costume orders for the spring season; part was still outstanding.

Q. What is the spring season, what period of time? A. Opens up in the Gown Shop in late January and runs through Easter.

Q. What attempts did you make to get garments that would replace the garments that you had on order from

6936 Max Heit and Herman Beispell? A. We sent money to open orders to Miss Fowler, which is our customary procedure, asking her to buy costumes. We sent her types that way, names, sizes, colors, costumes—that customers wanted costumes like we had in stock, to buy those.

Q. With what success? A. She did not get any costume suits.

Q. All right. Did the red carding, and your inability to get garments from Guild manufacturers, have any other effect upon Department 359? A. Well, it made it impos-

sible to get special orders on merchandise in stock, which is our customary procedure, to carry small stock, and special order, the size and color that the customer wants. That was bad from the customer's point of view.

Q. Now, with respect to the sports shop, Department 385, do you recall what orders you had outstanding in that department at the time you were red carded? A. No, I don't.

Q. Do you recall the names of the manufacturers from whom you purchased garments sold through that department? A. Yes.

Q. Who were they—Guild manufacturers, I mean to say? A. Houses like Adler & Adler, Star Maid, Kane Weill. 6938

Q. I show you Commission's Exhibit 479-B and ask you whether or not it refreshes your recollection as to what orders were outstanding at the time the Hudson Company was red carded—Department 385? A. I don't recall what type of merchandise—it would be sport dresses and sport coats in that.

Q. Does that exhibit refresh your recollection as to the orders that were outstanding at the time——

Mr. Albert: If it please the Court——

Q. —at the time of the red carding?

Mr. Albert: I object to the question upon the ground that the witness has now, two or three times, answered that he does not recall as regards that department, even after looking at the exhibit. 6939

Mr. Haycraft: That is what I am trying to find out, Mr. Examiner.

Mr. Albert: How many times do you want to try?

Examiner Bennett: If it does not refresh your recollection——

Mr. Haycraft: I am trying to find out from the witness——

Examiner Bennett: Well——

Mr. Haycraft: ——as to a certain thing, and I thought I was entitled to ask him again if it refreshed his recollection.

Examiner Bennett: Let him answer.

A. Other than they were sport dresses and sport coats I do not recall any.

By Mr. Haycraft.

6941 Q. I will ask you whether or not these outstanding orders were filled for that department? A. I don't recall whether any were delivered.

Q. Are you in a position to testify as to whether or not the red carding by the Guild of the Hudson Company had any effect upon Department 385? A. It hurts us very badly——

Mr. Albert: If it please the Court, the answer is "yes" or "no."

A. Yes.

Examiner Bennett: Are you in position? Yes. All right.

6942 *By Mr. Haycraft.*

Q. All right. Will you testify as to what effect it did have upon Department 385? A. It hurt us badly——

Mr. Albert: If it please the Court, I ask that be stricken. We want the facts, not his conclusion as to how it hurt him.

The Witness: We did not have golf dresses.

By Mr. Haycraft.

Q. How did the fact you did not have golf dresses affect your business?

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. You may answer. A. Before the red carding we had the exclusive Detroit outlet for the Helen Hicks and the Raggey golf dresses. 6944

Q. Who were the Raggey golf dresses made by? A. Adler & Adler—no, Star Maid.

Q. Who made the Helen Hicks? A. Adler & Adler.

Q. Had you advertised them? A. Yes, sir.

Q. Did you have customers asking for them? A. We did.

Q. What did you tell them? A. Did not have them now.

Q. Were you able to replace them? A. No, sir.

Q. Why not? A. Those two dresses have, as I understand, "Patented" on the sleeve—and another some sort of patent—that no other manufacturer can produce.

Q. I will ask you now, Mr. Simmons, whether or not you are in a position to testify—that is, whether you have an opinion as to whether the red carding by Hudson Company by the Guild had any other effect upon any of the other departments under your supervision about which you have not yet testified? That can be answered "yes" or "no." A. Yes. 6945

Q. Now, in your opinion, what other effect has red carding had on the departments under your supervision? A. It has injured 358 department.

Q. In what way? A. Since the red carding, that department, in my opinion, has not had a first class stock $29.75, $39.75 street dresses.

Q. Any other effect? A. It hurt Department 338 temporarily.

Q. In what way? A. That we could not get good dresses at the $29 and $39 price line, street dresses.

Q. Any other? A. It has hurt Department 369 at certain price lines.

Q. In what way? A. Through an inability to get the type of merchandise which we have previously sold at those prices.

6947 Q. Are you familiar with "Vogue" and "Harper" promotions carried on in sport shops?

Mr. Albert: May I ask that the question be repeated, please?

(Question read.)

A. Yes.

Q. What is the procedure followed in such promotional schemes? A. The manufacturer would have a promotion that he was going to run in "Vogue" or "Harper's" as a fashion magazine. He would offer to include our name in this feature, usually with several sketched garments. He would come in, ask us if we wanted to be in it. Sometimes we went in. If we liked the merchandise, we went

6948 in, in those promotions.

Q. Was any advertising done in connection with it? A. Sometimes.

Q. Now, in your experience, prior to the red carding, had Guild houses co-operated with the Hudson Company in such promotions? A. Our regular resources did.

Q. Do you recall some of them? A. Yes, Crystal; that is about the only one I recall.

Q. Do you recall Grossman-Siegal?

Mr. Albert: If it please the Court, I do not think the witness should be led in this direct manner by Mr. Haycraft.

Mr. Haycraft: I think I am entitled to refresh his recollection, Mr. Examiner.

Mr. Albert: That is a fine refreshment of a witness' recollection by asking him the name!

Mr. Haycraft: It is usual, nothing unusual about that.

Examiner Bennett: Yes. All right. I overrule.

Mr. Albert: Exception.

The Witness: May I have the question?

(Question read.) 6950

A. Grossman-Siegal had promotions on Strooks Camel's Hair Coats.

By Mr. Haycraft.

Q. Did you participate in that promotion? A. Yes.

Q. Did you carry the garments manufactured by those manufacturers in stock prior to the red carding? A. We did.

Q. Then what effect did it have upon that branch of your business—what effect did the red carding have upon that branch of your business? A. We did not have the Strooks Camel's Hair Coats.

Q. Did you have any calls for those coats after your stock was depleted? A. We did, and still do. 6951

Mr. Albert: May I ask that the question and answer be repeated?

(Question and answer read.)

By Mr. Haycraft.

Q. When was the last time that such a promotion was put up to you? A. We have had, before the red carding, and was offered us——

Q. Well, I mean since the red carding, has anyone attempted to get you to co-operate in such a promotion since the red carding? A. They have told us what we have missed by being red carded.

Mr. Albert: If it please the Court, I ask that that be stricken as not responsive.

Examiner Bennett: It may be stricken.

Mr. Haycraft: I will ask that the question be repeated to the witness.

(Question read.)

A. No.

6953

By Mr. Haycraft.

Q. Are you familiar with the Guild house known as Mutual Rosenbloom? A. Yes, I am.

Q. Is it your understanding that Mutual Rosenbloom is a Guild house—now, Mr. Simmons, what line of merchandise does the Mutual Rosenbloom manufacture and sell, or what do you buy from them? A. Sports dresses.

Q. Do they do any national advertising? A. Occasionally.

Q. Under what feature or title? A. They run features on a certain line of dresses, usually with some fabric story to them.

Q. Has Hudson's ever been invited to co-operate in that promotion? A. Yes.

6954

Q. Before red carding or after? A. Both.

Q. Were you able to co-operate after red carding? A. No, because we could not buy the dresses.

Q. All right. Is Kane Weill another one of the resources? I think that you named them.

Q. Do they conduct nationally advertised promotional schemes? A. Occasionally.

Q. At the same time? A. Yes.

Q. And before red carding had you been invited to participate in those? A. I do not recall.

Q. Have you participated in joint advertising, promotional joint advertising with other department stores throughout the country fostered by Guild houses, Guild manufacturers, in magazines such as "Vogue" and "Good Housekeeping"? A. I don't recall.

Q. I show you Commission's Exhibit 500 and ask you if you can identify that. Do you recognize it? A. I recognize it.

Q. What is it? A. It is a wire Mr. Wilton received about the dress we didn't take off sale in February.

Q. Is that the one you mentioned in your testimony? 6956
A. That I took to Mr. Sappington.

Cross-examination by Mr. Albert.

Q. How often did your buyers go into New York, Mr. Simmons? A. We have no regular schedule.

Q. How often would you say, on the average? A. I wouldn't want to make a guess.

Q. You mean to tell me that as assistant divisional merchandise manager you don't know how often your buyers go to New York? A. As often as necessary.

Q. Well, how often is necessary? A. Depends on how fast we sell the merchandise.

Q. Have you checked up on their expense accounts lately? A. I haven't. 6957

Q. Have you any knowledge or any facts upon which you can draw to determine how often your buyers have gone into the market? A. I don't have any myself.

Q. How often have you gone to New York? A. I wouldn't know exactly.

Q. How often do you think you went into New York in 1935? A. I wouldn't know.

Q. How often do you think you went into New York i 1936? A. I don't recall.

Q. How often did you go into New York after the re carding? A. I don't recall.

Q. When was the last time you went into New York A. I don't know that.

Q. Do you know when J. L. Hudson Company signe the Declaration of Co-operation with the Guild? A. I don't.

Q. Did you ever know when these buyers signed th Declaration of Co-operation with the Guild? A. I don' recall that I did.

6959 Q. But the first time you heard of the latter was i the latter part of 1934; is that correct? A. I said I didn' recall exactly.

Q. Well, I am not asking you for any exact time. Abou the latter part of 1934, I believe, is what you testified to

Mr. Haycraft: He didn't say the latter part.

By Mr. Albert.

Q. Some time in 1934? A. Some time, I think, I te tified.

Q. When was it? Was it in the beginning of 1934, o the latter part of 1934, or the summer of 1934? A. I don' recall.

Q. But it definitely was not in 1933? A. I testified o

6960 that.

Q. Was it in 1933? Could it have been 1933? A. I don't recall.

Q. You do not know? A. I don't recall.

Q. Well, now, when is the first time that you recall that you placed the Guild stamp on your orders? A. I don't recall that.

Q. As a matter of fact, didn't you testify that the firs time you learned of the Guild is when you were require

to put the stamp on the Guild orders in 1934? A. As I recall, that was the date.

Q. Well, that is all I asked you. A. You asked me the time.

Q. The first time you put the Guild stamp on the order was some time in 1934; wasn't that right? A. As I recall.

Q. Have you any doubt of your testimony? A. I didn't write it down when we put the first stamp on the order.

Q. Would you say you put it on in 1932? A. I don't recall.

Q. Did you put it on in 1931? A. I wasn't in ready-to-wear then.

Q. Did you put it on in 1933? A. I don't recall. 6962

Q. 1935? A. Yes.

Q. You put it on in 1935? A. (Witness nods head affirmatively.)

Q. You are certain of that? A. It was on the orders, then.

Q. I see. Well, now, working backward, was it on in 1934? A. I don't recall.

Q. Now, you don't even recall that it was on in 1934? A. I testified about that.

Q. Well, now, you testified for Mr. Martin that you put the Guild stamp on the order in 1934. Do you want to change that testimony that you are not certain of when it went on?

Mr. Haycraft: Do you want to change your question and get it right? 6963

Mr. Albert: No. The witness can correct me if I am wrong.

Mr. Haycraft: Let "Mr. Martin" stay in it, then. I am the one that asked the question.

By Mr. Albert.

Q. Will you answer the question?

The Witness: What was the question?

(Question read.)

A. I don't recall. That is exactly what I said.

Q. When were you first told by any of your superior that J. L. Hudson Company had signed the Declaration of Co-operation with the Fashion Originators Guild? A. I don't recall.

Q. Would you say it was 1934? A. I don't recall.

Q. Would you say it was 1933? A. I don't recall.

6965 Q. You haven't any memory whatsoever about that? A. I don't recall that.

Q. The Guild stamp, Mr. Simmons, involves the question of office and store policy of J. L. Hudson Company, doesn't it? A. It did.

Q. And yet you cannot remember when that policy was first adopted, but you can give us detailed information with respect to conversations with Mr. Post and meetings addressed by Mr. Post some time ago; isn't that right? A. I don't recall the date of the stamp. I don't recall the date the stamp was placed on the orders.

Q. Well, now, I am not asking for the exact date, Mr. Simmons. All I want is an approximation of the time if you can give it to me. A. I don't recall.

6966 Q. I show you Commission's Exhibit No. 475 and ask you if that refreshes your recollection as to when J. L. Hudson Company signified its intention to co-operate with the Fashion Originators Guild? A. I don't see any date on here.

Q. You cannot tell unless you see the date? A. That is the first time I ever saw that.

Q. You never saw the Declaration of Co-operation before? A. (Witness shakes head negatively.)

Mr. Albert: May I have the—it is Commission's Exhibit 475.

The Witness: This is almost like that, except that it has this down here, and the date up here.

Q. Do you see that date, does that refresh your recollection at all? A. It says June 22.

Q. Now, you say that you never saw this Declaration of Co-operation before? A. I did not.

Q. Was it in any way discussed between you and Mr. Sappington? A. I don't recall.

Q. Now, were you not instructed in any way, or given any advice with respect to store policies at the time that 6968
J. L. Hudson Company signed the Declaration of Co-operation with the Guild? A. Yes.

Q. When was that? A. I don't recall.

Q. Did J. L. Hudson Company have any other policy differing from that at the time that you were instructed about the fact that J. L. Hudson Company had signed the Declaration of Co-operation with the Guild? A. I don't recall.

Q. You do not know what the policy of the store was prior to its Declaration of Co-operation with the Guild? A. I don't recall.

Q. You do not know what it was, or you do not recall? A. I don't recall.

Q. I show you Commission's Exhibits 498-A, B, C, D and E and ask you if that is the matter in which the 6969
Guild stamp was placed on your orders? A. It is.

Q. To whom does the top sheet of that exhibit go? A. To the manufacturer.

Q. That goes to the manufacturer? A. That is right.

Q. And the bottom sheets are kept by the J. L. Hudson Company for your various— A. Records.

Q. —records and files? A. That is right.

Q. I ask you to show me if the Guild warranty stam is contained on any of the duplicates of the orders tha are retained in the J. L. Hudson Company's file?

Mr. Haycraft: Objected to as irrelevant and im material.

Examiner Bennett: Overruled.

A. I testified to that.

By Mr. Albert.

Q. No, you said it was on the top sheet only. A. O the first sheet.

6971 Q. Right, and it is not contained on the other sheet A. On the pink and yellow copies, it was on the original

Q. Only on the original sheet that is sent to the manu facturer? A. That is right.

Q. Now, Mr. Simmons, you stated that dresses agains which the charge has been brought that they were copie would eventually be brought to you for your determina tion; is that correct? A. I saw them, eventually.

Q. Did you pass upon the question of whether or no they were copies? A. No, sir.

Q. Did you render any opinion on the matter? A. N sir.

Q. Now, Mr. Simmons, what instructions were given t your shoppers with respect to their duties in so far a

6972 shopping competitors are concerned after a dress had bee complained of as a copy?

Mr. Haycraft: Objected to as irrelevant and im material.

Mr. Albert: Most material, if it please the Court

Examiner Bennett: Overruled. He may answe

A. They were shown the dress.

By Mr. Albert.

Q. Yes. A. Asked to see if they could find that dress, or a dress exactly like it in shops up and down Woodward Avenue and around on Farmer and Gratiot.

Q. How many shops were they requested to go to? A. Only important chain stores and shops on that price guarantee, whatever it should be.

Q. Were they to continue to shop the number of stores even though perhaps if they went to the first store they found it there? A. They were to see who all had the dress.

Q. And if they found it at the first store, they were not to come back and report, but to bring in reports as regards the presence of that dress in all competitors? A. That is correct. 6974

Q. When was the meeting in J. L. Hudson Company at which you learned of the fact that you had been red carded? A. I do not recall.

Mr. Haycraft: "Where" did you say, or "when"?

Mr. Albert: When.

The Witness: I don't recall.

By Mr. Albert.

Q. Where was it? A. At the conference room on the eleventh floor.

Q. Was that the first knowledge of the fact that you had been red carded? A. Yes. 6975

Q. Were minutes kept of that meeting? A. I don't recall.

Q. Was that a board of directors' meeting? A. I do not know what a board of directors' meeting would be there.

Q. Of a corporation, or was it merely a meeting of the executives of the store, of the divisional merchandise manager and the buyers? A. I don't know.

Q. Who was there? A. I don't recall everybody.

Q. What? A. I don't recall everyone.

Q. Well, give us a cross-section of who was there? A. Mr. Dunham——

Q. Who is he? A. Assistant in charge of coats, some of the other garment departments.

Q. Yes. A. Mr. Preston, Mr. Oscar Webber, Mr. J. B. Webber, Mr. Dowley; there were others but I don't recall.

Q. All right. That gives us a pretty good idea of the general type of meeting it was, Mr. Simmons. Thank you. This red carding was pretty important, was it not? A. It meant we were shut out of some resources.

6977 Q. Well, it was pretty important to J. L. Hudson Company and to you, was it not? A. Certainly.

Q. Vitally affected your business, you have testified? A. Certainly.

Q. Has it not? A. Certainly.

Q. And yet you cannot remember when you first learned of the fact that you had been red carded? A. I do not know the date.

Q. You do not know the date? A. No.

Q. You are positive of that? A. Yes.

Q. How do you know that you were first red carded on February 14? A. That is what we had been told.

Q. You were told that at this meeting? A. I don't recall when we were told.

Q. Who told you that? A. I don't recall.

6978 Q. Is not your entire knowledge of this particular matter predicated upon what you have heard or read with respect to the testimony given here? A. No, sir.

Q. When was this meeting at J. L. Hudson Company in relation to February 14? A. I don't recall.

Q. Well, aside from this meeting at the J. L. Hudson Company, when was the first contact that you had with any manufacturer in which you were told that you had been red carded? A. February 20 and 21st.

Q. Now, when was this meeting in relation to February 20 and 21st? A. Prior to that.

Q. How long prior to it, do you know? A. I don't recall.

Q. But you had no actual knowledge of that until you actually went out into the market, is that so? A. No.

Q. You had no personal knowledge of the fact that you had been red carded, aside from what you have told, until you went out into the market; is that not so? A. That is it.

Q. Mr. Simmons, you testified that you were told to change the buttons on the Bernard Appel dress; is that so? A. Yes.

Q. Was that the only difference that there was in the 6980
two dresses; do you know? A. That is what we were told to do.

Q. Who told you that? A. Mr. Goldston.

Q. Who? A. Mr. Goldston.

Q. When? A. When he was in Detroit at the office.

Q. You have not any written memorandum of that, have you? A. No.

Q. What date did he tell you that? A. I don't recall.

Q. Approximately when? A. March, 1935.

Q. And that was the end of the entire matter? A. That meeting?

Q. Yes. A. So far as I know—we put the dress on sale.

Q. At that time? A. He told us to.

Q. Do you not know, Mr. Simmons, that there was a 6981
difference between the two dresses in so far as the cut of the collar was concerned? A. I don't.

Q. Do you not recall that there was a difference in the two dresses in so far as the material was concerned? A. I did not see the material in the other dress.

Q. Do you recall, Mr. Simmons, any differences in the dresses other than the buttons? A. I don't recall.

Q. Did you ever see the original? A. No.

Q. Now, Mr. Simmons, you testified to the fact that Miss Fowler purchased dresses for your Gown Shop, di you not? A. I did.

Q. Who is Miss Fowler? A. A girl in New York.

Q. We can presume that from the fact that we pref the name with "Miss" and that you have testified that sh was in New York. Have you no further knowledge of th fact of who your buyer is than the fact that she is a gir and that she is in New York, or is that the extent of you knowledge? A. I do not know of any title that she has

Q. By whom is she employed? A. I don't know wh pays her salary.

6983 Q. Where does she make her office? A. 1440——

Q. There is no sense in fencing with me, Mr. Simmons you are going to tell me that she is with the A.M.C. befor I get through——

Mr. Haycraft: Wait a moment. I move that b stricken from the record.

Mr. Albert: It is ridiculous that we should hav to waste time in this way.

Mr. Haycraft: May counsel be admonished no to engage in this type of cross-examination? W have had too much of it in this kind of questioning There is no need of it, and it is certainly not th type of conduct that we usually have in a hearin before the Federal Trade Commission. I respect

6984 fully ask that counsel be warned and admonishe in that respect——

Mr. Albert: If your Honor pleases——

Mr. Haycraft: The witness was interrupted, h was trying to answer the question when the tirad was made by counsel for the respondent.

Mr. Albert: Yes, and we get a very——

Mr. Haycraft: I move it be stricken and tha counsel be admonished.

Examiner Bennett: Well, it may be stricken, if you want.

By Mr. Albert.

Q. Now, who is Miss Fowler, Mr. Simmons, in her relation with the A.M.C. and in relationship with the J. L. Hudson Company?

Mr. Haycraft: That is objected to. No foundation laid that the witness knows anything about—

Mr. Albert: Then let him say he does not know.

Mr. Haycraft: It is an improper question, the way it is framed. 6986

By Mr. Albert.

Q. Is Miss Fowler employed by the A.M.C.?

Mr. Haycraft: Objected to, no foundation laid that this witness knows.

Mr. Albert: Will you tell me he does not know by whom his own buyers are employed?

Mr. Haycraft: You will find out if you will ask a proper question. He said he did not know who paid her salary. That was answer enough. You cannot by browbeating and loud language and abuse of a witness hope to get anything——

Mr. Albert: The witness does not look particularly frightened, Mr. Haycraft. 6987

Mr. Haycraft: Well, I am not worrying about the witness at all.

Examiner Bennett: All right, go ahead with the examination.

Mr. Albert: May I have a ruling, if it please the Court, on the objection?

Examiner Bennett: I did not understand there was a question pending. Read the question.

(Question read.)

Examiner Bennett: You may answer, if you know, and if you do not——

A. I was never told. I was told Miss Fowler was going to buy our Gown Shop merchandise.

By Mr. Albert.

Q. As a matter of fact, does she not make her office with the A.M.C.? A. 1440 Broadway.

Q. In the A.M.C. offices? A. Yes.

Q. Does she not only buy gowns for the other members
6989 of the A.M.C.? A. I don't know.

Mr. Haycraft: I wish to have the record show, Mr. Examiner, that I have no objection to the record containing proper evidence of who Miss Fowler is, and her connection with the Hudson Company or with the A.M.C. It is no crime and the facts can and may be developed. What I am objecting to is the browbeating tactics employed toward this witness, when he has testified he did not know who paid her salary and did not know who employed her——

Mr. Albert: Nobody asked——

Mr. Haycraft: He is not in position to know. He was not placed here for that purpose. He is not
6990 a high official of the Hudson Company and this certainly is not the proper procedure in a case of this kind.

Examiner Bennett: Well, that is disposed of.

Mr. Albert: Now, if it please the Court, we have had a long speech by Mr. Haycraft, and I want to say that it was entirely uncalled for in the light of the fact that when I asked the witness "Who is Miss Fowler?" I got the very enlightening answer that

6991

she is a girl and that she is in New York. Now, certainly, if anything shows that the witness is trying to evade giving me an answer, an answer of that kind demonstrates it fully.

Mr. Martin: You also leave out that he had previously testified that she was their buyer.

Mr. Haycraft: What more do you want, and what more is relevant to the issues in this case?

Mr. Albert: May I quote your own remarks, Mr. Haycraft? Let me try the case in my own way.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

6992

By Mr. Albert.

Q. Do you not know, as a matter of fact, Mr. Simmons, that Miss Fowler purchases dresses for Strawbridge & Clothier, William Taylor Son——

Mr. Haycraft: That is objected to; he has already answered the question.

Examiner Bennett: Well, if he does not know, he can say he does not know.

Mr. Haycraft: He has already said he did not know.

Mr. Martin: He already said he did not know, your Honor.

6993

A. I answered once that I did not know, your Honor.

Examiner Bennett: All right.

By Mr. Albert.

Q. Does my mentioning of the names of those members of the A.M.C. refresh your recollection? A. No, sir.

Q. Now, did any of these manufacturers with whom you had a discussion tell you anything else as a reason why

they would not sell you other than the fact that you were red carded? A. I told them what Mr. Friedlander said about the meeting he attended.

Q. Yes. Well, did you ask him why you were red carded? A. We asked him if he knew, yes.

Q. Did you ask him why you were red carded, not if he knew that you were red carded? A. No.

Q. You were not interested in finding out why you were red carded, were you? A. We asked him if he knew.

Q. What? A. We asked him if he knew why we were red carded.

Q. Yes. A. We did not ask him why.

6995 Q. You did not ask him? A. No.

Q. Did you ask anybody why you were red carded? A. No.

Q. Do you know why you were red carded? A. I have been told.

Q. Aside from that you do not know? A. No.

Q. Who told you? A. I don't recall.

Q. You do not know who told you you were red carded? A. I don't recall who told us why we were red carded?

Q. Yes. Is that correct? A. No.

Q. Now, Mr. Simmons, with respect to these promotions in "Vogue" and in "Harper's," is this, roughly, what you are referring to, that certain manufacturers advertised their dresses in "Vogue" and in "Harper's," and in their

6996 advertisements they list certain retail stores where these dresses are sold? A. That is right.

Q. Is that, roughly speaking, the idea? A. Yes, that is correct.

Q. And you do not pay anything toward the printing of that advertisement? A. No.

Q. Do you? A. We have a——

Q. It is a courtesy extended to you by the manufacturers? A. In return for buying merchandise.

Q. And it arises from the fact that he believes that as a high type retail store it would enhance the value of his goods if it were known that you were selling them; is that not so? A. I do not know why he does it.

Q. Now, is it not a fact that the reason why you are not being invited to be listed in "Vogue" and "Harper's" is because you refused to protect his styles, and because it is possible for your customers to obtain copies from your store of the merchandise of high style that is being sold by the other retailers who are listed in those advertisements? A. That is not what I was told.

Q. Yes. You testified that you were told that the reason why you were not put in the advertisements was because you were red carded. A. That is right. 6998

Q. But every effect has a cause; is that not so?

Mr. Haycraft: Objected to.

Examiner Bennett: Well——

Mr. Haycraft: That is argument, argumentative.

Examiner Bennett: I will sustain the objection. We will adjourn until 10 o'clock to-morrow morning.

(Whereupon, at 4.30 o'clock P. M., August 19, 1936, the hearing in the above-entitled matter was adjourned:)

6999

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 20, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7001 Examiner Bennett: Be in order, please. This is a reconvening of Docket No. 2769, the Federal Trade Commission against Fashion Originators Guild of America, Inc. et al., from yesterday. The witness may take the stand. You may proceed, Mr. Albert, when you are ready.

WALTER E. SIMMONS resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Now, Mr. Simmons, you have testified with respect to a certain gathering at which Mr. Post made some re-
7002 marks. Was that the first—shall I say—conference in Detroit which he addressed, or was it the second? A. That was the only one I attended.

Q. Do you know how many times he was in Detroit? A. I wouldn't have any way of knowing.

Q. Do you know whether or not this conference about which you have been speaking was the second or his first? A. No, I wouldn't know.

Q. Do you know that he was in Detroit at another conference? A. No, I don't know.

Q. Can you fix the time at which this conference took place? A. I believe——

Q. Which you attended? A. I believe I testified to that.

Q. Well, will you tell me again? A. The spring of 1935.

Q. By that do you mean April or May? A. Along in there.

Q. That is, you are not definitely certain which— A. No, I didn't make any notes.

Q. —which month it was? A. No.

Q. Now, Mr. Simmons, what is it that Mr. Altmark told Mr. Post when you went with Mr. Altmark to Mr. Post—you at least remember testifying to that yesterday, do you not? Do you recall that? A. Yes. 7004

Q. What was it that he said? A. Mr. Altmark said that these two gentlemen had come to see about whether they were going to get delivery on the merchandise which they had on order with Mr. Altmark.

Q. What else did he say? A. That he thought that was a fair question and he had come over to get an answer.

Q. What else did he say? A. He thought it was a fair question and that while we had been—why we were trying to find out in order that we would not get a double stock in case this merchandise should be delivered.

Q. Was what Mr. Altmark said a fair representation of the conversation that you had had with Mr. Altmark? A. Yes.

Q. I mean, I take it from the way you told the story you had a conference with Mr. Altmark, you went up to Mr. Post, and then Mr. Altmark told Mr. Post what you and he had been discussing? A. We went to Mr. Altmark and told him what we wanted to find out. He called Mr. Post, and then he talked to Mr. Post in Mr. Post's office. 7005

Q. What do you mean by that, you were afraid you would have double stocks?

Mr. Albert: At this time, may it please the Court may I ask that Mr. Touff be excused from the room if he is here?

Examiner Bennett: Yes.

(Thereupon Mr. Touff left the court room.)

The Witness: Shall I go ahead?

Examiner Bennett: Yes.

A. Well, we had certain amounts of merchandise on order, in this case the Department 358. If we were not going to get this merchandise we had to have things to sell because we were getting ready for a fashion week.

7007 *By Mr. Albert.*

Q. Yes. A. If we would go out and buy more merchandise and then Mr. Altmark would deliver his merchandise we would have that much more than we needed, because when we had placed these orders we thought we had covered our needs to the best of our ability.

Q. Did you expect any difficulty in placing the orders then, to cover the merchandise that Mr. Altmark might not send you? A. We had not shopped them.

Q. You had not even attempted to, is that it? A. We wanted to know what was going to happen first to what we had on order.

Q. That is, you had made no attempt to replace the merchandise? A. Mr. Touff had been down before I went 7008 to New York.

Q. Yes. A. And I am not familiar with just what he had done.

Q. You do not know? A. No.

Q. These orders, Mr. Simmons, that were not filled, I presume have not been paid for, have they?

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Have not been paid for, you say?

Mr. Albert: Have not been paid for.

Examiner Bennett: Well, if he knows I will let him answer.

A. It is not my job to pay the bills.

By Mr. Albert.

Q. Do you know whether they have been paid for? A. No, I never check the bills that are paid or not paid.

Q. Is J. L. Hudson Company in the habit, if you know, of paying for merchandise that is not delivered? A. They pay after they get an invoice.

Q. Well, do you think you could risk saying that, in your opinion, they have not been paid for? 7010

Mr. Haycraft: That is objected to; he does not know.

Examiner Bennett: Well, I will sustain an objection.

Mr. Albert: Very well.

Examiner Bennett: There is no use in filling up the record with statements from a witness who does not know anything about it.

Mr. Albert: All right.

By Mr. Albert.

Q. Now, Mr. Simmons, have you any idea of the number of manufacturers available to the A.M.C. for the purchase of dresses at the price lines covered by the Guild? 7011

Mr. Haycraft: That is objected to.

Examiner Bennett: He may answer.

A. I have no idea what is available.

By Mr. Albert.

Q. None whatsoever? A. No.

Q. Did you ever see a list of manufacturers who were not Guild houses? A. I don't recall that I did.

Q. By that do you mean that you may have seen it, but you are not sure, or do you mean that you have never seen such a list? A. I don't recall that I ever saw a list.

Q. Do you know that the A.M.C. has supplied its member stores with a list of available resources? A. No, I don't know it.

Q. And since you don't know that there is such a list, of course you have never attempted to contact the houses 7013 that are on that list, have you?

Mr. Haycraft: Objected to.

Q. Except——

Mr. Haycraft: The respondent——

Q. Except as you may know them aside from that list?

Mr. Haycraft: Object to it. The witness is not a buyer nor put on as a buyer.

Mr. Albert: He is in——

Mr. Haycraft: There is no occasion——

Mr. Albert: He is in charge of his buyers, your Honor. He certainly ought to know what his 7014 buyers are doing.

Examiner Bennett: I will let him answer.

Mr. Haycraft: No foundation laid for that.

Examiner Bennett: Overruled. You may answer. I think there is a statement in the question, though, that is not exactly enlightening.

Mr. Albert: I withdraw the question.

Mr. Haycraft: I will say for the record, Mr. Examiner, that we have a buyer for the Hudson

Company that is waiting to testify in this case, and any question of this kind may be propounded to him and an answer received.

Mr. Albert: Mr. Haycraft got up yesterday afternoon and whined in a long speech that I was not permitting him to cross-examine, to question this witness whom he was presenting as having full knowledge of everything.

We are up against the same proposition, that he is handing me on to some other subordinate.

Mr. Haycraft: That is absurd.

Mr. Albert: When I start to cross-examine this witness——

7016

Examiner Bennett: Go ahead.

Mr. Haycraft: I have never said this witness knew everything.

Examiner Bennett: Go ahead with the cross-examination.

Mr. Albert: Which obviously he does not.

Mr. Haycraft: He knows enough. Don't worry about that.

By Mr. Albert.

Q. Do you know whether that list was made available to your buyers? A. No, I don't.

Q. You don't know anything at all about that list; do you? A. No.

7017

Q. You don't know whether your buyers have it or not? A. No.

Q. Did you ever hear of it? A. I don't recall that I did.

Q. You are in supervision of these buyers, aren't you? A. That is right.

Q. You have to pass upon their listing of what they wish to buy at a particular time, don't you? A. Pass on the money and the pieces that they are going to buy.

Q. Mr. Simmons, will you tell me whether or not to your knowledge any of the departments under your supervision were furnished with a list of resources compiled by the A.M.C.? A. I don't know. They may have gotten it in New York.

Q. I beg your pardon? A. They may have gotten it in New York. I don't know.

Q. They didn't get it through the J. L. Hudson Company? A. Not through me.

Q. You have never had any discussion with them about any such list? A. No.

Q. Did you compile a list of available resources? A.

7019 No.

Q. Did you investigate in any manner the possible resources that were available to your buyers? A. I instructed the buyers to.

Q. But you paid no attention to it? A. I am not that familiar with the market.

Q. Mr. Simmons, what do you consider a first-class stock? A. A stock that as nearly as possible takes care of our customer demands.

Q. What do you consider is your customer demand? A. The things that they ask for from day to day, and week to week.

Q. What do they ask for from day to day? We will pursue this until you finally give me the answer. A. It is a

7020 certain type of garment.

Q. What type of garment? I can follow you right along, Mr. Simmons. A. Good, high fashion, style right, well made, well tailored, good fabrics, desirable colors at the right price.

Q. What do you mean by high fashion? A. Good style.

Q. That is what you mean when you said you could not get a first-class stock in Department 358? A. That is right.

Q. What are the things that you consider good style? A. I don't understand the question.

Q. What constitutes good style? What are the elements that make up good style? A. The styling of the garment, the cut of it, the fashion points on the garment, the trimming.

Q. Do you mean by that the novelty of the style? A. Not necessarily.

Q. But possibly? A. Possibly.

Q. And the fact that is a style is an origination? A. I don't know about that.

Q. You don't know whether there are originals; do you? A. I never investigated.

7022

Q. Didn't you ever try to determine whether or not a dress was an origination or not? A. No.

Q. You don't know the difference between an original dress and a copy? A. No.

Q. Do you know the difference between a dress and a copy of that dress? A. I know that if we have a dress at one price, and we get it in another price, and they look just alike——

Q. Yes? A. That they are alike.

Q. One is a copy of the other? A. They might both be copies of something else; I don't know.

Q. I am not asking you that, Mr. Simmons. A. You asked me if one was a copy of the other.

Q. That is all I am asking you.

7023

Mr. Haycraft: You got his answer. There is nothing wrong with that.

By Mr. Albert.

Q. I didn't ask you to contrast it with anything else.

Mr. Haycraft: Ha, ha!

A. No, I don't know if one is a copy of the other.

Q. You don't know? A. No.

Q. Well, now, have you ever made a distinction between an original dress and a copy? A. No.

Q. You are quite certain of that? A. Yes.

Q. Now, let's turn to page 3840 of the record, where you were speaking a little volubly, and you weren't careful.

Mr. Haycraft: That is objected to, Mr. Examiner; the form of the question.

Q. And we find this question.

Examiner Bennett: Sustained.

7025 *By Mr. Albert.*

Q. (Reading) "Q. When you returned them of your own volition, what method did you follow to determine whether or not the garments should be returned?"

Mr. Haycraft: That is objected to.

Q. (Reading) "A. We had the original." A. That is the original as far as our stocks were concerned. That was the first dress of that particular style that came to our stocks.

Q. So that in so far as you knew up to the time that you had it, nobody else had made a dress of that style? A. We had never had it in our stock.

7026 Mr. Albert: May I ask the repetition of the witness' previous answer?

(Answer read.)

By Mr. Albert,

Q. So that your conception of what is an original dress is the original delivery to you; is that it? A. No.

Q. What do you mean? A. I have no conception of what an original style might be, as far—I started to say

that I have no idea of what a conception—of what an original style is, but that when a buyer comes to me and says, "I have this garment," as far as we are—I am concerned, that is the first time I have seen it. It is to the interest—my interest, if he has a good dress, not to have that dress sold at a lower price under certain conditions.

Q. Well, now, then, wouldn't you agree with me that your conception, or the J. L. Hudson's conception of what is an original dress is determined by the fact that the dress is originally delivered to J. L. Hudson, and that the first party that delivers the dress to J. L. Hudson is regarded as the original originator of the dress?

Mr. Haycraft: That is objected to, the form of 7028
the question.

Examiner Bennett: Well, I will let him answer.

Mr. Haycraft: Includes the J. L. Hudson Company, which is not——

A. My personal ideas aren't the J. L. Hudson Company's ideas, necessarily. I don't speak for them.

By Mr. Albert.

Q. You don't speak for them? A. Not as to the market; no.

Q. Who are you speaking for, the Emporium of San Francisco? A. No, my own ideas.

Q. That is all you have been giving us here? A. What 7029
I do at the store.

Q. Your personal opinions? A. Not of my personal opinions, all of them. Sometimes you ask my personal opinions.

Q. Yes. A. Sometimes you didn't.

Q. Well, now, I am not asking for your personal opinion. You are the assistant merchandise or assistant divisional merchandise manager of J. L. Hudson Company; are you not? A. Right.

Q. And you are subordinate, as I understand, to Mr. Sappington, are you not? A. Right.

Q. And I believe that you were here and heard Mr. Haycraft yesterday say that you had knowledge of a great many things in connection with the business; did you not?

Mr. Haycraft: That is objected to as not being a correct statement of what I said.

Examiner Bennett: Sustained. I don't see that that is important. Go ahead with the witness.

By Mr. Albert.

7031 Q. Aside from the fact, Mr. Simmons, of a determination of the time when a dress is delivered, have you any knowledge or have you ever attempted to find out whether or not a dress is an original? A. No.

Q. And J. L. Hudson & Company has co-operated with the Guild ever since they signed the declaration of co-operation?

Mr. Haycraft: I move to strike that. I object to that question and move that it be stricken.

Q. Isn't that so?

Examiner Bennett: Has this witness testified to that?

Mr. Albert: Oh, yes.

7032 Mr. Haycraft: I don't know when. That question was not propounded to this witness.

Examiner Bennett: He testified, as I remember, of beginning at some indefinite time to put a certain stamp on the orders and continued that until the red carding.

Mr. Albert: Very well, your Honor. To save time, I will withdraw the question.

By Mr. Albert.

Q. From the time, is it your contention that J. L. Hudson & Company—or, rather, from the time that you first put the stamp on the orders, did J. L. Hudson co-operate with the Guild? is that correct? A. As far as I know, to the time of the red carding.

Q. Are you at all doubtful about it as far as your departments are concerned? A. I don't know what was done by the firm.

Q. That is, you won't assume responsibility for what was done in your departments; is that it? A. I said I didn't know what was done by the firm.

Q. I am asking you about your departments. Did your 7034
departments co-operate with the Fashion Originators Guild from the time that you first put that Guild stamp on the orders? A. The instructions I had for my departments as to co-operation with the Guild——

Q. Yes? A. —was to put the stamp on the orders——

Q. Yes? A. —and to co-operate with the Guild shopper.

Q. Is the total extent of your attempt to co-operate with the Guild merely putting that stamp on the order, as far as your departments are concerned? A. The buyers then went further, probably.

Q. You don't know? A. I don't know what the buyers do in the market.

Q. You haven't the slightest idea with respect to it? A. No.

7035

Q. Now, Mr. Simmons, in answer to my question as to whether or not your departments fully co-operated after you put the stamp on, you said that you had no idea of what your buyers did in the market; didn't you? A. (Witness nods head affirmatively.)

Q. What has your buyers, what they did in the market, got to do with your departments co-operating here in the J. L. Hudson Company store? A. The buyers do for the departments.

Q. Aren't you willing to declare for your departments that your departments have fully co-operated with the Fashion Originators Guild since the time that you put the stamp on the orders? A. I can't testify for the buyers.

Q. I am asking you for your departments that you have supervision of and that you have control of, and with respect to which you exercise a modicum of control. A. I told you that the buyers were instructed——

Q. Didn't you say that you had seen your buyers four or five times a day? A. Yes.

Q. Well, now, didn't you know from them whether or not they were co-operating with the Guild? A. I didn't

7037 ask them.

Q. Didn't you make any effort to determine whether or not they were obeying the asserted policy of your store, or wasn't that one of your duties? A. I told you what my duties were.

Q. And that was one of them? A. To see that they put the stamp on and to co-operate with your shopper.

Q. All right. Now, how did you perform your duties of seeing that they co-operated with the shopper? A. Made it very definite that they were to be courteous to Mrs. Miller when she came into the store.

Q. Yes. A. Gave her the information that she requested.

Q. Yes. A. To the best of my knowledge they always did that.

7038 Q. And that is the state of your control over your departments to determine whether or not they have co-operated with the Guild— A. In addition——

Q. Is that what you want us to understand?

Mr. Haycraft: Let him answer—wait a minute.

A. In addition to making sure that the stamp is on the order.

By Mr. Albert.

Q. Yes. Mr. Simmons, as the assistant divisional merchandise manager of J. L. Hudson Company, controlling the various buyers in these departments, and as one naturally interested in the dress industry, have you any knowledge as to the contentions of manufacturers with respect to the fact that their styles are originals and originations? A. No manufacturer ever discussed that with me.

Q. Did you ever hear of the term before "original styles"? A. Only Mrs. Miller has talked about original styles with me.

Q. And, aside from that, you never heard of the ques- 7040
tion of original styles? A. I don't recall.

Q. You never discussed it with Mr. Sappington? A. No, sir.

Q. Never discussed it with Mr. Touff? A. No, sir.

Q. Never discussed it with any of your other buyers? A. No.

Q. You never asked what was all this business about copies and originals, and why do we have to determine what is a copy and what is an original?

Mr. Haycraft: Objected to, he has gone far enough, it seems to me.

Mr. Albert: Of course, if Mr. Haycraft will con- cede I have plumbed the depths of this witness' ignorance, I will desist. 7041

Mr. Haycraft: I will concede nothing to such a statement, and I move that that language be stricken.

Mr. Albert: I ask that the witness answer the question.

Examiner Bennett: All right, you may have an answer.

A. I was instructed that we put this stamp on the order and to co-operate with the shopper, and when she came in and told me I referred that to Mr. Sappington. She—

By Mr. Albert.

Q. You never made inquiry?

Mr. Haycraft: Let him finish his answer.

Mr. Albert: He has finished. I am sorry.

Mr. Haycraft: You know he has not finished.

A. I referred it to Mr. Sappington, who made any decisions in that particular instance.

7043 Q. Did you— A. Each instance was taken up individually.

Q. Did you not ever make inquiry as to what all this—shall I say—hocus-pocus was about? Were you not ever interested in it?

Mr. Haycraft: Objected to.

A. It was part of all the day's business.

By Mr. Albert.

Q. You did not know what all this was? This was all hocus-pocus to you, in your store, wasn't it?

Mr. Haycraft: I object, Mr. Examiner. Do not

7044 answer the question until I have a ruling.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. This business of attempting to determine whether or not a dress was a copy of something else was something new in your store, after you were instructed to put the stamp on the order, was it not? A. I don't recall.

Q. You do not recall whether or not you had ever tried to determine whether a dress was a copy before you put the Guild stamp on the orders? A. I recall that sometimes Mr. Touff would raise a question.

Q. When? A. Oh, off and on, they would have garments come up that they were referred to Mr. Sappington.

Q. Off and on when? A. From time to time.

Q. What time? Will you fix it, please? Before you put your stamps on the Guild order, or after you put your stamps on the Guild order? A. I don't recall when we started to put the stamp on the order.

Q. Well, did you ever, prior to the time that you put the stamp on the Guild order, have to determine whether or 7046
not a dress in your store was a copy of something else?

Mr. Haycraft: That is objected to. The witness has said he does not remember when he started putting the stamp on the order. How could he answer that question?

Examiner Bennett: Well, I will let him answer if he can.

(Question read.)

A. I never determined whether any of those questions—merely brought to me, and I referred them.

By Mr. Albert.

Q. So that before you put the Guild stamp on the orders, 7047
J. L. Hudson Company made investigation as to whether or not a dress was a copy of another? A. I don't recall.

Q. Do you recall whether or not any of your buyers made complaint that some of your other buyers were selling copies of dresses that they bought? A. No, I don't.

Q. Do you recall your name? A. Yes.

Mr. Albert: Thank you.

Mr. Martin: I move——

Mr. Haycraft: I move that the last question be stricken, Mr. Examiner.

Examiner Bennett: It may be stricken.

Mr. Albert: That is all, Mr. Haycraft. I am not going to waste any more of the Commission's time to get "I don't recall."

Examiner Bennett: Have you any redirect?

Mr. Haycraft: Yes, just a few questions.

Examiner Bennett: How?

Mr. Haycraft: I have just a few questions.

Redirect examination by Mr. Haycraft.

7049 Q. I will ask you whether or not the activities that you engaged in in the returning of dresses to manufacturers pursuant to the warranty clause placed on orders, was a part of your co-operation with the Guild? A. Yes.

Q. Now, yesterday, you were cross-examined with respect to your testimony on the Bernard Appel matter; I will ask you whether or not you had any correspondence with Bernard Appel in that connection?

Mr. Albert: That is objected to, if it please the Court, as entirely cumulative; and Mr. Haycraft's testimony with respect to that matter is in the record, that this witness knows nothing about it, and he refused to permit me—and now I am making this with more certainty of what I am saying when

7050 Mr. Haycraft said I refused to permit him with respect to Mr. Sappington—Mr. Haycraft refused to permit me to have this witness identify the correspondence, or anything in connection with it, and refused to give me his correspondence on it.

Now, it is improper redirect, and anything with respect to it so far as this witness is concerned has been thoroughly covered on cross-examination.

Mr. Haycraft: Mr. Examiner, if you will recall the matter yesterday was an attempt on the part of counsel for the Commission to get this witness to identify correspondence between J. L. Hudson Company and the Guild with which the witness was not familiar, and which the witness could not identify. He had testified under cross-examination that he had had correspondence with Bernard Appel. He was not allowed, or asked, to go into that matter.

Now, in order to make the story complete, I wish to say at this time that I am going to recall Mr. Sappington, properly identify the correspondence that counsel for the respondent had in mind yesterday, and introduce it in evidence, but that is only a part of the story. This witness had correspondence with Bernard Appel with respect to that transaction. I am now asking to identify that correspondence. If it is properly identified I shall offer it into evidence. If it is not sufficiently identified I shall retain it and offer it at a later time when it is more completely identified. 7052

Examiner Bennett: Well, all right.

Mr. Haycraft: That is the reason that I am asking the question which I have now asked.

Examiner Bennett: Well, all right. Read the question.

(Question read.)

7053

A. I did.

By Mr. Haycraft.

Q. Now, Mr. Simmons, I show you Commission's Exhibit 511 for Identification, and ask you if you can identify that?

(Copy of telegram from Simmons, The J. L. Hudson Company, under date of March 4, 1935, to

Bernard Appel, 35 Kneeland Street, Boston, Massachusetts, was marked for identification Commission's Exhibit 511.)

A. Yes, that is a wire I sent to Mr. Appel.

Q. On what date? A. March 4, 1935.

(A telegram under date of March 5, 1935, from Bernard Appel, Inc., to Simmons, care J. L. Hudson Company, Detroit, was marked for identification Commission's Exhibit 512.)

By Mr. Haycraft.

7055 Q. I show you Commission's Exhibit 512, and ask you to identify that? A. That is Mr. Appel's reply to my wire.

Q. Dated when? A. It is dated March 5.

(Copy of letter under date of March 14, 1935, from assistant divisional merchandise manager, The J. L. Hudson Company, to Bernard Appel, 35 Kneeland Street, Boston, Massachusetts, was marked for identification Commission's Exhibit 513.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 513 for Identification, and ask you if you can identify that? A. I can. That is a letter I wrote Mr. Appel.

7056 Q. Was that a carbon copy? A. That was a carbon copy of that letter.

Q. Was the original of that letter sent to Mr. Appel in the usual course of business? A. It was.

(Letter under date of March 15, 1935, from B. Appel, Bernard Appel, Inc., to Mr. W. E. Simmons, assistant divisional merchandise manager, The J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibit 514.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 514 for Identification, and ask you if you can identify that? A. I can.

Q. What is it? A. That is a letter I received from Mr. Appel.

Q. Under what date? A. March—he sent it on March 15.

Q. When did you receive it? A. I don't recall exactly.

Q. Was it in reply to your letter of March 14? A. It was.

(Letter under date of March 27, 1935, from B. Appel, Bernard Appel, Inc., to J. L. Hudson Company, Detroit, Michigan, attention of Mr. W. E. Simmons, was marked for identification Commission's Exhibits 515-A and 515-B.) 7058

By Mr. Haycraft.

Q. I show you Commission's Exhibits 515-A and B, and ask you if you can identify them? A. Another letter from Mr. Appel.

Q. Under what date? A. Dated March 27, 1935.

Q. Is that the original? A. It is.

Q. Did you receive it? A. I did.

Mr. Haycraft: Now, I offer these exhibits in evidence, Mr. Examiner, with the statement and assurance that other correspondence from the Guild with respect to this same matter, which will complete the story, will be offered later in the day. 7059

Mr. Albert: Now, if it please the Court——

Mr. Haycraft: If you would rather, I can withhold the offer of these, but I think there might be some examination of this witness with respect to it.

Mr. Albert: I object to this, if it please the Court, as being entirely improper redirect, as being

another evidence of the manner in which this hearing is being conducted by the Commission. This man was on the stand yesterday and testified orally with respect to the Bernard Appel matter, and the Commission at that time did not put into evidence, or attempt to put into evidence, this correspondence which I understand he has identified as being between himself personally and Appel & Company. At that time——

Mr. Haycraft: He did not say any such thing.

Mr. Albert: What?

Mr. Haycraft: He did not say any such thing
7061 that it was his personal correspondence. What is the matter with you anyway? Don't you want to represent things right at all?

Mr. Keller: Is the firm.

Mr. Haycraft: You don't say he was representing his firm. It is not personal correspondence.

Mr. Albert: Mr. Haycraft, did you think that I meant that this witness sent it out on his personal letterhead?

Mr. Haycraft: I do not know what you meant. I know what you said.

Mr. Albert: Don't be so stupid about things.

Mr. Haycraft: You are stupid, not me.

Mr. Albert: This letter was signed personally
7062 by Mr. Simmons and that is all I meant when I said he had personal correspondence.

Mr. Haycraft: It is not signed personally by Mr. Simmons or anything of the kind, and you know it.

Mr. Albert: What are your initials, Mr. Simmons?

The Witness: W. E.

Mr. Albert: W. E. S.?

The Witness: "S," yes.

Mr. Albert: And when you dictate a letter, I presume that your initials appear on the letter at the bottom; is that not so?

The Witness: Yes.

Mr. Albert: Now, I repeat that this correspondence was in the Commission's file yesterday when they examined this man orally with respect to this very transaction, and it was kept out. Now, after cross-examination, after this witness has been asked whether or not he examined the files with respect to the incident, and he said that he could not recall, we have this correspondence brought in.

I object to it, if it please the Court, on the ground 7064
that it is improper redirect.

Mr. Haycraft: I believe counsel laid a foundation for it himself by his statement.

Examiner Bennett: Any other objection?

(Mr. Albert examines papers.)

Mr. Albert: No objection, Mr. Examiner. The objection is withdrawn.

Examiner Bennett: They may be received in evidence. That is, Commission's Exhibits 511 to 515-B.

(The documents referred to, heretofore marked for identification Commission's Exhibits 511, 512, 513, 514 and 515-A and 515-B, were marked as exhibits and received in evidence.)

Examiner Bennett: Do you want these? 7065

Mr. Haycraft: I want to ask him a few questions about them.

By Mr. Haycraft.

Q. Now, after you had received the telegram of March 5, Commission's Exhibit 512, from the Bernard Appel Company, what did you do next?

Mr. Albert: That is objected to, if it please the Court, as thoroughly covered on redirect, and is now covered by the exhibits in evidence.

Mr. Haycraft: I am doing that, Mr. Examiner, as a foundation question for the next exhibit.

Mr. Albert: It was a foundation question all day yesterday.

Examiner Bennett: Yes. Well, go ahead.

By Mr. Haycraft.

Q. You may answer. A. What was the question?

7067 Examiner Bennett: Do not go into anything you have covered on direct questioning.

Mr. Haycraft: I will try not to as much as possible; this is a basis for the next letter. That is all I want to find out.

The Witness: What was the question?

(Question read.)

A. I called Mr. Sappington, read him this wire, and later sent it up to him.

By Mr. Haycraft.

Q. Well, then, did anything else transpire before you wrote to Mr. Appel on March 14, Commission's Exhibit 513? A. Yes.

7068 Q. What happened? A. Mr. Sappington had had some word that the Guild agreed—disagreed with Mr. Appel, so he called me and asked me to write Mr. Appel again.

Q. And you wrote Mr. Appel this letter of March 14? A. March 14.

Q. All right. Now, I call your attention to Commission's Exhibit 514, which is a letter from Mr. Appel to yourself dated March 15, and ask you what transpired be-

tween that letter and the next one you received from Mr. Appel dated March 27, 1935?

Mr. Albert: Objected to, if it please the Court, as fully covered——

Examiner Bennett: Well, I will let him answer.

Mr. Albert: —improper redirect.

A. Mr. Sappington had had more information from the Guild on this matter and had asked me to get in touch with Mr. Appel again.

Q. Did you do so? A. I believe we wired him.

Q. Do you have a copy of that telegram? A. No, I don't. 7070

Q. Do you know what you wired him?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: Well, if he knows he may answer.

A. No, I don't recall.

By Mr. Haycraft.

Q. Do you recall what further word Mr. Sappington gave you on the transaction? A. After this letter?

Q. No, before, between the letter of March 15 and the letter of March 27, from Mr. Appel? A. Well, the Guild still had not—there was still an argument between the 7071 Guild and Mr. Appel, and we were in between.

Q. When was the meeting that you referred to yesterday in your testimony at which Mr. Goldston told you to remove the buttons, with respect to the letters which you have just——

Mr. Albert: That is objected to, if it please the Court——

Q. —was it before——

Mr. Albert: —as improper redirect.

Examiner Bennett: Well, I will let him answer if he knows.

A. It was after this letter.

Mr. Haycraft: All right. That is all.

Recross-examination by Mr. Albert.

Q. When was your recollection refreshed about all these, Mr. Simmons?

7073

Mr. Haycraft: Objected to, nothing to show that his recollection was refreshed. The letters are there and speak for themselves.

Examiner Bennett: You may answer.

The Witness: What was the question?

(Question read.)

Examiner Bennett: You may answer, if there is any question about that.

A. I was shown these yesterday afternoon.

By Mr. Albert.

Q. Yesterday afternoon? A. Yes.

7074 Q. You had not seen them before? A. No.

Q. Did not know anything at all about them before? A. I testified yesterday that I had wired Mr. Appel and that he had wired me back.

Q. Yes. A. And we had had correspondence with Mr. Appel.

Q. How about the letters? A. I did not recall exactly how we had gotten back and forth.

Q. How about the question of your knowledge of the Guild's activities in this particular matter? A. I testified that my contact with the Guild was through Mrs. Miller.

Q. Through Mrs. Miller? A. Yes.

Q. Did you just tell us that you wrote certain letters and sent certain telegrams as a result of certain conversations with Mr. Sappington? A. To Mr. Appel?

Q. Yes. A. Yes.

Q. And yesterday, when we were having this discussion about whether or not there was any correspondence on the matter, you were restricting your answers to "I don't recall" to what correspondence passed between J. L. Hudson Company and the Guild, were you not? A. That is what 7076
you asked me.

Q. And you did not volunteer that you had any correspondence with Mr. Appel, did you? A. You did not ask me that.

Q. I said, you did not volunteer it, did you?

Mr. Haycraft: I object. He is not expected to volunteer. He is not in a place to volunteer.

Mr. Albert: Oh, I see; we are supposed to conceal facts?

Mr. Haycraft: No, you are supposed to conceal facts, but you are supposed to be lawyer enough to ask questions to get the facts.

Mr. Albert: Well, we will see whether or not I could have gotten the facts, Mr. Haycraft. 7077

Mr. Haycraft: All right, if you had asked the witness any question about correspondence he had with Mr. Appel, he would have given you whatever he knew about it, and you know it.

Mr. Albert: Supposing you had asked him about that correspondence on your redirect?

Mr. Haycraft: I did.

Mr. Albert: I have full faith and confidence that if you had——

Mr. Haycraft: I did, and he stated his recollection about it. You did not cross-examine him about it.

Mr. Albert: Can you find that in the record for me?

Mr. Haycraft: Certainly.

Mr. Albert: Where you asked whether or not he had correspondence with Bernard Appel?

Mr. Haycraft: Certainly.

Mr. Albert: Did you offer that correspondence in evidence?

Mr. Haycraft: No, I did not. I do not have to
7079 offer correspondence in evidence. Are you not lawyer enough to know that?

Mr. Albert: What?

Mr. Haycraft: Are you not lawyer enough to know that?

Mr. Albert: I am lawyer enough to know that you are not one.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: I wonder if you gentlemen are through? You may proceed, Mr. Albert.

By Mr. Albert.

Q. Now, what information did you have from the Fash-
7080 ion Originators Guild, Mr. Simmons, with respect to this matter?

Mr. Haycraft: That is objected to. The witness said he had no contact with the Fashion Originators Guild.

Examiner Bennett: Overruled. He may answer.

A. My contact with the Guild was through Mrs. Miller.

By Mr. Albert.

Q. Did you have any knowledge whatsoever of what the Fashion Originators Guild wanted with respect to this matter?

The Witness: Will you read me the question, please?

(Question read.)

A. Mrs. Miller told me that they wanted us to return the Appel dress.

By Mr. Albert. 7082

Q. Was that all she told you? A. Yes.

Q. Anything else? A. Because it was a copy of Townley's dress.

Q. Aside from the fact that Mrs. Miller told you to withdraw this dress because it was a copy of Townley's dress, you had no knowledge whatsoever of what the Guild's position was in this matter; is that so? A. Mr. Sappington, when I would call him and tell him about these, said that there was—that there was an argument about it, a disagreement.

Q. And is that all that you knew, that there was a disagreement, and that Mrs. Miller told you to return the dress because of the fact it was a copy of a Townley dress? A. As I recall, that's right.

7083

Q. That is all you knew? A. Yes.

Q. Now, will you tell me where you got the information from as contained in your letter of March 14 to Bernard Appel, being Commission's Exhibit 513 in evidence, reading as follows: "Now, the Fashion Originators Guild informs us that you have agreed to withdraw this stock from your line and are again demanding that we return the dress to you"? A. Mr. Sappington had given me that.

Q. So that you did more about the Guild's position than merely that Mrs. Miller told you to withdraw the copy, and that there was a disagreement about it; is that not so?

Mr. Haycraft: That is objected to, Mr. Examiner; the question does not mean that at all. I object to the form of the question.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: That language quoted there does not carry anything further.

Examiner Bennett: I will let him answer. Go ahead.

7085

A. On occasions like this, Mr. Sappington would call me, and if I had started a correspondence with Mr. Appel, as in this case, tell me what to ask him.

Mr. Haycraft: I would like to inquire, Mr. Examiner, if there are going to be any questions on cross-examination. We have waited ten minutes now since the last question was propounded.

Recross-examination by Mr. Albert.

Q. Mr. Simmons, was it the policy of the J. L. Hudson Company to wire the manufacturer in order to determine from him whether or not his dress was a copy? A. On a

7086 complaint?

Q. Yes. A. Yes.

Q. How many times was that done, do you know? A. No, I don't recall.

Q. Have you any idea as to how many times such a manufacturer agreed that his dress was a copy of another? A. No, I don't.

Q. Did any manufacturer ever agree that his dress was a copy of another? A. No, not as I recall.

Q. That you are certain of? A. Yes, sir.

Q. What did you mean when you said that J. L. Hudson Company determined whether or not a dress was a copy of another of its own volition?

Mr. Haycraft: Objected to as not proper recross-examination. It wasn't brought out on redirect at all. I examined this witness about this particular correspondence with Appel.

Examiner Bennett: Yes. All right. Let's confine ourselves to that, please.

Mr. Albert: What was your Honor's ruling?

Examiner Bennett: I say, sustained. Let's confine ourselves to that. 7088

Mr. Albert: Very well.

Examiner Bennett: To the redirect. If there is anything in that correspondence you want to develop, why, that is all right.

By Mr. Albert.

Q. Now, Mr. Simmons, was this the regular policy of J. L. Hudson Company? I am quoting from your letter, Commission's Exhibit 513: "We are still keeping this dress in our stocks until you agree with the Guild that the dress is a copy." A. Not to return it to the manufacturer until we had gotten an agreement or had not heard from him that it was a copy.

Q. So, in other words, unless the manufacturer agrees 7089
that his dress was a copy, you kept it on sale?

Mr. Haycraft: Objected to. That isn't what the witness said at all.

Mr. Albert: Well, let him contradict me if it isn't.

Mr. Haycraft: What is the use of putting things—

Examiner Bennett: Well, ask him.

The Witness: Will you repeat the question?

Examiner Bennett: I sustain the objection in that form. The question did not cover his last answer.

By Mr. Albert.

Q. Now, Mr. Simmons, that your recollection has been refreshed with respect to your correspondence with him, has your recollection likewise been refreshed since yesterday with respect to Respondents' Exhibits 47, 50 and 51?

7091 Mr. Haycraft: That is objected to, first, Mr. Examiner, with respect to the form of the question. The witness' recollection has been refreshed with respect to his correspondence with Appel. It was not with the others, and even if it was, it would have no bearing upon the exhibit which respondent attempted to get in yesterday because the witness did not recall the testimony, had never seen it before, and it is not proper recross-examination.

Examiner Bennett: I will sustain the objection. I understand there is an offer——

Mr. Haycraft: There is going to be a witness who will testify and identify all of this correspondence.

Examiner Bennett: There is an offer that the Commission will put that in the record in the regular way, that there is a witness who can identify them. This witness in his testimony yesterday said that he cannot identify it, and we are wasting time.

7092

Mr. Albert: Exception.

Examiner Bennett: All right, you may have an exception.

Mr. Albert: That is all.

Mr. Haycraft: That is all.

Mr. Albert: Just a moment, your Honor.

By Mr. Albert.

Q. Mr. Simmons, is the subject-matter and the substance of Commission's Exhibit 513, a letter of March 14 by you and the statements therein contained, matters which you know of your own knowledge? A. After the first wire, things that went to Mr. Appel was what Mr. Sappington instructed me to send him.

Q. That is, did Mr. Sappington give you the information? A. That is right, because——

Q. That is contained in the letter? A. That is right.

Q. And aside from the fact that Mr. Sappington told you what to write, you have no knowledge of the accuracy of what is contained in this letter? A. I don't recall every- 7094
thing in the letter. Can I see it?

Q. Did——

Mr. Haycraft: I object to it unless the witness is shown the letter.

By Mr. Albert.

Q. Did Mr. Sappington look over this letter before it went out? A. I don't recall.

Q. Do you know whether or not he initialed it in any way?

Mr. Haycraft: Show him the letter. I object to that question unless he sees the letter.

Mr. Albert: I am asking this witness, your 7095
Honor——

Examiner Bennett: Go ahead.

Mr. Albert: He should know.

The Witness: No.

By Mr. Albert.

Q. He did not? A. No.

Q. Did you tell him that you had sent the letter? A. He told me to send it. When he tells me to do something I do it.

Q. He gave you the subject-matter that you were to put in the letter? A. Right.

Q. Now, did he give you this statement: "We wired you because we have agreed upon a policy of not returning a dress to a manufacturer until that manufacturer informs us that he has copied the dress from the Guild house"—did he tell you that? A. Is that what the letter says?

Q. Is that right?

Mr. Haycraft: Let him see the letter. Let him
7097 see what else is in there.

Examiner Bennett: All right.

(The letter referred to was handed to the witness.)

By Mr. Albert.

Q. The second sentence (indicating).

Mr. Haycraft: I insist, Mr. Examiner, that the balance of the sentence be read also. It wasn't a sentence at all. It was a part of a sentence. I certainly object to that.

By Mr. Albert.

7098 Q. Read the balance of the sentence into the record, Mr. Simmons, and see if it has anything to do with the first part of the sentence.

Mr. Haycraft: It certainly has. It has a lot to do with it.

By Mr. Albert.

Q. Read the full sentence. A. All right. "We wired you because we have agreed upon a policy of not returning

the dress to a manufacturer until that manufacturer informs us that he has copied the dress from the Guild house."

Q. Now the rest is what I did not read. A. "We have had cases where both the Guild house and a lower priced manufacturer copied the dresses from the same source."

Mr. Haycraft: Yes.

By Mr. Albert.

Q. With whom was any agreement made?

Mr. Haycraft: I object to that question.

7100

By Mr. Albert.

Q. That you were not to return a dress to the manufacturer unless that manufacturer agreed that his own dress was a copy? A. We had that policy in the store.

Q. With whom did you agree? You say, "We have agreed upon a policy." Whose policy was that? A. The store's, J. L. Hudson Company.

Q. You didn't agree with anybody else about it, did you? A. No.

Mr. Haycraft: Ha!

By Mr. Albert.

Q. You didn't agree with the Fashion Originators Guild about it? A. No. 7101

Q. The Fashion Originators Guild didn't say that you couldn't—you shouldn't return a copy until the manufacturer had agreed that it was? A. No.

Q. And that is— A. As far as I know.

Q. And that is what you consider co-operation with the Guild program, is that so? A. That was the policy.

Mr. Haycraft: Objected to.

A. (Continuing) That was the policy I was instructed to follow.

Mr. Haycraft: What was the last answer?

(The last answer was read.)

By Mr. Albert:

Q. What are the cases, Mr. Simmons, in which a Guild house and a low priced manufacturer copied dresses from the same source?

Mr. Haycraft: If he knows.

Mr. Albert: I knew very well that he was going
7103 to say that he didn't know or didn't recall.

Mr. Haycraft: I object to that statement and ask that it be stricken.

Mr. Albert: I just want another "I don't recall" on the record.

Mr. Haycraft: You want the truth. That is what you will get.

Mr. Albert: I withdraw the question.

By Mr. Albert.

Q. Mr. Simmons, do you know in what cases Guild houses and a lower priced manufacturer copied a dress from the same source? A. I don't recall any.

Q. You mean by that that you don't know any? A. I
7104 don't recall any.

Q. You mean by that that there were some, but you can't remember? A. I can't remember whether I was told of any or not.

Q. Did you ever discuss it with Mr. Sappington? A. I don't recall.

Q. Where he told you to send this letter under your signature as a representation of an assistant divisional merchandise manager—did you ask him whether there were any cases? A. No.

Q. And yet you made this representation in this letter? A. That is what the letter says.

Mr. Albert: That is all.

Mr. Haycraft: Nothing further.

Examiner Bennett: Are you through?

Mr. Haycraft: Yes. That is all with Mr. Simmons.

(Witness excused.)

LOUIS B. SAPPINGTON was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows: 7106

Direct examination by Mr. Haycraft.

(Letter from Jack Goldston, Fashion Originators Guild of America, Inc., New York City, under date of March 16, 1935, to Mr. L. B. Sappington, The J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibits 517-A and 517-B.)

Q. Mr. Sappington, I show you Commission's Exhibits 517-A and B for Identification, and ask you if you can identify them? A. Yes, sir. 7107

Q. And tell us what that is? A. This is a letter written to me by Mr. Goldston of the Fashion Originators Guild, March 16, 1935.

(Copy of letter from Assistant General Merchandise Manager, under date of March 18, 1935, to Mr. Jack Goldston, Fashion Originators Guild of Amer-

ica, Inc., 512 Seventh Avenue, New York City, was marked for identification Commission's Exhibit 518.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 518 for Identification, and ask you if you can identify that? A. Yes.

Q. What is it? A. A carbon copy of a letter which I wrote to Mr. Jack Goldston, March 18, 1935.

Q. Is it in reply to the one you just identified from him? A. In reply to his letter of March 16.

Q. Was the original of this letter sent to Mr. Goldston
7109 in the regular course of business? A. Yes, sir.

(Letter from Jack Goldston, Fashion Originators Guild of America, Inc., New York City, under date of March 25, 1935, to Mr. Sappington, J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibit 519.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 519 for Identification, and ask you if you can identify that? A. This is a letter from Mr. Jack Goldston to me, March 25, 1935.

Q. Did you receive it? A. I did.

(Letter from Albert M. Post, Executive Director,
7110 Fashion Originators Guild of America, Inc., under date of April 2, 1935, to Mr. L. B. Sappington, J. L. Hudson Company, 1206 Woodward Avenue, Detroit, Michigan, was marked for identification Commission's Exhibits 520-A and 520-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 520-A and 520-B for Identification, and ask you if you can identify that? A. Yes, sir.

Q. What is it? A. A letter from Mr. Albert Post to me, dated April 2, 1935.

Q. Did you receive that? A. Yes, sir.

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., under date of April 3, 1935, to Mr. L. B. Sappington, J. L. Hudson Company, Detroit, Mich., was marked for identification Commission's Exhibit 521.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 521 for Identification, and ask you whether or not you can identify that? 7112
A. Yes, sir.

Q. What is it? A. It is a letter from Mr. Albert Post to me, dated April 3, 1935.

Q. Did you receive that? A. Yes, sir.

(Photostatic copy of paper signed by "The Committee" was marked for identification Commission's Exhibit 522.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 522 for Identification, and ask you if you can identify that? A. This is a photostatic copy which was enclosed in Mr. Post's letter of April 3, 1935.

7113

Mr. Haycraft: I offer this correspondence in evidence, Mr. Examiner.

(Counsel studied correspondence.)

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 518 unless the letter referred to in Commission's Exhibit 518 as being enclosed therein is also presented——

Mr. Haycraft: It is in evidence.

Mr. Albert: —for identification, or unless it is pointed out in evidence as to what is meant by that letter, which particular letter in evidence.

Mr. Haycraft: I will straighten that out in a moment.

By Mr. Haycraft.

Q. Mr. Sappington, calling your attention to Commission's Exhibit 518 for Identification, and to the letter referred to therein, mentioned by counsel for the respondent as being a copy of a letter from Mr. Appel, I will direct your attention to Commission's Exhibit 514 and ask you
7115 if that is the letter referred to in that Commission's Exhibit 518? A. Yes.

Mr. Feldman: What is that number?

Mr. Haycraft: Commission's Exhibit 514 is the letter referred to in Commission's Exhibit 518?

A. Yes, sir.

Examiner Bennett: The documents are received as Commission's Exhibits 517 to 522, inclusive.

(Documents referred to, heretofore marked for identification Commission's Exhibits 517-A, 517-B, 518, 519, 520-A, 520-B, 521, and 522, heretofore marked, were received in evidence.)

7116 Mr. Haycraft: Now I would like to have the other exhibits, Mr. Feldman.

(Counsel hands papers to Mr. Haycraft.)

By Mr. Haycraft.

Q. I now show you Commission's Exhibit 519, which is a letter from Mr. Goldston to yourself under date of March 25, 1935, in which he refers to a meeting of the Piracy

Committee, and call your attention to the following language at the bottom of the letter: "I will be in your city within the next week or so and look forward to meeting you." I will ask you whether or not Mr. Goldston did call on you when he was in Detroit, subsequent to that letter?

Mr. Albert: That is objected to as improper redirect.

Mr. Haycraft: Mr. Examiner, I am——

Mr. Albert: Apparently is not necessary to recall this witness for that purpose.

Mr. Haycraft: Mr. Examiner, this correspondence will not tell the whole story if this testimony 7118
is not elicited, and I think, in fairness to the Examiner and the Commission and the witness as well, that the whole story should go in.

Mr. Albert: Why was not this correspondence put into evidence when this man orally testified to it? If the whole story cannot be gotten just from the oral evidence aside from the letters?

Mr. Haycraft: You have your objection.

Examiner Bennett: Well, I do not conceive this as redirect.

Mr. Haycraft: No, it is not redirect.

Examiner Bennett: It is a recalling of the witness for further direct examination.

Mr. Albert: On a matter he has already testified 7119
to, your Honor.

Mr. Haycraft: No.

Examiner Bennett: If he wants to go into that—

Mr. Haycraft: He never testified to that.

Examiner Bennett: —subject further to a reasonable extent, why, I will let him do so. Objection overruled.

Mr. Albert: Exception.

7120 *Louis B. Suppington—For Com.—Recalled—Direct.*

By Mr. Haycraft.

Q. Go ahead. A. Yes. Mr. Goldston advised us—advised the store, and talked with me, after March 25.

Q. Did he discuss the subject-matter of a letter of March 25? A. Yes, sir.

Q. And on that occasion who was present besides yourself—was anyone else present besides yourself and Mr. Goldston? A. Mr. Simmons and Mrs. Miller.

Q. Now, then, will you testify as to what took place at that meeting?

7121 Mr. Albert: That is objected to, if it please the Court, as having been told on his previous direct testimony——

Mr. Haycraft: No, no.

Mr. Albert: He testified previously.

Mr. Haycraft: No, never mentioned on his previous testimony.

Mr. Albert: Why was it withheld?

Mr. Haycraft: It was not withheld. I told you before——

Mr. Albert: What is the sense of putting the witness on the stand back and forth like this. You put the witness on and then withdraw him and then put him back to discuss something that was up for discussion on his original examination.

7122 Mr. Haycraft: I attempted to interrogate this witness with respect to returns, and upon your objection I was not allowed to do it. This matter came up on cross-examination, as you know, with Mr. Simmons, and I am recalling this witness now in order to straighten out a situation which developed on that examination.

Examiner Bennett: All right.

Mr. Albert: Exception.

A. The matter of the controversy on the Appel-Townley matter was discussed. Mr. Goldston told us what had occurred in New York with reference to the work of the Piracy Committee. He asked us to return the dress to Mr. Appel. After considerable discussion of the subject, we agreed that we would return the dress to Mr. Appel, and the matter apparently was settled until Mr. Goldston supplemented his discussion by telling us after we had agreed that we would do it, that it was not necessary to do it, that if we would change the buttons on the dress we could go ahead and sell it, that if we took the buttons off, they would no longer—if we took the buttons off and put new buttons on, that the Guild would not consider the 7124
dress a copy of the Townley dress, and it would be satisfactory if we would continue to sell the garment.

By Mr. Haycraft.

Q. And did you do so? A. I instructed Mr. Simmons to do so.

Q. Now, did you subsequently to that conversation with Mr. Goldston meet Mr. Post and discuss this matter? A. Quite some time later. I think on Mr. Post's next visit he mentioned this matter, but not—that was quite a little time later.

Q. Was that after the date of the correspondence, April 2, 1935— A. Yes, sir.

Q. —the two letters from him, April 2, 1935, and April 7125
3, 1935? A. Yes, sir.

Q. Commission's Exhibits 520 and 521? A. Yes, sir.

Q. What did Mr. Post have to say on that occasion with respect to this matter? A. Well, Mr. Post, as I recall, opened his conversation by accusing the J. L. Hudson of non-co-operation, and I told him that I thought we had co-operated fully in the matter, and stated what had occurred, and Mr. Post gave me to understand at that time

7126 *Louis B. Sappington—For Com.—Recalled—Direct.*

that he had not heard from Mr. Goldston, and he did not know what the disposition of the Bernard Appel was on the part of the J. L. Hudson Company.

Q. Was that all he had to say about it? A. That was all he had to say. He said a great deal regarding our non co-operation before I acquainted him with the facts.

Q. What did he say about that? Did he say anything further than that, after that? A. No, no, sir; we discussed another matter entirely.

Mr. Haycraft: That is all.

Mr. Post: May I see those exhibits, please?

Mr. Albert: May we have those exhibits?

7127 (The papers were handed to counsel.)

Mr. Haycraft: We have one more question that has occurred to me.

By Mr. Haycraft.

Q. Mr. Sappington, I call your attention to Commission's Exhibit 513, a letter dated March 14, 1935, and the following language in that letter: "In reply to our wire you informed us that your style was not a copy as you had the same dress on your line last year. Now, the Fashion Guild informs us that you have agreed to withdraw this style from your line and are again demanding that we return the dress to you. We are still keeping this dress in our stocks until you agree with the Guild
7128 that the dress is a copy. Will you kindly wire at once giving your position on the dress and also inform us whether or not we should return the dress to you." I will ask you whether or not the statement which I have just read to you was the policy of the Hudson Company at the time that the letter was written? A. When there was a disagreement—that is, when we did not agree with the Guild shopper that a dress was a copy, when it was not an obvious thing to us that it was a duplication of another

we got in touch with the manufacturer to get his
n and get his story, which was back of the manufac-
to the dress during the time when that was in doubt
pt the merchandise on sale. If the manufacturer
no reply to our inquiry from him, which was often
se, as to whether or not his dress was a copy, we
ed the dress to him immediately. We gave him a
two for reply. If as in the case of the Appel situa-
he manufacturer strenuously objected, then we
l for more definite information before we took action.
cases we made the decision. If we di agreed with
anufacturer, then the dresses went back to him, and
s the only case that I know of that went this far 7130
there was any definite disagreement.

Mr. Haycraft: That is all.

examination by Mr. Albert.

Now, Mr. Sappington, do you recall when it was that
oldston had this conversation with you? A. Can't
on exactly, but it was some time the latter part of
.

It was definitely in March, was it not? A. Yes, I be-
t was in March. I——

It wasn't in February, was it? A. No, it wasn't in
ary.

Did you make any reply to the Fashion Originators 7131
letter of April 2, Commission's Exhibits 520-A and
. Is that the letter from Mr. Post.

I believe so. Yes. A. No, I do not.

I read to you from this letter—that is, Commission's
its 520-A and B. We were advised by our Mr. Jack
on that Mr. Appel of Boston had informed you that
ncy Committee consisting of three retailers had ad-
l his dress as no copy of the Townley Frock dress.

Mr. Goldston suggested that we send the actual report to you in order to assure you that the information we had transmitted was correct; and, secondly, to show you how absolutely undependable might be the defendant manufacturers' statements concerning his own transaction." Now, in the light of the fact that you say that in the end of March, 1935, Mr. Goldston told you certain things with respect to clearing up the question of whether the Appel dress was a copy, do you not think that the letter of April 2, 1935, from Mr. Post, does not support your story that Mr. Goldston told you to change the buttons, since after that conversation with Mr. Goldston there is still corre-
7133 spondence with respect as to whether it is a copy, and there is still correspondence with respect to the second Piracy Committee?

Mr. Haycraft: I object to any second Piracy Committee. There is nothing to show that there ever was a second Piracy Committee.

Mr. Albert: We will get to that, Mr. Haycraft.

Mr. Haycraft: I object to the form of the question. The question assumes a fact that is not in the record.

Mr. Albert: Mr. Sappington has shown that he can contradict me on facts, your Honor.

Mr. Haycraft: The reference is made to a second Piracy Committee. There is no evidence of any
7134 second Piracy Committee in this record. Read the correspondence.

Mr. Albert: Hold that last question.

By Mr. Albert.

Q. How many Piracy Committees were on the Appel dress, Mr. Sappington? A. Only one that I know of.

Q. Only one that you know of? A. That is right.

Q. I show you Commission's Exhibit 517-A, which is the letter of March 16 from Mr. Goldston to you, and read this sentence to you: "The Piracy Committee acting on the Barney Appel dress viewed—viewed—the two garments and judged it a copy." Is that the Piracy Committee you are referring to? A. I don't know anything about this Piracy Committee.

Q. Did you make any inquiry about it? A. No.

Q. You were informed of the fact that the Barney Appel dress had been adjudged a copy by a Piracy Committee in this letter; were you not? A. That is right.

Q. And despite that fact, that was not sufficient for you as to the question of whether or not the dress was a copy? 7136
A. This is a letter—this is all I know about the Piracy Committee. That is the question you are asking me.

Q. Didn't you have faith in the statement of Mr. Goldston to you that the Piracy Committee had passed upon the matter? A. I never accepted it nor questioned it.

Q. Didn't you? A. I didn't, no.

Q. Didn't you make any inquiry with respect to it? A. No.

Q. You were a co-operator with the Fashion Originators Guild, were you not? A. That is right.

Q. At that time you were informed that a Piracy Committee had passed upon the dress, had you not? A. That is what I was told.

Q. In this particular letter? A. That is what I was told. 7137

Q. Wasn't that sufficient for you as to the fact that it was a copy? A. No. We went ahead with the investigation.

Q. What investigation? A. Obviously it wasn't sufficient as to whether or not the dress was a copy.

Q. In other words, you insisted that the manufacturer must admit that it was a copy? A. We felt that in view

of his very strenuous objections, in view of the fact that he was a friend of ours, that we were doing business with him, that we owed some consideration to his statements, inasmuch as they were violently in opposition to the statements of the Fashion Originators Guild.

Q. Have you ever known any manufacturer to admit that his garment was a copy? A. By silent consent, yes.

Q. Hold that just a moment, Mr. Sappington. Now, I show you Commission's Exhibit—this photostat hasn't the number on it.

The Witness: It is marked some place.

Mr. Martin: It is the next one to that letter (indicating).

7139

Mr. Haycraft: It is right under your thumb.

Mr. Albert: Yes.

By Mr. Albert:

Q. I show you Commission's Exhibit No. 522. A. Yes.

Q. And ask you what is the date of that Piracy Committee report? A. March 23.

Q. That is the second Piracy Committee report, is it not?

Mr. Haycraft: Does it say so?

A. It doesn't say so. It says in the matter of determining.

7140

Q. Yes. A. It doesn't say redetermining, reviewing, or anything else.

Q. Yes. Very well. Now, will you answer my original question, Mr. Sappington? A. What is the question?

Mr. Haycraft: I object to that. There is no original question pending that I know of. He answered them all.

Examiner Bennett: Ask him what you want.

Mr. Albert: All right. I will reframe it, your Honor. It was some time ago.

By Mr. Albert.

Q. You testified that Mr. Goldston gave you the information with respect to the Appel dress in March, the latter part of March, 1935? A. That is right.

Q. And you received from Mr. Post his letter dated April 2, 1935? A. Yes, sir.

Q. After the receipt of Mr. Post's letter dated April 2, 1935, was any question raised in your mind, assuming Mr. Goldston said what you say he did, that he had no 7142
authority to make a statement? A. Certainly not.

Q. None whatsoever? A. None whatsoever.

Q. Despite the fact that Mr. Post's letter informs you of the Piracy Committee report and makes no mention of what you are to do in order to correct the deficiency in the dress? A. I understood Mr. Post's letter of April 2.

Q. Yes. A. Simply to be a statement to me.

Q. Yes. A. That Mr. Appel had appeared before the Piracy Committee.

Q. Yes. A. And that the Piracy Committee had judged his dress to be a copy of the Townley dress, not—and not covering in any way our action regarding the Appel dress which we had in stock. I considered that Mr. Goldston had full authority to dispose of that matter himself. 7143

Q. Did you inquire of Mr. Post, in answer to his letter of April 2, whether or not he had been told by Mr. Goldston of what you say Mr. Goldston told you? A. Why should I? He was an authority—representative of the Fashion Originators Guild with full authority. He is a member of the staff there. Why should I take my time to find out whether or not the various members of the Fashion Originators Guild keep in touch with each other or not?

Q. Now, this question, Mr. Sappington, of J. L. Hudson Company insisting upon a determination by the manufacturer as to whether or not his own dress was a copy was a subject of dispute between you and the Guild, was it not? A. Yes, it was, in that instance.

Q. Weren't you told by Mr. Post that every other retailer who had had that dress had returned it without question? A. I don't recall that.

Q. You do not know? A. No, sir.

Q. Did not Mr. Post—didn't you say that Mr. Post told you that you had not co-operated? A. Yes. He understood that we still had the Appel dress in our stocks and
7145 we had done nothing further about it. He told me that he didn't know what Mr. Goldston—what arrangements Mr. Goldston had made with us. He didn't know that Mr. Goldston had told us that if we took the buttons off and put new buttons on it would be all right to sell the dress. I can understand Mr. Post's position.

Q. With respect to the statement in Commission's Exhibit 513, Mr. Sappington, the top one there (indicating). A. No, that is 518.

Q. I mean 518. That is the one. A. Right.

Q. That is the letter from Mr. Simmons? A. No, that is the letter from myself, 518.

Q. Then I meant 513. It is also a yellow sheet of paper. A. Yes.

7146 Q. Did you in any way inform the Guild that it was your policy not to return dresses until the manufacturer had agreed that that dress was a copy?

Mr. Haycraft: I object to that. That isn't what the witness said was the policy of the Hudson Company.

Examiner Bennett: I will overrule the objection. You may answer.

A. No, because that wasn't our policy exactly. That was our policy in cases of dispute.

By Mr. Albert.

Q. Is there any statement qualifying that in this letter of March 14 of 1935 that that policy is adopted only in the case of a dispute?

Mr. Haycraft: That is objected to, Mr. Examiner, as not proper cross-examination. The exhibit speaks for itself. This witness did not write the letter. It is not the witness' letter.

Examiner Bennett: Sustained.

7148

Mr. Albert: May I remind Mr. Haycraft, if it please the Court, that the witness through whom this letter was gotten stated that it was dictated upon the instruction of Mr. Sappington and that it was Mr. Sappington's—the substance of the letter was Mr. Sappington's and not his own. He was merely doing it by instructions and he knew nothing about it.

Mr. Haycraft: What the witness said, Mr. Examiner, upon the question being propounded to him by counsel for the respondent, that Mr. Sappington did not see the letter and did not check the letter to O.K. it in any way. Therefore, it is not a proper question.

7149

Examiner Bennett: It is addressed to Mr. Appel, is it?

Mr. Haycraft: Yes. This is the Appel letter.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Mr. Sappington, did you give these instructions to Mr. Simmons to write the following to Bernard Appel: "We wired you because we had agreed upon a policy of not

returning a dress to a manufacturer until that manufacturer informs us that he had copied the dress from the Guild house"? A. Not exactly that way.

Q. Well, then, he made a mistake? A. I think he misunderstood.

Q. You didn't correct this letter? A. I didn't see the letter.

Q. You didn't see it at all? A. Until just now.

Q. This is the first time you saw it? A. Yes. No, I have seen it in our files, seen a copy in our files, but not until after this whole matter was disposed of.

Q. Despite the fact that you were giving instructions to
7151 a subordinate to write a letter containing statements of the J. L. Hudson Company policies, you did not examine the letter to see if he correctly stated those policies? A. I didn't think it was necessary. Mr. Simmons doesn't make very many mistakes.

Q. Then Mr. Simmons' letter of March 14, 1935, is a mistake in so far as it is a statement of what you told him to send?

Mr. Haycraft: Objected to.

Examiner Bennett: I will let him answer.

The Witness: What did he say?

Mr. Haycraft: You may answer.

A. It doesn't state the policy exactly, no.

7152 *By Mr. Albert.*

Q. Then it is a mistake? A. He left out something, and it is incomplete. I would say it is incomplete rather than a mistake.

Mr. Feldman: A bit of omission?

The Witness: Yes.

By Mr. Albert.

Q. Now, Mr. Sappington, when was this conversation with Mr. Post you referred to in which the subject of the Appel letter was brought up? A. I don't recall. It was some time later, whether it was a week or two, or as long as three or four weeks, I couldn't tell you. It was so—it was enough later so that I had almost forgotten the matter.

Q. And aside from a specific discussion of what transpired between J. L. Hudson, Mr. Goldston and Mr. Appel, did Mr. Post discuss with you in any way other differences between J. L. Hudson Company and the Guild in which Mr. Post believed you were not co-operating? 7154

Mr. Haycraft: That is objected to as not proper cross-examination.

Mr. Albert: I want to bring out the full conversation.

Mr. Haycraft: I do not believe it is relevant.

Examiner Bennett: I will overrule the objection. You may answer, if you remember.

A. I don't believe he did. We used this as an example.

By Mr. Albert.

Q. Didn't he further give you an example of the fact that J. L. Hudson Company was behind or backward in its co-operation by telling you and citing to you the fact that on the Bernard Appel dress every other retailer that handled it had sent it back without question as soon as they got the first Piracy Committee report? A. Well, if he did, I didn't take it very seriously because Mr. Goldston told me—— 7155

Q. Well, now— A. —something else.

Mr. Martin: Let him finish.

The Witness: About the same matter. He said there was a lot of controversy about the Bernard Appel dress.

Mr. Albert: That is all.

Examiner Bennett: That is all.

(Witness excused.)

Examiner Bennett: We will adjourn for luncheon until 2.10 o'clock P. M.

(Whereupon at 12.40 o'clock P. M. a recess was taken until 2.10 o'clock P. M. of the same day.)

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Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: Be in order, please. You may resume.

Mr. Haycraft: I will call Mr. Touff to the witness stand this time.

Examiner Bennett: You will be sworn, please.

DAVID SAUL TOUFF, was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft. 7160

Q. Your name, Mr. Touff? A. David Saul Touff.

Q. Where do you live? A. Detroit.

Q. What is your occupation? A. I am a dress buyer.

Q. A little bit louder so everybody can hear you. A. I am a dress buyer.

Q. For what firm? A. J. L. Hudson Company.

Q. How long have you been a dress buyer for the J. L. Hudson Company? A. I have been a buyer for the J. L. Hudson Company nine and a half years.

Q. What department or—strike that out. When you first became buyer for the J. L. Hudson Company, what did you buy? A. I was a buyer of sports apparel.

Q. Was there a department for that particular type of goods at that time? A. Yes. 7161

Q. What was the department number? A. 385.

Q. How long have you been a buyer of sports apparel? A. From February, 1927, to July, 1931.

Q. During that period of time did you buy for any other departments? A. (Witness shakes head negatively.)

Q. Subsequent to July, 1931, what did you buy for Hudsons? A. I bought misses' moderate priced dresses, daytime dresses.

Q. What department? A. Department 369. Until—

Q. Anything else? A. Until February of 1933. Yes. And I had two better dress departments added.

Q. What were the numbers of those departments? A. Department 338, women's better dresses; Department 358, misses' better dresses.

Q. So since February, 1933, you have been buying for those three departments? A. Yes. And at one time during that period I bought for Department 359, which was the gown room.

Q. For how long a period? A. From August to June.

Q. What year? A. From June, 1933, until June, 1934—

7163 from August, 1933, to June, 1934.

Q. Now, what is the price range of the dresses that you buy in Department 338, cost price range first? A. From $12.75 to $25.

Q. And the approximate retail price range? A. $21.75 to $39.75.

Q. What is the cost price range of the betters bought for Department 358? A. From $12.75 to $25.

Q. And the retail prices? A. From $21.75 to $39.75.

Q. What is the cost price range for Department 369? A. From $8.75 to $12.75 cost.

Q. The retail price range? A. From $13.95 to $19.75.

Mr. Albert: $13.95 to what was that?

The Witness: $13.95 to $19.75, daytime dresses

7164 only.

By Mr. Haycraft.

Q. Well, now, has it been your custom during the period of time from February, 1933, up to, say, January, 1936—strike that out. From February, 1933, until January, 1936, where did you buy the garments for these three departments? What market? A. We bought very largely in New York.

Q. Did you personally go to New York? A. Yes.

Q. What was your custom as to the frequency with which you went to New York from February, 1933, to January, 1936? A. You mean how many times did I go?

Q. Yes, how many times, a year or season or whatever way you can measure it? A. Well, it varied with the season. This is just a guess. It probably was forty times a year.

Q. How many seasons do you recognize as a year in your business? A. Two.

Q. What are they? A. Spring season and fall season.

Mr. Meder: Keep your voice up.

7166

By Mr. Haycraft.

Q. When did they begin and when did they end?

Mr. Meder: Talk loud.

A. Well, we considered the spring season starting February 1 and ending July 31; and the fall season, August 1 ending January 31.

By Mr. Haycraft.

Q. Is there any difference between types of dresses that you buy for those two seasons? A. Yes.

Q. What would you say is the difference? A. Well, we have very definite style difference between spring season and fall season, different types of dresses, different colors of dresses, different materials. 7167

Q. Now, with respect to the merchandise that you buy for Department 359 prior to January, 1936, who were your principal sources of supply?

Mr. Albert: Pardon me, Mr. Haycraft. Did you say 359 or 369?

Mr. Haycraft: My mistake. Make that 338.

The Witness: What is the question?

(Question read.)

Examiner Bennett: Ask him for the individual names or classification?

Mr. Haycraft: I am asking him for names, if he can recall them.

Examiner Bennett: All right.

A. Our principal sources of supply for Department 338 were—is it necessary to give this information?

Examiner Bennett: Well, I am not going to force you to give your sources of supply, if you——

7169 Mr. Haycraft: Well, I will change the question.

Examiner Bennett: —think it is going to do your business harm.

Mr. Haycraft: I will change the question.

By Mr. Haycraft.

Q. Prior to—I will put the question this way: Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first learn of its existence? A. I can't recall that definitely.

Q. Well, give us an approximate date, if you can. A. I should say shortly after its organization, probably—I don't know when that was—1932, I imagine.

7170 Q. Do you recall the occasion when the J. L. Hudson Company signed a declaration of co-operation with the Guild? A. No.

Q. You do not? A. No.

Q. Do you recall the time when you were required by—first I will ask who your superior is? A. Mr. Simmons.

Q. Do you recall a time when you received any instructions? Did you ever receive any instructions from Mr. Simmons with respect to placing a so-called warranty

stamp on orders placed with dress manufacturers? A. All order books for dress buyers were stamped before they were given to us.

Mr. Albert: That is objected to, if it please the Court. I ask that the answer be stricken as not responsive.

Examiner Bennett: Well, it is not responsive, but it is the information that they are trying to get.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 498-A, and ask if you can identify the stamp contained thereon? A. Yes.

7172

Q. Is that the stamp you have in mind in your last answer? A. Yes, sir.

Q. And was that the stamp that was placed on all orders that was placed in your department? A. Yes.

Q. Do you know when that stamp was first placed on orders which you plated with dress manufacturers? A. No, I don't remember.

Q. Can you give us an approximate date? A. I would have to guess at it.

Q. Well— A. It is so long ago.

Q. Well, did you place it on there in 1933? A. It was before that.

Q. Did you place it on there in 1934? A. It was before that.

7173

Q. During and throughout the year 1935, did you continue to buy dresses for Departments 338, 358 and 369? A. Yes.

Q. Did you have any knowledge as to whether or not any of your sources of supply were members of the Fashion Originators Guild of America, Inc.? A. Yes.

Q. Now, I will ask you to testify as to your understanding as to the sources of supply for Departments 338, 358

and 369 that were Guild houses during the year 1935, that you can recall? A. I am afraid I missed the first part of the question.

Mr. Albert: Now, then——

Examiner Bennett: Would it damage your business to disclose it?

The Witness: If I gave the names?

Examiner Bennett: Yes.

The Witness: I will be giving my competitors the names of the people I was previously successful with.

Examiner Bennett: Well, answer that question
7175 as to whether or not, in your judgment——

Mr. Meder: On behalf of the company, I will instruct the witness that during 1935 he may give those names.

Examiner Bennett: All right. Go ahead.

The Witness: You want the names or principal sources of supply for the three departments?

By Mr. Haycraft.

Q. Yes. A. For 1935?

Q. Yes. For each of the departments. Take up 338 first. A. 338, Antman & Bark.

Mr. Albert: What was that?

7176 The Witness: Antman & Bark. Matthes & Kadetsky; Ed Garrick.

Mr. Albert: What was that?

The Witness: Ed Garrick.

Mr. Feldman: Garrick.

The Witness: Baron Dress Company; Shatco; Miller & Rudy; Henry Ganz.

By Mr. Haycraft.

Q. How do you spell Rudy? A. R-u-d-y.

Mr. Albert: What was the last one?

The Witness: Henry Ganz. They are the most important ones.

Mr. Albert: Would you mind speaking up a little louder, Mr. Touff?

The Witness: I am sorry.

By Mr. Haycraft.

Q. That is 338? A. 338 department.

7178

Mr. Albert: The last one was Henry Ganz?

The Witness: Henry Ganz.

By Mr. Haycraft.

Q. Now, 358. A. 358, the most important resources were Milton Altmark; Strouse-Miller; A. Goodman; Mary Lee; Frank Starr-Friedlander; Capri; Harry Cohn. Those are the most important.

Q. All right. Now the same for 369. A. International; Aywon; Whitlan-Schneider.

Q. What was that? A. Whitlan-Schneider; C. H. D. Robbins; Lila Modes; Famous Dress; Gracette; Bretter & Swessman.

Q. What is that, Greiter? A. Bretter, B-r-e-t-t-e-r. Asterly; Lipman Brothers. 7179

Q. Is Lipman Brothers different from H. Lipman, or is that the same? A. No, I don't know; I don't know any H. Lipman.

Q. It was Lipman Brothers that you did business with? A. Yes.

Q. Did you mention H. M. Fried in Department 369—was that a source of supply? A. It was not an important source of supply until the beginning of 1936.

Q. Did you mention Dolcet Dress, or is that Antman & Bark? A. Antman & Bark and Dolcet are the same.

Q. Now, with respect to Department 338, source of supplies that you have mentioned, can you testify as to the percentage of your total purchases—garments purchased in that department—which consisted of Guild resources? A. What percentage of the merchandise was Guild merchandise?

Q. Yes.

Mr. Albert: What department are you referring to?

Mr. Haycraft: 338, in 1935, at the beginning of

7181 1936.

A. It would be a guess.

Q. You haven't any figures on it? A. No.

Q. Could you make an estimate? A. Yes.

Mr. Albert: Now, if it please the Court, the witness has testified that it would be a pure guess. I don't think the Commission is interested in anybody's guess.

Examiner Bennett: I will let him make an estimate, if he can make one that approximates the situation.

Mr. Haycraft: I can't hear you.

Examiner Bennett: I say, I will let him make

7182 an estimate if he can make one that approximates the facts.

Mr. Albert: Exception.

Mr. Haycraft: That is what I wish to get, yes sir.

A. I would say that in 338 department 65 per cent. of our merchandise came from Guild houses.

By Mr. Haycraft.

Q. What is your estimate as to the percentage of Guild houses from which you purchased the merchandise for Department 358? A. At least——

Mr. Albert: Is that also a guess, Mr. Touff?

The Witness: I beg your pardon?

Mr. Albert: Is that also a guess?

The Witness: Much less than the other one. About 95 per cent.

By Mr. Haycraft.

Q. Now, what is your estimate for Department 369? 7184
A. About 75 per cent.

Q. Did you continue to buy from those Guild houses during the year 1936? A. No.

Q. When did you stop? A. When we were red carded.

Q. When was that? A. February the 14th.

Q. What year? A. 1936.

Q. When you say you were red carded, what do you mean by that? A. I mean that the Guild instructed their membership they were to ship us no further merchandise.

Q. When did you first learn that? A. I don't know the date.

Q. Did you make any attempt to verify that information? A. Yes.

Q. What did you do? A. I went into the market and 7185
tried to get my goods.

Q. When did you do that? A. Either the Monday or the Tuesday following, my very next trip to New York.

Q. You mean following the 14th? A. Yes.

Q. Here is a calendar. Will you refresh your recollection on that? A. Either the 17th or the 18th—probably the 17th.

Q. What did you do? A. Well, I went to the various manufacturers I had been in the habit of doing business

with, doing my business with, asked them if they were going to ship the merchandise that was on order, and was told that they were not.

Q. Do you recall how many of the manufacturers you called on? A. During the course of that week I spoke with every important manufacturer that we do business with.

Q. Was there anyone with you on any of those calls? A. Yes, Mr. Simmons was with me at one time.

Q. Do you have a recollection of making—strike that out. On what manufacturer did you call when Mr. Simmons was with you, if you remember? A. We called on

7187 three.

Q. Which ones were they? A. We spoke to Mr. Sam Friedlander, Frank Starr-Friedlander; Milton Altmark, and Abe Goodman.

Q. What did Mr. Sam Friedlander tell you when you called on him? A. He told me that he did not expect to ship the goods that was on order unless the red card was lifted.

Q. Did you say anything other than that? A. We wanted to know at that time—in fact, our major interest in talking to Mr. Friedlander was to find out whether or not we were going to have to take his merchandise if the red card was lifted in addition to what we might subsequently buy. In other words, if we went out and re-bought

7188 merchandise to replace what was on order with him, and the red card was lifted within a week or so, would we have to take what we had subsequently purchased and what was already on order with him. Mr. Friedlander was very co-operative about it and said that he didn't know what was going to happen and regretted it all very much, but if the red card was lifted, if we wanted the merchandise, we would be at liberty to take it. If we didn't want it, it would not be necessary to take it. He would absorb it in the interest of business.

Q. Did you ask him any question with respect to why
had been red carded? A. (There was a short pause.)
ere was probably some discussion about that, but he
n't know why we had been red carded.
Q. You mean by that, that that is what he told you, or
at did he say? A. (There was a short pause.) I can't
ember the details of that discussion.
Q. Well, now, what was the other call that you made?
We went to see Milton Altmark.
Q. What did he have to say? A. Well, we discussed
same situation with him, and he was not quite as co-
rative about it.

Mr. Albert: I ask that that be stricken, if it 7190
please the Court, as not responsive.

Mr. Haycraft: I object to the witness being interrupted in the course of his answer.

Examiner Bennett: I will let him answer. Go ahead.

Mr. Albert: Exception.

Examiner Bennett: Explain in detail what you mean by co-operating.

The Witness: Well, he didn't make the same offer that Mr. Friedlander had made, that if the red card was lifted we need not take the merchandise. He thought that we were asking a very fair question, however, and called Mr. Post on the telephone to ask him what the attitude of the Guild would be in 7191
such an event, in the event that the red card was lifted. Mr. Altmark told me that Mr. Post told him over the telephone that rather than have us go through the market asking that question of every manufacturer that we do business with, that we should come to his office and he would explain the Guild attitude on it directly to us. Mr. Altmark and Mr. Simmons and I went to Mr. Post's office.

By Mr. Haycraft.

Q. What happened when you got there? A. We we shown into Mr. Post's office, and Mr. Altmark present the question that was involved to Mr. Post. Mr. Post sa that they had taken the question up with their attorne and the Guild situation was simply this: That we ha broken our agreement with the Guild; that, as such, t membership of the Guild could not ship us merchandis In the event that the red card was lifted and the misu derstanding straightened out, they would expect the mer bership of the Guild to ship that merchandise; that a loss arising to a member of the Guild from not being ab
7193 to ship the merchandise through his having to dispose it at distress prices would be the responsibility of t store, and the store could be sued to collect.

Q. Was that all that was said by Mr. Post? A. Yes, si

Q. What did you do then? A. We left. We went see Mr. Goodman.

Q. Did you present the same proposition to him? Yes.

Q. What did he say? A. Substantially what Mr. Frie lander had said.

Q. Did any of them tell you why you had been re carded? A. The impression was pretty general that w had been red carded because of our refusal to return certain dress that the Guild had asked us to return.

7194 Q. Did you know anything about that transaction? I did not.

Q. It was not in your department? A. No.

Q. What did you do after your conversation with M Goodman? A. I think we went back to the office and think we called and advised Detroit of Mr. Post's conve sation, and I think that we were advised to start replacin the goods immediately as best we could. And we called we called California to have certain merchandise boug for us out there.

Q. Did you make any further attempt to replace the goods while you were in New York on that trip? A. Yes, sir.

Q. What did you do? A. Well, I set about the business of looking for new people to buy from for every one of those departments—quite a task.

Q. Were you familiar with the New York market? A. Yes, sir.

Q. Well, you didn't have any difficulty doing that, did you? A. I had a great deal of difficulty doing it.

Q. What was the matter? A. It was impossible for me to buy enough satisfactory dresses for my departments.

Q. Has that situation changed any since that time? A. 7196
Very slightly.

Q. What is the situation to-day? A. In Department 338 the situation is somewhat corrected; some of those resources have been replaced. We are still without the one single resource that provided us with our largest supply of merchandise.

Q. Which was that one? A. Antman & Bark.

Mr. Feldman: Who?

The Witness: Antman & Bark. I still have considerable difficulty in Department 338 buying enough desirable half size dresses. Department 358——

Q. Before we leave 338, may I ask you—well, go ahead, 7197
I will not interrupt you. A. In Department 358 the picture remains very much the same. It is still impossible for me to buy anywhere near enough desirable dresses, satisfactory dresses for Department 358. Department 369, the situation is somewhat corrected, but it is likewise impossible to buy enough dresses of the $10.75, $11.75 and $12.75 costs to-day, or buy on——

Q. Have you thoroughly canvassed the New York market? A. Yes, sir.

Q. Have you gone to any other market? A. I have been in Chicago and Cleveland.

Q. More than once? A. Often.

Q. Now, Mr. Touff, from your experience that you have described here, do you have any opinion as to whether or not your inability to get merchandise from the Guild resources, subsequent to the red carding by the Guild, has had an effect upon the departments for which you buy? A. A very definite effect.

Q. Will you testify as to what that effect is, beginning with 338?

Mr. Albert: Objected to, if it please the Court, 7199
the exhibits in evidence speak for themselves.

Examiner Bennett: Well, we will have his opinion, if he has one.

A. Department 338 was materially affected during the months of March and April by not having enough satisfactory dresses. Department 358 was materially affected during the entire spring season by not having enough desirable dresses at $29.75 and $39.75. Department 369 is materially affected all during the spring season, until about the 15th of June, by not having enough desirable dresses that cost $10, $11 and $12.75.

Q. What happened in June to remedy the situation? A. We had a style change, it was a little bit unusual and 7200
unexpected, and made it possible for us to meet our figures at those prices with the limited market that was available.

Q. In what price line was that that you were able to meet the situation? A. At $10.75 cost.

Q. At $10.75 cost. How about the $11.75 and $12.75? A. The $11.75 price line has never been corrected at any time during the spring season. The $12.75 price line is in a similar situation to the ten.

Q. Now, will you describe in detail just how Department 338 was affected, that is the price line, the name of the source of supply and so on? A. Well, we have been in the habit for a period of years of doing business with those people that I have named, to build up a clientele, people who wanted that type of merchandise, starting with probably March 1 or March 15, when that merchandise was completely cleaned from our stocks, that we were unable to offer them that type of merchandise any longer, that standard of merchandise any longer. The biggest loss we suffered in that department was the loss of Anton & Bark, who made a sizeable dress to sell for $29.75, and which it was impossible to replace. We lost business all during the 7202
spring season at $29.75, as a result of that.

Q. Were you able to replace the garments that you had been buying at Henry Ganz? A. Henry Ganz made a very useful woman's dress, and they are the only house in New York that made that type of a dress, and it is impossible to replace it.

Q. Were you able to replace the garments that you had been buying from Matthes & Kadetsky? A. Not during the spring season, but I think for fall we will have replaced Matthes & Kadetsky and Ed Garrick.

Q. And Ed Garrick also? A. Yes.

Q. But you did not during the spring? A. No.

Q. Now, referring to Department 358, will you give the same detail as to the effect on the different lines and the names of the different manufacturers who were supplying 7203
the garments? A. Well, with the red carding of Department 358, there were only three or four houses left in the market, making daytime dresses to sell at $29.75 and $39.75. Only one of those houses was, to our point of view,—to my point of view—a satisfactory source of supply. As a result, we were non-competitive at $29.75 and $39.75 all spring. We did not have desirable assortments

at $29 and $39 during this spring season. We lost busi
ness at those prices continually. We probably will agai
this fall.

Q. Your testimony just referred to the daytime dresses
A. That's right.

Q. Was there any effect upon evening dresses in tha
department? A. Well, we had previously done a ver
large part of our evening dress business with Frank Star
Friedlander, a resource which we lost, and a resourc
which I am finding it extremely difficult to replac
although there are quite a number of evening dress house
available for us to buy from, it seems impossible to bu
7205 that—a dress as satisfactory as his.

Q. Now, will you give the same testimony with respec
to Department 369? A. 369, we lost every resource bu
one that we had used as a supply for $10.75 and $11.75 an
$12.75 house dresses. All during this spring season w
lost business as a result of not having a sufficient supply o
satisfactory types, satisfactory dresses. We will probabl
continue to lose business at those same prices again thi
fall.

Q. In your opinion, did the inability to replace re-order
for merchandise from these manufacturers and from th
manufacturers, Guild manufacturers, supply garments fo
Departments 358 and 369, have any effect upon the sale
in those departments? A. It had a very considerabl
7206 effect. Every dress that—practically every dress that w
were running, getting business on at the time of the re
carding, we were forced to drop, had to go out into th
market and attempt to buy dresses to replace them, ge
new numbers established, running numbers established
We lost the whole basis of our immediate operation, ou
immediate re-order numbers.

Q. Mr. Touff, do you have any opinion as to what fac
tors should be taken into consideration in determinin
what is a desirable source of supply of merchandise fo
garments? A. Yes.

Q. In your opinion, what are the factors that go to make up a desirable source of supply, or resource as it is known in the trade? A. Well, first of all, a resource must make the type of dress that we are successful in selling. A great many manufacturers who make satisfactory dresses that are not satisfactory to us—that is, they make satisfactory dresses but they are not satisfactory to us. A manufacturer has to make the kind of dress we are successful in selling, both as to style and type, standard of workmanship and fit, and we find that a manufacturer, to be successful, for a store of our size, has to be equipped to handle volume business quickly and efficiently. Many manufacturers who make desirable dresses are not 7208
equipped to give them to us in as large quantities, and in as short a space of time as we find it necessary to have them. Also, we find it necessary, because of our competitive position, to have what are known in the trade as top dresses, dresses that come from houses who style them well, make them well. It is absolutely essential that we have the best style dresses?

Q. What has been your experience as to the material used in the sources of supply by members of the Guild as compared with non-Guild members? A. The members of the Guild, being the largest manufacturers in the trade—

Mr. Albert: If it please the Court, may I ask that that be stricken as a conclusion of the witness for which no foundation has been laid and volun- 7209
teered in the answer?

Mr. Haycraft: I object to the witness being interrupted. I am asking this witness for his opinion and his conclusions and that is what I want.

Examiner Bennett: Well, I think that he should have some knowledge and experience.

Mr. Haycraft: That is a matter of cross-examination when we get through with his testimony, Mr. Examiner, if he doesn't believe he is competent to testify.

Examiner Bennett: Yes. I overrule the objection. You may proceed.

By Mr. Haycraft.

Q. Complete your answer.

Mr. Haycraft: Read the answer as far as he got.

(The reporter read as follows: "The members of the Guild, being the largest manufacturers in the trade—")

Mr. Haycraft: Now read the question to him.

(The reporter read as follows: "Q. What has been your experience as to the materials used in the

7211 sources of supply by members of the Guild as compared with non-Guild members? A. The members of the Guild being the largest manufacturers in the trade—")

The Witness: The members of the Guild being the largest manufacturers are very generally in a position to have confined to them, brought to them for their first selection the most desirable items in the piece goods market, the most desirable items in the trimmings market, that are available. It is naturally to the best interest of the large piece goods houses and the large trimming houses to have the manufacturer who has the largest outlet use his product. Because of this many of the Guild houses

7212 are—have at times some of the most desirable items in the market and have them exclusively for themselves.

By Mr. Haycraft.

Q. Would you say that that fact is a factor to be taken into consideration in determining the desirability of a resource? A. Absolutely.

Q. What have you been doing, Mr. Touff, during the past two weeks to replace merchandise that you have been buying from the Guild or that you have been accustomed to buying from the Guild at this time of the year, Guild manufacturers at this time of the year? A. I found it very difficult to complete my early fall plans. I have been to Chicago three times on fall merchandise; I have been to Cleveland once; I have been in New York four times. I have as yet been unable to complete my August appropriations which would normally have been completed a week ago.

Q. Are you having any trouble in any particular line, or is it a general condition with respect to all of the merchandise you handle? 7214 A. I am incomplete in all three departments, having some particular difficulties in Department 369.

Q. What are your difficulties in 369? A. I have been unable to buy enough $10.75 cost wool dresses of the type that I formerly bought and sold very largely in the months of August and September from two or three Guild houses.

Q. In your opinion, will that have an effect upon the sales—strike that out. In your opinion, will your inability to complete your lines have an effect upon the sales of the J. L. Hudson Company in your departments during the coming season?

Mr. Albert: If it please the Court, the question is objected to. We are now trying to make the wit- 7215 ness a prophet. Maybe nobody is going to buy any wool dresses in August.

Mr. Haycraft: I am asking for his opinion.

Examiner Bennett: Well, let him give it for what it is worth. I think it will be difficult——

The Witness: I think it will—the J. L. Hudson——

Examiner Bennett: —to answer the confidence.

The Witness: J. L. Hudson Company's business will suffer at certain price lines as a result of my not being able to buy those dresses.

By Mr. Haycraft.

Q. Which price lines do you have in mind? A. $16.95 price line.

Q. That is retail price or wholesale price? A. Yes, retail price.

Mr. Haycraft: Mark that.

(A certain document was thereupon marked
7217 Commission's Exhibit 523 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 523 for Identification, and ask you if you can identify it? A. Yes, sir.

Q. What is it?

(There was a discussion off the record.)

By Mr. Haycraft.

Q. Will you state what that is? A. This is a listing of manufacturers who make better dresses from the Fairchild directory for the fall of 1936 and a rather broad classification by type and price line.

7218 Mr. Albert: May I have the answer repeated?

(The answer was read.)

By Mr. Haycraft.

Q. Did you prepare it? A. Yes.

Q. And is it based upon your experience and knowledge? A. Yes.

Q. Is it correct? A. To the best of my ability.

Q. What price lines have you included in this? A. I have broken down the misses' daytime dresses into cost prices of $12.75 and $14.75, $16.75 and $18.75 to $25.00 inclusive; $29.75 and up; all misses' evening dresses in one classification; all women's dresses in one classification; all cotton dresses in one classification; and maternity dresses in one classification.

Q. Now, in the classification of $29.75 and up, what did you include in the up? A. They are all houses who manufacture dresses who formerly in the season manufacture dresses that cost $29.75 and up; includes a great many manufacturers who manufacture dresses that probably wholesale for $100 and up. It is a very broad classification. 7220

Q. Does the exhibit also contain a summary of the classification that you have indicated? A. The exhibit shows the totals for each of those classifications.

Mr. Haycraft: I offer it in evidence.

(The document referred to was handed to Mr. Albert.)

Mr. Albert: If it please the Court, may we have some further explanation of the meaning of this summary?

Examiner Bennett: I beg your pardon?

Mr. Haycraft: There is no objection to asking questions about it because it has not yet been received in evidence. I will be glad to ask some further questions. I reserve it then because I anticipated the rule of—— 7221

Mr. Albert: Well, in that it represents this witness' opinion of a list of houses with respect to the various price lines.

Mr. Haycraft: It is the Fairchild list, as I understand.

Mr. Post: (Mr. Post shakes head negatively.)

Mr. Albert: And the fact that they are either Guild or non-Guild, I have no objection, your Honor, but in so far as the accuracy of it is concerned, I don't, of course, concede that.

Examiner Bennett: Yes. All right.

Mr. Albert: But as this witness' opinion and as his listing——

Mr. Haycraft: Yes.

Mr. Albert: —and that it was prepared by him and merely is a matter of his opinion, I have no objection to it being admitted.

Examiner Bennett: Well, received.

7223 (Whereupon the document heretofore marked for identification Commission's Exhibit 523 was received in evidence.)

By Mr. Haycraft:

Q. Mr. Touff, in the first column of this exhibit appears a list, the first column of this exhibit is headed "Manufacturer" and a number of names thereunder. What are those names; are those the sources from which they were taken? A. From the Fairchild's directory.

Q. Which issue? A. The early fall, 1936.

Q. What divisions of that directory? A. That directory is——

Q. Divided? A. Is not divided according to price line.

7224 Q. Then the division according to price line and according to this exhibit is your selection by yourself? A. That is right.

Q. Now, immediately following the list of manufacturers are a group of red x's after certain of the manufacturers' names. What do those red x's signify? A. They are members of the Guild.

Q. Now, in the first numerical column, that is, the column headed "$12.75-$14.75" appear black x's after cer-

tain names and red x's after certain names. I will ask you to indicate what those x's signify. A. The black x's signify that the manufacturer opposite x is a non-Guild manufacturer, manufacturing dresses at $12.75 and $14.75, and the little red x that is in there in pencil means that the Guild house standing opposite that x manufactures dresses at the same price.

Q. All right. Now, is that explanation true also for the remaining columns? A. Yes.

Q. $16.75 and so on? A. Yes.

Q. Now, at the bottom of the exhibit after the reading "Summary" I find certain figures: 75, in the first column. What does that indicate? A. That indicates that there are 7226
that many people in that listing that are members of the Guild.

Q. Is that a totaling of the red x's? A. That is right.

Q. Then in the column headed "$12.75-$14.75" I find the figure 9. What does that represent? A. That means that there are nine non-Guild manufacturers listed in the Fairchild's directory making that price dresses.

Q. Now, under the column headed "$16.75" I find in the summary the figure 4. What does that represent? A. There are four manufacturers in the Fairchild's directory manufacturing at $16.75, dress manufacturers in the Fairchild's directory that are not members of the Guild.

Q. Now, in the column headed "$18.75 to $25.00" I find the figure 5. What does that represent? A. That there are five manufacturers who are not members of the Guild 7227
whose names are listed in the directory, who manufacture dresses at approximately those prices.

Q. Now, the next column headed "$29.75 and up" I find in the summary the figure 25. What does that represent? A. There are twenty-five better dress manufacturers who are not members of the Guild, who manufacture dresses that cost aproximately $29.75 and higher.

Q. Now, in that column "$29.75 and higher" do you have any knowledge so that you can testify as to how many of those were $29.75 as distinguished from the higher prices? A. No.

Q. You do not? A. It does not affect my department.

Q. It does not affect your department. All right. Now, the next column headed "Misses' Evening" I find nineteen names in the summary and the figure 19 in the summary. What does that represent? A. That there are nineteen non-Guild houses making misses' evening dresses which cost $12.75 up, whose names are listed in the directory.

Q. Now, with respect to the column headed "Women's
7229 Day & Eve," I find the figure "26" in the summary; what does that represent? A. That there are twenty-six manufacturers listed in the Fairchild Directory who are not members of the Guild, who make women's daytime and evening clothes, at a cost above $12.75.

Mr. Albert: May I ask, if it please the Court, whether the witness means by that there are only 26 listed in Fairchild's directory?

Examiner Bennett: That is what he says. I do not know what he means by it.

Mr. Albert: Or whether that list contains 26 of those that are listed in Fairchild? I don't think it is clear.

Examiner Bennett: Well, I think——

7230 Mr. Haycraft: You will find out when you get your turn.

Examiner Bennett: That is his statement. I do not know.

By Mr. Haycraft.

Q. Now, under the heading "Cotton." I notice the figure "3" in your summary. What does that represent? A.

That the Fairchild directory lists three houses who make cotton dresses above $12.75, who are not members of the Guild.

Mr. Albert: Is that above $12.75?
The Witness: Yes.

By Mr. Haycraft.

Q. $12.75 and above, or above $12.75? A. $12.75 and above.

Q. And the last column headed "Maternity" has "1" in the summary; what does that represent? A. That there is one house listed in the directory as a better dress house who makes maternity dresses, that is not a member of the 7232
Guild.

Q. Now, I notice in each of these columns there are red x's indicated a line drawn over the name of the manufacturer; what does that mean? A. That is the classification that I would put that—that particular Guild house in.

Q. I see, from your experience. A. Yes.

Q. Now, I notice in the lower left-hand corner under the caption "Non-Guild," "$16.75" four names listed. What does that represent? A. That represents the names of the four houses that are in the $16.75 column that are non-Guild.

Q. All right. And then I notice the names of five manufacturers under the caption $18.75; what does that represent? A. They are the five houses that are non-Guild 7233
houses available at $18.75 to $25.

Q. I notice that one of these five houses, namely, Ben Schwartz-Max Heit, has a check mark over it; what does that check mark signify? A. Well, that house was not available to us last——

Q. In other words— A. It is a new house.

Q. A new house? A. Yes. I might say that—if I may—that in all these things the classification is rather broad

since any manufacturer makes a variety of price lines; because I have classified them as a $16.75 house does not mean he makes only $16.75 dresses. He might at certain times of the year make 10's, and he might at the same time he is making the $16.75 make $35's.

Q. What is your classification based on? A. On what his line is—what he generally makes—what his general classification would be in the trade.

Q. Was this exhibit restricted to the New York market? A. Yes.

Q. And does not include manufacturers outside of the New York market? A. Well, it includes the manufacturers that are listed in the Fairchild directory.

7235

Q. Well, can you explain what you mean by that answer? A. I think there is one manufacturer who is listed in the Fairchild directory who has a showroom—no, there are two—that I can think of offhand who are listed in the Fairchild directory, who have showrooms in New York, and are therefore listed, and do not do their manufacturing in New York.

Q. Which ones are they? A. I recall offhand Baron Dress Company and Matthes & Kadetsky.

Q. And Baron Dress Company, the factory is located where? A. In Boston.

Q. And Matthes & Kadetsky is located where? A. In Boston.

7236

Mr. Albert: May I ask one question, Mr. Haycraft, if you have no objection, as to what Fairchild manual the witness is referring to?

Mr. Haycraft: He said the spring and fall.

The Witness: No.

Mr. Haycraft: Or he said——

The Witness: The early fall of 1936.

Mr. Haycraft: The early fall of 1936.

Mr. Albert: The fall of 1936 manual.

Mr. Post: Dress manual, dress directory?

By Mr. Haycraft.

Q. Do you have a copy of it with you?

Mr. Post: Ready-to-wear—is there a distinction between ready-to-wear and the question?

(Witness hands booklet to counsel.)

Mr. Albert: May I see it?

Mr. Haycraft: I will have it marked for identification if you wish.

Mr. Albert: Will you mark it for identification?

Mr. Haycraft: Yes, I will.

(The booklet referred to was marked for identification Commission's Exhibit 524.) 7238

By Mr. Haycraft.

Q. I show you Commission's Exhibit 524 for Identification, entitled "Fairchild's Women's Wear Directory of New York, Dress and Costumes, Advanced Fall, 1936," and ask you if that is the document from which Commission's Exhibit 523 was prepared? A. Yes.

Mr. Albert: Have you any objections to our borrowing that manual?

Mr. Haycraft: No, indeed, I thought you had one.

Mr. Post: No.

By Mr. Haycraft. 7239

Q. Now, I will ask you whether or not you made a similar study, or prepared a similar exhibit, for $10.75 dress houses located in New York? A. Yes.

(A paper was marked for identification Commission's Exhibit 525.)

Examiner Bennett: We will take a ten-minute recess.

(There was a short recess taken.)

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 525 for Identific tion, and ask you if you can identify that? A. Yes, sir.

Q. What is it? A. It is a listing I made of the $10. daytime dress houses in the directory, as to whether th are Guild or non-Guild?

Q. They were taken from the same source as the oth exhibits, Commission's Exhibit 523, they were taken fr the Fairchild Directory— A. Yes.

7241 Q. —Commission's Exhibit 524 for Identification? Yes.

Q. And the red column of X's indicated what? A. T Guild houses.

Q. And the column of black X's under the caption "no Guild" indicates what? A. The non-Guild houses.

Mr. Haycraft: I offer that in evidence, Comm sion's Exhibit 525.

Mr. Albert: No objection, if it please the Cou as evidence of this witness' computations, witho conceding the accuracy of it.

Examiner Bennett: Received.

(Document referred to, heretofore marked f identification Commission's Exhibit 525, w

7242 marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I notice in the right-hand column of this exhibit, o posite the name "Goldstein & Entin," which is printed non-Guild house, the word "Drop" before "Guild." Wh does that mean? A. That means that he resigned from t Guild during the spring season.

Q. This year? A. Yes.

Q. I also notice the same notation after the name "Phil Zahn & Co., Inc." A. That is the same reason.

Q. I notice a star in front of Joe Levine & Company, Inc., with the word "Konette." A. That means that Konette should be inserted there for alphabetical order.

Q. In other words, it should be a part of the list ahead of Joe Levine? A. Yes, that's right.

Q. I notice the totals have been changed a few times. The present totals are eighteen for Guild and twenty-two for non-Guild; is that correct? A. Yes.

Q. And you have checked this pretty carefully, have you? A. That is right. 7244

Mr. Haycraft: That is all; you may cross-examine.

Cross-examination by Mr. Albert.

Q. Mr. Touff, you listed certain resources for Departments 338, 358 and 369 in response to Mr. Haycraft's questions. Were those the resources in those departments for J. L. Hudson during the year 1935 down to January 31, 1936, or down to the day of red carding? A. I think I said that they were the most important ones.

Q. Yes. Were you confining the resources when you listed them to Guild houses, or did you include all resources? A. He asked me for the most important resources in the department. 7245

Q. Yes. A. I gave him the most important ones.

Q. Were all those resources only Guild resources, or did you give him the resources for 1935, which I believe that previous to that you have stated that you could not reveal? A. Those are obviously not Guild houses, because there are two or three involved that are not.

Q. Exactly. That is why I asked you the question. I wanted to be sure that you knew what you were giving

him, and that I was not mistaken in believing that you were attempting to give him only Guild houses. Do you recall when J. L. Hudson Company signed the Declaration of Co-operation? A. No.

Q. Have no remembrance of it whatsoever? A. None.

Q. Did you ever discuss it with any official of J. L. Hudson Company? A. No.

Q. Did you ever discuss it with Mr. Sappington? A. I don't recall.

Q. Did not Mr. Sappington call you in and say "Here we have signed a Declaration of Co-operation with the Guild; you have to conduct your department in such and
7247 such manner hereafter?"

Mr. Haycraft: That is objected to; nothing to show that Mr. Sappington is this witness' superior; he said that Mr. Simmons was.

By Mr. Albert.

Q. Did Mr. Sappington call you in to tell you that "from here on we have to conduct the department in a certain way"? A. No, not that I recall.

Q. How did you become aware of the necessity of complying with the Guild rules and regulations?

Mr. Haycraft: That is objected to as nothing in the direct testimony to indicate that he did.

7248 Examiner Bennett: I will let him answer. You may answer. Overruled.

A. I don't recall.

By Mr. Albert.

Q. When did you first see the Guild stamp on J. L. Hudson Company's orders? A. I can't tell you.

Q. When you first saw the Guild stamp on the J. L. Hudson Company orders did you make any inquiry as to what it meant? A. I don't recall.

Q. Do you mean to tell me, Mr. Touff, that you saw——

Mr. Albert: May I have that exhibit, Mr. Martin?

(Mr. Martin hands document to Mr. Albert.)

By Mr. Albert.

Q. —this additional warranty on your order, which was necessarily on the order, and never made inquiry of anybody in J. L. Hudson Company what it meant? A. I did not say that.

Q. You do not recall whether you ever did. A. I said I did not remember making inquiry.

Q. Yes. A. It is a pretty long time ago. 7250

Q. Did you have any conference with Mr. Simmons about it? A. I can't remember.

Q. Did you have any conference with Mr. Sappington about it? A. I can't remember.

Q. Did you have any conference with Mr. Dowley about it? A. That, definitely no.

Q. Did you have any conversations with any of the other buyers about it? A. I don't remember.

Q. Was it the subject of any discussion whatsoever among the buyers? A. I am sorry. I don't recall.

Q. I am sorry, too. Did you have any difficulty with any of your manufacturers when you placed that stamp on your order? A. No.

Q. Did any of your manufacturers ask you what it 7251
meant? A. No.

Q. Did any of your manufacturers refuse to accept the order with that stamp on it? A. No.

Q. Were you given any instructions that that stamp was to appear on all orders and was to be accepted by manufacturers upon pain of the order not being placed with them? A. I don't think I understand that.

Q. Were you given instructions by anyone in J. Hudson Company that unless that stamp appeared on order, and unless the manufacturer was willing to ac the stamp on the order, that you were not to place order with such manufacturer? A. There were no o orders to place.

Q. Well, now, let me reframe the question. Obviou this stamp had not always been on the J. L. Hudson C pany orders; isn't that so? A. That is right; yes, si

Q. There was a certain period of time when it bega appear on the order blanks? A. Yes.

Q. Is not that so? Now, were they printed on the o

7253 blanks, or were they put on with a stamp? A. They w stamped.

Q. Who stamped them, the buyer? A. No, I don't kn

Q. You received the order blank already stamped? Yes, sir.

Q. Were you given any advice as to what to do if manufacturer refused to accept the order with that st on the order blank? A. No.

Q. Did you know what to do if a manufacturer refu to accept the stamp, the order without the stamp? A. occasion never arose.

Q. Nobody ever questioned you? A. Nobody ever

Q. About the stamp? A. Nobody ever refused to ac the order with that stamp on it.

7254 Q. So that in so far as you were concerned, when first saw that stamp on the order, you didn't know significance of it or the absolute necessity of its not be stricken off the order? A. Isn't that two questions?

Q. Answer one at a time, then, if you think it is. A can understand it when I read it.

Q. Yes. A. I think that is the answer to the first q tion.

Q. In other words, you needed no explanation of w it meant? A. No.

Q. Now, since you needed no explanation of what it meant, did you know what to do if a manufacturer said, "I won't take an order with that stamp on it"?

Mr. Haycraft: I am going to object to that question. The witness said the occasion never arose. I don't see the relevancy nor the materiality and it is not proper cross-examination.

Mr. Albert: I think it is quite material, if your Honor pleases.

Examiner Bennett: Well, you may answer. Go ahead.

A. I was never instructed on the subject. I never asked 7256
for information on the subject.

By Mr. Albert.

Q. So that in so far as your instructions were concerned, you were at liberty to place an order with any manufacturer without this stamp on the order?

Mr. Haycraft: That is objected to.

Q. Isn't that so?

Mr. Haycraft: That is objected to as not a proper summary of what the witness has said.

Mr. Albert: Let the witness explain. I am willing to let the witness explain. 7257

Mr. Haycraft: I am objecting to the misleading information being placed in the question.

Mr. Albert: It can't be misleading information in the question when I am asking the witness what he did and what he was accustomed to doing in the matter.

Mr. Haycraft: You are not asking that.

Examiner Bennett: I will let him answer, give his understanding.

Mr. Martin: Read the question.
(Question read.)

By Mr. Albert.

Q. The Court said you may answer the question.

The Witness: Will you repeat it for me?
(Question read.)

A. That is not true.

Mr. Post: What was the answer?
Mr. Martin: "That is not true."

7259

By Mr. Albert.

Q. May I ask you what you mean by "That is not tr
A. I was unable to place an order without that stam
it. There were none. There were no orders that d
have the stamp on.

Q. Mr. Touff, you don't have that order book with
in the manufacturer's showroom, do you? A. Yes.

Q. You have the specific order with you? A. This
(indicating Commission's Exhibit 498-A)?

Q. Yes. A. I have one just like it.

Q. Well, I mean a facsimile of it? A. Yes.

Q. Do you make the order out right there? A. S
times.

7260 Q. Is it necessary that it be confirmed? A. Is it n
sary to be confirmed?

Q. That the order be confirmed, or does your wri
out of the order right then and there constitute a
order? A. If I write it out?

Q. Yes. A. If I write it out in the showroom and l
it, the manufacturer can accept it as an order.

Q. And it is unnecessary for him to receive a confi
tion from Detroit, from J. L. Hudson Company? A.
write it on his order book, it requires a confirmatio

Q. Yes. You are familiar with the firm of Milton Altmark, Inc., aren't you, Mr. Touff? A. Yes, sir.

Q. And they are a Guild house? A. Yes, sir.

Q. And still are a Guild house? A. Yes, sir.

Q. What is the volume of dresses that Milton Altmark sells or sold for 1935? A. What is the volume?

Q. Yes. A. I don't know.

Q. And what is the volume of Milton Altmark for 1935, do you know? A. No.

Q. Are you familiar with Bender & Hamburger, Inc., as a Guild house? A. Yes.

Q. Do you know what their piece volume is? A. No, sir.

Q. For 1935? A. No, sir. 7262

Q. Do you know what their dollar volume is for 1935? A. No, sir.

Q. Are you familiar with Capri Frocks? A. Yes, sir.

Q. As a Guild house? A. Yes, sir.

Q. Do you know what their unit volume is for 1935? A. No, sir.

Q. Do you know what their dollar volume is for 1935? A. No, sir.

Q. Are you familiar with Leonard Saltzman, Inc.? A. Yes.

Q. Do you know them to be a Guild house? A. Yes.

Q. Do you know what their unit volume is for 1935? A. No.

Q. Do you know what their dollar volume is for 1935? 7263
A. No.

Q. Are you familiar with Joe Copeland, Inc.? A. No.

Q. You are not familiar with them? A. No.

Mr. Haycraft: Mr. Examiner, I am going to object to further questions of this type of the witness. If necessary to prevent further cross-examination along that line, I will concede that the witness does

not know either the unit volume nor the dollar volume of the Guild manufacturers or of any other manufacturer.

Mr. Albert: Does counsel for the Commission also concede that the witness doesn't know anything at all about the unit volume nor the dollar volume of non-Guild manufacturers?

Mr. Haycraft: Did you hear what I said?

Mr. Post: He added something to it.

Mr. Haycraft: Read the statement.

(The statement of Mr. Haycraft was read.)

Mr. Albert: That is accepted.

7265 Examiner Bennett: All right.

Mr. Albert: I have been specifically examining the witness, Mr. Haycraft, from Commission's Exhibit 523. Will you concede the same lack of knowledge with respect to the houses encompassed within the price range of Commission's Exhibit 525? I mean, you are not making a distinction?

Mr. Haycraft: No, I am not making any distinction.

Mr. Albert: All right.

By Mr. Albert.

Q. Now, Mr. Touff, you stated that you had a conversation with Mr. Friedlander, together with Mr. Simmons, in
7266 New York just after you were red carded; is that correct?
A. Yes, sir.

Q. What was it that you told Mr. Friedlander with respect to your fear of double stock?

Mr. Haycraft: Fear of double stock? I object to that question. He didn't say anything about that.

Examiner Bennett: Overruled.

Mr. Albert: The Court has said you may answer.

Examiner Bennett: You may answer.

A. I didn't use the word "fear." I don't think I used that word.

Q. Well, you didn't want to take any chances on a double stock, isn't that so? A. We asked Mr. Friedlander what was his attitude, and what his attitude would be if in the event we went out and purchas[illegible]erchandise to replace what we had on order with him, w[illegible] his attitude would be in the event that the red card were lifted within the next week or two—would he expect us to take the merchandise that was on order or not.

Q. Did you expect the red card to be lifted in a week or two? A. I didn't, no.

Q. What led you to believe that the red card—with- 7268
drawn. Did you make any inquiry of your superiors as to the possibility of the red card being lifted in a week or two?

Mr. Haycraft: Objected to.

Examiner Bennett: I will let him answer. Overruled.

A. Did I make any inquiry of my superiors?

By Mr. Albert.

Q. Yes. A. I don't think so.

Q. You didn't inquire of them at all with respect to that? A. No, sir.

Q. What led you to believe that the red card might be 7269
lifted in a week or two?

Mr. Haycraft: That is objected to. He hasn't said that he believed it.

Mr. Albert: The Court's ruling?

Examiner Bennett: You may answer, if you have an answer.

A. I didn't say that I believed it.

By Mr. Albert.

Q. Well, naturally, when you asked Mr. Friedlander whether or not he would send you dresses, or whether or not you would be required to take his dresses if the red card was lifted in a week or two, you were foreseeing the possibility that it might be lifted in a week or two, weren't you? A. I was simply being cautious.

Q. Were you going to mark time as regards the purchase of dresses while you were determining whether or not that red card was going to stay on? A. No.

Q. You wanted to go out and get dresses, didn't you?

7271 A. Yes.

Q. And as a matter of fact, your expectation that the red card might be lifted in a week or two wasn't an honest statement, was it?

Mr. Haycraft: Objected to. He didn't say he expected.

By Mr. Albert.

Q. Or an honest expectation?

Mr. Haycraft: I object to it. He didn't say he expected.

Examiner Bennett: Sustained.

By Mr. Albert.

7272 Q. When you were in New York did you go out to see Mr. Post at all? A. On one occasion.

Q. With Milton Altmark? A. Yes, sir.

Q. Did you ask him of the possibility of the red card being lifted in a week or two? A. No.

Q. You didn't discuss it with him at all? A. No.

Q. Didn't ask him whether or not it would be a wise thing to lay off and not buy anything for a week or two, that maybe the whole thing would be fixed up? A. No.

Q. Wasn't he the logical person to ask that?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you know whether any efforts were made by your superiors towards the lifting of the red card?

Mr. Haycraft: Objected to as irrevelant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

7274

By Mr. Albert.

Q. Mr. Touff, Mr. Friedlander's statement to the effect that the red card, if the red card were lifted, you could take as much of the merchandise as you had ordered, as was on hand—was that what you said? A. No.

Q. What exactly was it? I am not quite certain of that, Mr. Touff. A. Repeat it? I said that Mr. Friedlander said that if the red card should be lifted we could take the merchandise that was on order, if we wanted it, and if we didn't want it, he would absorb it himself. There wouldn't be any difficulty about it.

Q. And that was the position of Mr. Friedlander personally; isn't that so? I mean, he was speaking then only for his own behalf? A. Yes.

7275

Q. As his policy with respect to J. L. Hudson Company if the red card were lifted? A. Yes.

Q. And in no way was he speaking for any other member of the Guild? A. No.

Q. Now, in your discussions either with Friedlander, with Altmark, Goodman, or with Mr. Post, was there any discussion whatsoever of why a red card was issued? A.

I don't recall the conversations with the manufacturers well enough because there was no such conversation with Mr. Post.

Q. You are positive that the matter was not gone into? A. Yes, sir.

Q. And you didn't ask Mr. Post, "What is all this red card about? Why did we get a red card?" A. No.

Q. You are quite certain of that? A. Very.

Q. But you don't recall whether or not you had such a conversation with the manufacturers? You may have had such a conversation, but you do not remember whether there was one or not; is that correct? A. I don't recall
7277 the nature of the conversation, sir.

Q. I believe you stated that the issuance of the red card constitutes a claim by the Guild that J. L. Hudson Company had reached its agreement with respect to the declaration of co-operation. Is that a proper paraphrase of what you stated? A. Yes.

By Mr. Albert.

Q. You may answer. A. No.

Q. And you are proud of the fact that you are a buyer of J. L. Hudson Company, are you not?

Mr. Haycraft: Objected to.

A. Yes.

7278

By Mr. Albert.

Q. And you are proud of the fact that they bear the reputation of being one of the leading department stores in the country, are you not? A. Yes.

Q. Now, do you mean to tell us that you did not defend J. L. Hudson Company from the claim that it had breached its agreement to observe the declaration of co-operation when you spoke to these manufacturers?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception.

By Mr. Albert.

Q. Were you not resentful of the fact that J. L. Hudson Company had been red carded?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Haycraft: I think it goes to the bias of the witness, if it please the Court.

Examiner Bennett: I presume that you are going along the same line. 7280

Mr. Albert: Well, I would like to take it for both lines, your Honor, showing the witness' bias. Of course, if the question is answered, it will be answered "Yes," but it will be ruled on specifically.

Examiner Bennett: I do not get just how this would show his bias.

Mr. Albert: Very well, your Honor. Exception.

By Mr. Albert.

Q. Now, Mr. Touff, when you stated that Altmark was not as co-operative as Friedlander, did you mean simply that Altmark would not make the same statement that you could have the merchandise or not, as you desired, if the red card were lifted within a week or two? A. Yes. 7281

Q. That was the only thing you meant by that, is that not so? A. Yes.

Q. Is that your conception of co-operation, Mr. Touff—

Mr. Haycraft: Objected to.

By Mr. Albert.

Q. —that a manufacturer should give you an edge? Do you understand what I mean?

Mr. Haycraft: That is objected to. The witness has testified to what he meant and what he said, and I object to any further——

Examiner Bennett: Read the question.

(Question read.)

Mr. Albert: If your Honor please, may I point out that the witness has stated that one manufacturer agreed to give him merchandise if the red

7283 card was lifted in two weeks.

Examiner Bennett: I will let him answer.

Mr. Albert: Thank you.

The Witness: Shall I answer?

Examiner Bennett: You may answer.

Mr. Haycraft: If he does understand; I am sure I do not.

The Witness: I cannot answer that question.

By Mr. Albert.

Q. You used the word "co-operative," Mr. Touff.

Mr. Haycraft: Yes, but he did not——

Q. What did you mean when you used the word "co-

7284 ope ative"?

Mr. Haycraft: He did not use the word correctly.

By Mr. Albert.

Q. When did you mean when you used the word "co-operative" in describing the different agreements that it was possible for you to make with two different manufacturers?

Mr. Haycraft: Objected to. He has already answered that question twice, once for me and once for the respondents.

Mr. Albert: He used the word, your Honor, without explaining what he meant.

Examiner Bennett: I will sustain the objection. I think he has answered that already.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Touff, is it your understanding of the declaration of co-operation that upon a retailer being red carded he is not to receive any merchandise subsequently 7286
from Guild manufacturers then on order?

Mr. Haycraft: Objected to; no basis for it; no foundation laid that this witness had any knowledge of the declaration of co-operation. If you recall his direct examination, Mr. Examiner, he testified that he did not know anything about it; he had never seen it, and——

Examiner Bennett: I will let him answer.

A. I have never seen a declaration of co-operation.

By Mr. Albert.

Q. Was it explained to you in any way? A. No.

Q. Have you had any discussions about it? A. No. 7287

Q. So you do not know what it is that you have been required to conform to in your purchase of dresses?

Mr. Haycraft: That is objected to; he testified what his instructions were and he complied with same.

Mr. Albert: May I have an answer, if it please the Court, without a statement of evidence from

Mr. Haycraft, and without a reminder to the witness? I think the witness is capable, perfectly, to answer the question and telling me exactly what he said.

Mr. Haycraft: I think, Mr. Examiner, I am entitled to object.

Mr. Albert: Make a legal objection without stating——

Mr. Haycraft: When counsel includes in his statement erroneous facts, or assumes facts which are not in the record.

Examiner Bennett: What is the question?

7289 (Question read.)

Examiner Bennett: He may answer.

A. I did not say that.

Q. What did you say? A. I said that I had never seen the articles of co-operation.

Q. Yes. A. The agreement of co-operation, or whatever it is.

Q. Were they ever explained to you? A. Not as such.

Q. What do you mean, "not as such"? I do not think that is quite clear. A. No one ever took the articles of co-operation and went over them with me and said, "These are the points involved."

Q. What were your instructions with respect to the purchase of copies?

7290 Mr. Haycraft: That is objected to. He did not say he had any.

By Mr. Albert.

Q. Did you have any instructions with respect to the purchase of copies?

Mr. Haycraft: That is objected to. Nothing to show that there are such things as copies.

A. No.

Examiner Bennett: I will let him answer.

(Question read.)

Mr. Albert: I think the witness answered "No."

The Witness: No.

By Mr. Albert.

Q. So that you were not restricted in the purchase of copies?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain the objection. I think the question implies a misstatement.

Unless you are almost through, we will take an adjournment until to-morrow morning. 7292

Mr. Albert: Oh, no, your Honor, far from being through.

Examiner Bennett: How?

Mr. Albert: Far from through, your Honor.

Examiner Bennett: We will adjourn until to-morrow morning at 10 o'clock.

Mr. Haycraft: That is good; I was afraid he was going to quit.

(Whereupon, at 4.30 o'clock P. M., August 20, 1936, the hearing in the above-entitled matter was adjourned.)

7293

Court Room No. 722,
Federal Building,
Detroit, Michigan,
August 21, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7295 Examiner Bennett: Be in order, please. You may proceed.

DAVID SAUL TOUFF resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Mr. Touff, you prepared certain figures pertaining to charts and analyses of the total volume both in units and in dollars of your respective departments and gave those analyses to Mr. Sappington, did you not?

Mr. Haycraft: Object to it. Not proper cross examination, irrelevant and immaterial.

7296 Examiner Bennett: Not covered——

Mr. Haycraft: Not covered by the direct examination.

Examiner Bennett: All right. Sustained.

Mr. Albert: If it please the Court, the witness has also testified orally as to the effect of the recarding on his departments.

Examiner Bennett: Yes. Well, he has testified orally. You are asking him for those figures; if that is what you are doing, that is all right.

By Mr. Albert.

Q. Now, Mr. Touff, in connection with the opinion that you have given us with respect to the effect on the various departments of the red carding, did you make any report with respect thereto to Mr. Sappington?

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I will let him answer that.

A. I should answer, did you say?

By Mr. Albert.

7298

Q. Yes. A. I made a great many reports to Mr. Sappington.

Mr. Albert: May I see Commission's Exhibits 481 and 482, please?

(The exhibits were handed to Mr. Albert.)

By Mr. Albert.

Q. I show you Commission's Exhibits 481 and 482, which are analyses of Departments 338 and 358 with respect to piece sales, and ask if those exhibits, as presently shown you, are in the same condition as they were when you handed them to Mr. Sappington?

7299

Mr. Haycraft: Just a moment. Don't answer. I object to that on two or three grounds. First, there is nothing to show—there is no foundation laid that the witness prepared these exhibits and had anything to do with them; and, secondly, it is not proper cross-examination. He wasn't interrogated about them.

Examiner Bennett: Yes.

Mr. Albert: I will make the question simple, your Honor.

By Mr. Albert.

Q. Mr. Touff, in connection with Exhibits 481 and 482, now shown you, did you make any written report, render any written opinion, or attach to those reports any written remarks for Mr. Sappington?

Mr. Haycraft: The same objection.

Examiner Bennett: That is sustained. If you want to find out whether he made those figures for Mr. Sappington, that is all right.

By Mr. Albert.

7301 Q. Did you have those figures prepared for Mr. Sappington? A. I don't know.

Q. You don't recall? A. I don't know.

Q. Did Mr. Sappington ask you to prepare those figures? A. Mr. Albert, these figures are available in the store. They are part of our unit control system. Anybody might make these figures.

Q. Have you seen those figures before? A. I have never seen these figures, these exhibits before, no.

Q. Have you seen those figures, not those exhibits, Mr. Touff? A. I don't know.

Q. Did you analyze those figures for Mr. Sappington? A. I haven't seen these figures. I don't know that I have seen these figures before.

7302 Q. Do you mean by that that you are referring to the figures on that specific sheet of paper?

Mr. Haycraft: That is what he was asked about, is it not? I object to anything else.

Mr. Albert: I asked for Commission's Exhibits 481 and 482.

Mr. Haycraft: They are in evidence.

Mr. Albert: For identification. May I point to the ruling of the Examiner with respect thereto.

that Commission's Exhibits 482-A and B for Identification may be referred to in that manner? I ask for Commission's Exhibits 482-A and B for Identification.

Mr. Haycraft: I want to say this, Mr. Examiner, that 481, 482, the original exhibits that were identified, were offered in evidence as they were then prepared. They were admittedly not competent. Counsel for the respondent objected to them. They were rejected so far as the explanatory matter was concerned and admitted so far as the figures were concerned. In order to keep the record straight, we withdrew those exhibits and inserted and submitted exhibits that are now Commission's Exhibits 481 and 482, and withdrew the original exhibits which had been marked for identification because of the fact that they contained irrelevant, immaterial and incompetent matter. Now, it certainly would be no proper procedure for the respondents to be given access to papers which were not in evidence for the purpose of cross-examining a witness who did not identify the original exhibits. 7304

Examiner Bennett: Yes.

Mr. Albert: Now, if it please the Court——

Examiner Bennett: That matter has been up and disposed of and we are not going to reopen it. You may ask any questions you want to from the exhibits of that number in the record, but we are not going out hunting for papers that have been rejected as incompetent. 7305

Mr. Albert: Now, if it please the Court, may I point out with respect to the statement of counsel for the Commission that the matter contained in Commission's Exhibits 481 and 482-A and B for Identification was objected to originally on the

ground that it could not be properly proved at that time against the respondent. Its competency of proof against the respondent by the Commission is one thing; when the respondent seeks to use the remarks of this witness in connection with those exhibits, that is another thing.

Mr. Haycraft: We did not——

Mr. Albert: In addition thereto, your Honor, I wish to point out that I have specifically offered those exhibits into evidence sight unseen, that I have withdrawn the objection that I made to Mr. Haycraft's offer of evidence. Now that we have

7307 the witness on the stand who prepared the remarks with respect to those exhibits which we only saw cursorily, am I to understand—I merely want to make certain, your Honor, so that I shall not pursue the subject any further—that I have no access to, nor will the Commission's attorneys furnish me, nor will the Court direct the Commission's attorneys to furnish me with Commission's Exhibits 482-A and B as originally marked for identification?

Examiner Bennett: So far as the Examiner is concerned, that matter is closed. I have no objection to the attorneys giving you those papers if they want to give them. They are in the custody of the attorneys.

7308 Mr. Albert: Very well, then. I make formal demand upon the Commission's attorneys to produce Commission's Exhibits 482-A and B for Identification, as originally presented by the Commission, containing remarks by this witness with respect to the figures now in evidence as Commission's Exhibits 481 and 482.

Mr. Haycraft: Counsel for the Commission respectfully declines the request.

7309

Mr. Albert: Very well.

Mr. Haycraft: On the ground that there is no logical reason why that should be done. The exhibits which are in evidence are in evidence. They were identified by Mr. Sappington when Mr. Sappington was cross-examined with respect to them. This witness was not interrogated with respect to these exhibits in question. He has given his testimony orally and is subject to cross-examination.

Examiner Bennett: Yes. Well, the exhibits are in evidence, of course, and may be used in cross-examination, the exhibits which are in the record. I think that the general subject was covered as to the effect on the departments, and would be relevant as to that particular thing.

7310

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert,

Q. Now, Mr. Touff, you testified that certain improvements in your department arose from the fact that a new style commenced at about June or July; was that correct? A. Yes.

Q. What did you mean by that? A. I mean for the first time we had a demand, starting as early as the 1st of June, becoming very prominent about the 15th of June, for black daytime dresses. This was a demand which we had never experienced before, during the summer season, that carried through June and July, made it possible for us to sell dresses at $16.95 where previously in the month of July the price line was fairly dormant.

7311

Q. Did you have a sufficient supply of dresses? A. I would say no.

Q. What type of black dress are you referring to, Mr. Touff? Any particular type of black dress? A. Yes.

Q. What type? A. They were made——

Q. Sheer black dresses? A. They were shade sheers, marquisettes, chiffons; the best selling styles were tunics.

Q. Were what? A. Tunic styles.

Q. And is this the first time, in June, that J. L. Hudson ever had a demand for black sheer dresses, the first year? A. It is the first year that there ever was so substantial a demand, so large a demand.

Q. Isn't what you mean that you were particularly successful this year in selling black dresses over previous years, rather than that there has been a sudden demand in June of 1936 for black dresses? A. That is not what
7313 I mean.

Q. Wasn't there ever a demand for black dresses prior in the summer, prior to 1936? A. I think I have said that before.

Q. And is the improvement, using the word generally, in your departments that you referred to, again speaking roughly, May, June and July? A. That is too rough.

Q. June and July? A. I think the testimony was made on the basis of July.

Q. Only July? A. (Witness nods head affirmatively.)

Q. Very well. Is the improvements in July due solely to the fact that there was this style change and you sold a lot of black dresses? A. I wouldn't say solely, but very largely.

7314 Q. The most important consideration? A. Yes.

Q. Mr. Touff, are you distinguishing 1936 from previous years upon the ground that the demand for these sheer dresses, and the type that you have spoken about, has been for black dresses rather than for navy or for dark brown? A. I don't think I understand your question.

Q. Are you distinguishing your improvement in July of 1936 over the previous years upon the ground that you sold a black dress? Do you understand the question? A. (There was a short pause.) I am afraid I don't.

7315

Q. Now, isn't it a fact that the type of dress you have spoken of, aside from the question that you called it a black dress, is sold year in and year out in June and July and the color generally varies between navy, dark brown and black, and that some years you will sell a lot of navy dresses, some years you will sell a lot of dark brown dresses, and some years you will sell a lot of black dresses, but the type of dress as distinguished from the color always has a demand in July or June; isn't that so? A. Now I understand your question. I will answer it.

Q. Go ahead. A. Normally the demand for dark dresses, navy and brown, which we normally have in the spring season, we begin to satisfy as early as the beginning of January. By the time we arrive at the 1st of June or the 15th of June that demand is pretty well satisfied. Any dresses that we sell after the 15th of June we generally sell at a lower price. This was a new developing demand, one that we had not experienced before at this time of the year.

7316

Q. And it is your contention that normally you sell sheer dresses in January? A. Yes, certainly.

Q. Do I understand you correctly, then, Mr. Touff, that prior to this year J. L. Hudson Company had never had such a demand for this type of dress at this particular time? A. We never previously had demand for marquisettes, chiffon, sheer tunic dresses starting about the 15th of June and carrying through the month of July.

7317

Q. Did you know what I asked you about, Mr. Touff, that I was asking you about a dark sheer dress? I didn't say anything at all about tunics. A. You asked me——

Mr. Haycraft: I object to the question, then, if you didn't include——

By Mr. Albert.

Q. Then I will place it to you definitely, specifically.

Mr. Haycraft: The witness said——

By Mr. Albert.

Q. Is it your contention that J. L. Hudson Company, prior to 1936, July or June, never had a demand for dark sheer dresses? A. I have answered that question three times.

Q. That is the best answer that you have given? A. Yes, sir.

Q. All right. Who were the Guild houses that you used in Department 358? A. You mean the list of Guild houses that I gave you yesterday or every Guild house that I ever used in Department 358?

Q. No, for 1935, the ones from whom you got the bulk
7319 of your goods? A. Milton Altmark.

Q. Yes. A. Straus-Miller.

Q. Yes. A. Mary Lee.

Q. Yes. A. Frank Staf-Friedlander.

Q. Yes. A. A. Goodman.

Q. Yes. A. Charles Lang.

Q. Who? A. Charles Lang, L-a-n-g.

Q. Who? A. Charles Lang.

Q. Yes. A. Jack Herzog.

Q. Yes. A. Kaplan & Moskowitz.

Q. Yes. What was that one? A. Kaplan & Moskowitz.

Q. Yes. A. Goldstein and Anton. I think that would cover the important ones.

Q. Those are all the important substantial Guild houses
7320 from which you obtained most of your merchandise for Department 358, is that correct? A. Oh, I forgot Capri.

Q. Yes. A. I think that covers them.

Q. Is there anyone else you forgot? A. It is possible, but I can't recall them right now.

Q. Did you forget Harry Cohn? A. You asked me about Guild houses.

Q. That is not a Guild house? A. No.

Q. Now, yesterday you didn't tell us about Lang, Herzog, Kaplan & Moskowitz or Goldstein and Anton, did you? A. No.

Q. Did you forget them yesterday? A. No.

Q. What made you omit them? A. There was a difference in the question, I believe.

Q. What was the difference? A. Yesterday I understood the question to be that I was to give the Guild houses that I did the substantial part of my business with. I didn't understand the question that way this morning.

Mr. Albert: Will you be good enough, Mr. Stenographer, to read my question?

(The record was read.) 7322

A. Most of the names that I have given you are the most important names. Names that I added to-day were less important, but I used them.

Q. You don't consider the houses from whom you obtained the bulk of your goods as important, is that it? Collectively? A. I am afraid I don't understand that.

Q. All right. It is not important, Mr. Touff.

Mr. Albert: All right. It is not important now.

By Mr. Albert.

Q. Now, what was the non-Guild houses from whom you purchased substantially the bulk of your merchandise for Department 358 in 1935? 7323

Mr. Haycraft: I object to that question, as to the form of it. It is impossible to answer.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: He has already testified he bought the bulk from the Guild houses; how could he buy

the bulk from the non-Guild houses?. He cannot purchase from two places.

Examiner Bennett: Well——

By Mr. Albert.

Q. Who are the most important non-Guild houses from whom you purchased merchandise in 1935? A. Harry Cohn, Famous Dress.

Q. Any others? A. I think not.

Q. Those are the only two non-Guild houses? A. Those are the only two that I can recall now.

Q. Anybody else would be very small orders, if at all, 7325 is that it? A. Even these were.

Q. Now, what is there about the dresses that you purchased from Guild houses for Department 358 that you could not obtain from non-Guild houses? A. They were not as satisfactory for our purposes.

Q. That is, satisfactory with respect to what? A. Salability.

Q. Salability with respect to what? What types are there in those dresses that you purchased from the Guild houses that you could not get from the non-Guild houses? A. Well, I think we could write a doctor's thesis on it.

Q. Well, if you think you can get a degree from it, let me have a minor thesis on it. A. Well, Mr. Albert, I explain it this way: We had been doing business with cer- 7326 tain of these houses for several years. We had built up a demand for the type of merchandise that they made, as far as type, certain customers who demanded other types of merchandise that they made were not in the habit of coming to our store to look for it, as they knew, over a period of time, that they would not find it. It was essential that we have the types of merchandise that came from those few Guild houses. I find it impossible to buy enough dresses of that type to satisfy my demand. Number—that is only my beginning.

I think that the Guild houses monopolizing such a large part of that particular market, as they did, also monopolized a great part of the desirable novelty piece goods, trimmings, and so forth, and I think that the Guild houses handling such a large volume of the business in that field naturally would have more satisfactory styles than the houses—the Guild houses that were left.

Also, over a period of years' experience, we had found that certain people make better dresses, better manufactured dresses, better intrinsic dresses, better fitting dresses than other manufacturers. We had weeded out the ones that we felt that we could not make money on, or approach making money on, and those houses were largely in the 7328
Guild——

Q. Well— A. —entirely in the Guild.

Q. Is that all, Mr. Touff? A. Yes.

Q. What is the type of dress that you were referring to for which there was a demand that you had built up in your store? A. The type of dress that is manufactured by the resources that I gave you.

Q. Mr. Touff, what is it in a dress that makes it salable? A. Well, you ask a question that demands general answers. I cannot answer it in anything but generalities.

Q. Tell me this: Can you say that the quality of the merchandise that is used in the dress contributes towards its salability? A. Sometimes.

Q. Would you say that needlework in a dress con- 7329
tributes towards its salability? A. Sometimes.

Q. Would you say that the tailoring in a dress contributes towards its salability? A. Yes, sometimes.

Q. Would you say that the very name of the manufacturer who makes the dress contributes towards its salability? A. We have no names in our stock, or practically none.

Q. Would you say that the style of the dress contributes towards its salability? A. Yes.

Q. Now, all of these elements are elements that are taken into consideration by you when you go out to purchase a dress, are they not? A. Yes.

Q. When you are looking for a dress that is salable? A. Yes.

Q. Now, excluding all the other elements which you take into consideration, what do you look for in style that you think contributes towards the salability of a dress? A. Style must be wearable by a large number of people; it must be in a fashion trend——

7331 Q. Well— A. —and it must be at a point in a fashion trend——

Q. I am sorry. I did not hear that last. A. And it must be at a point in the fashion trend where a large number of people are wanting it.

Q. Now, then, a large number of people are wanting it. That contributes towards its re-order value, does it not, rather than your initial desire to purchase it? A. Well, I always try to buy dresses that will be re-ordered.

Q. Of course, but when you say that it must be at a specific point in the fashion trend, that it will be purchased again by others; that is a question of re-order, is it not? A. I don't think so.

Q. You do not know for certain, when you purchase a
7332 dress from a manufacturer, predicated upon your knowledge of what will sell, that it actually will sell? A. No one does.

Q. Of course not. You rely upon your experience and your knowledge of dresses to purchase a type of dress, or a style of dress, that you think will sell? A. Yes.

Q. Do you not? A. Yes.

Q. Now, in what way do you determine whether or not a dress is in the fashion trend when you look at it? A. By a number of sources of information that come to me.

style information, that comes to me through periodicals, reports, and that sort of thing, and that development that I can see of the fashion trend in the goods that we are selling in our store.

Q. What do you mean by the fashion trend? A. That takes rather a long answer, if you do not mind.

Q. If it takes a long answer, we will have to have a long answer. A. All styles originate—

Q. After all, we have been here two months. You can hold us up another month. We don't care.

Mr. Martin: I move that be stricken.

Examiner Bennett: It may be stricken.

7334

A. All styles—probably all styles—originate with a few very important people whom the rest of the world has a tendency to watch. Some few smart continental women, some few movie actresses, who have a reputation in their cities, or in the country, for being well dressed, whom other people imitate the things that they wear, are followed, or imitated, or are followed in the things that they wear by people whom they come in contact with. There is a selective process that goes on all the way down the line because some people don't like some of the things that they wear. Those high fashion pieces, as we call them, eventually reach the volume houses and again a process of selection is gone through, and eventually they become—some of the things that those people wear—become volume fashions. The history that they go through from the few people who originate them, to their volume acceptance, is their trend.

7335

Q. That is your conception of what the fashion trend is, what you meant, that a dress must be in the fashion trend: is that it?. A. That is a broad picture of it.

Q. Is not what you have discussed, rather, the mechanics, the process, the description of how a dress is copied down? A. Of course not.

Q. It is not? Now, is it your contention that the actresses in Hollywood originate the styles which th wear?

Mr. Haycraft: I object. He did not say so.

Mr. Albert: I am asking him if that is his co tention, your Honor.

Mr. Haycraft: No foundation laid for that.

Examiner Bennett: Well, I will let him answe if he has an answer.

Q. (Question read.) A. No, it is not my contention.

7337 *By Mr. Albert.*

Q. All right. Start back behind these Hollywood actresses, and tell us where the Fashion trend originates that these Hollywood actresses wear? A. Well, you have to go way back into history and make a study of the history of fashion from the earliest days.

Q. Yes. A. And decide where all these fashions originally—peasant costumes, historic costumes, military costumes, that they decided that certain dressmakers or certain couturiers decided they are going to use as an inspiration for a new dress.

Q. And who is that that decides that? A. Who is it that decides it?

Q. Yes. A. A great many things that have to do with

7338 deciding it, Mr. Albert. I mean, if they have an oriental exhibit in London, as they had two years ago, we are liable to find a great many clothes in Paris of oriental inspiration——

Q. No, no, no——

Mr. Haycraft: Let him answer. Do not interrupt him.

Mr. Martin: Let him answer the question.

A. If we have an exposition in Paris, a Colonial exposition, showing all the French colonies, and all their handicraft, and so on, we find a great many things in the Paris openings that reflect that.

By Mr. Albert.

Q. And if they open up a hole in Egypt and find another Tutankhamen, then you have an Egyptian trend; is that not so? A. Well, it could conceivably be so.

Q. How? A. I say, it could conceivably be so.

Q. I mean, that is how you had that as the style trend a couple of years ago; is that not so? A. I don't recall it.

Q. Or is that before your time? A. How long ago was 7340
it?

Mr. Martin: About twelve years ago.

Mr. Albert: Twelve years ago.

The Witness: I don't remember.

By Mr. Albert.

Q. You do not remember all the brown make-ups that the girls had on at that time, with their dresses?

Mr. Martin: Do you, Albert, do you?

By Mr. Albert.

Q. Would you say that the most recent trend in style developed as the result of—shall I say—influence of Mae 7341
West?

Mr. Haycraft: Let him answer that question. It is all right. Just shows how silly the questions can be.

By Mr. Albert.

Q. Would you say that that was one of the recent trends in style? A. I would say that one of the recent trends in style, as recently as two years——

Q. Yes. A. —had evolved from an American histori costume that Mae West chose to wear in a certain picture

Q. Right. And that developed a certain trend in th style of dresses, did it not?. A. Temporarily.

Q. Well, all of these are temporary, are they not? A I said that there was a process of selectivity involved. I think in that process of selectivity that fashion—had a tendency to go by the boards, I think it was discarded.

Q. Now, granting that a certain trend of style develops who is it that refines the style, the trend, for present-day conception? I mean, it is not your contention that when you have an oriental wave, or you have an Egyptian wave,
7343 or you have a throw-back to the Empire period, that the dresses of those respective periods are worn to-day exactly as they were in those times? I do not think you meant to contend that, did you? A. No.

Q. All right. Now, who is it that adapts or refines or develops—using any word that you wish—these trends, so that they will be adaptable to present-day custom and uses? A. Well, they are probably changed by a great many people, initially. If we are speaking of the couturier in Paris, they are probably a great deal changed by the couturier's clientele. There are smart Parisian women, American, Continental women, Argentine, and so on, who make certain changes in those dresses as they buy them, and have them to suit themselves, rather
7344 than exactly as the couturier shows them. Then, I have doubt, as a matter of fact I know that when our American designers, and stores, go into the Paris market to buy those things, they make certain changes on them also before they bring them to this country, and when they are brought to this country, a great process of selection and change goes on, because some of them are copied exactly, some of them are not. Each designer, each buyer, each stylist does a little something to the dress, to the style that makes it very slightly different than the one before. Is that what you mean?

Q. And, therefore, is it your contention that couturiers of Paris, generally speaking, conform the trend of a fashion to the present-day custom, of usage, and that the American manufacturers take the trend from the Parisian couturiers? A. No, that is not my contention. My contention is that of the great many things that the Paris couturiers show, our American manufacturer, our American store, selects those few things which they think will be accepted by the American public.

Q. But the American manufacturer gets his inspiration in the first place from the Paris couturier; is that not so? A. There are other fields of inspiration, and——

Q. Is not that the main source—— 7346

Mr. Martin: Let him answer.

Q. —Mr. Touff——

Mr. Martin: Let him answer. He had not finished.

Examiner Bennett: Have you finished?

The Witness: I had not finished.

Examiner Bennett: All right, finish.

A. There are other fields of inspiration besides the Paris couturier, although the Paris couturier is probably the most important. I think that answers both questions.

By Mr. Albert. 7347

Q. Yes. Now, Mr. Touff, in the creation of a dress, how many component parts would you say must be taken into consideration? I mean, you have various types of sleeves, you have various types of cuffs, you have various types of tunic, you have various types of skirts. A. It is almost an infinity, Mr. Albert.

Q. Almost an infinity of varieties, of changes that you can have in a dress; is that not so? A. Yes.

Q. And that is equally so, is it not, to a great extent as to the changes which you can have in a dress even in a particular fashion trend; is that not so?

The Witness: Repeat the question, please.

Examiner Bennett: Do you understand the question?

The Witness: Could you rephrase it?

By Mr. Albert.

Q. You say in the fashioning of a dress there are so many elements to be taken into consideration, as to amount to almost an infinity of elements; is that not so?

7349 A. Yes.

Q. Now, that infinity of elements is naturally reduced when you have a dress that conforms in general to a certain fashion trend. I mean, if you have a certain fashion trend in which you are trying to manufacture a dress, you will naturally omit from your consideration in the manufacturing of that dress the oriental trend, if it happens to be an Empire dress; is that not so? A. Not all——

Q. To a great extent? A. A consistent designer would. They aren't all consistent.

Q. Yes, of course. Within a particular fashion trend? A. Yes.

Q. Isn't the amount of elements that one may take into consideration in order to have a dress consistently in the

7350 fashion trend, doesn't that amount of elements, almost approaching infinity as far as listing them is concerned? A. If I understand you correctly, you want me to say that there are a great many styles that can be built in the same fashion trend. Is that right?

Q. A great many designs. A. Styles.

Q. Styles? A. Yes, that can be built in the same fashion trend.

Q. Almost infinite, isn't that so? A. A great many.

Q. Would you say that— A. It all depends on what you mean. If you mean if you take a velvet button off and put a jet button on, if that makes another style, then infinite.

Q. No, I do not think that you want to create the impression that that makes it another style, if it is a different style dress otherwise. A. I don't know what your impression is.

Q. Is that what you wish to contend, that there are some elements— A. You said that changing them would make a—you could make by changing them around you could make infinite variety within the same fashion trend.

Q. Yes. But what I mean by that is, in the dress proper, 7352
not in the ornaments which you put on the dress. A. Well, Mr. Albert——

Q. Isn't that so? A. Mr. Albert, there are very few basic silhouettes that we use at any one time.

Q. Yes. A. Leading fashion prognosticators of the moment say that we have three. Some people disagree. Some say two, some say six, but there are only a limited number of accepted silhouettes, fashion bodies, and the rest of the dresses depend entirely for its change of ornaments and detail.

Q. And detail? A. Yes.

Q. Now, how many factors can a manufacturer take into consideration in the development of his silhouette of the dress, assuming for the sake of argument, purely, that there are three silhouettes without in any way being bound 7353
by your statement. A. Yes.

Q. In the development of the silhouette of the dress, how many elements would he take into consideration?

Mr. Haycraft: You understand the question?

The Witness: I am afraid not.

Mr. Haycraft: I object to it.

The Witness: Could you illustrate it?

By Mr. Albert.

Q. Are you aware of what the three silhouettes are, Mr. Touff? A. I don't say that there are three.

Q. Well, of the possible three silhouettes, whether or not you believe there to be only two, three or one. A. Yes.

Q. How would you describe them, briefly? A. Well, now, this is another person's opinion, not my own. Is that a proper part of testimony?

Examiner Bennett: Yes. If it is the opinion of skilled persons in that business.

The Witness: I am not at liberty to quote the
7355 person's name.

Examiner Bennett: Well, it isn't necessary to give the person's name if it is information that comes to you in the course of your study and work.

The Witness: We have a silhouette at the moment which is carried through for quite some time with a wide broad shoulder and a very slim skirt. That is the one that we are all very familiar with. We have the silhouette at the moment developing with a fitted waist, bodice and a flair skirt, wide skirt, a dress of peasant inspiration. We have a silhouette developing—we have a silhouette with us with a moderate shoulder line and a tunic, a full tunic starting from the waist line.

7356 Q. Mr. Touff, in this description of the three silhouettes you have mentioned, the wide shoulder, a moderate shoulder, a fitted waist, a narrow skirt, a flair skirt and a full tunic starting from the waist. You may have mentioned other elements but I couldn't get them quite that fast. Isn't that so? A. (Witness nods head affirmatively.)

Mr. Haycraft: Just speak up.

The Witness: Yes.

By Mr. Albert.

Q. Now, cannot those be consolidated in any number of combinations? A. If I understand your question correctly, the answer is no.

Q. Let me put it this way, Mr. Touff: Not all of these—Cannot all of these various elements be interchanged? A. You mean, can we put a tunic on a dress with a wide shoulder and a flairing skirt?

Q. If you want to make it that way. A. Not very well.

Q. It may develop, can it not? A. I cannot see it in the picture yet, no.

Mr. Albert: May I have a repetition of the witness' answer. 7358

(Record read.)

Q. Now, Mr. Touff, aside from the fact that you cannot see it yet, do you say that you cannot have a dress with a wide shoulder and a flair skirt with a tunic?

Mr. Haycraft: That is objected to unless——

A. You——

Mr. Haycraft: Just a minute. Unless the question confines it to a style trend or to a conceivable style trend.

Mr. Post: That is what a silhouette is, Mr. Haycraft. 7359

Mr. Haycraft: You can make any sort of a combination, I suppose, physically.

Mr. Albert: It is perfectly apparent what the question is directed to, with in the line of the inquiry.

Examiner Bennett: Yes. Well, of course——

Mr. Haycraft: I do not believe that there should be——

Mr. Albert: Is that objected to because the witness is merely taking so long a time to answer?

Examiner Bennett: I will let him answer it if it is understood that he is talking about the practical dresses made to manufacture and sold to his customers.

Mr. Albert: Certainly.

Examiner Bennett: That he is not speculating on any possible caricature of a dress that might be made.

The Witness: Well, your Honor, if I answered "yes" to his question it would be in the realm of

7361 speculation, certainly.

Examiner Bennett: Well, I would expect you to answer the question in the light of what could be manufactured and sold to customers according to your experience.

The Witness: I don't believe it could be manufactured and sold under the present fashion trend.

By Mr. Albert.

Q. Under the present fashion trends? A. Yes.

Q. Isn't that so? A. Yes.

Q. And had you been asked whether or not dresses of the Mae West silhouette would have been sold within the past two years, if you would have been asked that six or

7362 seven years ago, I believe your answer would have been that you don't see how it could possibly be so in the fashion trend of that time; isn't that so? A. I would have answered it as I answered your question before, it would be in the realm of speculation.

Q. Quite. But not within the realm of impossibility? A. No.

Q. Because it is in the realm of speculation because from one year to the next we don't know what the fashion

ead will be; isn't that so? A. Very. Not from one year the next, no.

Q. Well, from one year— A. Over a period of years.

Q. Over a period of two or three years. I think we all derstood what I meant by that. A. (Witness nods head firmatively.)

Mr. Haycraft: Mr. Examiner, may we have a short recess to let the witness get a drink of water?

Examiner Bennett: Yes. We will have a recess for ten minutes.

(There was a short reces taken.)

Examiner Bennett: Be in order, please. You may proceed. 7364

Mr. Albert.

Q. Now, Mr. Touff, in the adaptation, or, to use a general word, which I think you will understand as a general m, in the adaptation of the fashion trend, present-day tom and usage, will you concede or will you deny—what your thoughts—that each manufacturer contributes ething to the particular model which reflects the fashtrend either in a grouping of certain elements that come the dress, merely in their arrangement, or else in the rporation of a dress of a feature different from the gen run of the particular time? A. I will concede that e manufacturers contribute something.

. Yes. A. Not all manufacturers. 7365

. Not what? A. Not all manufacturers.

. Not all? A. No.

. Now, will you say that "some manufacturers," who ontribute something in the model in the adaptation of fashion trend, for the greater part are Guild houses?

No, I wouldn't say that at all.

Would you say that in the main the "some manufacrs" who contribute something in the model in the tation of the fashion trend— Will you repeat that?

(Question read.)

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Would you say that of the "some manufacturer who contribute something novel or different to the mo within the fashion trend, the first ones who do that a the Guild houses? A. No, I don't think I can concede th

Q. Is that because there are a few others than the Gu houses who do contribute, or because you feel persona that there isn't a higher percentage of Guild houses who that? A. I am afraid I don't understand.

7367

Mr. Haycraft: I object to the question, to t form of it. If he wants an explanation of his a swer, let him ask for it.

By Mr. Albert.

Q. You have stated that you cannot say that of the ma ufacturers who contribute something different, somethi novel or something new in the adaptation of the fashi trend, present-day custom and usage, that you cannot s that the houses that first do that are for the most pa Guild houses? A. Did you say "for the most part" t other time?

Q. Yes.

7368

Mr. Haycraft: You mean in this country?

The Witness: Well——

Mr. Haycraft: That is too general, Mr. E aminer.

The Witness: And it is a statistical questi without any statistics.

By Mr. Albert.

Q. Well, when you stated the Guild manufacturers we the largest, you knew nothing about their volume of un

or their volume of dollar units; did you? Now, predicated upon your same general knowledge of the industry, can you not tell me one way or the other—if you cannot, say so—that the Guild houses are generally, for the most part, the first ones to contribute, to add something to the models that reflect the fashion trend? A. No, I cannot admit that.

Q. Would you say that the non-Guild houses were the first ones that did that? A. I can't say that.

Q. Would you say that it was equal between the two types of houses?

Mr. Haycraft: Object to the question as assuming something which the witness hasn't testified to, 7370
and it is not in the record, and that is that any manufacturer originates anything.

Mr. Albert: I think we are perfectly clear about what we are about, your Honor.

Examiner Bennett: I will let him answer.

Mr. Haycraft: I will ask the witness if he can answer that.

Examiner Bennett: Well, if he can't, he won't answer.

The Witness: Will you repeat the question, please?

(Question read.)

Examiner Bennett: Can you answer that?

The Witness: I can only answer that both types 7371
of houses contribute to that practice.

Examiner Bennett: That is, you are not saying which is first or which is predominant?

The Witness: I wouldn't know that.

Mr. Haycraft: There were a couple of questions and answers that you didn't get.

Mr. Albert: I heard them.

By Mr. Albert.

Q. So that you cannot tell in your opinion from you knowledge of the industry whether or not the Guild house or the non-Guild houses contribute more to the differenti ation, to the novelty of models within the fashion trend A. It is impossible to tell that.

Q. And there is nothing in your experience, there is n knowledge upon which you can draw in order to form a estimate or an opinion of that; is that so? A. That is so

Q. Well, now, Mr. Touff, you have testified that prior t 1936 H. Fried Company was not a particularly important house to you and that in 1936 it did become an important
7373 source of supply; did you not? A. I didn't testify that they became an important source of supply, no. I testified that they were not an important source of supply in 1935.

Q. Didn't you testify that they became an important source of supply in 1936? A. I don't think so.

Q. I give you this question by Mr. Haycraft: "Q. Did you mention H. N. Fried in Department 369? Was that a source of supply? A. It was not an important source of supply until the beginning of 1936." Do you recall that testimony? A. Yes.

Q. Do you want to change your testimony that you did not testify that it was an important source of supply?. A. Well, the choice of words was probably a little bit ill ad-
7374 vised.

Q. Who advised you to choose your words? A. I might have left out the word "important."

Q. You mean that it is not an important source of supply for 1936? A. No.

Q. Do you want to change your testimony because of the fact that prior to 1935 H. N. Fried & Company did not have an outstanding designer for its dresses, and that in the beginning of 1936 H. N. Fried & Company did obtain

an outstanding designer for its dresses, by reason of which the high style of its dresses improved considerably?

The Witness: Will you read that to me, please?

(Question read.)

The Witness: Can you make that a simple question? I know what you are driving at, but just make it an easy question.

By Mr. Albert.

Q. If you know what I am driving at, in the light of the fact that you know what I am driving at, answer and we will save time. A. H. N. Fried was not an important source of supply to us in 1935. 7376

Q. Yes. A. They were anything but an important source of supply to us in 1936. My choice of words in yesterday's testimony was ill-advised.

Q. So that you want to— Have you any knowledge of the volume of business that you did with H. N. Fried & Company up to July of 1935? A. You mean for the previous six months?

Q. Yes. A. Well——

Q. A rough— A. —a very vague guess.

Q. A rough guess. A. Less than $500.

Q. Less than $500? A. Yes.

Q. Have you any idea of the amount of the volume of your business with H. N. Fried & Company from July, 1935 to January 1, 1936? A. Oh, five or six hundred dol- 7377
lars.

Q. Same amount. That is, with respect to all departments? A. It is only used in Department 369.

Q. H. N. Fried only sold to Department 369? A. Yes.

Q. Do you know the volume of your business with H. N. Fried & Company after January 1, 1936? A. Yes.

Q. What would be your estimate of it?

The Witness: Your Honor, I think that t might be embarrassing information to give to c petitors, and embarrassing information for manufacturer.

Mr. Albert: Are we suddenly becoming emb rassed, your Honor, after a revelation of all of t amount of his volume?

Examiner Bennett: The revelation of whate he has given thus far was with the consent of t management, for 1935, and if the management w —or the attorney who is here present for J. Hudson Company—wants to release the witness

7379 that matter, why, it is all right, but without th release I cannot try to force him.

Mr. Meder: Your Honor please, we would pref that he not answer such a question as that.

Examiner Bennett: All right.

Mr. Meder: You can see the reason for it.

Mr. Albert: I confess I cannot.

By Mr. Albert,

Q. Mr. Touff——

Mr. Albert: May I have Commission's Exhib 479-A?

Mr. Haycraft: Do you want the witness to loo at it?

7380 Mr. Albert: Yes.

By Mr. Albert.

Q. Will you look at Commission's Exhibit 479-A, subdivi sion under Department 369, and tell me how much goods you had outstanding under order with H. N. Fried & Com pany on February 15, 1936? A. It is very funny—it is $947.

Q. So that when would you say that goods was placed on order? A. It was placed on order the first week in January.

Q. How? A. The first week in January.

Q. Were there any deliveries against that order? A. Yes.

Q. So that in the light of the fact that you do not wish to disclose the amount of the order, am I correct in saying that the order that you placed with H. N. Fried & Company, commencing January, 1936, is somewhere in excess of $947?

Mr. Haycraft: I object.

Mr. Albert: I think that is reasonable, your Honor; I am not asking for the exact figure. 7382

Mr. Haycraft: You can draw your conclusions from it, but I object to the exact question.

Examiner Bennett: You may answer.

By Mr. Albert.

Q. Is that not so?

The Witness: You say I may answer?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Yes. A. Yes.

Q. So that in the first month of 1936 the total of your orders on H. N. Fried & Company was in excess of your entire order for 1935, roughly speaking? 7383

Mr. Haycraft: Objected to as irrelevant and immaterial. I do not see what probative value there is to that question.

Examiner Bennett: Well, it is in the record.

Mr. Albert: It has quite a bearing on the precise question, if it please the Court.

Examiner Bennett: I say, it is in the record.

Mr. Albert: Very well.

Examiner Bennett: I do not see what we a gaining by asking the question.

By Mr. Albert.

Q. Now, then, Mr. Touff, will you tell me what it about H. N. Fried & Company that resulted in your pla ing orders with them in the month of January in exces of the total amount that you had placed with that firm i 1935?

7385 Mr. Martin: That is objected to.

A. Yes.

By Mr. Albert.

Q. If you can. A. Yes.

Mr. Haycraft: Objected to—not in conformance with the facts in the record. Five and six make eleven hundred, in my addition?

Examiner Bennett: Well, I will sustain it on the ground of being totally irrelevant, as far as I can see.

Mr. Albert: It is merely a foundation question, your Honor.

7386 Examiner Bennett: Well, foundation for what? For contradicting the witness' testimony?

Mr. Albert: That is right.

Examiner Bennett: Well, on the same point that you have already contradicted it——

Mr. Albert: If your Honor pleases, if you think I have already contradicted the witness, I will desist.

Examiner Bennett: Why; surely, you have already contradicted him.

Mr. Albert: Thank you.

Examiner Bennett: So I see nothing in this.

By Mr. Albert.

Q. Now, Mr. Touff, do you know Emma Kirby? A. No.

Q. Do you know of her? A. Yes.

Q. Who is she? A. Who is she? She is a designer.

Q. And quite a capable designer, is she not? A. I would prefer not to pass opinion.

Q. Would you consider that she has an excellent reputation in the industry and is well known in the industry? A. Do you ask those as two separate questions?

Q. Well, answer them separately. A. She is very well 7388
known in the industry.

Q. Would you say that she has an excellent reputation as a designer? A. I don't know.

Q. By whom is she employed at the present time, if you know? A. There has been a lot of confusion there in the last few weeks, and I don't know.

Q. As a matter of fact, Mr. Kirby, do you not know that the lady in question is a designer of dresses for H. N. Fried & Company? A. Ha, ha. I don't want to be Mr. Kirby.

Mr. Post: May I say, off the record——

(There was a discussion off the record.)

The Witness: What is the question?

(Question read.) 7389

A. That she is a designer of dresses for H. N. Fried & Company; is that the question?

Q. Is the question, yes. A. No, I don't know.

Q. Do you know that she was a designer for H. N. Fried & Company in January, 1936? A. Yes.

Q. Do you also know that Miss Kirby was not a designer, was not associated with Fried & Company for the whole of 1935? A. Yes.

Examiner Bennett: What do you mean by that any part of 1935, or——

The Witness: I think you said for all of 1935 that she was not associated with Mr. Fried for all of 1935.

Examiner Bennett: At any time?

By Mr. Albert.

Q. That she only went into H. N. Fried in the latter part of 1935? A. Yes, that is the question I was asked.

Examiner Bennett: Yes, I wondered, because the question was ambiguous.

7391 Mr. Albert: Thank you, your Honor.

By Mr. Albert.

Q. Now, Mr. Touff, you have testified that by reason of the red carding, it was impossible for you to purchase dresses that were satisfactory for your departments? A. I did not testify to that.

Q. What did you testify? A. I think it is in the record. I said enough dresses, enough satisfactory dresses.

Q. Eough satisfactory dresses? A. Yes.

Q. Did you mean by that in number or in style? A. Well, that question would have to be answered both.

Q. That is, you did not have a sufficient number of dresses, and you did not have a sufficient number of

7392 dresses of the style to which your customers were accustomed; is that it? A. I could have bought all my dresses in one style, and I would have had the right quantity.

Q. Yes. A. I had to have both variety of style and quantity.

Q. Right. I believe you also testified that it was absolutely essential that you have the best style, did you? A. I either testified that, or some of the best style dresses.

Q. And, is it, therefore, your contention that the Guild houses have the best style dresses? A. No, it is my contention that they have some of the best style dresses.

Q. And you can get good style dresses from other sources than the best styles? A. Some.

Q. Some. Well, now, let us put it this way, Mr. Touff:—And perhaps we can get off the subject: I believe you are aware substantially of what the Guild's contentions are with regard to this proceeding, are you not?

Mr. Haycraft: That is objected to.

Mr. Albert: It is a foundation question.

Mr. Haycraft: I object to it.

Examiner Bennett: Well, I will let him answer 7394
if it is a foundation question. If you are going to ask him on this proceeding——

Mr. Albert: No, I am not, your Honor. Of course not.

The Witness: Will you repeat the question?

(Question read.)

Examiner Bennett: If you are not, why, say so.

The Witness: I am not.

By Mr. Albert.

Q. All right. Let me put it this way: The Fashion Originators Guild contend that manufacturers originate designs in dresses. Are you aware of that? Mind you, I am not asking you whether you agree with it or not; I 7395
am asking you whether you are aware of the fact that that is a contention of the Fashion Originators Guild? A. Yes, it is.

Q. You are. And that there is a contention of the Fashion Originators Guild that a manufacturer who originates a design within the fashion trend has a right to be protected against that original design being copied; are you aware of that? A. That that is your contention?

Q. Yes. A. Yes.

Q. Are you aware of the fact that there is also contend among manufacturers in the industry that there is such evil as style piracy?

Mr. Haycraft: I object to that; not an issue this case.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Are you connecting that with the Guild?

Mr. Albert: Yes, your Honor.

Examiner Bennett: The question does not co

7397 nect it up.

Mr. Albert: Read the question.

(Question again read.)

By Mr. Albert.

Q. —by manufacturers in the industry—assuming th I mean members of the Fashion Originators Guild.

Mr. Haycraft: I object to that, Mr. Examiner.

Examiner Bennett: Well, I am going to let hi answer. If we are going to have a question founde on all this—go ahead. If you are aware of it, wh say so, and if you are not, why, say so.

A. Yes, I am aware of it.

3798

By Mr. Albert.

Q. Are you also aware of the fact that it is the conte tion of retailers who have co-operated, and are co-operatin with the Fashion Originators Guild, that there is an ev in the industry known as style piracy?

Mr. Haycraft: That is manifestly objected t No foundation at all in the record, and no place i the pleadings.

Mr. Albert: If it please the Court, I am asking if this man knows that that is a contention in the industry among retailers who are co-operating with the Guild.

Mr. Haycraft: That is off the point.

Examiner Bennett: Is that a foundation question?

Mr. Albert: A foundation question.

Mr. Haycraft: There is not such a question either in the record or anywhere else.

Examiner Bennett: Yes. Well, I sustain an objection to that.

Mr. Albert: Exeeption. 7400

By Mr. Albert.

Q. Are you aware of the fact that it is the contention, or the claim, of certain retailers who are members of the Fashion Originators Guild, who are co-operating with the Fashion Originators Guild, that an evil exists which is harmful to retailers, known as style piracy? What is your answer?

Examiner Bennett: Answer it, if you know anything about it.

A. I am not aware of it.

Q. You are not aware of that contention among retailers— A. No.

Q. —who are co-operating with the Fashion Originators Guild? A. No. 7401

Q. Do you agree that there is such an evil in the industry as style piracy?

Mr. Haycraft: That was not the first of it.

Mr. Albert: Let me ask it in the order I like, Mr. Haycraft.

Examiner Bennett: Yes.

A. Yes.

By Mr. Albert.

Q. There is an evil in the industry of style piracy?
Yes. You understand that that is my personal opin
Q. Yes, of course.

Mr. Haycraft: Do you want the answer to
rest of your question?

Mr. Albert: No.

Mr. Haycraft: All right.

Mr. Albert: I have got enough.

Mr. Haycraft: Well, I move to strike all of
question as originally propounded and the pres
7403 question, as being of no probative value to
issues in this case, and as irrelevant and immate
to the issues in this case and of no probative va
in this proceeding.

Mr. Albert: Most of them are irrelevant, if
please the Court—we have had that out before.

Examiner Bennett: I think I will grant the
tion to strike, if that is what you are after. I thi
it is just playing with the situation——

Mr. Feldman: Oh, no.

Examiner Bennett: I do not believe it has a
bearing.

Mr. Albert: If your Honor pleases, it is the c
tention of the respondent in this case that if th
is an evil existent in the industry, ruinous to
7404 the component parts of the industry, manufact
ers and retailers——

Mr. Haycraft: He did not say that.

Mr. Albert: —and which is injurious to the c
tomer——

Mr. Haycraft: He did not say that.

Mr. Albert: —that, if there is such an evil, t
industry has a right to take steps to correct th

evil. Now, I believe I have elicited from this witness the fact that there is such an evil as style piracy.

Examiner Bennett: Oh. the fact of the opinion that he has, that there is such an evil—now, as I understand it, and I think that matter has been gone into, probably repeatedly in the record—there is no contention on that particular issue on the part of the Commission.

Mr. Feldman: Yes.

Mr. Albert: Your Honor pleases, we had this identical matter brought up, I believe it was either yesterday or the day before yesterday, and I put 7406
the direct question to the Commission, and it certainly would have saved a great deal of time, both to-day and in the future—I put the direct question to the Commission—will they concede that there is an evil in the industry known as style piracy, and that it is injurious to manufacturers and to retailers—and they refused to make that concession, if your Honor pleases.

Examiner Bennett: I understand—I do not know—I think that is probably true, but they have contended that it is not an issue in this proceeding.

Mr. Albert: Well, if your Honor pleases——

Examiner Bennett: And they are making affirmative issues. Now, when you come to present your case, why, that may be another matter—— 7407

Mr. Albert: If it please the Court——

Examiner Bennett: ——hat I will have to pay attention——

Mr. Albert: Will your Honor bear with me just a moment?

Examiner Bennett: I will have to pay attention to what you say when you present your case.

Mr. Albert: Yes, your Honor, but will you with me a moment?

Examiner Bennett: Yes.

Mr. Albert: It is all very well for the Com sion's attorneys to say that that is not in issu these proceedings, and with all due respect to Commission's attorneys, that is not a matter their decision. We contend, if it please the C that in so far as the Circuit Courts of Appeals concerned, and the United States Supreme C the question of whether or not a program is rected at eliminating an evil known to exist in

7409 industry is a matter which has a great deal of pr tive weight in the determination of whether not that program is illegal, was in restraint of t or not. Now, then, I believe, therefore, that should be permitted to bring out from hostile nesses presented by the witness in support of t case, the very vital proposition, and the very subject, that there is an evil in the industry, s as style piracy, which will add so much more pr tive force to the respondents' contention that th was such an evil.

Mr. Feldman: Oh, I think the code cases very clear on that point.

Mr. Haycraft: How about the Sugar Institu

Mr. Feldman: How about the Sugar Institu

7410 Where they said, for the purpose of eliminatin boycott was proper.

Mr. Haycraft: A boycott was never proper.

Mr. Feldman: Did not say anything of the k in the Sugar Institute.

Mr. Haycraft: You better read it again, Geo

Examiner Bennett: If it is in the record—i is in the record you may make any use of it wh you choose.

Mr. Albert: Now, if your Honor pleases, in order to obviate this recurring discussion with respect to the matter in hand, in order that respondents may know exactly where they stand in attempting to meet the issues presented by the Federal Trade Commission, its attorneys, I ask the Federal Trade Commission's attorneys now formally, as to whether or not they will concede that there is an evil in the industry known as style piracy. Now, they have been very equivocal about admitting or denying it, and they refer us back two months ago to a stipulation that was entered into. I think it would be very simple, and very helpful, 7412
and of great assistance to all that are concerned, if we could have a declarative statement, a very simple one, from the Commission, upon that point. It would take a great deal less time than all of this discussion which has now twice arisen within the past two days.

Examiner Bennett: Yes. May I——

Mr. Martin: May I ask what date this was two months ago that we entered into this stipulation?

Mr. Haycraft: I made the statement—I told them again this week—I do not see why it has to be repeated all this time.

Mr. Albert: Then am I to understand——

Mr. Haycraft: If the Examiner wants me to, I will make it again. 7413

Mr. Feldman: The first day or second day.

Examiner Bennett: I wish you would reply distinctly to the——

Mr. Haycraft: The reply is "no concessions"; is that plain enough?

Mr. Feldman: Well then——

Mr. Albert: There you are, your Honor. May I ask now, that your Honor, in the light of that

statement by counsel, reconsider your determi
tion to strike from the record this hostile witne
opinion that there was such an evil as style pira
in order that the record may be clear with resp
thereto?

Mr. Haycraft: Well, then, Mr. Examiner, I
spectfully suggest that that is a part of their affir
ative case. If they are going to make it an issu
we may take it before the Commission at that tim
In other words, if the time ever comes when t
respondent attempts to make that question an i
sue, it may be necessary to take this case to t
7415 Commission to decide whether it will be an issu
and I certainly do not want the record——

Mr. Albert: At this time, your Honor——

Examiner Bennett: It may be plead. Of cours
when we come to the respondents' case that is a di
ferent proposition.

Mr. Albert: May I point this out, your Hono
that if the witnesses presented by the Federal Trad
Commission, who certainly are, to say the least
biased as against the F.O.G.A., all admit that there
is such a thing in the industry as an evil, known as
style piracy, that then and in that event it become
a grave question for the consideration of the Com
mission, as to whether or not the respondent will be
7416 required to make answer to the Commission's
charge——

Examiner Bennett: Yes.

Mr. Martin: Does counsel contend that the wit
ness showed his bias when he said that that was an
evil?

Mr. Albert: No. But, if your Honor pleases, if
a witness in J. L. Hudson Company, who h s been
red carded——

Examiner Bennett: Yes.

Mr. Albert: —will admit that there was such a thing as style piracy——

Examiner Bennett: He said it was his opinion, he was not speaking for J. L. Hudson Company.

Mr. Albert: Your Honor please, his opinions have been taken as gospel here by the Federal Trade Commission's attorneys down to this point, so that to suddenly say that he is not qualified, or that his opinion means nothing——

Examiner Bennett: No.

Mr. Albert: That he can only have an opinion on one thing and not another.

Mr. Haycraft: I haven't any quarrel with his 7418
opinion.

Examiner Bennett: We are wasting a whole lot of time. I have told you what my decision is, and I have told you that I was not going to change it at this time.

Mr. Albert: Very well, your Honor. Exception.

Examiner Bennett: You have it in the record. It is there physically and make any use of it you choose.

Mr. Albert: Thank you.

Examiner Bennett: I think most of the testimony of this witness upon fashions is wholly at variance with that statement which you made as to his opinion.

7419

By Mr. Albert.

Q. Now, Mr. Touff, will you please take Commission's Exhibit 523.

Mr. Martin: If you will give it to him.

(Commission's Exhibit 523 was handed to the witness.)

By Mr. Albert.

Q. Mr. Touff, will you be good enough to tell me whe you obtained the information that Gillis Gowns, Inc., was Guild house? A. I got that information from the Ne York office.

Q. What do you mean by your New York office? A. the A.M.C. office.

Q. Do you know where they got the information from A. No.

Q. So that aside from the fact that you made inquir of them you have no knowledge of the facts that—as to th fact that Gillis is a Guild house? A. Gillis—no, I hav

7421 not.

Q. Don't you know as a matter of fact that Gilli Gowns, Inc. never has been at any time a member of th Fashion Originators Guild? A. No, I don't know that.

Q. Yet, without checking up on this you have presented this list as an accurate list? A. There is no way of find ing out who belongs to the Guild.

Q. And I assume you got the same information in the same manner with respect to Phyllis Martin, Inc.? A. Yes.

Q. Don't you know, as a matter of fact, that Phyllis Martin, Inc., has never been a Guild house? A. No.

Q. Mr. Touff, you relied upon the A.M.C. for your in formation as regards what are and what are not Guild

7422 houses. Did you also make any inquiry from them as to possible sources of supply?

Mr. Haycraft: Objected to.

Mr. Albert: We have in here, if it please the Court, a tabulation of sources of supply prepared by this witness. I wanted to get a break-down of that list.

Mr. Haycraft: The witness testified that this list was prepared from the Fairchild Directory and not from anything that the A.M.C. had.

Mr. Albert: If he gets a list from the advertisements appearing in the New York Evening Journal, the Commission wants that and doesn't want the facts brought out as to the other possibilities of preparing a list from more reliable sources or from more inclusive sources?

Mr. Haycraft: Then, I take it, you want to concede for the record that the list prepared by the A.M.C. is more reliable and more conclusive than the Fairchild list which counsel for the respondent, Mr. Weisman, used on more than one occasion in his cross-examination of Commission's witnesses?

Mr. Albert: I don't say that in the least. I don't say that in the least. 7424

Mr. Haycraft: It sounded like it.

Examiner Bennett: You may find out whether he checked the list by any outside source.

By Mr. Albert.

Q. Did you use any other source for your information aside from—what is that?

Mr. Post: Exhibit 524. But that is no list.

By Mr. Albert.

Q. Did you use any other source for compiling Commission's Exhibit 523 than the Fairchild Women's Wear Directory of New York, advanced fall, 1936, being Commission's Exhibit 524 for Identification? A. I don't think so. 7425

Q. Well, don't you know— A. It was made up quite some time ago. I think—I think I used this exclusively (indicating Exhibit 524).

Q. Exclusively? How long ago did you make up that list? A. Oh, about four weeks ago, or more.

Q. Is it at least four weeks ago that you made up th list? A. Yes. There was one correction made on it sin then.

Q. Can it possibly be more? A. Yes, it can possibl be more.

Q. Now, is this list (indicating Commission's Exhib 523) an abstract of the names appearing in Fairchild, o does this list indicate (indicating Commission's Exhibi 523) a repetition of all of the names appearing in Fai child in the various price line? A. They are not classifie by price line in this book.

Q. Mr. Touff, you have here a list of fifteen manufac
7427 turers in the price line $12.75 to $14.75. Are there an additional manufacturers in that price line whose name appear in Fairchild and do not appear on Commission's Exhibit 523 within that price line? A. There are manufacturers who make $12.75 dresses whose names are not on this chart, whose names are in Fairchild's.

Q. Are in Fairchild's? A. Yes.

Q. So that Commission's Exhibit 523 is a selective list of the houses listed in Fairchild's in the various price lines set forth in Commission's Exhibit 523; isn't that so? A. No, that is not so.

Q. How many additional manufacturers in excess of fifteen are there in Commission's Exhibit 524 who are not listed on Commission's Exhibit 523? A. I don't know.

7428 Q. But there are some? A. Yes.

Q. You have no idea of the number? A. No.

Q. Now, in the $16.75 price line there are fourteen houses listed. Have you any idea as to how many additional manufacturers there are in that price line listed in Fairchild's whom you have not listed in Commission's Exhibit 523? A. There are no manufacturers of misses daytime dresses costing—who are generally considered $16.75 houses, or whom I would consider $16.75 houses who are listed in the Fairchild Directory that are not on this page.

Q. So that the total number of $16.75 houses listed in Fairchild's is fourteen? A. No, I didn't say that.

Q. Whom you would consider $16.75? A. I didn't say that, either.

Q. How else did you classify it? A. That I know.

Q. That you know? A. (Witness nods head affirmatively.)

Q. Did you make any inquiry or any investigation from any other list aside from Fairchild's? A. I have been continually making inquiry.

Q. Yes. And from what list did you make inquiry? A. None, specifically.

Q. The only list that you chose was the Fairchild list? 7430
A. That is the list I chose to make this report.

Q. Yes. Now, then, the $16.75 price line, there are seventeen manufacturers set forth. Are there any additional manufacturers named in the Fairchild Directory who are not named in your list, being Commission's Exhibit 523? A. There are no houses making $18.75 to $25 misses' daytime dresses that I know listed in the Fairchild Directory.

Mr. Post: That are not on the list.

The Witness: That are not on my list.

By Mr. Albert.

Q. Did you examine any other directory in an effort to find whether or not there were additional manufacturers 7431
other than those named in your Commission's Exhibit 523?
A. Not for the purposes of making this report.

Q. And is the same true of your $29.75-up column? A. Yes, sir.

Q. And of the other columns? A. Yes.

Q. Are you aware of the fact that the A.M.C. prepared a list of resources for members of the A.M.C.? A. Yes.

7432 Q. The question is, whether or not Berke-Vogel, liste on the A.M.C. list of $12.75 houses who are not—who we non-Guild members, is contained in your exhibit, Com mission's Exhibit 523?

Mr. Haycraft: Objection to the reference to th Commission's Exhibit 523.

Examiner Bennett: I will overrule it for the purpose. I think your statement as to the purpos covers the matter.

A. Berke-Vogel——

7433 *By Mr. Albert.*

Q. No. Is it listed, Mr. Touff? A. It is not listed.
Q. Is Berke, Press & Berke listed? A. No.
Q. Is Bowdin & Tourmen contained in your list? A. No.
Q. Is Harry Butler contained in your list? A. No.
Q. Is Darny Frocks contained in your list?

Mr. Haycraft: How do you spell that?
Mr. Albert: Darny, D-a-r-n-y.

A. No.

By Mr. Albert.

Q. Is Harry Harston Frock contained in your list? A
7434 Yes.

Q. Is Milton Russell contained in your list? A. Milto Combs Russell.

Q. Yes. A. He is not in this list.

Mr. Haycraft: K-o-h-n?
The Witness: Yes.

By Mr. Albert.

Q. Is Konette Frocks contained in your list? A. No.

Q. That was added on? A. Yes. That is, I think it is.

Mr. Haycraft: The answer is "Yes"?

The Witness: The answer is "No."

By Mr. Albert.

Q. All right. Is G. & J. Lipman—no, excuse me. Withdrawn. Is McKenzie & Fine contained in your list? A. No.

Q. Is Mattie Lucille contained in your list? A. No.

Q. Is New York Dress & Costume contained in your list? A. No.

Q. Is Pickwick Dress contained in your list? A No.

Q. Is Rembrandt Frock contained in your list? A. No. 7436

Q. Is Rothbardt Dress contained in your list? A. No.

Q. Is Sackin Lindner contained in your list?

Mr. Haycraft: I have an objection to this whole line of cross-examination, Mr. Examiner?

Examiner Bennett: Yes, you have an objection.

Mr. Haycraft: As I said before, it is not intended to be a complete list of all the sources in the country. It is only as to the resources that the witness was familiar with and experienced with.

Examiner Bennett: Yes. Well, that is what we will find out after he gets through. If it doesn't mean anything, why, it doesn't. I want to see.

Mr. Haycraft: What is the last one? 7437

Mr. Albert: Sackin Lindner.

Mr. Haycraft: How do you spell it?

The Witness: S-a-c-k-i-n.

By Mr. Albert.

Q. Is Normal Stuart contained in your list? A. Yes—No. No.

Q. Is B. Tobias contained in your list? A. No.

Q. Is Weingartner Dress contained in your list? A. No

Q. Is Alexander White contained in your list? A. No

Q. Is Whitmore contained in your list? A. Not in thi list.

Q. Now, all of these dress houses that I have listed that I have named, are contained in the list submitte by the A.M.C. for the use of its buyers for the store connected with the A.M.C.; is that correct? A. Yes.

Examiner Bennett: Were these houses with whic you did business, these houses on the A.M.C. list?

The Witness: Your Honor, most of the house that he has interrogated me about are in the othe

7439 exhibits which I gave at the same time as this one

Examiner Bennett: Oh, I see.

The Witness: And the others I will be examine about later, I think.

Examiner Bennett: I see. All right.

Mr. Haycraft: Did you do business with them That is the question the Examiner propounded.

The Witness: I know every single house that h asked me about and I have done business with mo of them.

Examiner Bennett: I see. All right. That i they were included then in your available resource of supply and you still say that your resources wer inadequate?

7440 The Witness: Yes, sir.

Mr. Haycraft: I think, Mr. Examiner, the poi here is they weren't in the price line.

Examiner Bennett: Yes, I understand.

Mr. Feldman: They are on the price lines.

The Witness: No, they aren't.

Mr. Feldman: According to the A.M.C. list, the are.

The Witness: According to the A.M.C. list—I mean, according to the list of this time, George, Milton Altmark might be a $12.75 manufacturer, but you know that he isn't, according to this kind of a list.

Mr. Haycraft: In other words, Mr. Examiner, what we are doing here is proving the——

Mr. Post: You mean the A.M.C. list.

Mr. Haycraft: Proving the unreliability of the A.M.C. list, Commission's Exhibit 475 now.

The Witness: No, we aren't proving that, either. Are we off the record or not?

Examiner Bennett: No, you are not off the record. 7442

The Witness: Well——

Examiner Bennett: We will take a recess until two for lunch.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

Mr. Albert: May we have Commission's Exhibit 525? Where is Commission's Exhibit 450? 7443

(Papers handed to counsel.)

By Mr. Albert.

Q. Now, Mr. Touff, you told us that certain of the names of manufacturers who appeared on the A.M.C. list, Commission's Exhibit 450-E, and who do not appear on Commission's Exhibit 523, appear on Commission's Exhibit 525; is that not so? A. Yes.

Q. Now, of those names does Berke-Vogel appear on Commission's Exhibit 525? A. No.

Q. Does Harry Butler appear on Commission's Exhibit 525? A. No.

Q. Does Darny Frocks appear on Commission's Exhibit 525? A. No.

Q. Does McKenzie-Fain appear on Commission's Exhibit 525? A. Well, I don't think it—it does not, no.

Q. Does Rothbart appear on Commission's Exhibit 525? A. No.

Q. Or does Alexander White appear on Commission's Exhibit 525? A. No.

7445 Mr. Albert: Where is Commission's Exhibit 523?

Mr. Martin: Here.

By Mr. Albert.

Q. Now, turning to the fifth column on Commission's Exhibit 523, headed "Misses' Evening." A. Yes.

Q. And comparing with Commission's Exhibit 450 as to a similar heading of the list of manufacturers manufacturing misses' evening dresses, does Eugene Party Frocks appear on Commission's Exhibit 523?

Mr. Haycraft: Same objection to this line of examination.

Examiner Bennett: He may answer.

7446 A. No.

By Mr. Albert.

Q. Does Fashion Dress appear on Commission's Exhibit 523? A. No.

Q. Does George Jackson appear on Commission's Exhibit 523? A. No.

Q. Nor does Novel Dress appear on Commission's Exhibit 523? A. No.

Q. Does Rosetta Gowns appear on Commission's Exhibit 23? A. No.

Mr. Albert: Now, if your Honor pleases, I do not want to take up too much time with this. Does your Honor believe that this is a sufficient cross-section demonstrating the various manufacturers that have been omitted from Commission's Exhibit 523?

Examiner Bennett: I do not think we have had the whole story.

Mr. Albert: No, I mean so far as the market, that——

Examiner Bennett: Well, I know. I think that such as it is we have had plenty of it, but I think 7448
that the vital part of the story, as I understand it, is left out. If you will give me those three documents, I will ask some questions—I may be wholly in error, but I am sort of confused as to the situation, and the confusion arises from this sort of—from this examination.

By Examiner Bennett.

Q. Is the Fairchild Directory classified as to price lines? A. No, sir.

Q. Who made the classification as to price lines that appear in your list? A. I did.

Q. As taken from the Fairchild Directory, you did? A. Yes. 7449

Q. That is your own price line classification? A. Yes.

Q. Does that price line classification coincide with the price line classification of A.M.C.? A. Well, I will have to explain that, your Honor.

Q. I beg your pardon? A. I will have to explain that.

Q. Yes. That is what I wish you would explain. I get the confusion as to— A. Manufacturers are very frequently known as manufacturing dresses of a certain price range.

Q. Yes. A. And we categorize them in the market as a $10.75 manufacturer, or a $16.75 manufacturer. That does not mean that at any time that manufacturer makes only dresses of that price; the bulk of his dresses may be that price, but the $10.75 manufacturer—and I know $10.75 manufacturers who make garments as high as $49.50 cost——

Q. Yes. A. —I would still classify that house as a $10.75 manufacturer because the bulk of his product is $10.75. Now, this list of the A.M.C. that is being continually referred to, certain houses which Mr. Albert has called to my attention in the $12.75 list are really $10.75

7451 manufacturers—at least, I consider them $10.75 manufacturers.

Q. Yes. A. At the time the A.M.C. made that list those manufacturers perhaps had a dress or two dresses or five dresses on their line at $12.75, but I included them on my $10.75 list because that was the bulk of their business.

Examiner Bennett: Yes, I see.

The Witness: There are manufacturers in that list who also make other—who are making $10.75 dresses in the spring season, for example, who did not make them when I made my list.

By Examiner Bennett.

Q. Yes. In other words, you made a list and classify

7452 it in the light of your own requirements as resources? A. My experience with those resources.

Q. Yes. Your experience and your requirements. A. Yes, sir.

Q. And it does not necessarily coincide with the A.M.C. list? A. No, sir; because——

Q. Does the A.M.C. list throw any light or enlarge the scope of your resources? A. That is——

Q. In those particular lines, except to the extent that you have indicated now? A. Yes.

Q. That there might be a few dresses? A. Yes, it does change it to the extent that the A.M.C. list to which Mr. Albert referred is a list that was prepared on April 4. I don't know whether you are familiar with it or not, but the mortality in the dress business is notorious.

Q. I see. A. That list is out of date.

Q. I see. I see.

Examiner Bennett: All right. That explains the situation, I think, so far as I am concerned.

By Mr. Albert. 7454

Q. Do you know whether or not the A.M.C. has gotten up a subsequent list, Mr. Touff? A. Yes.

Q. They have gotten one up later than this one? A. Yes.

Q. Have you a copy of it? A. No.

Q. Have you it in your records in the J. L. Hudson store? A. I don't think so.

Q. You merely have heard of the fact that they have gotten one up; is that what you mean? A. No, no. I have seen one.

Q. You have seen one? A. Yes.

Q. Did you use that list? Did you consult that list at all? A. I use the Fairchild Directory. I had to have a standard. 7455

Q. And that is the standard you chose? A. Yes, that's right.

Q. Now, as a matter of fact, Mr. Touff, in the A.M.C. list, being Commission's Exhibit 450, is not each house there listed classified in each department in that list for each price line? Let me put it this way: The A.M.C. list— A. Yes.

Q. —does not classify houses as you have according to their most popular price lines, does it? A. May I see it?

Mr. Martin: There it is right there.

Mr. Albert: Disappeared again.

Examiner Bennett: Here it is.

A. (Continuing) Yes. Practically every house that you have called to my attention as not being on my list at $12.75, that I have explained as on our list at $10.75, is also on this list at $10.75.

By Mr. Albert.

Q. What I mean is this, Mr. Touff: If a house manufactures $10.75 dresses, $12.75 dresses, $14.75 dresses and
7457 $16.75 dresses, then that house is on that list under each one of those price lines; is that not so? A. On this list, yes.

Q. So that if a name appears on the A.M.C. list which does not appear on your choice of names which you have taken from the Fairchild Directory, then you have not included any name from the A.M.C. list regardless of its price line?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain an objection. I think the witness has made clear what he has done. You can find out from him by asking him directly as to whether those A.M.C. list make his supply adequate—the resources.

7458

By Mr. Albert.

Q. Now, Mr. Touff, can you make an estimate of the number of names that appear in the Fairchild Directory from which you chose the manufacturers set forth in Commission's Exhibit 523? A. No.

Q. Would you say that there are approximately 1800 names listed in that directory? A. You might say so, but I would not.

Q. Would you say that there was less than a thousand?
A. I wouldn't say anything about it; I couldn't.
Q. Have you any idea on it? A. No.
Q. Assuming that there are approximately 1500 names set forth in that directory, do we understand you correctly to say that of that number, without binding you that there are 1500, that whatever that number is, only 167 are available to you as resources, the 167 being the number of houses that are set forth in Commission's Exhibit 523?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: I will overrule the objection. He may answer.

7460

By Mr. Albert.

Q. That is, in your opinion; that is all I want to know.
A. Now, let us see. 167 are on the one list; is that right?
Q. That is right. I am referring to Commission's Exhibit 523. A. That of the 1500, or approximately, that there are in this book, only 167 of them make a price merchandise that I classified?
Q. Right. A. To the best of my knowledge, yes.

Mr. Albert: That is all I wanted to know.

Examiner Bennett: Let us see that book, please.

(Counsel hands Commission's Exhibit 523 to the Examiner.)

7461

Mr. Haycraft: That is in the price lines in that exhibit.

The Witness: Yes.

Mr. Albert: Your witness, Mr. Haycraft.

Redirect examination by Mr. Haycraft.

Q. You made a statement on cross-examination, Mr. Touff, as to who contributed novelty ideas to adaptations style trends, and you were asked whether the members

of the Guild did more than the non-Guild members, and you said that they both did. Was that correct? A. Yes.

Q. What is your explanation of your answer?

Mr. Albert: That is objected to, if it please the Court, as improper redirect, calling for the conclusion of the witness. All that we are interested in is the fact—all I asked him about was the fact, and not an explanation of what he meant by it.

Mr. Haycraft: You asked for an opinion. I am asking for the explanation of the opinion. Perfectly proper.

Examiner Bennett: What is the pending question?

7463 (Question read.)

Examiner Bennett: All right. You may answer. Overruled.

Mr. Albert: Exception.

A. Well, I believe that both Guild and non-Guild members take any particular fashion or any particular style, give it their own interpretation by changing it somewhat, by changing the ornaments, changing the decoration very slightly, making it their own dress. I don't think that there is any greater tendency among the Guild houses to do this than there are among the non-Guild houses to do the same thing.

7464 *By Mr. Haycraft.*

Q. You were asked about whether Miss Kirby was a designer for the Fried Company in 1935. I will ask you whether or not the fact that Miss Kirby was employed as a designer by the Fried Company had anything to do with your increasing any of your business with that company in the beginning of the year 1936?

7465

Mr. Albert: If it will help the witness, I will object to the question as improper redirect, your Honor.

Examiner Bennett: I will overrule the objection.

A. Well——

Mr. Haycraft: I do not think the witness needs any assistance.

A. (Continuing) Well, it did indirectly. It was not her ability as a designer that interested us as much as it was the use of the name.

7466

By Mr. Haycraft.

Q. Now, with respect to Commission's Exhibit 523, which has been the subject of cross-examination, you were asked a number of questions with respect to houses that were not listed in the $12.75 list on that exhibit. A. Yes, sir.

Q. For instance, Berke-Vogel. Why did you not include Berke-Vogel in that list? A. Because Berke-Vogel is out of business.

Q. Why did you not include Harry Butler? A. Because Harry Butler was making sport dresses in the spring season and is at best a blouse house, a shirt house, to the best of my knowledge is not making dresses this fall. At least, dress department dresses. He may be making a new sport department dresses.

7467

Q. Milton Schlussel?

Mr. Albert: Milton Kohn Schlussel.

A. Milton Schlussel was on my $10.75 list.

Q. McKenzie-Fine? A. I didn't include them because they are out of business.

Q. Rothbart? A. I left Rothbart off by accident. It was a mistake.

Q. Alex White? A. Alexander White is a sportswear house.

Q. Now, the other dresses to which your attention was called are included in the $10.75—your $10.75 list. I will call them to you if you will refer to it. A. Yes, sir.

Q. $10.75 list. Berke, Press & Berke? A. That was included.

Q. Bowden & Toumen? A. They are included.

Q. Konette? A. Konette was included.

Q. New York Dress? A. Was included.

7469 Q. Mattie Lucille? A. Included.

Q. Pickwick? A. Pickwick.

Q. Rembrandt? A. Was included.

Mr. Albert: Do you want the list of those that were not included, Mr. Haycraft?

The Witness: I think I have it right here.

By Mr. Haycraft.

Q. Well, all the rest of the names were mentioned. Were they included in your $10.75 list with the rest of them that counsel mentioned listed in your $10.75 list? How about Eugene Party Frocks? A. Out of business.

Q. Fashion? A. They make women's evening dresses which I don't buy.

7470 Q. George Jacobson? A. George Jacobson makes wedding dresses. I don't buy them.

Q. Novel Dress Company? A. Novel Dress Company is a wedding dress resource. I didn't list them.

Q. Rosette Gowns? A. Rosette Gowns? I think that is R-o-s-e-t-t-e.

Mr. Albert: Yes.

The Witness: Is a junior house, a junior affiliate.

Mr. Haycraft: That is all.

Recross-examination by Mr. Albert.

Q. Mr. Touff, when you say that one of the houses mentioned makes a wedding dress, do you mean that they make a wedding dress exclusively? A. That exhibit is headed "Daytime Dresses."

Q. Yes. But it doesn't appear anywheres on your list, does it? A. I made no list of evening dresses because Department 339 is apparently not in question and I don't buy for that department. There are no wedding dresses or no evening houses on that list at all, on the $10.75 list, Mr. Post.

Mr. Post: Oh. 7472

Q. That particular house isn't listed anywheres, including under "Misses' Evening" or "Women's Evening," is it? A. No.

Q. So that when you say it is not listed under "$10.75"—A. If that house were to be listed, Mr. Albert, it would have to be listed under $10.75 on this list, in the $10.75 classification, and this is a daytime classification.

Q. In other words, it is merely your judgment that these houses do not make a sufficient number of $12.75 evening dresses and that you have included them solely in the $10.75; is that it? A. I haven't included the house at all.

Q. Mr. Touff, do not the houses which you have defined as sport houses also make a tailored dress for the afternoon? A. I would say the most departments of our type, of Department 369, are unsuccessful with retailing the kind of a dress that those manufacturers make because it is too simple, too set, and those things are much better or much more profitably retailed in a sports shop. 7473

Q. Now, you say you left Rothbart off your list by mistake? A. Yes, sir.

Q. Is it possible that you have been in error with respe to omitting other names? A. I don't—I have done my be to be conscientious, to present a real picture.

Q. Well, is it fair for me to ask you and for you t answer that since you have admitted that you have mad a mistake in omitting one name, do you recognize th possibility that you have perhaps omitted other name despite the fact that you have made a conscientious effor that— A. I will admit that if you will admit that I hav got a pretty high batting percentage.

Q. That remains to be seen, Mr. Touff, after we prese our lists.

7475 Examiner Bennett? Overruled.

A. To render the declaration profitable.

By Mr. Haycraft.

Q. Why did you sign up again? A. To be able to bu from the Guild resources.

Mr. Haycraft: That is all. I ask for an adjour ment to 10 o'clock to-morrow morning, as the wi ness referred to by this witness as being famili with the details of the dress business, and partic larly with respect to the cause of the red cardi and the situation at that time and the names the resources of the dress department is in Ne 7476 York to-day and will not be back until to-morro morning.

At the time I put Mr. Kern on I had been l to believe that he could testify as to those thing but apparently did not because he was not famili with the details sufficiently to do so; that he willing to have Miss Patterson here to-morro morning at 10 o'clock and I should like to have adjournment until that time.

Examiner Bennett: Well, under the circumstances I am going to deny the motion and we will adjourn to resume in room 1123 in Chicago at 10 A. M. on Monday.

Mr. Albert: 1123. What building is that?

Examiner Bennett: 1123 New Post Office Building.

Mr. Albert: Thank you.

Examiner Bennett: And I do it because I think that the prospects are that the Commission will get no useful testimony out of these witnesses.

(Whereupon, at 3.15 o'clock P. M., August 21, 1936, the hearing in the above entitled matter was adjourned.) 7478

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,

August 24, 1936.

(Met, pursuant to notice, 9 o'clock A. M., C. S. T.)

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc. 7479

WILSON & MCILVAINE, by J. H. S. LEE, JR., Esq. (120 West Adams Street, Chicago, Illinois), appearing for Marshall Field & Company.

BEN. J. ALTHEIMER, Esq., and ALAN J. ALTHEIMER, Esq. (10 South LaSalle Street, Chicago, Illinois), appearing for Henry W. Wyzanski, witness.

PROCEEDINGS.

Examiner Bennett: Be in order, please.

This is a reconvening of hearing from Detroit, Mic gan, on Friday, August 21, 1936.

Mr. Haycraft: Has the witness been sworn?

HENRY N. WYZANSKI was thereupon called as a witn for the Commission, and, having been first duly swo testified as follows:

7481

Direct examination by Mr. Haycraft.

Q. Will you give your full name to the Court, plea A. Henry N. Wyzanski.

Mr. Feldman: It sounds like a Boston name

The Witness: It is Boston.

By Mr. Haycraft.

Q. Where do you live, Mr. Wyzanski? A. 3500 L Shore Drive, Chicago.

Q. What is your occupation? A. Merchant.

Q. Where are you employed? A. Mandel Brothe State Street, Chicago.

7482

Mr. Albert: May it please the Court, at t time I respectfully request that all prospective w nesses be excluded from the hearing room.

Mr. Haycraft: I do not have any that I know Are there any witnesses here for the Federal Tr Commission hearing?

Examiner Bennett: I think there are none. there any any, why, I will ask any persons w

have been called as a witness for the Federal Trade Commission to please retire to the next room.

Mr. Martin: Any witnesses in the Van Ogden case? I guess not.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. What is your occupation with Mandel Brothers? A. Merchandise manager of the upstairs ready-to-wear, millinery, furs, silks and synthetic fabrics, and the basement store.

Q. How long have you had that position? A. Why, I have been merchandise manager of the basement since February 1, 1929, and assumed the upstairs functions early in September, 1934. 7484

Q. What are your duties in the position that you hold? A. I consider my duties to be the increasing of the sales and the profits.

Mr. Albert: May it please the Court, may we have the question answered, not what he considers his duties, but what his duties are?

Mr. Haycraft: Well, I think that is good enough. A man considers his duties—his interpretation of them, that is what I want.

Examiner Bennett: All right. Go ahead.

The Witness: I consider my duties to be the increasing of the sales and the profits of the things under my supervision, by the formulating of a policy consistent with the store policy, and getting together the best possible organization for the carrying out of that policy and aiding that organization by any help that I can give them in the carrying out of that policy. 7485

By Mr. Haycraft.

Q. Are the buyers of the merchandise in those departments under your supervision? A. They are.

Q. The sales force as well? A. No, the sales force is under the service end of the business.

Q. But the buyers are under you? A. Yes.

Q. Do you have separate, or distinct departments under your supervision in the dress departments and in the basement? A. Yes, I do.

Q. How are the departments arranged over which you have charge—take the upstairs store, for instance? A. Do you mean by number?

7487 Q. By number, if they are numbered, and by name if they have a name, also. A. Department 5 is "Misses' Better Dresses, $25 and up."

Mr. Albert: Is that retail or wholesale?

The Witness: Retail, except in the summer, when they go down to $15 in cotton dresses. The same applies to Department 38, which is "Women's Better Dresser." Department 81 is "Misses' Dresses, $15 to $29." Department——

By Mr. Haycraft.

Q. Is this wholesale or retail? A. Retail.

Q. All right. A. Department 84 is "Misses' Dresses," carrying the same prices. Both those departments go down

7488 to $12.95 in the summer season. We have Department 35, which is $8.95 to $12.95 dresses, which goes down to $5.95 in the summer season, and up, occasionally has gone down to $3.95 in cotton dresses, in the summer season.

Mr. Albert: What is that department?

The Witness: Dresses.

Mr. Albert: Will you be good enough to find out, Mr. Haycraft, what that is—women's?

By Mr. Haycraft.

Q. Women's dresses?

Mr. Albert (continuing): —junior, misses'——

The Witness: Women's—I mean, women's and misses' dresses. We have Department 78, which is the junior department, carrying regular dresses from $8.95 up to $39, and in the summer goes to $[illegible].95 on silk or acetate dresses, and $3.95 on cotton dresses. We have the sports department, Department 49, which carries dresses from $5.95 up to—upon occasion—$59. In the summer, it goes as low at $2.95 on cotton dresses. In the basement store, 7490
we have Department 103, which carries misses' dresses up to $12.95, and Department 115, which carries women's dresses equally as high.

Mr. Albert: Is 115 also in the basement?

The Witness: Yes.

By Mr. Haycraft.

Q. Do you know where the dresses are bought that are sold in those departments under your supervision? A. Why, I know our leading resources, I wouldn't say that I know every one of them.

Examiner Bennett: Do you mean in what cities?

By Mr. Haycraft: 7491

Q. Do you know where they are located, the leading resources? A. Yes, I know where they are located.

Q. Where are they located? A. In New York, Boston, Cleveland, Chicago, St. Louis, Philadelphia, Los Angeles.

Q. Now, out of these various markets that you have described, which one, would you say, was the principal market? A. New York.

Q. Why is that true? A. I would say because the largest number of manufacturers whose goods sell readily in our store, are located in New York.

By Mr. Haycraft.

Q. To what class of trade does your store cater? A. Medium to better.

Mr. Albert: Medium to what?

The Witness: Medium to better, in the upstairs store and volume trade in the basement.

7493 *By Mr. Haycraft.*

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. As it affects our store.

Q. When did you first learn of the existence of that organization? A. I would say some time in the spring of 1933.

Q. How did it come to your attention? A. There were various discussions in our store as to whether or not we should co-operate with this guild in the way they wanted us to.

Q. And with whom were those discussions had? A. I believe with our management and——

Q. Do you recall the names of the individuals that were in on the discussion? A. Leon Mandel and Mr. Post.

Q. Mr. Albert M. Post? A. Yes.

7494 Q. Was Mr. Post with the store at Mandels in 1932 when you assumed the duties in the basement store? A. I don't believe so, I think it was 1939, I am not positive.

Q. How long did he continue with Mandel Brothers? A. I believe it was four years.

Q. What was his position there? A. Merchandise manager of the upstairs ready-to-wear and intimate apparel.

Q. You succeeded him? A. I did.

Q. What was the outcome of these discussions that you referred to? A. The outcome was that we should sign the declaration of co-operation with the Guild with a rider attached to it, to the effect——

Mr. Albert: Now, if it please the Court, I object to any description of any written document that is not in evidence.

By Mr. Haycraft.

Q. Do you have a copy of this declaration of co-operation, or the rider that you refer to? A. Our attorney has.

Mr. Haycraft: Will you produce it, please? 7496

(Mr. Altheimer hands paper to Mr. Haycraft.)

Mr. Haycraft (indicating): I show you Commission's Exhibits 527-A and B, and ask you if you can identify those two sheets of paper?

(The papers referred to were marked Commission's Exhibits 527-A and B for Identification.)

The Witness: I don't follow what you mean by "identify."

By Mr. Haycraft.

Q. Can you identify it? Do you know what it is? A. I know what they are, yes.

Q. All right, what are they? A. 527-A is a declaration of co-operation in anti-piracy between Mandel Brothers and the Fashion Originators Guild and—— 7497

Q. Is it dated? A. No.

Q. All right. A. And 527-B is a letter, copy of a letter of June 23, 1933, to the Fashion Oirignators Guild signed by Mandel Brothers.

Q. Who signed the original of that letter? A. Mr. Post.

Q. Albert M. Post? A. Yes.

7498 *Henry N. Wyzanski—For Commission—Direct.*

Mr. Haycraft: I offer the exhibits which have just been identified.

(The papers referred to, heretofore marked for Identification Commission's Exhibits 527-A and B, were received in evidence.)

By Mr. Haycraft.

Q. What is the date of the letter you just identified? A. June 23rd, I believe.

Q. 1933? A. Yes.

Mr. Albert: No objection.

7499 Examiner Bennett: Received.

By Mr. Haycraft.

Q. I call your attention to paragraph two of Commission's Exhibit No. 527-B, which says that "In signing this we are calling attention to the two reservations which were discussed at our meeting, and wish to stipulate that this declaration is approved with these reservations." What meeting did that refer to? Do you know where this conference was held, that is referred to in this letter?

Mr. Albert: I object to the question as immaterial.

The Witness: No, I don't.

Examiner Bennett: Do you want to ask him

7500 about anything that is in that letter, that is in practice, afterwards, as to whether it was used, and he knows? It is all right.

By Mr. Haycraft.

Q. Now, in the first of these reservations, one, that it applied only to the upstairs store, I will ask you whether or not you were present when a discussion was had with respect to that reservation?

Mr. Albert: That is objected to, if it please the Court, the witness has already testified he was not there.

Mr. Haycraft: No, he hasn't anything of the kind.

Examiner Bennett: He may answer.

The Witness: I was present at the meetings in our store when it was discussed.

By Mr. Haycraft.

Q. Yes. All right. Why was that reservation made?

Mr. Albert: That is objected to, if it please the Court, the exhibit speaks for itself. 7502

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: Why was that reservation—question please.

(Last question read by the reporter.)

The Witness: Because it was contrary to the policy of our basement store not to have copies. The principle of our basement store is "Fashion at a price." It is a slogan which we have long had, and we feel that a buying motive of style merchandise in our establishment is one known as economical emulation. Mrs. Jones wants what Mrs. Astor has, and she cannot afford to pay the price that Mrs. Astor pays; therefore, she wants the closest approximation of it at the price she can afford to pay, and such a declaration of co-operation with the Guild would be inconsistent with the policy of our basement store, which has long been established. 7503

Q. Now, the second reservation: "If any manufacturer refuses to accept the return of any merchandise sent to him for violation of the Warranty Clause, we reserve the

right of decision regarding its final disposal. If it is necessary for us to reaccept this goods and sell it, such sale shall not be termed a violation of this declaration." I will ask you whether or not the subject-matter of that reservation was discussed at meetings in the Mandel store, which you attended? A. I was not present at those meetings.

Q. You were not present at those meetings? A. I don't recall being there.

Q. In other words, meetings which you were present at involved the basement store policy? A. Yes.

Q. Over which you had jurisdiction at that time, is that correct? A. That is correct.

7505

Q. Now, in the declaration of co-operation itself, Commission's Exhibit No. 527-A, reference is made to a certain clause which for the want of a better name we can refer to as the warranty clause; are you familiar with that? A. Yes, I am.

Q. (Indicating) I show you Commission's Exhibit No. 498-A, and ask you if you can identify in any way the stamp on that, the warranty stamp on that exhibit? A. Yes, I can identify it.

Q. Is that the stamp—is that the language of the stamp used by your store on orders? A. Yes.

Q. Now, what was the custom, in what way, rather, did Mandel Brothers comply with the declaration of co-operation as to the placing of such warranty stamp on orders?

7506

A. That is, placed them on orders when we had bought merchandise from manufacturers.

Q. Now, beginning with June, 1933, after June 23rd, 1933, on what orders was such stamp placed? A. On dress orders.

Q. With what class of manufacturers? Well, did you place it on all orders, for instance, did you place it on basement store orders at that time? A. We did not place it on basement store orders at that time, no.

Q. All right. That was covered by the reservation. Did there ever come a time——

Mr. Albert: If it please the Court, I ask that Mr. Haycraft's last statement that that was covered by the reservation, be stricken out. I think it is about time that Mr. Haycraft ceases to testify.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. Well, I will ask the witness—what was the reason for not placing it on orders placed for the basement store? A. Because, according to the rider of our original—articles of co-operation—we did not have to put it on basement orders. 7508

Q. Did a time ever come when you had to put it on basement orders? A. Yes, we did.

Q. When did that time come? A. It was in the early fall of 1935.

Q. What was the occasion? A. The Guild declared that in keeping with our declaration of co-operation we would have to put it on all orders, despite the fact that we had this rider making it apply only to the upstairs store.

Q. Was that declaration or requirement in writing, or orally? A. In a bulletin from the Guild.

Q. Do you have that bulletin with you? A. I believe we do.

7509

Mr. Altheimer: What date, do you know?

Mr. Haycraft: What date?

The Witness: I think we had one around November, saying that it should be on all orders.

(Thereupon Mr. Altheimer hands a paper to Mr. Haycraft.)

(Thereupon a paper was marked Commission's Exhibit 528-A and B, for Identification.)

(Mr. Albert picks up the exhibit just marked Commission's Exhibit 528-A and B.)

Mr. Haycraft: It has not been identified yet.

Mr. Post: It is already in evidence, is it?

Mr. Albert: Sure.

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 528-A and B, and ask you if you can identify them?

Examiner Bennett: What is it?

The Witness: It is a bulletin from the Fashion
7511 Originators Guild of America stating that among other things that——

Mr. Albert: No.

By Mr. Haycraft.

Q. Do not describe it, just give us the date. A. November 6, 1935, addressed to Mandel Brothers.

Q. Signed by? A. Signed by Fashion Originators Guild, Albert M. Post.

Q. Albert M. Post was then director? A. Executive director.

Q. That is the same Albert M. Post who was at one time merchandise manager of Mandel Brothers? A. Yes.

Q. And the same man that made the reservations in
7512 Commission's Exhibits 527-A and B? A. That is right.

Mr. Feldman: 1933?

By Mr. Haycraft.

Q. Well, did you discuss this matter with Mr. Post, this putting of the warranty stamp on all orders including the basement store? A. I don't recall any such discussion.

Q. Well, since November 6th, 1935, have you been placing the stamp on all basement orders? A. Yes, we have.

Q. Mr. Wyzanski, can you testify as to the percentage of merchandise, source of merchandise resources for your upstairs store, that consists of members of the Guild, Guild manufacturers? A. I cannot testify as to the percentage of manufacturers. I can testify as to the percentage of goods that we used in 1935 in the Guild price lines and the percentage that came from Guild resources?

Q. What percentage is that?

Mr. Albert: If it please the Court, that is objected to, unless we know upon what figures the witnes bases his estimate. I do not think the Court is interested in knowing or hearing what the witness thinks he can tell us about it. 7514

Mr. Martin: He did not say that.

Mr. Haycraft: I have qualified that.

Mr. Albert: What study he has made of it, if it please the Court—we are now even omitting the very varied proposition that Mr. Haycraft has of asking the witness "Have you made a study" and when he says "yes" that he has made a study, we get the answer without knowing what he has studied, at least let Mr. Haycraft ask him whether he has made a study of it.

Examiner Bennett: I will let him answer.

Mr. Albert: Exception.

Mr. Bennett: Give us your best knowledge.

The Witness: What is it? 7515

By Mr. Haycraft.

Q. Go ahead.

Examiner Bennett: Give us your best knowledge. Read the question.

(Last question read by the reporter.)

The Witness: 61.4 per cent. of the merchandise we used in 1935 in Guild price lines, came from houses—members of the Guild.

By Mr. Haycraft.

Q. What did you include in the Guild prices—what price range? A. $10.75 and up.

Q. Cost? A. Cost.

Q. You did not include the lower price lines as mentioned in Commission's Exhibit No. 528-A? A. No, because many of them are not members of the Guild this year.

Q. I see. Now, had there been a discussion, or correspondence, between you and the Guild with respect to the inclusion of the lower-priced manufacturers and the return of goods by the basement stores prior to November
7517 1, 1935? A. I wrote Mr. Post a letter, I believe it was—it was in the fall or September, 1935, I think it was in September, telling him that it would be a hardship on our basement store, and asking him for his best advice.

Q. How long then had it been that they had been asking you to co-operate to that extent? A. Beginning with the fall season of 1935. I place it some time in July or August, 1935.

Q. What was that requirement at that time? A. That we place——

Mr. Albert: If it please the Court, that is objected to unless we have the correspondence to which the witness is referring.

7518 *By Mr. Haycraft.*

Q. Do you have some of that correspondence? A. I have a letter to Mr. Post.

Mr. Altheimer: To or from?

The Witness: To Mr. Post.

(Thereupon paper was marked for Identification Commission's Exhibit 529.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 529, and ask you if that is the letter you have in mind? A. That is the letter I have in mind.

Mr. Haycraft: I offer in evidence Commission's Exhibit No. 529.

By Mr. Haycraft.

Q. The original of that letter was sent to Mr. Post, was it? A. That is correct.

Q. Who at that time was representing the Guild, was he? A. That is right. 7520

Q. That is, he was executive director of the Guild? A. Yes.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 529, was received in evidence.)

By Mr. Haycraft.

Q. Did you get any reply to that letter? A. I did.

Q. Do you have that here also this morning? A. I do.

(Witness produces paper.)

(The paper referred to was marked Commission's Exhibit 530 for Identification.) 7521

Mr. Albert: No objection, if it please the Court, except for the pencil notations and underlined parts in pencil that appear on the letter, which did not originally appear on it.

Examiner Bennett: Yes, they may be eliminated. It is received with the understanding that nota-

tions made thereon and markings may be eliminated.

Mr. Haycraft: Yes, it is perfectly all right with us.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 530-A to E, inclusive, was received in evidence. Being a letter of September 18, 1935, to Henry Wyzanski on the letterhead of the Fashion Originators Guild, signed by Albert M. Post.)

By Mr. Haycraft.

7523 Q. Now, Mr. Wyzanski, I believe you started to say that you had discussions on this matter as early as July and August, 1935, is that correct? A. No, I did not say discussions.

Q. What was it, correspondence or—was there any more correspondence on this besides what you have stated? A. No.

Q. It says in this first paragraph of Commission's Exhibit No. 529 from you to Mr. Post: "You will remember that when we spoke about not having copies of Guild Dresses in our Subway, you said that we would have an understanding that you would be most lenient with basement stores because, as you yourself said, they must meet competition." Now, what did you refer to there when

7524 you said "When we spoke about not having copies of Guild dresses" when you quoted Mr. Post? A. It must have been a discussion that we had on the subject; I do not recall what it was.

Q. But do you recall the discussion at all? A. No, I can't say that I do.

Q. Now, the next paragraph you refer to the style of 515 from Solo. Who is Solo? A. Basement resource.

Q. And that is not a member of the Guild? A. No.

Q. Do you recall what cost price that dress was? A. No, I don't.

Q. Now, I notice you name Carters, Gaylords, Pages, Graysons, who were they? A. Chain shops in Chicago.

Q. When you say you returned style 799 through D. R. A. Who was D. R. A.? A. Basement Dress Resource.

Q. Not a member of the Guild? A. No.

Q. What does the D. R. A. stand for? A. That I don't know; it is the name of a firm.

Mr. Post: Probably Daughters of the American Revolution.

The Witness: Daughters of the American Revolution, probably, Mr. Post says. 7526

By Mr. Haycraft.

Q. Then you refer to style 943 from Varsity; is that also a non-member? Of the Guild? A. Yes.

Q. When you used the language "best selling dresses" what did you have in mind there? A. Best selling dresses, that would be dresses in—dresses selling fast.

Q. Do you recollect as to how fast these dresses were selling? A. I don't have any recollection now, no.

Q. When you say "we have hurt the Subway's business" in what way did it hurt the Subway's business?

Mr. Albert: I object to the question, if your Honor please, no proper foundation has been laid as to any study, or analysis, or comparison of figures this man has made to enable him to reach a conclusion as is asked for. 7527

Mr. Haycraft: I do not think it is necessary.

Mr. Albert: Oh, yes.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception.

The Witness: What was the question, please?

(Last question read.)

The Witness: By returning dresses that were selling fast, instead of being able to keep them in stock and selling them, we were missing potential sales, and furthermore, by not being able to re-order them we were losing further sales.

By Mr. Haycraft.

Q. Now, the first paragraph of Mr. Post's reply, Commission's Exhibit No. 530-A to E, mentioning a man by the name of Johnny Groff—who is he? A. Head of our New York office.

7529 Q. You have an office in New York, do you? A. Yes, we do.

Q. Mention is also made of Weintraub—who is he? A. At that time he was divisional merchandise manager of the basement store, under me.

Q. In the third paragraph, I find this language: "Our position is that we will consider any request for exception of a specific model, but only with substantiating evidence of any claims. In such cases we expect the store to co-operate by removing the garments immediately from sale pending an investigation as to the existence of the same dresses in unsigned stores." I will ask you whether or not that policy was thereafter followed by your store in co-operation with the Guild? A. Yes, we followed that policy.

Q. What was the basis for an exception of a specific

7530 model?

Mr. Albert: That is objected to, if it please the Court; the letter speaks for itself.

Mr. Haycraft: I am asking him not for the letter, but what the basis was that the store actually followed, Mr. Examiner.

Examiner Bennett: Yes, followed in practice?

Mr. Haycraft: In practice.

Examiner Bennett: All right. Be more specific than the letter. Objection overruled.

The Witness: I don't recall any exceptions.

Mr. Albert: I am sorry, I did not hear the answer.

The Witness: I don't recall any exceptions.

By Mr. Haycraft.

Q. Do you recall any attempt to get exceptions, to get a model excepted from the requirements to be returned? It says here "We will consider any request for exception of a specific model." A. Well, whenever the Guild shopper pointed out we had what she said was a copy, we would 7532 always ask her for proof.

Q. And if she furnished proof, then what did you do? A. Immediately returned the dresses, we took them off sale upon her calling it to our attention, and then we returned them when we found out—when she had proved that they were copies.

Q. Well, did you make any investigation among your chain store competitors to see whether or not that model was being sold by them?

Mr. Albert: If it please the Court, that is objected to as to form, as being a leading question.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: May I have the question? 7533

(Last question read by the reporter.)

The Witness: Yes, we did, as outlined in our letter to Mr. Post, they were on sale at chain stores. We found that they were on sale at chain stores.

By Mr. Haycraft.

Q. When you found that they were on sale at chain stores, what was the practice? What did you do then?

A. We abided by the Guild's decision, and took them off sale. That is the reason for my complaint.

Q. You returned the models to the manufacturer? A. Yes, yes, we did.

Q. Did you ever make any request for an exception, as indicated in the paragraph I read to you a while ago?

Mr. Albert: That is objected, if it please the Court. The witness has previously testified he never did. That is why we have had seven or eight questions that have followed that answer in an attempt by Mr. Haycraft to lead the witness.

Examiner Bennett: Sustained.

7535

By Mr. Haycraft.

Q. Who was the shopper in the Chicago area? A. Miss Kindler.

Q. On page four of this letter from Mr. Post, there is a mention made of Miss Popel, who is she? A. She was the dress buyer for those basement departments at that time.

Q. In the third paragraph, third completed paragraph of this letter, there appears the statement: "We will ask our representative not to continue what we call 'open shopping.'" What does that mean? What does that refer to?

Mr. Albert: If the witness knows, your Honor.

7536

By Mr. Haycraft.

Q. Well, what is your interpretation of it.

Mr. Albert: We are not interested in his interpretation, if it please the Court. We want to know what it means, not what he thinks it means.

Mr. Haycraft: I am interested in what this witness' interpretation is, he received the letter.

Examiner Bennett: Yes, he may answer.

The Witness: Continuous shopping of our department in an endeavor to find Guild copies.

By Mr. Haycraft.

Q. Was that, as a matter of fact, discontinued at that time? A. I believe it was for a short period.

Q. Do you remember how long? A. No, but I think it was around two to three weeks.

Q. After two or three weeks, did Miss Kindler continue to shop in your department? A. Oh, yes, we have had returns from the basement since then to the Guild, because of her shopping. 7538

Q. Who is the other shopper besides Miss Kindler?

Mr. Albert: If it please the Court, there is no testimony here that there is another shopper.

Mr. Haycraft: All right. I am reading from the last paragraph on page four of this letter, Commission's Exhibit No. 530. "We are now employing two shoppers in Chicago."

The Witness: I don't know.

By Mr. Haycraft.

Q. Do you know who the other shopper was? A. I don't.

Q. Do you belong to the Michigan Avenue Guild, local Guild, Mr. Wyzanski? A. We do not. 7539

Q. Have you ever been requested to subscribe funds to defray the expenses of the shoppers in Chicago, on the part of the Guild? A. We have, we have been requested.

Q. Have you complied with that? A. No, we have not.

Q. Now, Mr. Wyzanski, what has been your experience in complying with the requirements of the Guild in returning copies to non-Guild manufacturers, subsequent to September 1, 1935, the date of this letter, September 18th.

Mr. Albert: May we have that question a little more definite, your Honor? It opens up a wide field, and I would like to be able to make an objection as to what the witness is going to answer. I think Mr. Haycraft can—if he has various subdivisions of the question, can very readily ask him each one first.

Examiner Bennett: Have you in mind something specific you want to bring out?

By Mr. Haycraft.

Q. Well, I will ask him first, whether or not Mandel
7541 Brothers has always returned garments which the Guild claims to be copies of styles of Guild manufacturers? A. Yes, we have always returned from our store Guild—copies of Guild dresses.

Q. Do you have an opinion as to the effect that that practice has had upon the business of your basement store, since that time? A. I have a definite opinion that it has hurt us.

Q. In what way has it hurt you? A. Because it is contrary to the policy of our basement store, which is to give fashion at a price, and we are not keeping faith with our customers in doing that, to the fullest extent, because we are not able to give them the closest approximation to what they want at the price they want to pay; therefore, I feel we have hurt our business. In addition, there has
7542 been certain best selling numbers which we have been forced to discontinue selling and have not been able to re-order. That is evidence of that.

Q. Has that had an effect upon your ability to compete with retail stores that are not co-operating with the Guild?

Mr. Albert: That is objected to, if it please the Court, absolutely no foundation laid for that question, as to what his competitors are doing, and what his ability is to compete.

Examiner Bennett: Well, I will let him answer.

Mr. Albert: Exception.

The Witness: We believe that if chain stores have copies of Guild dresses, as we know they have had from our various shoppers, and we don't have them, that we will not get the fullest amount of business because we are not carrying out our policy of giving fashion at a price.

Q. Do you have in mind any particular instance where this has been proved, since, say, September 1, 1935? A. In the basement store, none other than those quoted in that letter, but we have had many returns to the Guild, so I assume that is a common practice. 7544

Q. Well, has it affected at all any of your price lines in your other stores—other departments? A. Yes, I believe that in our lower-priced departments upstairs we have been hurt by not having Guild copies.

Q. Do you have any illustrations of that? A. We have one that I can remember, late this spring.

Q. What was that? A. We had a large order with a manufacturer for 2500 dresses, placed to meet the business we had with that manufacturer last year, when we sold some 6,000 of his dresses in June, and at the time the dresses started to arrive in the store Miss Kindler called to our attention the fact that one was a Guild copy. So we had to return that dress, which we did, and canceled all others of that particular style that were on order. 7545 In canceling that style, as well as returning those which we had received, it broke up our assortment, because this was a one-piece style, and in order to keep our assortment balanced from a customer viewpoint we had to cut down—we felt we had to cut down some of the dresses that were on order in two-piece styles, to keep the assortment in balance. In so doing, we canceled a great many dresses, and, as a result, did not secure the business until such time

as we obtained permission from the Guild to carry the dresses. That was an exception in the upstairs store, that we secured.

Q. Then you did secure an exception in the upstairs store? A. Yes, we did.

Q. Although you never have in the basement, is that correct? A. No, I don't recall any in the basement.

Q. Now, after this instance you have just now referred to, where you had to—do you know how many actual dresses were returned, or how many dresses were canceled, pursuant to that?

Mr. Albert: I am sorry, I did not understand
7547 the question. May I have it read?

(Last question read by the reporter.)

Mr. Haycraft: Pursuant to the instructions from the Guild.

The Witness: Originally, 1100 dresses out of the 2500 ordered.

By Mr. Haycraft.

Q. With whom did you take up the matter in trying to get an exception on that return? A. That was taken up by the New York office. I took it up first with our New York office, who took it up with Mr. Post, and they were unsuccessful in securing an exception, and I sent Mr. Post a wire.

7548 Q. Do you have that telegram here present in the court room? A. I believe we have.

Q. Telegram to Mr. Post. What date was that? A. I think it was June 11th, 12th, or around there.

(Whereupon a telegram was marked for Identification Commission's Exhibit 531-A and B.)

y Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 31-A and B, and ask you if you can identify that? A. es.

Q. What is it? A. It is a wire that I sent to Mr. Post.

Q. When?

Examiner Bennett: Date?

The Witness: On June 12th, saying that——

y Mr. Haycraft.

Q. 1936?

Mr. Albert: Never mind what it says. 7550

Mr. Haycraft: All right. I offer it in evidence.

y Mr. Haycraft.

Q. Is this the telegram you have in mind in your testi-ony just now (indicating)? A. Yes.

Mr. Keller: What year?

Mr. Haycraft: 1936.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for Identification Commission's Exhibits 531-A and 531-B, was received in evidence.)

7551

Mr. Haycraft.

Q. Now, after sending this telegram, did you get any ply to it from Mr. Post? A. I got a telephone call.

Q. How long after you sent the telegram, did he call you the telephone? A. I believe it was the same day.

Q. What did Mr. Post tell you on that occasion? A. told us that it had been a mistake in New York, that Harris thing had broken, and that it was a misunder-

standing with Sterns Brothers in New York, and, th
furthermore, he did not feel that the situation was co
parable in Chicago, where we had the line exclusively, a
people in various stores in New York had it and need
it in order to meet competition, and I brought out t
point that we had competition with our own figures. W
had sold 6,000 of the dresses last year, in that month, a
we had made plans to sell many this year, and that
were not meeting our sales of last year, or our potenti
sales figures, and that consequently it was working
hardship on us. I felt that—I told him that we were wi
ing to co-operate with the Guild as much as anybody el
7553 was, but that we wanted the same privilege that eve
other Guild store had, and that we did not see why
should be singled out in Chicago and compared wi
Sterns and Wannamakers and Loesers and Frankl
Simon, and stores like that in New York, and stores
other cities throughout the country, which were membe
of the Guild, but which were carrying these dresses, b
cause the Guild shopper evidently had not detected the
at those stores. And, after a long discussion which
had over the phone, upon our saying that we would ma
it very clear to Mr. Harris that we did not want to b
copies in the future, Mr. Post gave us the privilege of car
ing these copies.

Q. Harris was the manufacturer? A. Yes.

Q. Well, did he allow you to place any re-orders?

7554 Yes.

Q. He allowed you to complete this sale, at that tim
A. Oh, yes.

Q. How long were these dresses off sale? A. My origi
wire to the New York office asking them to see Mr. P
about it was on style 809; the first style which caused
the big cancellation, and that was on May 14th. And
telephone conversation with Mr. Post was, I believe,
June 12th, in answer to this wire, so that 809, the st

for which we had the most on order, was off sale for more than a month. By the time we got it in again, and in addition to which we had styles 813 and 829 coming into our store for an "ad" on a Tuesday morning, which was around that period, the middle of June, and on Monday, when we were going to O.K. the "ad" on these dresses, we got a notice from the Guild, a sketch showing style 813 as a copy, so we immediately took style 813, which we had just received, off sale, and changed our "ad" from a two cut "ad," to a one cut "ad," and ran style order 809, showing that we were still co-operating completely with the Guild.

Q. Now then, when did you place that back on sale? A. 7556
Well, I think we received shipment on these dresses around the 20th of June.

Q. Then did you continue to sell them, for how long a period? A. We still have them on sale, and we have sold over 6,600 of them, despite the fact that we started out selling beyond the peak of the season.

Q. Would you say those were hot numbers? A. I would say they were the hottest thing in summer dresses, and our sales passed the peak of the season, which would seem to indicate that our original plans of buying 2500 originally, so that we could more than double last year's sales, shows that our plans were correct, otherwise we would never have been able to sell that many past the peak of the season.

Q. What was the difference between those dresses and 7557
the dresses that you sold the year before, manufactured by the same manufacturer? A. They were of a different fabric, and styles were somewhat different.

Q. How long have you been selling those particular numbers in your store, 809, 813? A. Well, we really did not have a chance to sell 809. It was in, I would say, not more than two days before the Guild shopper caught it, and that led to our original return and cancellation and our wire to the New York office.

Q. And the 813 has not really been put on sale? A. N

Q. Or 809? A. No.

Q. Is that correct? A. Yes, that is correct.

Q. Did the orders which you placed with Mr. Harris f those garments contain the warranty clause? A. Yes, the did.

Q. Was any representation made to you by Harris as whether or not they were copies?

Mr. Albert: That is objected to, if it please t Court, as immaterial.

Examiner Bennett: I will let him answer.

(Last question read by the reporter.)

7559 The Witness: I was not there at the time t styles were bought, I don't know.

Mr. Albert: If it please the Court, I do not thi we have as yet had a statement as to what pri these dresses were selling at. I may be mistake about that. Did you get——

By Mr. Haycraft.

Q. What price were they? A. $5.95 retail.

Q. What was the cost price on them? What was t cost?

Mr. Keller: Wait just a moment.

Mr. Ben J. Altheimer: I do not wish to disclo that at this hearing, if the Court pleases.

7560 Mr. Haycraft: Very well. I will withdraw tha

By Mr. Haycraft.

Q. Were they silk dresses or cotton dresses? A. Th were synthetic fabrics.

Q. As I understood your testimony a moment ago, y said that 809—you referred to 809 and 813—I will a you whether or not the style 809 was a style known

your store prior to the time you placed your order? A. Yes, our buyers claimed that we had it the previous year.

Q. From the same manufacturer? A. Yes.

Q. Had you been successful, or otherwise, with it on the previous year? A. I don't recall.

Q. Pursuant to the policy of your store, would you have returned those dresses to the manufacturer if the Guild had not requested it?

Mr. Albert: That is objected to, if it please the Court, as immaterial.

Examiner Bennett: Sustained.

By Mr. Haycraft. 7562

Q. Your firm is still co-operating with the Bureau? A. Definitely.

Mr. Albert: That is a surprise.

By Mr. Haycraft.

Q. Has there been any change in the requirements on the part of the Guild as to placing of warranty stamp on orders?

Mr. Albert: May I have that question repeated?

(Question read by the reporter.)

The Witness: We are still placing the stamp on all our orders.

7563

By Mr. Haycraft.

Q. Including the basement? A. Including the basement.

Q. Is the shopper, Miss Kindler, still shopping your store? A. Yes.

Q. You are still returning copies to the manufacturer? A. Yes. We returned some last week.

Q. Do you keep any record of the copies that you return, as to the number of garments that you return? A. No.

Q. Can you recall the name of any of the manufacturers whose garments you have returned?

Mr. Altheimer: On behalf of Mandel Brothers, we wish to object to that question, on the ground we do not wish to disclose our sources, to whom we return, or from whom we purchase.

By Examiner Bennett.

Q. Is it your contention, Mr. Witness, that that would do your business an injury? A. Yes.

Mr. Altheimer: We feel it would disclose so-
7565 called trade secrets, our sources of supply.

Examiner Bennett: I shall not press it.

Mr. Haycraft: I think that's all.

Examiner Bennett: We will take a recess of ten minutes.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert, with the cross-examination.

Cross-examination by Mr. Albert.

Q. Would you mind telling us the difference between your position and that of divisional merchandise manager, and as to whether or not the divisional merchandise man-
7566 ager is your superior, or your subordinate? A. The divisional merchandise manager would be my subordinate.

Q. He would be your subordinate? A. Yes.

Q. Does the divisional merchandise manager have charge of the same number of departments of which you have testified, or a lesser number? A. Our organization is set up so that I have an assistant in my upstairs functions and a divisional manager in the basement, and in that upstairs department the assistant works in the same de-

partments I do, and in the basement the divisional manager works in the same departments that I do.

Q. So that the divisional merchandise manager has charge, under your supervision of Departments 103 and 115? A. That is correct.

Q. And no control over the other departments, is that it? A. Control over all the other departments in the basement, but not of the upstairs dress departments, or any upstairs departments.

Mr. Albert: Are these the exhibits?

Examiner Bennett: Do the gentlemen mind if I ask them not to smoke during the proceeding? I cannot make an exception. 7568

Mr. Albert: Before I proceed with the cross-examination of this witness, I would like to ask the Commission's attorneys as to whether or not they expect to call upon Mr. Post for any evidence or testimony with respect to Commission's Exhibits 527-A and 527-B, since, if the Commission does intend to call upon Mr. Post, who signed Commission's Exhibits 527-A and 527-B, I would like to curtail or even withhold my cross-examination of this witness with respect to those exhibits until Mr. Post takes the stand. He is the man who actually signed them, and had the conference with respect to that, and I do not want to waste time with this witness on it.

Mr. Haycraft: I haven't any idea of calling Mr. Post on those exhibits. They speak pretty well for themselves. 7569

By Mr. Albert.

Q. Now, Mr. Wyzanski, what percentage of your merchandise is purchased in New York? A. Is purchased here?

Q. In New York. A. I don't know.

Q. What percentage of your merchandise is purchased in Boston? A. I don't know.

Q. What percentage of your merchandise is purchased in Cleveland? A. I don't know.

Q. What percentage of your merchandise is purchased in Chicago? A. I don't know.

Q. What percentage of your merchandise is purchased in St. Louis? A. I don't know.

Q. What percentage of your merchandise is purchased in Philadelphia? A. I don't know.

Q. What percentage of your merchandise is purchased
7571 in Los Angeles? A. I don't know.

Q. By how much does the percentage of your merchandise purchased in New York exceed that purchased in Boston? A. By a very great deal.

Q. Have you any idea as to the amount? A. I would say at least 100 to 1.

Q. By how much does the purchase of your merchandise in New York exceed the purchases in Cleveland? A. By a greater percentage than that.

Q. You mean by that, that for every unit purchased in Boston you purchase 100 units in New York? A. That is right.

Q. By how much does the amount of your purchases in New York exceed that purchased in Chicago? A. Oh, I would say fifteen to one.

7572 Q. And St. Louis? A. On a 100 to 1 basis.

Q. Philadelphia? A. Slightly more than Boston.

Q. And Los Angeles? A. The same as Boston.

Q. On what calculations do you base your estimates? A. My best judgment, from memory, as to where we buy most of our merchandise.

Q. When did you last see the figures? A. I have never seen any such figures by cities, but I have some figures by resources, and that would be my judgment.

Q. That is a correlation of the figures by resources, as far as you know them to be located in a particular city?
A. That is right.

Q. What would you say was the total dollar volume of your purchases in New York?

Mr. Altheimer: We object to that.

Mr. Haycraft: That is objected to.

Examiner Bennett: The witness' counsel objects to that?

Mr. Altheimer: Yes. We prefer to have that line of questioning changed. We cannot see where the dollar volume in sales, of purchases, is material to the issues in this proceeding. 7574

Examiner Bennett: Are you inclined to press that, Mr. Albert?

Mr. Albert: If it please the Court, there has always been a very grave question that originated in the Commission's evidence thus far as to the resources of these various concerns. We have a witness coming in here that has given us an opinion as to where these resources come from, he has given us statements of comparisons of resources, such as New York purchasing 100 dresses to 1 purchased in Boston.

Certainly, I believe, that, under the circumstances, I should be permitted to find out upon what he bases his figures. 7575

In addition to that, if the Court please, I believe that in the interest of saving a great deal of time, by reason of the fact that this witness should have those figures at his finger tips, the evidence should be disclosed, in order to obviate the necessity of our subpoenaing the books of Mandel Brothers, to find out how accurate these figures are, which we intend to do if we do not get at least an estimate of them from this witness.

Examiner Bennett: That will probably be y
privilege when you get around to putting in y
side of the case. In view of your attitude, I th
I shall sustain the objection of the attorney
the Commission, who, I believe, has objected t
as irrelevant, and I consider it irrelevant, so
as I can see.

Mr. Albert: If it please the Court, may I p
out that in my opinion the attorney represen
this particular witness has no right to object
the ground of immateriality or irrelevancy.

Examiner Bennett: I am talking about the
7577 torney for the Commission. He objected.

Mr. Albert: Oh, I see. Exception.

Examiner Bennett: As I remember the rec
the attorney for the Commission did not place
within a specific limit.

Mr. Haycraft: No, I did not.

Examiner Bennett: He simply asked for ci

Mr. Albert: He did ask as to what cities
amount of merchandise was purchased.

Mr. Haycraft: I might point this out, Mr.
aminer, in view of the fact that the witness
asked, that this witness was not interrogated
to the effect of red carding, which is the usual p
where we get into this question about the ex
and the effect of the red carding. This wit
7578 was interrogated only as to the fact of the dema
of the Guild as they are enforced on members.

Examiner Bennett: I see no relevance of
matter.

Mr. Haycraft: I object to that.

Examiner Bennett: All right. Let us go ah

By Mr. Albert.

Q. Now, Mr. Wyzanski, is it part of your duties to supervise the actions of the buyers, and of your subordinates, in seeing to it that they honestly and fairly conform to the policies adopted by Mandel Brothers? A. Yes, it is.

Q. And in the performance of that duty, do you check up, upon the actions of the buyers in that respect? A. As many of them as time allows.

Q. I don't quite understand what you mean by "as many of them as time allows." Are there any buyers who have a free rein to do as they wish? A. No, but they are given leave for initiative, and to do things in accord- 7580
ance with our policies, and, naturally, since they are working for me, I am in contact with the major ones, but there may be, and undoubtedly there are, some details with which I am not familiar. I have over sixty departments under my jurisdiction. It would be impossible to know the details in all of them.

Q. Take, for example, the Guild program. Did you make any investigation as to whether or not all your buyers were placing the stamp upon their orders, as required? A. Oh, yes, I definitely did that.

Q. Did you make any investigation to determine whether or not the buyers were attempting not to purchase copies in their various departments? A. Yes, we made that investigation. 7581

Q. In all departments? A. Yes.

Q. You have testified to knowing a certain Miss Kindler. Who was she? A. A Guild shopper in town here.

Q. When did you first meet her? A. I can't recall.

Q. Have you any general recollection? I don't want any specific date. Within a month or two, or even three or four months. A. It was some time after I became associated with the upstairs ready-to-wear.

Q. And when was that? A. Early in September, 1934.

Q. And you met her shortly thereafter? A. I don't know whether it was shortly or not.

Q. Would you say you met her within six months afterwards? A. I wouldn't know that, I can't recall that.

Q. You haven't any idea at all? A. No.

Q. Do you recall the circumstances under which you met her? A. Without knowing definitely, it seems to me that I recall meeting her when she brought to our attention the fact that we had some Guild copy in stock, and asked us to return it.

Q. So that the first time you met her, was when she
7583 made the first complaint? Was that the first time you met her, when she made her first complaint as to copy? A. I believe it was. I can't remember.

Q. Would you say that you had not met her before then? A. No, I would not be able to say that.

Q. Do you recall whether or not Miss Kindler approached you in any way, and informed you of the fact that she was going to shop the store? A. No. I understood that to be her function.

Q. When did you so understand that to be her function? A. Some time after I became associated with the upstairs ready-to-wear.

Q. Then you understood that prior to the time when she first brought in a complaint with respect to a specific
7584 dress, that it was a copy, isn't that so? A. What was that question?

(Question read by the reporter.)

By Mr. Albert.

Q. Let me put it this way, Mr. Wyzanski. Was Miss Kindler introduced to you, or did you meet Miss Kindler, or did you hear of Miss Kindler as a Guild shopper, prior

to the time when she first made a complaint with respect to any one dress being a copy?

Mr. Haycraft: I object to that question on the ground the witness said he could not remember when it was he met her.

Mr. Albert: I think I should be able to prove the witness' memory, and point out certain things to him, in order to recall it to him.

Examiner Bennett: He may answer.

Mr. Haycraft: He said the first time.

Examiner Bennett: If you have any recollection.

The Witness: I believe that before I met Miss Kindler I knew there was such a person as Miss 7586
Kindler who was the Guild shopper. Does that answer your question?

Mr. Albert: Yes, I think that is fair.

By Mr. Albert.

Q. From whom did you learn that fact? A. My assistant, Mr. Byrne.

Q. And what is his position with Mandel Brothers? A. He is assistant to me in the merchandising of the departments under my supervision in the upstairs store.

Q. Do you recall what it was that he told you about Miss Kindler? A. I can't recall anything he did say, other than the fact that the Guild shopper was Miss Kindler.

Q. Did he tell you as to when he had met her? A. No. 7587

Q. Did he tell you as to the method of her operation? A. Why, I don't remember whether I knew of her methods from Mr. Byrne, or any previous time as to the method of Guild shopping.

Q. What was the method of Guild shopping? A. Miss Kindler would come in and shop the store, either shopping the store looking for copies, which I understand Mr. Post said in his letter was called open shopping, or she

would come in looking for a specific copy that some st
might have said we had, and she was checking up to s
if we had it.

Q. In that latter case, did she first approach you,
Mr. Byrne, or any of the buyers, and tell them she h
a report that a specific dress is a copy, "this is the diagra
of the dress. I am going to look for it. Do you kn
where it is"? A. No. Her procedure is to go into the d
partment, call it to the attention of the buyer, and a
him to take it off sale.

Q. That is, she would first see the buyer? A. Yes.

Q. Did you just hear me state your testimony here,
7589 the effect that there were two types of shopping? A. Y
Q. Was that correct? Was that what you testified t
A. I believe it was.

Examiner Bennett: I will ask the witness thi

By Examiner Bennett.

Q. Have you any detailed knowledge of the proceedi
by the shopper when she came into your store, that is,
to just what she did? A. Not in any particular instan
but her general procedure.

By Mr. Albert.

Q. That's all I want.

7590 *By Examiner Bennett.*

Q. You know her general procedure, do you? A. Y
I know her general procedure.

Examiner Bennett: All right. He may answ

By Mr. Albert.

Q. With respect to this second type of shopping,
which a complaint has been made that Mandels has in

stock a copy of a dress, what was the procedure of Miss Kindler with respect to investigating that complaint? A. Go in the department, speak to the buyer, look for the dress, with the help of the buyer.

Q. With the help of the buyer. Then what happened? A. If we had the dress, and if Miss Kindler had the sketch from the Guild, or proof that it was a copy, it was taken off sale and returned.

Q. What proof would you require that the dress was a copy? A. Either a sketch from the Guild, or a signed statement from Miss Kindler that it had been up before a Piracy Committee, and had been adjudged a copy.

Q. Do you know in what manner a dress is adjudged a 7592
copy before the Piracy Committee? A. No.

Q. Have you made any inquiry in connection with your duties in order to determine upon what basis a dress has been adjudged a copy, by reason of which adjudgment it is necessary for Mandel Brothers to return a dress?

Mr. Haycraft: Objected to, as too indefinite.

Examiner Bennett: Sustained. He does not seem to know about the piracy procedure, and what is the use of mussing it up?. That is in the record already.

By Mr. Albert.

Q. Mr. Wyzanski, when did you first hear of the Piracy 7593
Committee?

Mr. Haycraft: Objected to as not proper cross-examination, and no foundation laid.

Mr. Albert: This witness has testified, in response to the question, that dresses were returned after they were adjudged copies by a Piracy Committee. We then have a very startling statement that he knows nothing about how the Piracy Com-

mittee works. I don't think that I am bound by that, and I think I should be permitted to find out what he knows about a Piracy Committee, when he testifies to it voluntarily.

Examiner Bennett: You have the facts upon which to base a judgment as to that. I will sustain the objection to further questioning along this line.

By Mr. Albert.

Q. Now, Mr. Wyzanski, to your knowledge, is there anything secretive about the manner in which Miss Kindler
7595 shopped the various departments?

Mr. Haycraft: That is objected to, unless there is some definition of what he means by "secretive."

Mr. Albert: I would suggest the Commission explain what it means by that in its complaint.

Examiner Bennett: That is a general term. He may answer. Overruled. Have you the question?

The Witness: Was there anything secretive?

Examiner Bennett: Read the question.

(Question read by the reporter.)

The Witness: I would say "no."

By Mr. Albert.

7596 Q. That is, all your buyers knew her, you knew her, she came in openly, did not attempt to conceal her identity, or what she was doing in any manner, did she? A. No.

Q. Now, you testified, Mr. Wyzanski, that there were various conferences and discussions in your store upon the question as to whether or not Mandel Brothers should co-operate with the Fashion Originators Guild. First will you tell us who it was that engaged in those dis

cussions or conferences? A. Those that I attended, our general manager, Mr. Mandel, and Mr. Post.

Q. Which Mr. Mandel is that? A. Leon Mandel; and it was generally discussed from time to time at the luncheon table at which all of us ate.

Q. I am referring now particularly to the time when you signed the declaration of co-operation. A. That is what I am discussing.

Q. That is what you are referring to, also? A. Yes.

Q. Is the Mr. Leon Mandel that you refer to the gentleman that is sitting in the room at the present time? A. Yes, he is.

Q. What was the policy of Mandel Brothers with respect 7598
to copies and the sale of copies prior to the time when you signed the declaration of co-operation? A. I don't know what the policy was under Mr. Post.

Q. Mr. Post was in charge at that time? A. Yes.

Q. Do you think he would know? A. I would think so.

Q. And he is present in the room now, is he? A. Yes, he is.

Q. Now, Mr. Wyzanski, you testified that you took dresses off sale on proof that they were copies. Is this proof that you refer to the letter that you have also referred to which was generally shown you by Miss Kindler, to the effect that a style piracy committee had passed upon the matter? Is that the only proof you require?

Mr. Haycraft: I object to the form of the ques- 7599
tion. I don't recall that the witness used the word "proof."

Mr. Albert: If Mr. Haycraft will look at the record, he will see that the witness specifically said "proof."

Examiner Bennett: I will let him answer.

The Witness: Read the question, please.

(Question read by the reporter.)

The Witness: Yes.

By Mr. Albert.

Q. So that you had full faith and confidence in the actions of the Piracy Committee with respect thereto, and the reports on it presented to you by Miss Kindler? A. Well, I would not go so far as to say that. We would return the dresses, take them off sale and return them, because we had signed a declaration of co-operation with the Guild; and, since it is our function to bring to our customers the best that the market affords, we feel we have to have a free market to do that, and, in order to have a free market, we have to go into the Guild houses, and we would not do anything that would endanger our
7601 being deprived of that free market, consequently a statement from the Guild that such and such was a copy would be immediate cause for us taking them off sale and returning them, because we wanted to maintain that free market.

Q. You know what I asked you, don't you? A. I was explaining it.

Q. Let us find out whether Mandel Brothers is fish or fowl. Is it your contention that you are co-operating with the Fashion Originators Guild solely by reason of fear? A. We only are co-operating with the Fashion Originators Guild because we believe that in practice—that is, because although we believe that in practice it has hurt our business in the basement and in some of our upstairs de-
7602 partments, we are co-operating with them so that we can do as we have always done, bring the best in the market to our customers. We believe that is our function, that is for the upstairs store, and that also applies to the basement, in that we feel that we have a policy in our basement of fashion at a price, and we want to be consistent in that policy; and, as I said before, we believe the main buying in the basement is that of economical emulation.

Q. I would like to get a simple statement from you with egard to the policy of Mandel Brothers, and I will give ou all the opportunity in the world to explain all of the ancy terms which you have just used, but I would like simple statement from you as regards Mandels policy. oes Mandel, or did Mandel Brothers sign that declaraion of co-operation in the sincere belief that style piracy as an evil in the industry, and with the desire to elimiate that evil?

Mr. Haycraft: I have objected to it.

Examiner Bennett: You have your objection. Please don't try to argue across the table in that way. You may ask a foundation question. 7604

By Mr. Albert.

Q. Was there any decision at the conference with reect to whether or not there was such an evil existed the industry as style piracy? A. There was a discusion of whether or not there was such an evil as style iracy.

Q. What was said about it? A. That it was a very nteresting theory.

Q. Is that all that was said about it? A. And that the ress business being as bad as it was at that time, that might be a good thing to go along on this experiment.

Q. Is that all that was said about it? A. No. There as also said that if we did not, we would not have 7605 free market to buy the best merchandise available.

Q. Is that also what was discussed? A. Yes.

Q. What was the merchandise that was available to you the market at that time, do you know?

Mr. Haycraft: That is objected to.

The Witness: Prior to the signing of the declaration you mean?

By Mr. Albert.

Q. Yes. A. All the merchandise.

Q. What merchandise would you have been cut off from at that time if you had not signed the declaration of co-operation? A. Merchandise coming from those members of the Guild, those people who were members of the Guild at the time of the signing of the declaration.

Q. Who were the members of the Guild at the time of the signing of the declaration of co-operation? A. I don't recall them.

Q. Do you recall their number? A. A member?

Q. Do you recall their number? A. No.

7607 Q. Do you know whether or not it was more than a hundred? A. I believe it was less.

Q. About how much less would you say it was? Would you say it was ten?

Mr. Haycraft: Mr. Examiner, I object to the form of this question upon the ground that there is nothing to show that this witness is the one who discussed that matter and was informed as to the matter. The record shows that Mr. Post was the man who was in charge of that department. If you want to ask this witness what Mr. Post said about it, all right, but that is not this witness' testimony. I object to the form of the question.

7608 Mr. Albert: May I call the Court's attention to the fact that I specifically asked Mr. Haycraft before I commenced cross-examining this witness as to whether or not he was going to call the man who had all the knowledge of it, upon the ground I did not want to start cross-examining this witness as to his knowledge if he was going to call Mr. Post, and Mr. Haycraft stated he was not going to call Mr. Post. Now, he seeks to stop me from cross-examining this witness as to his knowledge as to what happened in his presence.

Mr. Haycraft: No, I am not objecting to your asking this witness as to what transpired at that conference, not in the least. My objection is running to the assumption by the cross-examiner that this witness took certain knowledge to the conference and gave it to the conference. He is examining him as if he were the one who knew those things. The record does not show that. If he wants to ask Mr. Post that, very well, but this witness is not in a position to do that.

Mr. Albert: Will Mr. Haycraft permit me to call Mr. Post while we are in Chicago?

Mr. Haycraft: No. You may call him when 7610
we get through with the Commission's side.

Mr. Albert: In other words, the Commission wants to leave its case in a very faulty position at the present time in Chicago as regards the fact that Mandel Brothers signed the declaration of co-operation, and does not want to call the man who signed it on behalf of Mandel Brothers, is that it?

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: I will sustain the objection. I think we are getting nowhere with that.

Mr. Albert.

Q. Prior to your signing the declaration of co-operation, did you receive any correspondence from the Fashion 7611
iginators Guild? A. Did I personally? No.

Q. Did you see any correspondence from the Fashion iginators Guild? A. No, I did not.

Q. Was there any discussion at these conferences as to number of manufacturers who were members of the ild? A. I don't know, I don't remember.

Q. Was there any discussion or investigation made prior your signing the declaration of co-operation as to the

number of manufacturers in your various markets who manufactured at the price lines which you say you wanted or needed? A. There were none made of me. I don't know whether anybody else did.

Q. Did anybody make any? A. That I don't know.

Q. Was your opinion sought as to the matter at these various conferences? A. Only in regard to the basement were they sought.

Q. Do you know whether or not Mr. Post made any investigation with respect as to those matters? A. I don't know.

7613 Mr. Albert: Does your Honor want to adjourn at this point? It is the customary adjourning time.

Examiner Bennett: Yes. We will take a recess until 2 o'clock for luncheon.

(Witness excused.)

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

(Hearing resumed at 2 o'clock P. M.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

7614

HENRY N. WYZANSKI thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Now, Mr. Wyzanski, did you make any reply whatsoever to Commission's Exhibit No. 530-A and 530-B? A. No.

Q. With respect to Commission's Exhibit No. 528-A——

Mr. Albert: Did you put this in evidence?

Mr. Haycraft: I thought I did; if I did not, I will offer it now.

Mr. Albert: It should be in evidence.

Mr. Martin: I think, as a matter of fact, it was not offered, Mr. Post spoke up at the time and said a copy of that letter was already in evidence. I do not think it was.

Mr. Albert: Do you know what the number of it was before?

Mr. Martin: No.

Examiner Bennett: Are you going to offer it? 7616

Mr. Haycraft: Yes, we will offer it.

Examiner Bennett: No objection to it. It may be received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 528-A and 528-B," was received in evidence.)

By Mr. Albert.

Q. Did you have any conference with Mr. Post with respect to the subject-matter of this letter, Commission's Exhibit No. 528, dated November 6th, 1935? A. No, not that I can recall.

Q. Did you have any conference with him prior to the receipt of this letter? A. Not that I can recall. 7617

Q. When you say "not that you can recall," are you restricting your answer to a personal conference with Mr. Post, or do you mean by that that you were not present at any conference which was addressed by Mr. Post? A. I meant it on a personal basis.

Q. But you were present at conferences that were addressed by Mr. Post, were you not? A. Yes.

Q. With respect to the subject-matter of this letter?

Mr. Martin: Show him the letter.

Mr. Albert: What is your answer?

Mr. Ben J. Altheimer: Show the witness the letter so that he knows what you are referring to.

Mr. Albert: I am sorry, I thought he knew what I was referring to.

The Witness: Yes.

(Mr. Albert hands letter to the witness.)

The Witness: No, I was not.

By Mr. Albert.

Q. Now, as a matter of fact, and prior to the receipt of
7619 that letter, was not Mr. Post present in Chicago, and did he not address a conference attended by various retail establishments of the City of Chicago? A. I have attended conferences at which Mr. Post spoke in Chicago; but I don't remember the date of them.

Q. Were they not with respect to the subject-matter of that letter? A. I only remember being at one conference in Chicago at which Mr. Post addressed the merchants here, and I—my recollection of that conference did not include all the things in here.

Q. Did not include all the things in there? A. No.

Q. What was there in that conference addressed by Mr. Post that covered any of the subject-matter in that letter? A. My recollection of that conference was that it was the
7620 hope of the Guild that they would be able to get the chain stores to sign a Declaration of Co-operation with the Guild, and it was the hope at that time that if he was successful, that would extend our own protection down into lower-priced lines.

Q. What was the date, approximate date, Mr. Wyzanski? I don't want to hold you down even to the precise months of that conference? A. I haven't—I really don't remember.

Q. Would you say it was the summer of 1935? A. I really don't know.

Q. Would you say it was the spring of 1935? A. I don't know.

Q. Would you say it was the winter of 1934? A. I know it was not the winter of 1934, because it was after I came upstairs.

Q. So that it was some time in 1935? A. I would say yes.

Q. Did Mr. Post tell you in what manner he expected to get the co-operation of the chain stores? A. As I recall it, he said that he would—expected to get their co-operation by having them sign the Declaration of Co-operation.

Q. Was that the only thing that was discussed with respect to that? A. That I cannot say, I cannot remember. 7622

Q. Now, as a matter of fact, was not the subject of that conference the inclusion in the Guild of the manufacturers of $6.75, $7.75 and $8.75 dresses? A. It may have been, I don't remember.

Q. Is not it a matter of fact that the question at that conference was directly put to the retailers then present, as to whether or not they had any objection to the inclusion in the Guild program of manufacturers of $6.75, $7.75 and $8.75 dresses? A. My recollection is that it was expressed as a hope.

Q. Did you or anybody representing the Mandel Brothers oppose any steps which the Guild might take towards the fruition of that hope? A. No, we did not.

Q. Did you, in any way, present any arguments opposing the inclusion in the Guild of manufacturers of $6.75, $7.75 and $8.75 dresses? A. No. 7623

Q. As a matter of fact, is it not true that every single retailer in the Chicago district who was present at that conference expressed his affirmative consent and acquiescence to the Guild, including in its program the $6.75, $7.75 and $8.75 manufacturers? A. I don't remember that.

Q. Do you recall that a vote was actually and specifically taken upon the proposition? A. No, I don't recall such a vote.

Q. Would you say that there was no vote taken? A. No, I couldn't say that.

Q. In other words, you do not recall one way or the other whether a vote was taken? A. I do not recall whether a vote was taken or not.

Q. After Mr. Post addressed this conference, did Mandel Brothers, through you, or any other of its subordinates, employees or executives, express its opinion with respect to the subject-matter of the conference either in letters to the F.O.G.A., or otherwise? A. No, we did not, although I believe it is my recollection that Mr. Groff, the head of our New York office, spoke to Mr. Post about it.

7625

Q. Was that discussion which you referred to as having occurred between Mr. Groff and Mr. Post on the question of policy, or was it on the question arising by reason of a particular dress which had been adjudged a copy? A. On the policy as affecting the basement—I don't know that—I cannot answer that question, I was not there, I was not there.

Q. In other words, is this a fair estimate of what you wish to say, that Mr. Groff and Mr. Post had a conversation about something, that you do not know what it was? A. Well, I know that it was in respect to the basement not being able to carry copies, contrary to our original agreement.

7626

Q. But was there anybody acting under the authority of Mandel Brothers, either Mr. Groff, Mr. Leon Mandel, Mr. Weintraub, Mr. Byrne, or anybody acting with the authority and consent of Mandel Brothers, who, in any method, either orally or in writing, dissented from the policy of including in the Guild program $6.75, $7.75 and $8.75 manufacturers? A. Not that I know of.

Q. Tell me this, Mr. Wyzanski, assuming that Mr. Post said, as you have testified, that it was the policy of the Guild to include as co-operators the retail chain stores, were you in favor of that inclusion?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: I think it is most relevant, your Honor, in the light of the testimony.

Mr. Haycraft: Relevant to what? Of what this witness was in favor——

Examiner Bennett: What do you expect to show by that?

Mr. Albert: Since you have testified, Mr. Wyzanski, that Mr. Post stated that the Guild expected to take into co-operation the retail chain outlets, did Mandel Brothers, through any subordinate of any kind, protest against this inclusion, either in writing or orally? 7628

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled; he may answer.

The Witness: No, because we already had a letter on file making it apply only to the upstairs stores.

By Mr. Albert.

Q. You mean to tell us that it was Mandel Brothers' interpretation of the inclusion of the hope of including chain store operations in the Guild program, that it was not to apply to your basement store? A. No, I mean to say that we already had our objections on file. 7629

Q. Yes. A. And if a decision were reached by the Guild it certainly would have been reached over our objections.

Q. Now, Mr. Wyzanski, did not you understand the purpose of that conference, whatever may have been the understanding before that time, to be the desire on the part

of the F.O.G.A. to get the consent of all retailers upon inclusion in the Guild program of, one, $6.75, $7.75 and $8.75 manufacturers, and, two, of chain store retailers? A. I recall that as a hope, yes, that was expressed then.

Q. Well, was not that the purpose of the meeting to find out whether or not there was any objection to that broadening of the F.O.G.A. program? A. I looked upon it as a statement of facts, in the making of which decision we would not have any part, like other decisions.

Q. And you just sat idly by and listened to a statement on the part of Mr. Post, without in any way trying to enlighten him as to your opinions on the matter, is that so?

7631 A. Yes, I think Mr. Post was aware of my opinion.

Q. When did you communicate it to him? A. Well, from the time of our original discussion, that the basement should be included.

Q. When was this? A. December of 1933, at the time we signed the original declaration.

Q. You were present at this conference, were you not? This one you just referred to?

Q. Yes. A. Yes.

Q. You noted your appearance? A. I don't know what that means.

Q. Was your name noted down as being present at this time? A. I was present, I don't know if there was any roll call.

Q. Now, Mr. Wyzanski, what was the purpose of the

7632 original reservation that was made in the signing of the Declaration of Co-operation? A. Not allowing copies of styles in our basement store would be inconsistent with the policy of our basement store; which was to promote style merchandise at a price, fashion at a price, and, as I said before, the leading buying motive for customers coming into the basement is that of economical emulation. They want the closest approximation they can possibly get to better merchandise at the price they can afford to pay.

and we felt that the inclusion of copies from our basement store would be inconsistent with our basement policy. We owe it to our customers.

Q. What was the discussion at that conference with respect to the elimination of copies in your upstairs store, in order to show why you have a reservation in your basement you had to know the problem that was confronted at the upstairs store, did you not, and you discussed that, did you not? A. I don't believe I had to know it, no, I was merchandising the basement at that time.

Q. Do you know anything at all about the problem that confronted your upstairs store? A. At that time you mean?

7634

Q. Yes. A. Just by hearsay of being in on several meetings and discussions and luncheons and the like.

Q. What was said at those discussions and conferences and luncheons or wherever else you got the information from, as to what Mandel Brothers instituted as respecting its upstairs store?

Mr. Haycraft: Objected to, as there is no showing that Mandel Brothers instituted any policy with respect to its upstairs store.

Mr. Albert: If Mr. Haycraft wants to concede they never obeyed the declaration, I will take the concession.

Mr. Haycraft: It is an entirely different proposition, including something and co-operating, are two entirely different terms, as I understand it.

7635

Examiner Bennett: I do not believe this witness is competent to go into the policy of the upstairs store at this time. There is nothing in the testimony indicating that he is.

By Mr. Albert.

Q. Prior to 1934, Mr. Wyzanski, you were, I believe, in charge solely of the basement store? A. Prior to September of 1934?

Q. Yes, and your first connection with the upstairs store, the upstairs department store, was after September of 1934, is not that correct? A. First connection of a direct responsibility?

Q. Yes. A. I was on the advisory board for the store.

Q. You were on the advisory board for the upstairs store? A. Yes.

Q. Prior to September 1, 1934? A. Yes.

Q. When did you get on that advisory board? A. I don't recall the date.

Q. All right, did not you discuss, as a member of the advisory board for the upstairs department, what effect

7637 the Declaration of Co-operation would have on your upstairs store? A. I don't believe so.

Q. Your upstairs departments? A. I don't believe it was ever brought up in an advisory board meeting.

Examiner Bennett: Excuse me. Were you a member of the advisory board before that declaration was signed?

The Witness: Yes, I was.

Examiner Bennett: I will let you go into that.

Mr. Haycraft: I would like, Mr. Examiner, to find out what that advisory board was, counsel said for the upstairs store. Now, I do not know whether that is——

Mr. Albert: Counsel did not say; the witness said that.

7638

Mr. Haycraft: No, the witness did not say that. That is the point. That is the reason I am clarifying that. Read the record.

(Thereupon the record was read as follows: "You were on the advisory board for the upstairs store? A. Yes. Q. Prior to September 1, 1934? A. Yes. Q. When did you get on that advisory board? A. I don't recall the date. Q. All right, did not you discuss, as a member of the advisory board for

the upstairs department, what effect the Declaration of Co-operation would have on your upstairs store? A. I don't believe so. Q. Your upstairs departments?")

By Mr. Albert.

Q. Does not the advisory board, Mr. Wyzanski, cover the whole store? A. Yes.

Q. Does not it consider the problems of the whole store? A. Some of them, when they are brought up.

Q. Does not it consider the policies for your upstairs ready-to-wear departments? A. It may and it may not. We have no occasion—it is purely advisory to the management. 7640 The management may or may not bring things up to the advisory board.

Q. Just exactly who are the advisory board? Are they the experts on policies for the store? A. They are the heads of the various pyramids within the store.

Q. Do you mean to tell us the advisory board of Mandel Brothers did not consider the effect of the signing of the Declaration of Co-operation on the upstairs departments or the ready-to-wear departments, the upstairs store? A. I mean that exactly. As I recall it, it was a determination made by Mr. Post with Mr. Mandel.

Q. And nobody else had anything at all to say about it? A. In making the decision, no.

Q. Did anybody discuss it? A. Not at the advisory board. 7641

Q. Well, now, you say not at the advisory board; where was it discussed? A. Because, as I told you before, I have heard it discussed at lunch, and I have heard it discussed in Mr. Mandel's office with Mr. Post.

Q. Who else was present besides Mr. Mandel and Mr. Post and yourself? A. I don't recall anybody else being there.

Q. And they discussed the effect on the upstairs department store of the signing of the Declaration of Co-operation? A. That I cannot recall; there were many conferences, I may have been in only one or two of them.

Q. Do you recall the ones that you were at? A. Yes, I do, some of them.

Q. What was said as regards the upstairs departments? Forget your basement for a while. A. As I recall it, it was the feeling that Mandel Brothers——

Q. No, no, I do not want the feeling. What was said, Mr. Wyzanski? A. That is what I am trying to give you.

Mr. Haycraft: Who said it?

7643

By Mr. Albert.

Q. And who said it?

Examiner Bennett: It is a good deal to ask the witness.

The Witness: I cannot answer.

By Mr. Albert.

Q. Just give us the general substance of the discussion. A. That is what I am trying to do. The feeling was that Mandel Brothers——

Q. No, Mr. Wyzanski, please do not give us the feeling. A lot of things can be said that resulted in an entirely

7644 different feeling. What I would like to have is what was said, not the interpretations, your feelings that resulted from a result of what was said. A. I don't believe I could do that, sir.

Examiner Bennett: All right. If you do not recall it——

By Mr. Albert.

Q. So, then, in so far as you are concerned, you can throw no light whatsoever upon the policy of Mandel

Brothers signing the Declaration of Co-operation with respect to the upstairs departments, is that correct? A. That is correct.

Q. And you do not know how Mandel Brothers felt about signing the Declaration of Co-operation with respect to its upstairs departments, is that so?

Mr. Haycraft: Object to it, he has tried his best to tell you what that was, and you would not take it.

Mr. Albert: The sum and substance of it is nothing.

Mr. Haycraft: You would not let him say what the feeling was. He tried twice to tell you what it was. 7646.

Mr. Albert: Since when has the Commission tried its cases on feelings?

Mr. Haycraft: You asked for it right now, and that is what he is trying to tell you.

Mr. Albert: I did not ask for that.

Mr. Haycraft: Read the question and you will see.

(Last question read as follows: "Q. And you do not know how Mandel Brothers felt about signing the Declaration of Co-operation with respect to its upstairs departments, is that so?")

Mr. Albert: As regards to what they said, Mr. Wyzanski.. 7647.

Mr. Haycraft: I object to that last question.

Examiner Bennett: Well, sustained.

The Witness: What did you say?

Examiner Bennett: I sustained the objection.

By Mr. Albert.

Q. Are there any intra-office communications in Mandel Brothers between Mr. Leon Mandel and yourself, between

Mr. Mandel and Mr. Post, or any other of the executives or employees or buyers of Mandel Brothers with respect to the consideration of whether or not Mandel Brothers should sign the Declaration of Co-operation for its upstairs departments? A. I have looked through the file and I could not find it.

Q. None whatsoever? A. None.

Q. How long were you in charge of the basement store of Mandel Brothers, Mr. Wyzanski, before September, 1934? A. I went to work there on September 1, 1927, as assistant merchandise manager, and became merchandise manager of the basement January 1, 1929.

7649 Q. Prior to your connection with Mandel Brothers, with whom were you associated? A. William Filene & Sons, Boston.

Q. William Filene & Sons of Boston? A. Yes.

Q. Were you in charge of the basement there also? A. No.

Q. Were you in the basement in Filenes? A. I was.

Q. Now, Mr. Wyzanski, you referred to approximately 6,600 dresses that you sold, is that correct? A. That's right.

Q. Of that 6,600, how many were copies, do you know? A. No, I believe three styles were adjudged copies. I don't know how many of the 6,600 were of those three styles.

7650 Q. How many styles were encompassed within that order of 6,600 dresses? A. There was no order for 6,600 dresses.

Q. You mean that there were several orders placed, aggregating 6,600 dresses? A. I mean that we had sold 6,600 dresses.

Q. Do you mean that you purchased more than 6,600 dresses? A. That's right.

Q. How many dresses did you purchase? A. It is very difficult to tell how many dresses were ordered, because

there have been so many cancellations forced on us because some of them were Guild copies, the first of which I mentioned to you when we had the style 809, and then when we were planning to run that off, cut ad style 813, and in order to do which we had to cut our original order down because it made the two-piece dresses out of proportion to the one-piece dresses; so that I cannot tell just what the orders, minus the cancellations, totalled.

Mr. Bennett: I see. You have not the information?

The Witness: Not on the total number of orders.

Examiner Bennett: I see, all right. That's it.

7652

By Mr. Albert.

Q. How many styles were encompassed within the orders that were placed from which you sold the 6600 dresses? A. Originally six, and then three more were added.

Q. Nine. Of that nine, three have been adjudged to be copies, is that so? A. That's right.

Q. Now, would you say that the sales of those nine styles bear the same proportion as the amount of copied styles bear to the total amount of styles? A. Would you mind repeating that?

Q. That is, would you say that approximately 4400 dresses were sold of the other six styles, and 2200 dresses were sold of the style 809, of the other three styles that you say were adjudged copies? A. No, no, I would not say that. 7653

Q. What would you say the figures were? Have you any idea? A. I haven't got them in my mind, no, but I know that is not the fact, as you have stated it.

Q. Would you say it was fifty-fifty? A. I can't answer that, it would be a guess on my part

Q. Were the other styles that you obtained, and which were included among the 6600 dresses, good styles? A. Yes, I believe they were good styles.

Q. Would you call them, in the parlance of the trade, hot numbers? A. Yes, some more than others.

Q. Well, of course, I mean— A. They were not all equal.

Q. Every style is not a hot number, we will all concede that. Now, with respect to the other six styles, that were not adjudged copies, you were not stopped originally from selling those, were you? A. No, we were not stopped from selling them, but it broke up our selling program.

Q. Just what do you mean by that? A. Well, as I say, we set out to do a big business because we knew we had sold so many last year, 6,000 of them, and we
7655 had every feeling that they were hotter this year than last year, to quote your word, and we went in with an original order of 2500 without having sold any, and so we must have had a lot of confidence in the merchandise when, because Miss Kindler had called our attention to the fact that style 809 was a copy, we returned style 809 and we cancelled those on order. I mean, they all did not come in, it was a part shipment. We then had to cut our order down considerably—the number of 809 that we had—because it made it out of proportion. 809 was a one-piece style, and so we had to cut down some of the other numbers, even though they were not copies, and in doing so we destroyed the advertising plan. We did not have enough of the goods. It was very difficult to go into the large advertising campaign that we had
7656 originally planned on.

Q. Were these styles that you have just referred to the same style as Harris had used the previous year? A. No. I said that there was one style 829 that was very similar to the style that he had used last year.

Q. Now, Mr. Wyzanski, have you any idea, or do you know anything at all with respect to the background of the sale of these dresses by Harris, Mandel Brothers, and to these other retail stores, which you had testified had them? A. I don't know what you mean by background.

Q. Do you know whether or not it was a deliberate plan of Harris to dump these copies on the market?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Read the question.

(Last question read by the reporter.)

Mr. Albert: At this particular time?

The Witness: No, I don't know.

Mr. Haycraft: Wait a moment, wait a moment, wait for a ruling.

Examiner Bennett: Well, I think the question is of doubtful validity, but it does not mean anything anyway. 7658

Mr. Haycraft: No.

Examiner Bennett: The witness does not know.

By Mr. Albert.

Q. Was Mandel Brothers in any way associated with the A.M.C., Mr. Wyzanski? A. Not in its domestic business, no.

Q. Well, just what are you differentiating? A. We do some of our foreign buying through the A.M.C. foreign offices.

Q. And you, therefore, have access to the A.M.C. for information and for assistance and advice on various things? A. Not on domestic matters.

Q. Not on domestic matters? A. (Witness shakes head negatively.) 7659

Mr. Haycraft: You will have to say "yes" or "no," the reporter cannot get the shaking of your head.

The Witness: No.

By Mr. Albert.

Q. As a matter of fact, Mr. Wyzanski, does not Mr. Groff of your New York office have occasion to very often

consult with the A.M.C. as to policies of buying, as to various resources, and things of that concern? A. In fulfilling his function as head of the New York office he consults with most everybody in the market for advice.

Q. Including the A.M.C.? A. Yes, he consults with them too.

Q. Is it not a matter of fact that Mr. Groff in his capacity as head of the New York office joined the A.M.C. and subsidized advertising? A. I don't get that at all.

Mr. Haycraft: Read the question.

Mr. Albert: The question is withdrawn.

Mr. Haycraft: Physically?

7661 Examiner Bennett: It is withdrawn.

By Mr. Albert.

Q. Now, did you ever have any discussions with Mr. Harris with respect to this particular order? A. The original order?

Q. Yes. A. No.

Q. None whatsoever? A. No.

Q. The order was just placed? A. Oh, I knew about it.

Q. Without any discussions? What? A. Oh, I knew about it long before the order was placed, I knew that they were going to try to do something to beat our last year's figures and go ahead with them.

Q. Did not Mr. Harris tell you that these three styles
7662 were copies of merchandise? A. No.

Q. You are quite certain of that? A. Quite certain.

Q. Now, after the original order was placed, Mr. Wyzanski, did you have any conferences with Mr. Harris with respect to the order? A. No—what do you mean? How long after?

Q. Any time after, after you placed the order? A. Not until such time as we had sent back 809 and cancelled the rest of 809.

Q. Is it not a matter of fact that the first time that you had any knowledge of the fact that these dresses were being sold in the New York market was when Mr. Harris informed you of that? A. Oh, no, no.

Q. When did you first learn that these dresses were sold in the New York market? A. When I saw the ads in the New York stores, Guild stores.

Q. How long was that after you received notice of the fact that the dresses that you had were copies? A. As to date, I cannot answer, but I know that I saw the ads on these styles after we had returned ours, run by Guild stores in New York.

Q. Do you know when these dresses were delivered to 7664
the New York stores, or when they placed their orders for these dresses? A. Since ours was one of the initial orders, why, I assume, it was after ours.

Q. That is exactly the point. Was not Mandel Brothers the first concern that received a delivery of these dresses from Harris? A. Well, that I couldn't tell, I don't know.

Q. Did you not just say you were one of the initial stores? A. To order?

Q. Yes. A. Yes.

Q. What makes— A. It would be natural if you had that much business to go against, you would start early planning to go against it.

Q. You do not mean to convey to the Commission the idea, do you, that the New York stores were selling these 7665
dresses for some time prior to the delivery to you of these dresses and for some time prior to you being informed that you were handling copies? A. Prior to what delivery?

Q. Prior to the delivery to you of these styles? A. You mean prior to the delivery which we were forced to return?

Q. Right. A. That I don't know.

Q. Now, as a matter of fact, Mr. Wyzanski, as a result of the correspondence attached with respect to this particular transaction, and as a result of the conferences or the discussions that you had with Mr. Post, and from what you heard on behalf of Mr. Harris, is not this the fact, that Mandel Brothers were the first ones to place the order with Harris, that subsequently the New York stores in a very short time thereafter also placed their orders and placed their advertising for it, and as soon as it was pointed out that the New York stores had these copies, they also were informed of the fact that they were selling copies and were ordered to take them off, or
7667 requested to take them off, is that not so? A. Well, part of that question you asked me something about whether the New York stores ordered, but I have no idea when they ordered theirs.

Q. And you have no idea from that, despite the communications that you had with respect to this matter with the F.O.G.A., and despite your discussions with Mr. Post, and whatever discussions you may have had with Mr. Harris, or with Mr. Groff of your New York office? A. As to when the other stores originally ordered theirs, is that the question?

Q. Yes. A. I don't know when the other stores originally ordered theirs.

Q. How long a period of time would you say elapsed between the time that you were notified that you were
7668 selling a copy, or had a copy in stock, at the time that you saw the dress advertised in the New York market? A. I remember the date as being the 14th that I received a wire in our New York office, asking them to speak to Mr. Post about the possibility of our carrying style 809, and it was some time from between then, and I would say the end of the month, that I saw these ads in New York after we had returned style 809.

Q. This, you say, was about May 14th? A. My wire to our New York office was of May 14th to speak to Mr. Post about it.

Q. About the question of whether or not 809 was—A. About——

Q. —I mean were copies? A. Yes, about asking Mr. Post's permission for us to carry it.

Q. You are certain that that wire was not sent in April? A. Yes, quite certain.

Q. You are sure of that? A. Yes, I think so.

Q. It was sent around May 14th? A. Yes.

Q. That is when you first learned or had any suspicion of the fact that 809 was a copy? A. Yes, it was called 7670
to our attention by Miss Kindler immediately preceding that.

Q. Yes, and you are as certain of that testimony as you are of everything else you testified to? A. Well, I am reasonably certain of it.

Q. And are you as certain of everything else as you are of that? A. I cannot differentiate.

Mr. Haycraft: I object to that question.

Examiner Bennett: Sustained.

The Witness: Might I refresh my memory and look up that wire? I have it here.

Examiner Bennett: Yes, certainly.

The Witness: Will you get that wire? So that I can refresh my memory on it? 7671

Mr. A. J. Altheimer: It is an exhibit, is it not?

Mr. Haycraft: No.

The Witness: I asked the Court if I could refresh my memory.

Mr. Albert: May I ask the indulgence of the Commission a moment or two?

The Witness: May I talk to my attorney a moment?

Examiner Bennett: Yes, certainly.

(Witness leaves the stand.)

Examiner Bennett: The Examiner has permitted the witness to refresh his recollection as to that date in order to get that date correct.

If you wish to you may ask him about it, if you wish.

By Mr. Albert.

Q. Do you still say the date is May 14th? A. The date on it, the date on which I wired the New York office—it was May 14th.

7673 Mr. Albert: I would like to have the telegram marked for identification.

(Thereupon a paper was marked Respondents' Exhibit 52 for Identification.)

Mr. Martin: That is this year?

The Witness: Yes.

Mr. Albert: I offer in evidence the Respondents' Exhibit No. 52.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for identification Respondents' Exhibit 52, was received in evidence.)

By Mr. Albert.

7674 Q. Now, Mr. Wyzanski, I believe that in taking out Respondents' Exhibit No. 52 in evidence you also took a letter from your file by which you refreshed your recollection, is that right? A. No, it was just attached to that.

Q. Attached to that telegram? A. Yes.

Q. Did it have anything to do with the telegram?

Mr. Haycraft: Did it have anything to do with the telegram—that is objected to.

Examiner Bennett: I will sustain the objection to the examination.

By Mr. Albert.

Q. Did the letter which you took from your file in any way amplify or give any information with respect to the subject-matter of the telegram in so far as Mandel Brothers is concerned?

Mr. Haycraft: I object to the fishing expedition.

Mr. Albert: It certainly is a fishing expedition, I admit it.

7676

Mr. Haycraft: I object to it.

Mr. Albert: This witness took a letter which certainly had some connection with the telegram, your Honor.

Examiner Bennett: I sustain the objection.

Mr. Albert: I offer in evidence a letter extracted by the witness from the letter file to which he has referred to as being attached to Respondents' Exhibit No. 52, which is now in the right inside coat pocket of the witness.

Examiner Bennett: That offer will be stricken from the record. There is no such letter before the Examiner.

Mr. Albert: I offer in evidence a piece of paper that is in the right inside coat pocket of the witness, which he has testified was attached to Respondents' Exhibit No. 52.

7677

Mr. Haycraft: Where do you think you are, in Turkey, Russia, or where?

Mr. Albert: I thought so all the way up to now. I think you are beginning to see the relevancy of it.

Mr. Haycraft: I am beginning to see your tactics, all right enough.

Examiner Bennett: The language of the offer may be stricken from the record.

Mr. Albert: Don't tell me that the Government is afraid of the respondents.

Mr. A. J. Altheimer: Your Honor please, the only purpose the witness had was to look at the telegram for the purpose of refreshing his memory. Counsel has asked him a pointblank question, "Are you as sure about that date as you are about all the other testimony you have given?", and the witness went to the record for the purpose of finding that one telegram to refresh his memory on the subject.

7679 Examiner Bennett: Yes, we are not going any further in the record on that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what do you mean in Respondents' Exhibit No. 52, "Disappointed delivery so bad"? A. May I see it? It meant that we had not gotten complete delivery on our 2,500 dresses.

By Mr. Albert.

Q. When did you get complete delivery? A. Well, we never got them, because we had to cancel.

7680 Q. Is that what you were referring to? Is that what you were referring to by the bad delivery, "disappointed delivery so bad"? A. Disappointed on our delivery of our complete order.

Q. When did you return Harris style 2809? A. I have no recollection of that date; prior to that, I imagine, I am not sure.

Q. Is it not a matter of fact that you did not return any Harris style number of dresses until after this tele

gram? A. Oh, yes, excuse me, we took them off sale, we did not return them.

Q. So that at the very time that you were informed that Harris style 809 was a copy, the delivery was bad up to that time, is that not so? A. Yes, but there is a big distinction between May 14th and June 20th.

Q. But up to May 14th delivery on style 809 was bad, was it not? A. Wasn't complete.

Q. So that your previous testimony that "disappointed delivery so bad" referred to the fact that you could not get delivery because it was a copy, that is so, is it not? A. I don't recall making that statement.

Q. Did not you attempt to convey the thought that "disappointed delivery so bad" referred to the fact that delivery had been stopped on 809 because it was a copy? 7682
A. At the time I sent this wire, as you pointed out, we had not as yet retutrned the dresses, because the wire said: "However, under present arrangement compelled to return copies suggest Groff or Leon Mandel state situation to guild to see if exception could be made to keep us competitive with other stores that have copies of same style." So at that time we had hopes of continuing running style 809, otherwise I never would have made this reply and among other styles that were not then on delivery, 809 was one. Is that what you meant?

Q. And the fact delivery was bad had nothing whatsoever to do with the fact that you had been informed that it was a copy, was that not so? A. I don't see any relation 7683
between the two.

Q. How far behind was Harris in deliveries on May 14th?

Mr. Haycraft: That is objected to. There is no relation between the two. Why go into it?

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Albert: May I point out to your Honor the purpose of that question?

Examiner Bennett: Yes.

(Short interruption.)

Examiner Bennett: You may answer.

The Witness: I don't know.

By Mr. Albert.

Q. Have you any idea? A. No, I cannot recall.

Q. Were they eight weeks behind on delivery? A. I don't know the date of the original order. I couldn't say.

Q. Can you get it? A. I imagine it is on file in our
7685 New York office; the order was placed in New York.

Q. Is that the only place where it was on file?

Mr. Haycraft: That is objected to. It is so far away from the issues.

Examiner Bennett: I will sustain an objection to asking the witness to get further information unless he has it in his possession here.

Mr. Albert: Is that information in Chicago?

Mr. Ben J. Altheimer: If your Honor please, we will make an objection to the interrogation of the witness along that line.

Examiner Bennett: Beg pardon?

Mr. Ben J. Altheimer: I say, we will make an objection.

7686 Examiner Bennett: Yes. Well, I have always advised witnesses that on cross-examination they were not under obligation to go out and get new matter for the cross-examination, and I still advise the witness to that effect. If he wants to do it as an accommodation to the cross-examining attorney, I have no objection; but, as an obligation, I advise him that he is under no obligation, and I so instruct this witness.

Mr. Albert: Do I understand, then, that the witness declines to give the information?

Mr. Ben J. Altheimer: Counsel objects to it, and the Court sustains the objection.

Mr. Albert: Very well.

By Mr. Albert.

Q. In what record will such information be found?

Mr. Haycraft: That is objected to.

Mr. Ben J. Altheimer: I renew the objection.

Examiner Bennett: Objection sustained.

By Mr. Albert. 7688

Q. Is there a record of such an order, and of the delivery date with respect thereto?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Albert: If it please the Court, the witness has refused, upon advice of counsel, to give me the information. The only way I can find out sufficient about such an order to name it in a subpoena duces tecum is by finding out from the witness exactly where the record may be obtained. I am not asking him to disclose the contents of it, but unless I can at least question the witness as to what the name of it is, the respondent is hamstrung in its 7689
attempt to receive the testimony. The only place we can find that out is from Mandel Brothers.

Examiner Bennett: When you get to that point, I think, as a matter of fact, that you have sufficient information. I am sure you cannot get a subpoena duces tecum to get it on cross-examination.

Mr. Albert: No. I mean, however, when we get back to New York.

Examiner Bennett: That is later.

Mr. Albert: Very well, your Honor. Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what do you mean, in Respondents' Exhibit 52 in evidence, by "Paris Style 809 direct copy"? What do you mean by "direct copy"? A. I mean Miss Kindler had come in and told us that the dress is a direct copy, and we must take it off sale, and return it.

Q. What is a "direct copy," a copy of what? A. Under the Guild regulations a copy of a Guild dress.

7691 Q. You mean a copy of an original style? A. I believe that is the usual wording.

Q. Did anyone associated with Leon Mandel have any conference with Mr. Harris with respect to these styles that you have been referring to?

Mr. Haycraft: Objected to as too indefinite.

Examiner Bennett: I will let him answer if he knows.

The Witness: Yes.

By Mr. Albert.

Q. Who? A. Our New York office.

Q. By that do you mean Mr. Groff? A. Mr. Groff and Mr. Eisinger.

7692 Q. Aside from Mr. Groff and Mr. Eisinger, did any one from Mandel Brothers discuss with Harris the question of these styles being copied? A. In answering my first question, there wasn't anything about copies in the question, I might not have answered it right.

Mr. Haycraft: That is why I said it was too indefinite, Mr. Examiner. That is why I objected to it.

Examiner Bennett: Yes. I will sustain an objection to that question.

Mr. Haycraft: I move to strike the answer.

Examiner Bennett: It may be stricken.

By Mr. Albert.

Q. Did Mr. Groff or Mr. Eisinger in any way discuss with Mr. Harris——

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Do you know the substance of the discussion between Mr. Groff and Mr. Eisinger and Mr. Harris? 7694

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. With respect to these styles?

Mr. Haycraft: There is nothing in the record on that.

By Examiner Bennett.

Q. You were not present? A. No, sir.

Q. Were they under your instructions? A. I was responsible for their action, yes.

Q. Did they report to you on this particular question? 7695
A. After the style had been declared a copy, not before.

Q. Do you know what they did? Do you know about the substance of what their conference was about with Harris? A. Yes, I do.

Examiner Bennett: Very well.

By Mr. Albert.

Q. What was that substance, Mr. Wyzanski? A. That I had told them we would have to return the style because it was a copy, and they went to talk it over with Harris and he told them that other stores that were co-operating with the Guild were buying the dresses, and he did not see any reason why we should not buy them.

Q. Did he tell you anything else? A. Not that I can recall.

Q. Do you know whether or not Mr. Byrne had any discussion with Mr. Harris? A. Yes, he did, but this was not at that particular time. He was in Chicago at

7697 that time.

Q. Who was in Chicago? A. Mr. Byrne. He later discussed it with Mr. Harris, I believe.

Q. Did Mr. Byrne tell you what was his discussion with Mr. Harris? A. Yes.

Q. What was the discussion that Mr. Byrne had with Mr. Harris? A. That Mr. Harris said we were very foolish letting his business slip out of our hands, because other stores co-operating with the Guild were buying them.

Q. Did Mr. Harris tell Mr. Byrne anything else? A. Not that I know of.

Q. Do you know whether or not Mr. Leon Mandel had a discussion with Mr. Harris? A. I don't believe Mr. Leon Mandel had a discussion with Mr. Harris.

7698 Q. As a matter of fact, didn't Mr. Harris tell you that these styles had been given to him by the A.M.C. to copy? A. He definitely did not.

Q. Are you quite certain? A. Positive.

Q. Did he tell that to Mr. Groff? A. Not that I know of.

Q. Did Mr. Groff tell you that he told him? A. No.

Q. Did he tell that to Mr. Eisinger? A. Not that I know of.

Q. Did Mr. Eisinger tell you that he told it to him? A. No.

Q. Did he tell that to Mr. Byrne? A. Not that I know of.

Q. Did you obtain information from any source— A. I didn't get that first part.

Q Did you obtain information from any source that Mr. Harris had been given these styles to copy by the A.M.C.? A. No.

Q. Now, Mr. Wyzanski, in abiding by its express declaration of co-operation with the Guild, did Mandel Brothers' store abide by the letter as well as the spirit of the declaration? Did Mandel Brothers use all of the dresses which you have referred to as being ordered in that group of nine styles, of which you sold 6600? 7700

Mr. Haycraft: Objected to as meaningless.

Mr. Albert: To dispose of.

Examiner Bennett: He may answer.

Mr. Haycraft: He has already answered that question.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: Sustained. I think we have gone into that as far as is proper.

By Mr. Albert.

Q. Did Mandel Brothers always return to the manufacturer dresses which had been adjudged copies of Guild manufacturers' dresses? A. In all except one instance. 7701

Q. What instance was that? A. In one instance we took advantage of the clause in our rider that if the manufacturer did not want them back, we reserved the right to dispose of them as we saw fit. That is in the letter that excepted the basement, attached to our original riders, clause No. 2.

Q. Do you know how you disposed of the dresses in that instance?

Q. Mr. Wyzanski, do you know whether or not Mandel Brothers ever purchased merchandise from Guild manufacturers and then resold the same to retailers who had been red carded?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Ben J. Altheimer: Same objection.

Examiner Bennett: Objection sustained.

Mr. Albert: Exception. If the Court please, I offer to prove that if this witness had been permitted to answer this question he would have answered that Mandel Brothers had purchased merchandise
7703 from Guild manufacturers not for its own consumption, and that it had shipped it to retailers who had been red carded for sale by such retailers.

Mr. A. J. Altheimer: For the purpose of this record we take exception to the statement of counsel, as to what he is offering to prove by this witness in this case.

Mr. Haycraft: I move to strike it.

Mr. A. J. Altheimer: And we move to strike it.

Examiner Bennett: It may be stricken.

By Mr. Albert.

Q. Now, Mr. Wyzanski, what effect upon your upstairs department has the sale of a copy of a dress being sold
7704 in the upstairs department when sold in the basement? A. What was the question again?

(Question read by the reporter.)

By Examiner Bennett.

Q. Is that an actual situation? A. It is a conceivable situation.

Examiner Bennett: All right.

The Witness: I have no facts upon which I could base any answer.

By Mr. Albert.

Q. What effect upon your upstairs department has the sale of a copy?

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Mr. Wyzanski, do you know that certain manufacturers in the industry contend that there is an evil existing known as style piracy? 7706

Mr. Haycraft: That is objected to as irrelevant and immaterial

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you know that there are certain retailers in the industry who contend that there is such an evil existing in the industry, known as style piracy?

Mr. Haycraft: Same objection; irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Same ruling.

Mr. Haycraft: Beg pardon? 7707

Examiner Bennett: Same ruling.

By Mr. Albert.

Q. Did you discuss at the time of signing the Declaration of Co-operation the question that there existed an evil in the industry known as style piracy? A. That question came up for discussion in some of the conferences that I was at.

Q. Is it true that at the time of the signing of that Declaration of Co-operation Mandels believed that the principles declared by the members of the Guild with respect to the program were proper for the protection of the public, the retailer and the manufacturer?

Mr. Haycraft: That is objected to. There is no foundation laid to that question. The witness said it was discussed, then counsel asks him whether or not that was Mandel's policy.

Examiner Bennett: Well, do you know anything about it? I will let you answer if you know. Read the question.

7709 (Question read by the reporter.)

The Witness: They thought it was a theory which might well be experimented with.

By Mr. Albert.

Q. And you have experimented with that theory— A. We have.

Q. —up to the present date? A. We have.

Q. And you have not withdrawn your Declaration of Co-operation? A. We have not.

Q. And since the broadening of the scope of the program of the Guild——

Mr. Albert: Question withdrawn.

7710 *By Mr. Albert.*

Q. Mr. Wyzanski, does Mandel Brothers believe that manufacturers of original dresses should be protected in the design of those dresses?

Mr. Haycraft: That is objected to. There is nothing to show there is such a thing, no foundation laid for that question.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Have you ever gone into the New York market to assist in buying dresses? A. To assist in buying them?

Q. Yes. A. I have gone into the New York market with the buyers to give them my advice.

Q. In the course of your duties have you ever made a comparison of the dresses which have been adjudged copies with the dress of which they have been claimed to be copies? A. I have seen both, yes.

Q. What was the basis of your comparison? A. There was no comparison that I made.

Q. You just looked at them? A. That's all.

Q. Aside from the administration on behalf of Mandel 7712
Brothers of the policies set forth in the Declaration of Co-operation, have you any knowledge of the theory upon which such Declaration of Co-operation is predicated, as to the meaning of style piracy or origination in dresses, and of the right to protection of origination in dresses?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: I will let him answer.

The Witness: What is the question, please?

(Question read by the reporter.)

The Witness: I have some ideas about it.

By Mr. Albert.

7713

Q. What was there about the Guild merchandise which made it necessary for you to obtain the same and which formed the basis for your signing the Declaration of Co-operation as you have testified to? A. I didn't know that I had testified to that.

Examiner Bennett: What was that question?

(Question read by the reporter.)

Mr. Haycraft: I did not get to object before the witness answered, but I object to the form of the question.

Examiner Bennett: If he understands the question, I will let him answer. I think he has already answered it two or three times.

By Mr. Albert.

Q. Did you not testify, Mr. Wyzanski, that the reason why the Declaration of Co-operation was signed was in order to obtain merchandise from the Guild manufacturers? A. I testified that that was one of the reasons.

7715 I did not say that was the only reason.

Q. What were the other reasons? A. That Mandel Brothers was interested in experimenting with this theory of style protection to see if it could be successful.

Q. Was that by reason of your belief that an evil existed known as style piracy? A. It had nothing to do with my belief at the time.

Q. How about Mandel Brothers' belief?

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. Do you know anything about it?

Mr. Haycraft: No foundation laid.

7716

By Examiner Bennett.

Q. Do you know whether Mandel Brothers had any belief on that subject? A. Yes. I believe—it is my recollection that they thought it was a theory worth experimenting with.

7717

By Mr. Albert.

Q. That the protection was a theory worth experimenting with, isn't that what you said? A. That protection was? What do you mean?

Q. That protection of styles was a theory worth experimenting with. A. Yes, that is right.

Q. What was it that they thought would be a good idea to try to protect? A. Prevent the copying of better dresses.

Q. What was there about the better dresses that was copied? A. Those facts that would make a style piracy committee adjudge it to be a copy.

Q. Have you any knowledge as to what those facts are? A. No specific knowledge.

7718

Q. Isn't it a matter of fact that what was sought to be protected and what Mandel Brothers was trying to protect was the style of dresses as originated by these manufacturers?

Mr. Haycraft: That is objected to. There is nothing to show these manufacturers ever originated anything yet.

Mr. Albert: I am asking this witness——

Mr. Haycraft: There is no foundation for it.

Mr. Albert (continuing) —if that is what he was trying to protect.

Mr. Haycraft: There is no foundation for it.

Mr. Albert: Do you have to lay a foundation for everything you ask this witness? We are finally getting this witness to the point where he is admitting a few things.

7719

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Haycraft: I say there is nothing to show that there is anything, Mr. Examiner—that they ever originated any.

Examiner Bennett: I will sustain the objection to that. It seems to be loaded.

Mr. Albert: Exception.

By Mr. Albert.

Q. Was the copying of better dresses, whatever that may mean, an evil at the time that you signed that Declaration of Co-operation? A. There was a question as to whether it was an evil. There was a definite question as to whether it might have been or might not.

Q. Was there any discussion with respect to that? A. I believe there was.

7721 Q. Was there any decision on that discussion as to whether or not the copying of better dresses was an evil or was not an evil? A. I think the decision was to be left to experience by co-operating with the Fashion Originators Guild, that it was a theory we wanted to experiment with.

Q. What theory did you want to experiment with? A. Whether copying, style piracy, was an evil.

Q. Do you mean to tell me that Mandel Brothers declared they would co-operate with a scheme to protect something which it did not believe was an evil? A. I didn't say it did not believe it was an evil. I said it did not know; it might be and it might not.

Q. Without knowing or deciding that an evil existed,

7722 they signed a Declaration of Co-operation to return dresses? A. They quite evidently did.

Q. Can you explain how co-operating in a policy of protection demonstrates that an evil exists?

Mr. A. J. Altheimer: If your Honor please, before the witness answers that question I would like to have some definition read into this record as to what type of evil counsel is questioning the witness about. Is he talking about evil from the standpoint

of the manufacturer, or evil from the standpoint of the retailer, or evil from the standpoint of the consumer? Just what is this evil we have heard a great deal about this afternoon?

Mr. Albert: I will be very glad to enlighten counsel. I read from the Declaration of Co-operation signed by Mandel Brothers—signed by Albert M. Post, who was at that time merchandise manager of Mandel Brothers, and, if the Commission wishes to obtain the information that counsel has requested, Mr. Post is in the room at the present time and can testify fully as to it. As regards the actual matter in hand, in order not to have any encumbering of the record, I ask counsel particularly to read what Mandel Brothers signed. 7724

Mr. A. J. Altheimer: I would suggest that you confine your questions to the witness' end of this delaration of policy and what it shows.

Mr. Albert: May we have the last question and the answer? That is, may we have the last question read and may the witness answer it?

(Question read by the reporter.)

Mr. Haycraft: I object to that as argumentative.

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert. 7725

Q. Will you explain what there is in the mechanics of protection that would reveal to Mandel Brothers the existence or non-existence of the evil of style piracy?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain that objection.

Mr. Albert: Exception.

By Mr. Albert.

Q. Does Mandel Brothers still subscribe to the Declaration of Co-operation as signed by it originally? A. Mandel Brothers still subscribes to the original declaration, plus the rider that we attached to it.

Q. In the light of the fact that the program of the Fashion Originators Guild to-day, subscribed to by those who have signed the Declaration of Co-operation and are abiding by it to-day, does not include the rider, Commission's Exhibit 527-B, is the Fashion Originators Guild to interpret your answer as a withdrawal of your Declaration of Co-operation?

7727

Mr. A. J. Altheimer: We object. That is not an issue for this hearing. Whether or not Mandel Brothers stays with the Guild or no longer stays with it certainly should not be decided by the witness.

Mr. Albert: We have had an equivocal answer by this witness. It has been demonstrated, I believe, thus far that the policy of the Guild does not include the exceptions at present contained in Commission's Exhibit 527-B. This witness has stated that the policy of Mandel Brothers as of to-day has not in any way altered, and that in so far as it was concerned they agree with the policy of co-operation only in so far as Commission's Exhibit 527 is consistent with their original declaration. I believe, in the light of the testimony that has been given, the Commission should know and should be informed as to what is the intention of this witness.

7728

Examiner Bennett: What is the pending question?

(Question read by the reporter.)

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

Examiner Bennett: That is a matter you can settle between the Guild and Mandel Brothers. We are not going into that.

By Mr. Albert.

Q. Has your experience with protection of styles in the light of your co-operation pursuant to the Declaration of Co-operation shown there is an evil known as style piracy in the industry?

By Examiner Bennett.

Q. Do you understand that? A. It is very difficult for me. 7730

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Haycraft: That is objected to; too indefinite as to what he means by "industry."

Examiner Bennett: I will let him answer if he understands it.

Mr. Ben J. Altheimer: Evil to whom, if your Honor please? To the retailer, the manufacturer or to the buyer?

Mr. Haycraft: It is too indefinite.

Mr. Albert: I will accept the amendment to the question. I will let him answer it individually.

Examiner Bennett: I will let him answer the whole matter, if he recognizes any evil in the industry. I imagine we will have to take it by and large as to whether it is, on the whole, an evil or a benefit. 7731

Mr. Haycraft: It is also objected to as irrelevant and immaterial to the issues.

Examiner Bennett: I will let him answer. If he knows, he may answer.

By Mr. Albert.

Q. And if you want to differentiate between manufacturer, retailer and consumer and state either that it is or is not an evil with respect to either one of them, you may answer it in that way. A. We like to look at it from a customer viewpoint and we are interested in the experiment as being possibly beneficial to those customers that buy better dresses in our store. I believe that was one of the hopes with which we signed the declaration. That is why we called this theory an experiment. And, while we believe that it has been of benefit to dresses in the better price lines, we cannot establish it, we cannot seem to prove
7733 it within our store. As I have stated before, it has definitely hurt the basement because it is contrary to our policy down there.

Q. Would you say that style piracy is an evil in the industry in so far as the manufacturer is concerned? A. I don't know.

Mr. Haycraft: That is objected to; no foundation laid.

Examiner Bennett: Sustained.

The Witness: I am not a manufacturer.

By Mr. Albert.

Q. Would you say that style piracy was an evil in the
7734 industry in so far as the retailer was concerned, with the exclusion of the basement?

Mr. Haycraft: I object to that.

Examiner Bennett: I will sustain the objection. He has answered that as fully as he can, it seems to me, and very frankly.

(Whereupon, at 4.30 o'clock P. M., August 24, 1936, the hearing in the above entitled matter was adjourned, to reconvene at 10 o'clock A. M. of the following day, Tuesday, August 25, 1936.)

7735

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,

August 25, 1936.

Met pursuant to adjournment, 9 o'clock A. M., C. S. T.
Before: JOHN W. BENNETT, *Examiner.*

Same appearances, and:

7736

GEORGE H. LIKERT, JR. (1313 Wells Building, Milwaukee, Wisconsin), appearing for Ed. Schuster & Company, Inc.

PROCEEDINGS.

Examiner Bennett: Be in order, please.

HENRY N. WYZANSKI thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

Cross-examination (continued) by Mr. Albert.

7737

Q. Mr. Wyzanski, after the signing of the Declaration of Cooperation do you know what instructions were given the buyers with respect to the merchandise that they purchased, specifically with respect to the purchase of copies?

Mr. Haycraft: That is objected to unless it is restricted to the department over which Mr. Wyzanski had direction at that time.

Mr. Albert: He may still know, if it please the Court, the instructions generally.

Examiner Bennett: Well, if he knows. You may answer as to your department, if you know, Mr. Wyzanski, or if you have knowledge you may answer.

The Witness: I do not know definitely.

By Mr. Albert.

Q. Do you know for your own department? A. None of those provisions applied to my own departments at that time.

Q. Well, what was the practice among the buyers in your department?

7739

Mr. Haycraft: Objected to; no foundation laid.

Mr. Albert: This happens to be the laying of the foundation, your Honor.

Examiner Bennett: Ask him if he knows. If you know, you may answer.

The Witness: My buyers at that time went out and bought merchandise as they always have.

By Mr. Albert.

Q. That is, I mean, frankly, Mr. Wyzanski— A. Yes.

Q. —I want the record to be clear—that is, your buyers did not? A. You are talking about the sub-buyers at the moment, are you not?

7740

Q. Yes. I mean, they did not go out and look for copies; they bought merchandise, that is all; they bought dresses as they saw them? A. They bought dresses that they thought the public would like best.

Q. Right; and in attempting to purchase them they did not specifically go out and look for a copy of any particular dress, did they? I mean, they shopped the market and bought what they thought was proper for the department? A. I would not say that. We always had the thing out

down in the basement as to what—not only our upstairs store, but other upstairs stores were doing.

Q. Yes. A. And we attempted to get the same type of merchandise in our basement. at basement prices,

Q. Well, would you then say that in the basement your buyers specifically attempted to purchase copies of the better dresses? A. I would not make it as general as that. I would say that if there was something particularly hot in the upstairs store, or throughout the country, that they would do their level best to get merchandise as close to it as possible in their price lines.

Q. So that perhaps at particular intervals they might see, or not, a particular dress, that they would attempt 7742
to get that, but as a general policy it was not the policy of the buyers to continually try to get copies for the basement in the way—I mean, I want the record to be clear in fairness to Mandel Brothers. A. It is hard to define the word "general." There were many cases where they did.

Q. Specifically purchase copies? A. Specifically attempt to purchase copies, and in the buying of other dresses they undoubtedly bought copies whether they knew they were copies or not.

Q. Well, now, Mr. Wyzanski, do you know what effect upon the value of a better dress was the sale of the copy of that dress in the market to the public? A. No—are we continuing this discussion in the basement?

Q. No. 7743

Mr. Albert: Will you read the question, please?

(Last question read by the reporter.)

The Witness: I am confused by "in the market to the public."

By Mr. Albert.

Q. Well, we will leave out "in the market to the public."

A. Read it again.

(Last question read as follows: "Q. Well, now, Mr. Wyzanski, do you know what effect upon the value of a better dress was the sale of the copy of that dress?")

Q. What, in your opinion, is the effect on the salability of a better dress selling, let us say, for $29.75 on a copy of that dress being sold for $16.75?

Mr. Haycraft: That is objected to as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: He may answer.

The Witness: What did you say, sir?

7745 Examiner Bennett: You may answer if you have any opinion.

The Witness: I could conceive of a dress at $16.75 being a copy of a $29.75 dress and hurting the sale of that $29.75 dress.

By Mr. Albert.

Q. That is, isn't it a little bit more than conceiving that it would hurt? Don't you know from your experience that the sale of a copy of a better dress has definitely and does definitely and will always definitely hurt the salability of that better dress? A. I know definitely that that is not true as you have expressed it—always definitely.

Q. In very rare cases will it not affect the salability of
7746 a better dress? Is that not so? A. I know of two cases this spring where our store bought dresses from a man and they were retailed at $35 and he was a non-Guild man and there were copies of that dress in stores in Chicago and we continued to sell that dress at $35 and sell it successfully, because the other manufacturers did not have that something—I don't know what it was—it was the line or the fit or something that made our dress continue to sell at $35, and we did not take a single reduction right through the summer season.

Q. Well, then— A. (Continuing) I know of a similar case in Marshall Field's.

Q. Would you say that the other two dresses were copies of your $35.75 dress—whatever price you mentioned? A. Yes, I would say they were copies.

Q. Despite the fact you say they could not compare with your dress, there was something about them that was lacking? A. Yes, but it was the fit, must have been the fit. I cannot conceive of anything else, because they were copies.

Q. Where were these other two dresses sold, do you know?

Mr. Ben J. Altheimer: We would not like, Mr. 7748
Examiner——

Examiner Bennett: I do not hear you.

Mr. Ben J. Altheimer: We would not like the witness to testify as to who the buyers were that handled the dresses, who they were, and what competitors handled the dresses, because other people may go there and buy them.

Mr. Albert: May I point out to your Honor exactly what I am getting at? I would like to do it to your Honor personally without revealing the purpose of the examination thus far, because if I do that it will be defeated automatically. I think your Honor will agree with me as to the relevancy of the question and the pertinency of it. 7749

Mr. Haycraft: I think we are way off from the issues in this case, Mr. Examiner.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I say, I think we are way, way off from the issues in this case.

Examiner Bennett: Yes. Are you objecting?

Mr. Haycraft: Yes, I am objecting—irrelevant and immaterial.

Examiner Bennett: I will sustain the objection as irrelevant.

Mr. Albert: If your Honor will permit me?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Now, Mr. Wyzanski, can you give us an estimate of the number of styles handled in the basement during 1935? A. I could not.

Q. Have you any idea whatsoever, a rough estimate? We are not asking for anything specific. A. No. I am sorry.

7751 Q. Can you give us an estimate of the number of styles that you handled in your basement which are copies of Guild merchandise? A. No, I cannot.

Q. Do you know how many different styles you have in your basement to-day? A. No, I do not.

Q. Can you make any estimate of the number of copies of Guild merchandise that you have in your basement store to-day? A. I assume that there are none because we are being shopped.

Q. Aside from that, you don't know? A. Well, I am relying upon the accuracy of Miss Kindler, and also on our buyer, who is instructed not to buy Guild copies.

Q. Have you at any time prior to this hearing prepared any statistics showing the number of styles generally used

7752 in your basement? A. No, I never have.

Q. Have you, prior to this time, ever prepared statistics or comparative figures showing the number of copies of Guild merchandise that you have used in your basement? A. No, I never have.

Q. Have you at all investigated or shopped the stock of your so-called competitors in an attempt to determine the number of styles that your competitors generally have on hand? A. Your question reads "total number of styles"?

Q. Yes. A. No, we never have.

Q. Have you ever shopped your competitors to determine the number of copies of Guild merchandise that they have ever had on hand at a particular time? A. I can't say that we have made a survey, but our shoppers have reported off and on from time to time the presence of Guild copies in chain shops.

Q. But as regards the number of those copies you cannot say; is that so? A. I cannot say as regards to number, except that it has been a continuous occurrence.

Q. In so far as you know is it possible that the shopper that shopped your competitor each time reported on the same copy as being present? A. I don't think the life 7754
of the average dress would last as long as our shoppings have been over a period of time.

Q. Is there anything in your investigation that might lead you to——

Mr. Albert: Question withdrawn.

By Mr. Albert.

Q. Can you tell us definitely, as a result of your shopping, whether or not a particular competitor had more than one copy of Guild merchandise in stock at any particular time, and if so, the number? A. It is my recollection that they had many Guild copies.

Q. How many would you say, as a result of your shopping investigations? Have you any idea? A. Oh, I have 7755
seen reports that stated three or four from time to time.

Q. Three or four in stock at a particular time? A. Styles.

Q. Styles? A. Yes.

Q. Do you know how many styles that particular competitor was showing in addition to these three or four copies of Guild merchandise?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: It is most relevant, your Honor.

Examiner Bennett: I will let him answer.

The Witness: I don't know that and I don't know how many additional Guild copies they might have, other than the ones that the girl reported on.

By Mr. Albert.

Q. As a matter of fact——

Mr. Albert: Withdrawn.

7757 *By Mr. Albert.*

Q. Your opinion, Mr. Wyzanski, that these competitors were selling copies of Guild merchandise is predicated—is this correct?—solely upon the opinion of your shopper who shopped the competitor? Is that so? A. No.

Q. Upon what, in addition to that, do you base your opinion that this particular copy was actually a copy? A. The opinion of the buyer, who is in the market and used to report to me how much she was being hurt, that she saw others selling styles that she saw orders on being shipped to Chicago because I would not let her sell those styles, and complaints that her business was being hurt thereby.

Q. The only information upon which you predicate your
7758 belief that copies are being sold by competitors is on the information given you by the shopper in the store and by your buyer who said that she could not buy the merchandise, is that correct? A. No.

Q. Well, what else? A. My own opinion, from what seems to me a common-sense viewpoint, that if Guild dresses are good styles and if a person does not belong to the Guild and they are selling merchandise in the cheap

price lines and they want to give the customers the best styles that they can, that they would naturally tend toward buying Guild copies. That is my opinion, I say. It may not be so.

Q. So that, in so far as your opinion is concerned, you base it purely upon the assumption that they must have Guild copies in order to sell their dresses?

Mr. Haycraft: That is objected to; not his testimony at all.

Examiner Bennett: He has answered "No," I think, hasn't he?

Mr. Haycraft: I didn't hear it.

7760

By Mr. Albert.

Q. Mr. Wyzanski, have you prepared up to the present time any figures showing the ratio of copies of Guild merchandise in your basement store as compared with other merchandise sold in the basement store? A. No, we have not made such a study.

Q. Have you those figures for any period of time at all? A. No, we have not.

Q. Then your opinion——

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Then, despite the fact that you have no comparative 7761
figures upon which to predicate your belief, it is your opinion that the basement store has been hurt by your inability to obtain copies? A. I do have such comparative figures to this extent, that we know we have sent back fast-selling styles, styles that we were selling in our basement, styles that we would have re-ordered and got potential sales on, and by returning them we must have lost business, because the styles were selling and we did not re-order them.

Q. Have you made any concomitant gains in your better departments? A. I tried to answer that question yesterday by saying that we think it is a good thing in our better dresses, but in examining our figures we cannot prove it.

Mr. Albert: That's all.

Redirect examination by Mr. Haycraft.

Q. At the time you held the conferences with Mr. Post and Mr. Mandel, before the signing of the Declaration of Co-operation agreement, Commission's Exhibit 527-A, what was the position that Mr. Post held? A. He was
7763 merchandise manager of the ready-to-wear and intimate apparel, Mandel Brothers.

Q. You were asked to testify as to what was said at those conferences, and you started to testify twice and you were interrupted. I will ask you now to testify as to what—

Mr. Albert: I object to the statement of Mr. Haycraft.

Mr. Haycraft: May I complete my question?

Mr. Albert: I am sorry. I thought you had completed it.

Examiner Bennett: Complete it.

Mr. Haycraft: Let the reporter read it as far as I had gone.

(Question read by the reporter.)

7764

By Mr. Haycraft.

Q. (Continuing)—transpired at those meetings as to the policy of Mandel Brothers with respect to the subject matter of the Declaration of Co-operation?

Mr. Albert: Are you through, Mr. Haycraft?

Mr. Haycraft: I am through.

Mr. Albert: If the Court please, I object to the gratuitous inclusion of an irrelevant and unfounded

statement by Mr. Haycraft with respect to the question involved. I also object to the question upon the ground it is improper redirect.

Examiner Bennett: My recollection is that that was gone into on cross-examination. You may answer it yourself, sir, with sufficient accuracy to tell us, if you know the substance of what was said at those conferences.

The Witness: I have a recollection of it; I have a definite recollection, but I cannot swear to it.

By Examiner Bennett.

Q. Give us your best recollection. A. My best recollection is that it was discussed and the feeling was that it was a theory worth experimenting with, and that for this reason and the fact that Mandel Brothers wanted to be able to give its customers the best that the market afforded and be able to go into any resources in the market —for those two reasons, as I recall it, to my best recollection, that is the reason we signed the Declaration of Co-operation. 7766

By Mr. Haycraft.

Q. How many dresses did you actually return to the Harris Company as a result of the advice of the shopper that they were copies?

Mr. Albert: That is objected to, may it please the Court, as improper redirect. The testimony has shown he was eventually permitted to sell them all. 7767

Mr. Haycraft: I am trying to find out how many were actually returned, if he knows.

Examiner Bennett: He may answer. Overruled.

A. Of style 809 we had 700 on order. How many of them came into the store I do not know. But those that

did come into the store were returned and the remainder of the 700 that did not come into the store were canceled, in addition to which there were 400 other dresses canceled which were not copies, so that our assortment might be kept in proper proportion between one and two-piece styles, as I explained yesterday.

By Mr. Haycraft.

Q. As to the other numbers, 813 and 829, those were all canceled; is that right? A. No.

Q. What was the situation with reference to that? A. 813 we were forced to take off sale because it was a copy.

7769 That was the one where we had the ad running for Tuesday, the merchandise came in Monday, we got notification from the Guild it was a copy, so we took it off sale, and we changed our ad from a two-cut ad to a one-cut ad, running a dress that had not been called a copy, thereby depriving us of potential sales on the other one.

Q. How about 829, what did you do about that one? A. I don't recall the details of 829.

Recross-examination by Mr. Albert.

Q. I believe Mr. Haycraft asked you how many of style 809 were returned to Harris; is that correct? A. That is correct. I believe so.

Q. What was your answer? A. My answer was I could

7770 not tell him how many were returned. I did know we had 700 on order, but I did not know how many had come in, but that those that did come in we returned to Harris and canceled the remainder of the order, and in addition 400 other dresses.

Q. Did you return all of the dresses to Harris, or cancel all of the dresses which you had ordered from Harris? A. Of that style.

Q. Of that particular style? A. 809. And in addition, as I said, other styles that were copies, to make the order balance.

Q. When you specifically refer to style 809, do you mean that that style was one of the styles of which dresses were not sent to Stix, Baer & Fuller?

Mr. Haycraft: That is objected to.

Mr. A. J. Altheimer: We object to it.

Mr. Haycraft: It is not proper recross-examination.

Examiner Bennett: I will sustain the objection.

By Mr. Albert. 7772

Q. Now, Mr. Wyzanski, in so far as Mandel Brothers is concerned, what is their opinion as to the program of the Guild in its attempt to eliminate style piracy? Is it still an experiment?

Mr. Haycraft: That is objected to as not proper recross.

Mr. Albert: May it please the Court, Mr. Haycraft asked the witness questions with regard to what they felt when they signed the Declaration of Co-operation, upon the ground that the witness had been prevented from answering matters with respect thereto on his cross, and therefore he brought it out on his redirect.

7773

Mr. Haycraft: Right up to that time.

Examiner Bennett: What is the question?

(Question read by the reporter.)

Examiner Bennett: I will let him answer. Objection overruled.

A. Yes, we still feel that the experiment is going on and we do not believe that sufficient evidence has been gathered

as yet to indicate whether it has been successful or unsuccessful.

By Mr. Albert.

Q. Is that in all departments? A. In our better price lines. We feel that in our lower price lines, in our basement, that it has hurt us; but we subscribed to the theory originally as an experiment and we are still going along, trying to find the answer.

Q. What are you trying to find the answer to? A. Whether or not the elimination of style piracy will be a good thing for Mandel Brothers' customers.

7775 Q. In so far as Mandel Brothers is concerned, therefore, there is such a thing as style piracy, and the sole question is as to the possibility of eliminating it? Is that correct?

Mr. Haycraft: That is objected to, going into a matter that was gone into on cross-examination before; mere repetition.

Examiner Bennett: I will sustain the objection to that.

Mr. Albert: That's all.

Mr. Haycraft: Nothing further.

(Witness excused.)

Examiner Bennett: Do you have another witness?

Mr. Haycraft: Yes.

7776 Mr. Likert: May I enter my appearance as attorney for the witness?

Examiner Bennett: Yes. Give it to the reporter, please. What is your name?

Mr. Likert: George H. Likert, Jr., of the firm of Kaumheimer & Kaumheimer, at Milwaukee, Wisconsin.

Examiner Bennett: Are you appearing for the witness?

Mr. Martin: He is appearing for the witness, yes, sir.

Mr. Likert: Yes, sir.

RALPH T. FRIEDMANN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name? A. Ralph T. Friedmann. 7778

Q. Now, Mr. Friedmann, where do you live? A. Milwaukee, Wisconsin.

Q. What is your occupation? A. Vice-president of Ed. Schuster & Company, Inc.

Q. How long have you been in the employ of Schusters? A. Some sixteen years.

Q. How long have you been in your present position? A. Three years.

Q. Now, Mr. Friedmann, what position did you hold with Ed. Schuster & Company in the fall of 1932? A. I was treasurer and general merchandise manager.

Q. What was your position in the winter, spring——

Mr. Martin: Strike that out. 7779

By Mr. Martin.

Q. What was your position in the summer of 1933? A. In the summer of 1933 I held the same position, treasurer and general merchandise manager.

Q. In the winter and spring of 1935 what position did you hold? A. Vice-president and assistant general manager.

Q. What business is Schuster Company engaged in? A. Retail Department Store.

Q. Do they have a ready-to-wear dress department, or departments? A. They do.

Q. What are those departments, do you know? A. They have a women's and misses' department, and a Budget Shop.

Q. Who is in charge of those particular department? A. We have a divisional merchandise manager in charge, with a group of buyers under him.

Q. Do they report to you? A. The buyers report to me —may I have the question please?

7781 (Last question read by the reporter.)

The Witness: Not directly.

By Mr. Martin.

Q. Did they in the years 1932 or 1933? A. Buyers reported to the divisional merchandise manager, the divisional merchandise manager reported through my assistant, to me.

Q. Now, just briefly, what were your duties as Treasurer and general merchandise manager of Schusters in the years 1932 and 1933? A. I was responsible for the merchandising and promotional activities of the business, with a group of divisional merchandise managers reported to me.

7782 Q. Now, what were your duties in 1935 and 1936? A. Executive part of the responsibility of the general management—executive responsibilities of the business.

Q. Now, Mr. Friedmann, have you ever heard of an organization known as the Fashion Originators Guild of America, Incorporated? A. I have.

Q. When did you first hear of it? A. 1932.

Q. Do you recall in what way it was brought to your attention? A. Well, we received a letter, as I remember it, from the Fashion Originators Guild of America.

Mr. Martin: Mark these papers Commission's Exhibits 532-A to D and 533-A to I.

(Thereupon papers referred to were marked Commission's Exhibit 532-A to D, inclusive and 533-A to I, inclusive for Identification.)

Mr. Albert: You will save some time on the identification if you will let me see that.

By Mr. Martin.

Q. Mr. Friedmann, I hand you Commission's Exhibits 532-A to D for Identification and Commission's Exhibits 533-A to I, and ask, can you identify those papers (indicating)? A. I can. 7784

Q. What is that? A. Letter sent to me by Maurice Rentner, chairman of the Fashion Originators Guild of America.

Q. Under what date? A. Date of December 16, 1932.

Q. What is the next exhibit, the next number? A. 533-A?

Q. Yes. A. That is a—I believe a copy—it is a memorandum attached to it, as nearly as I know.

Q. That is attached to the letter? A. Yes.

(Mr. Martin hands to Mr. Albert paper marked Commission's Exhibits 533-A to D, inclusive.)

Mr. Albert: Have not these gone in before?

Mr. Martin: I think it has. 7785

Mr. Albert: I mean, why put it in again Oh, well.

By Mr. Martin.

Q. Now, is this the letter that you referred to in your testimony a few minutes ago, when you testified that you first heard of the Guild through receiving a letter from

Mr. Rentner in 1932—is this the letter you referred to (indicating)? A. It is.

Q. Now, after the receipt of that letter, which advised you of the Fashion Originators Guild, did you have any conferences with any of the officers of the Guild? A. I did not.

Q. Are you familiar with any of the other objects, or aims, or activities of the Guild, other than those outlined in Mr. Rentner's letter of December 16th, which is Commission's Exhibit No. 532-A?

Mr. Albert: Objected to, if it please the Court, as not within the complaint of the Commission, and
7787 being entirely irrelevant and immaterial.

Mr. Martin: I do not think that needs any argument by me, your Honor.

Examiner Bennett: Well, I will let him answer.

Mr. Albert: We are back in 1932, your Honor.

Mr. Martin: His Honor has ruled on the question.

The Witness: May I have the question read?

(Last question read by the reporter.)

Mr. Albert: May I ask that the Commission be asked to fix the time as to what he is speaking of?

Examiner Bennett: Yes, fix the time.

By Mr. Martin.

7788 Q. Since you first became acquainted with the Guild?

Mr. Albert: That is objected to as entirely immaterial and irrelevant, if it please the Court.

Mr. Martin: His Honor has already ruled on that.

Mr. Albert: Well, there was no fixing of time before. We are not interested in what happened back in 1932 or 1933.

Mr. Martin: No, you are not interested in anything that you do not think is going to help you.

Examiner Bennett: Yes. I will let him answer.

Mr. Keller: I move that that last remark be stricken.

The Witness: May I have the question read, please?

(Last question read by the reporter.)

The Witness: No, I am not.

By Mr. Martin.

Q. Now, did Schuster Company enter into any agreement with the Fashion Originators Guild as a result of 7790
this letter of Mr. Friedmann's, this letter of December 16th, 1932 (indicating)? A. We did not.

(Thereupon papers were marked Commission's Exhibits 534-A to D, inclusive, for identification.)

By Mr. Martin.

Q. Mr. Friedmann, I hand you Commission's Exhibits No. 534-A to D, inclusive, for identification, and ask, can you identify that paper (indicating)? A. I can.

Q. What is it? A. It is a letter to me under date of June 19, 1933 from Maurice Rentner, chairman of the Fashion Originators Guild of America, Incorporated.

Q. All right, sir. Now, Mr. Friedmann, have Schusters ever signed a Declaration of Co-operation with the Fashion 7791
Originators Guild of America? A. No, sir. We wrote a letter.

Q. Did you enter into an agreement of co-operation and anti-piracy?

Mr. Albert: That is objected, if it please the Court, as calling for a conclusion of the witness. The witness has testified he did not sign the Declaration of Co-operation.

7792 *Ralph T. Friedmann—For Commission—Direc*

Mr. Martin: All right.

Examiner Bennett: What is the question ing?

Mr. Martin: That is all right; I will wi the question. Will you please mark these Commission's Exhibits 535, 536 and 537.

(Thereupon papers referred to were Commission's Exhibits 535, 536 and 537 fo tification.)

By Mr. Martin.

7793 Q. (Indicating) I hand you Commission's Exhi 535 for Identification and ask, can you identify tha I do.

Q. Sir? A. I do.

Q. What is it? A. A Declaration of Co-operat Anti-Piracy.

Q. (Indicating) I hand you Commission's Exhi 536 and ask, can you identify that? A. I do.

Q. What is it? A. It is a letter from me to the F Originators Guild of America.

Q. (Indicating) I hand you Commission's Exhi 537 for Identification and ask, can you identify tha I can.

Q. What is it? A. It is an acknowledgment of ceipt of my signed Declaration of Co-operation wi

7794 members of the Guild.

Mr. Albert: May it please the Court, I h objection to Commission's Exhibits 536 a going into evidence, but I do not see that t any particular necessity for Commission's E 535.

Mr. Martin: Now, if your Honor please, in evidence, Commission's Exhibits 536 and

Examiner Bennett: Received; no objectio

(The papers referred to, heretofore marked for identification Commission's Exhibits 536 and 537, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Friedmann, I will ask you is this letter of July 8th from you to the Fashion Originators Guild, which is Commission's Exhibit No. 536, the Declaration of Co-operation you signed with the Fashion Originators Guild? A. It is.

Q. And I ask you if Commission's Exhibit No. 537, is an acknowledgment on the part of the Fashion Originators Guild of the receipt of the Declaration? A. It is. 7796

Q. Now, Mr. Friedmann, I hand you Commission's Exhibit No. 536, which is the Declaration you signed, and Commission's Exhibit No. 535 for Identification, which was the form that the Fashion Guild sent you, and ask you if you will point out if there are any differences between those two papers (indicating)?

Mr. Albert: That is objected to, if it please the Court, the documents speak for themselves.

Examiner Bennett: Are you asking him to point out the difference?

Mr. Martin: I beg your pardon?

Examiner Bennett: Are you asking him to point out the differences which caused him to sign one Declaration? 7797

Mr. Martin: That is right.

Examiner Bennett: And not to sign the other?

Mr. Martin: That is right.

Examiner Bennett: I will let him point out what he regards as the differences.

Mr. Albert: Do you mind if I look over your shoulder?

The Witness: No.

Examiner Bennett: He may state what he regards as the differences.

By Mr. Martin.

Q. What is the difference between those two statements? A. I would say that in the second paragraph of the Declaration which says that: "We do not and will not buy for our ready-to-wear departments any copied or pirated dresses of garments created by members of your association."

Mr. Albert: That is Commission's Exhibit 535 you just read from?

7799

Mr. Martin: For Identification.

Mr. Keller: That is a letter of——

The Witness: Our letter of July 8th, 1933, second paragraph stated: "We do not wish to buy, and wil not knowingly buy, for our ready-to-wear departments any copied or pirated dresses or garments created by members of your association."

By Mr. Martin.

Q. Am I to understand that the only difference is that in your agreement, as signed by you, you inserted the word "knowingly"? A. Yes, sir.

Mr. Albert: Mr. Martin omits to include that in the Declaration signed by Mr. Friedmann there is also the statement not contained in the general form "we do not wish to buy."

7800

Mr. Martin: I inadvertently overlooked that, Mr. Albert.

Examiner Bennett: Yes.

Mr. Martin: I will put that question again.

By Mr. Martin.

Q. The only thing is that in the agreement as signed by you, Schuster Company, you made the statement that you did not wish to buy and "will not knowingly buy"? A. Yes.

Q. Now, Mr. Friedmann, do you know what was the reason for making that change? A. As I recollect, we felt that we would not be able to determine ourselves whether or not we were buying a copy.

Q. Now, do you know the reason why your signed any Declaration?

Mr. Albert: That is objected to as immaterial, if it please the Court. 7802

Mr. Martin: I think it has a very material bearing.

Examiner Bennett: Overruled; he may answer.

The Witness: May I have the question?

(Last question read by the reporter.)

("Now, do you know the reason why you signed any Declaration?")

By Mr. Martin.

Q. Yes or no. A. Yes.

Q. What were your reasons for signing the Declaration in the form as signed by you? A. I would say there were three reasons——

7803

Mr. Albert: Now, if it please the Court, I object to the witness saying that he would say what the reasons were——

Mr. Martin: Your Honor please——

Mr. Albert: ——the question was what the reasons were at that time.

Mr. Martin: I object to counsel for the respondent interrupting the witness in the midst of an an-

swer to a question. If he wants to object he can wait until the witness goes ahead and answers, but to interrupt him there in the middle of it, is highly improper.

Mr. Albert: We have to wait until the house burns down, your Honor, before putting the hose on it?

Mr. Martin: Right.

Mr. Albert: The witness is obviously not answering the question. I do not see why the record should be cluttered up when it is obviously not an answer to the question.

7805

Mr. Martin: You did not give him a chance, Mr. Albert; he was interrupted before he got started.

Examiner Bennett: He may answer the question.

The Witness: What was the question?

(Last question read and answer as given read.)

Examiner Bennett: Go ahead and enumerate them.

The Witness: Namely, in a letter from Mr. Rentner to us he had stated that all the outstanding lines would be shown in the fall through the Guild; secondly, we wanted access to these lines; and; in the third place, the divisional merchandise manager recommended that we sign that Declaration.

7806

By Mr. Martin.

Q. (Indicating) I hand you Commission's Exhibits for Identification No. 534-A to D and ask you if that is the letter of Mr. Rentner to which you refer in which he advised that lines would be restricted to those who signed the Declaration? A. It is the letter and memorandum.

Q. Did the purposes of the Fashion Originators Guild, as understood by you at the time you signed the Declara-

tion, agree with, and were they in accord with the policies and the practices, of E. Schuster and Company, at that time? A. I would say the principles were.

Q. What was your primary motive in signing the Declaration?

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, irrelevant. He has given us all the reasons, your Honor. We are getting into metaphysics when we start asking the witness as to which reason outweighed another reason.

Examiner Bennett: Well, if you have one, you may answer; overruled.

7808

Mr. Albert: Exception.

The Witness: To make it possible for all my buyers to have access to the showing of the fall lines, which, in accordance with Mr. Rentner's letter to me— May I change that and put it in better English? In view of the fact that——

By Mr. Martin.

Q. See if Commission's Exhibit No. 534-A for Identification in any way refreshes your recollection (indicating)?

Mr. Albert: Now, if it please the Court——

The Witness: Yes, it is in the memorandum——

7809

Mr. Albert: ——the witness answered, he had not seemed to need any refreshing of recollection. I do not see why Mr. Martin pushes a letter under the witness' nose and tells him to look at it and give his answer after reading the letter.

The Witness: No, I don't need that, I don't need that.

Mr. Martin: Your Honor please, the witness has a perfect right, without a tirade on the part of

opposing counsel, to refer to these documents to refresh his recollection, if he so desires.

Mr. Albert: No question about it, your Honor, when he asks for it, and says he needs his recollection refreshed; but when he is answering from memory and seemingly needs no aid to his memory, I object to Mr. Martin sticking the evidence under his nose and telling him to read from it, practically.

Mr. Martin: I object to you setting up yourself as the arbiter as to whether he needs refreshing or not.

7811 Mr. Albert: That is the point to the objection, your Honor. I am not setting myself up as the arbiter. I am just objecting to the practices of Mr. Martin.

Mr. Martin: You certainly are——

Examiner Bennett: All right. Will you read the question?. And read the answer so far as it has gone, and let the witness finish his answer.

(Last question and answer read.)

By Mr. Martin.

Q. Go ahead. A. In a memorandum attached to Mr. Rentner's letter of June 19th to Ed. Schuster & Company, he had stated that all the outstanding lines would be shown by Guild houses; we felt it imperative and necessary

7812 that we have access to those lines.

Mr. Albert: May I see that a moment, Commission's Exhibit No. 534?

(Witness hands paper to counsel.)

Examiner Bennett: That letter has been used so much I think it should be in the record.

Mr. Albert: It is.

Mr. Martin: Your Honor please, this same letter, I have no objection to putting it in, and I do not think——

Mr. Albert: If your Honor feels you want this particular letter, I have no objection, but it has been in before.

Examiner Bennett: Yes, all right, then.

Mr. Martin: But this same letter is in the record.

Examiner Bennett: All right.

Mr. Martin: I think two or three times already.

Examiner Bennett: With that statement, of course, that is sufficient. 7814

By Mr. Martin.

Q. Now, Mr. Friedmann, after the date of July 8th, 1933, did you co-operate with the Fashion Originators Guild as indicated in your letter of that date? A. So far as I know, we did.

Mr. Martin: Do you know what exhibit the stamp is?

Mr. Albert: 306. Speak generally about the stamp. I will not——

By Mr. Martin.

Q. Did you, in accordance with your agreement, place a warranty stamp, or cause to be placed the warranty stamp, set out in your letter of July 8th? A. I instructed that it be done. 7815

Q. That it be placed on all orders? A. Yes.

Q. Do you know Mr. Albert Post of the Fashion Originators Guild of America, Mr. Friedmann? A. I do.

Q. Did you have any conversation with Mr. Post either in a personal conference or over the telephone, just prior to March 21st, 1935? A. I did not.

(Thereupon a paper was marked Commission's Exhibit 538 for Identification.)

By Mr. Martin:

Q. (Indicating) I hand you Commission's Exhibit No. 538 for Identification and ask can you identify that? A. I can.

Q. What is it? A. It is a letter under date of March 21, 1935, from me to Mr. Post.

Mr. Albert: If it please the Court, with respect to Commission's Exhibit No. 538 for Identification, I know we ought to object to it upon the ground
7817 that proper foundation has not been laid as to the actual mailing of it. What I do wish to object to is this, your Honor, that undoubtedly there is a reply to that letter, that the respondents had no idea whatever as to who was going to be put on here, that we have not gotten in the Milwaukee correspondence and cannot check upon it.

Mr. Martin: For your information I have a reply and that will be introduced in evidence.

Mr. Albert: Very well, your Honor, subject to the introduction of the reply, I have no objection to the admission of Commission's Exhibit No. 538.

Examiner Bennett: It is received as Commission's Exhibit No. 538.

7818 Mr. Martin: It has not been offered yet.

Examiner Bennett: I understood that it was offered at the time.

Mr. Martin: No, I now offer this in evidence as Commission's Exhibit No. 538.

(The paper referred to, heretofore marked for identification Commission's Exhibit 538, was received in evidence.)

By Mr. Martin.

Q. Now, Mr. Friedmann, I hand you Commission's Exhibit No. 538, for the purpose of refreshing your recollection, and ask did Schusters co-operate with the Guild from the time of signing the declaration on July 8th, 1933, up to the date of that letter (indicating)? A. Although I had given instructions that the stamp be affixed to all orders, evidently these instructions had not been thoroughly carried out in all instances.

Mr. Albert: May I ask that the reporter read the answer?

(Answer read.) 7820

By Mr. Martin.

Q. Was the stamp affixed on all orders——

Mr. Albert: That is objected to, may it please the Court, as having been previously answered.

Mr. Martin: If you will kindly wait until I have finished my question.

Mr. Albert: I am sorry. I thought you had dropped your voice.

By Mr. Martin.

Q. (Continuing) —was the stamp affixed to all orders in all price lines? A. So far as I know, yes. The instructions were so given, so far as I remember. May I add to that, on rush orders also. 7821

Q. Did you receive any reply from Mr. Post to your letter of March 21? A. I believe I did.

Mr. Martin: I will ask this document be marked for identification as Commission's Exhibit 539.

(The document referred to was marked Commission's Exhibit 539 for Identification.)

Mr. Albert: May I point out to your Honor that we have reached the recess hour?

Examiner Bennett: Yes. We will take a ten-minute recess.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please.

By Mr. Martin.

Q. After March 21st, 1935, Mr. Friedmann, did Schuster continue to—do you know whether or not Schuster continued to place the warranty stamp on all orders?

7823 Mr. Albert: That is objected to, may it please the Court. There is no testimony in evidence that prior to that time they placed it on all orders. The question assumes a state of fact not in evidence.

Examiner Bennett: You can cut out the word "continue". Let us not have a controversy about that. We have the record.

By Mr. Martin.

Q. Do you know, Mr. Friedmann, whether, after March 21, 1935, the Guild "warranty stamp" was placed on all orders? A. Instructions were given that it be done.

Q. That it be placed on all orders, regardless of price? Afterwards, I am referring to. A. Instructions were given that the stamp be placed on all orders over $7.75 whole-

7824 sale.

Q. Over $7.75 wholesale? A. Yes.

Q. Do you know why that distinction was made at that time?

Mr. Albert: That is objected to, may it please the Court. No foundation has been laid.

Examiner Bennett: He may answer.

By Examiner Bennett.

Q. Do you know? A. Because in our letter to Mr.——

By Mr. Martin.

Q. Just answer "yes" or "no". Do you know why that distinction was made? A. Yes.

Q. Why was the distinction made? A. Because, in our letter to Mr. Post, we stated that we would place the stamp on orders on dresses over $7.75.

Q. I hand you Commission's exhibit for identification No. 539 and ask you if you can identify that (handing document to the witness)? A. I can.

7826

Q. What is it? A. It is a letter to me from Mr. Post under date of March 23rd, 1935.

Q. Was that received by you in reply to your letter of March 21st, which is Commission's Exhibit 538? A. It was.

(The letter referred to, heretofore marked for identification Commission's Exhibit 539, was received in evidence as Commission's Exhibits 539-A to 539-F, inclusive.)

Examiner Bennett: You may proceed.

By Mr. Martin.

Q. Was Commission's Exhibit No. 539-D enclosed with this letter?

7827

Mr. Albert: It is in evidence, Mr. Martin. We will concede it was sent. Why waste time?

By Mr. Martin.

Q. That was received with this letter? A. It was.

Q. And also this memorandum? A. It was.

Q. Now, Mr. Friedmann, with reference to your letter of March 21, and Mr. Post's reply thereto, under date of

March 23, Commission's Exhibits 538 and 539, do you know the reason for the limitation to the $7.75 price line of the Guild stamp? A. I do.

Mr. Albert: That is objected to, may it please the Court, no foundation laid as to the source of his knowledge.

Examiner Bennett: He says he knows. He may answer.

The Witness: A. I do.

By Mr. Martin.

Q. What was that reason?

7829

Examiner Bennett: Overruled. You may answer.

A. I was advised by the merchandise manager in charge of ready-to-wear, and my assistant, who was also active in the Ready-to-Wear Division, that it would be necessary for us to make that $7.75 price stipulation in order to have free access to both the higher price and the lower price dress markets.

By Mr. Martin.

Q. Do you know whether subsequently to March 21, 1935, the promise which you made to Mr. Post in your letter of March 21, namely, that you would use the stamp and co-operate down to $7.75, was kept? A. I ordered it so.

7830

Mr. Martin: I will ask that this document be marked for identification Commission's Exhibits 540-A and B.

(The document referred to was marked Commission's Exhibits 540-A and 540-B for Identification.)

By Mr. Martin.

Q. I hand you Commission's exhibits for identification 540-A and B and ask you can you identify that? A. I can.

Q. What is it? A. It is a letter from Mr. Post, addressed to me, dated July 1, 1935.

Q. Was it received by you? A. It was.

(Mr. Martin handing document to Mr. Albert.)

Mr. Albert: No objection, may it please the Court. We are not certain of it. That is why I make no objection.

Mr. Martin: If your Honor please, I offer in 7832
evidence Commission's Exhibits 540-A and B.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibits 540-A and 540-B, was received in evidence.)

Mr. Martin: If your Honor please, I will ask this be marked Commission's Exhibits 541-A and B.

(The document referred to was marked Commission's Exhibits 541-A and 541-B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibits 541-A and B for 7833
identification and ask you can you identify that? A. I can.

Q. What is it? A. A letter to me from Mr. Post, under date of November 8, 1935.

Q. Was it received by you? A. It was.

(Mr. Martin handing paper to Mr. Albert.)

Mr. Martin: If your Honor please, it is stipulated between counsel that Commission's Exhibit No. 541-A and B for Identification, being a letter

from Mr. Albert M. Post to Mr. Ralph T. Friedmann, of the Edward Schuster Company, under date of November 8th, 1935, is the same letter which was sent by Mr. Post to all retailers who had signed the declaration of co-operation with the Fashion Originators Guild, and a copy of the same is in evidence.

Mr. Post: As 361-A and B. I will check it.

Mr. Martin: A copy of which is already in evidence as Commission's Exhibit 361-A and B.

Mr. Albert: Commission's 541-A and B is the same as Commission's Exhibit 361-A and B, whatever the date of it.

7835

Mr. Martin: Yes. That's all.

Mr. Albert: No questions.

Mr. Martin: If your Honor please, it is now a quarter past twelve. Mr. Haycraft was to take the next witness, and he is not here at this time, nor is the witness. I would ask that you adjourn at this time, instead of waiting until 12.30, that we adjourn now for lunch, after which Mr. Haycraft will be back, and available.

Examiner Bennett: All right. We will reassemble at 1.50.

The Witness: Am I excused?

Mr. Martin: You are excused.

(Witness excused.)

7836

Examiner Bennett: Hasn't the witness a subpoena?

Mr. Martin: Yes, sir, but we had expected there would be some cross-examination, consequently we finished earlier than we had planned.

Examiner Bennett: We will recess until 2 o'clock.

(Whereupon, at 12.20 o'clock, P. M., a recess was taken until 2 o'clock, P. M. of the same day.)

AFTERNOON SESSION.

(Hearing resumed at 2:25 o'clock P. M.)

Examiner Bennett: Be in order, please. You may proceed.

Mr. Albert: If your Honor pleases, before we commence this afternoon, I think, in all fairness to the respondents, we should have some indication from the Commission as to how they intend to proceed with their case from this point on.

We are not very near New York. It is necessary for us to get various files. We have attempted to bring as 7838
many as we can, and, at the present time, we cannot anticipate, we have not the slightest knowledge, as to who the Commission intends to put on as their witnesses.

As a result, undoubtedly cross-examination will be delayed by reason of the necessity of respondents' attorney after a witness is put on, getting out the correspondence with respect to that particular witness, so that I believe, in fairness, we should at least be told who the Commission expects to put on, in the attempt to save time.

Far more important than that consideration is the following, your Honor: We have noticed here in the corridors since we have been in Chicago, yesterday and to-day, two witnesses who ostensibly are going to be called in Minneapolis. The Commission has indicated that in so far as they are concerned, they expect to take testimony 7839
in Chicago here for a few days, then go to Minneapolis, and then come back.

It seems to me if these witnesses can come down from Minneapolis, and are in Chicago here at the present time, it is most unreasonable and unfair to require the respondents, who have to pay their expenses out of their own pockets, and do not get them from the Government, to go

up to Minneapolis and pay the expenses of going up there solely for the purpose of meeting people who are here in Chicago at the present time, and then coming back to Chicago in order to take testimony here.

Either the Commission should continue its hearings in Chicago, and complete them here, and then go up to Minneapolis, if necessary, so that we can leave for New York from Minneapolis, or else put those Minneapolis witnesses on here in Chicago where they are at the present time, and where they have been attending the hearings in Chicago.

I cannot see any purpose whatsoever in our having to
7841 go up to Minneapolis to see people there who are here now. I do not think our request is an unreasonable one, and I think we should have some indication from the Commission's attorneys as to what their intentions are in that matter.

Mr. Martin: May I ask, isn't it necessary, in going from Minneapolis to New York, to come through Chicago?

Mr. Post: It is necessary, but it is not necessary to stop in Chicago. I am something of a native.

Mr. Haycraft: I assumed, Mr. Examiner, that counsel for the Commission had some privileges or responsibilities in this case. I do not understand that we have to take orders or directions from counsel for the respondents as to whom we shall call, or where we shall call them.

7842 Mr. Albert: We are not in any way attempting to give any orders to the Commission's attorneys, whatsoever.

Mr. Haycraft: Certainly the methods being used are not conducive to getting anything in that respect. When counsel for respondent tells the Examiner, and, through the Examiner tell counsel for the Commission, why, they should do this, and why they should not do that, it is not going to get him anywhere.

Mr. Albert: It seems to me it is a confession of weakness on the part of Mr. Haycraft if he assumes there is

any threat in what I said. There certainly could be no threat in what I said against the Government of the United States. What I do say is, it seems to me to be most unreasonable to make us go up to Minneapolis, and then make us come back here, when the Minneapolis witness is here; and it certainly seems more unreasonable when the Minneapolis witnesses are in Chicago, to refuse to answer that question.

I may say that no matter how much it costs us, the Government will not get us to discontinue this case because of lack of funds, and if that is the theory Government's counsel are going on, they can put it out of the window immediately. Nor is there any reason whatsoever 7844
why, if we have funds to combat them, and will combat them, that those funds should be unnecessarily exhausted. It seems to me there can be no point whatever in going to Minneapolis when those people are in Chicago to-day, especially in the light of the fact that the Government attorney does not wish to tell us who they have in Minneapolis, aside from those they have here to-day.

Mr. Haycraft: With the attitude you are taking now you are not going to get anything. If you would come to me as one attorney to another, instead of going at it this way, there would be no difficulty. We have accommodated you all we possibly could.

Mr. Albert: No.

Mr. Haycraft: The facts will show to the contrary. 7845

Mr. Martin: I think the record will pretty well show what accommodation you have had in the past.

Mr. Albert: May I ask the Court, in the exercise of reasonable discretion, to inquire of the Commission's attorneys the necessity for going to Minneapolis when Minneapolis' witnesses are here in Chicago at the present time and the Commission's attorneys refuse arbitrarily to say whether or not they need anybody else in Minneapolis aside from those they have in Chicago to-day?

There are certainly some rights which respondent has. I will state the philosophy of the Commission's attorneys has been to ride rough-shod wherever they can, but I think it should be stopped at this point, in so far as that precious schedule is concerned.

Examiner Bennett: I would be glad to have the Commission's attorneys indicate their reasons for going to Minneapolis, or whether they have additional witnesses there, if it is true that their witnesses are here and might be heard.

Mr. Haycraft: I haven't anything to say on the matter, Mr. Examiner.

7847 Examiner Bennett: Well, don't you think, that you ought, for the record?

Mr. Haycraft: No.

Examiner Bennett: The Examiner is of a different opinion. Have you any other witnesses?

Mr. Haycraft: Beg pardon?

Examiner Bennett: I say, I wish you would answer his question. Have you any other witnesses, other than those who are here in Chicago now, who you want to hear in Minneapolis?

Mr. Haycraft: I must respectfully decline to answer. In the first place, it is an assumption, Mr. Examiner, that I do not think should be made—that is, that there are witnesses present and ready to testify—which is contrary to the fact.

7848 Mr. Albert: I did not say they were ready to testify. I said they were in Chicago and it certainly would be more comfortable for them to stay here a day than to make seven of us go up to Minneapolis, with the attendant expense.

Examiner Bennett: If you will just wait and not interrupt, I do not understand that anything except stubbornness would prevent your making a reasonable statement as to why you want to go to Minneapolis.

7849

Mr. Haycraft: There are a number of reasons, Mr. Examiner, that I do not mind telling you.

Examiner Bennett: Well, what are they?

Mr. Haycraft: But I certainly feel no responsibility to tell counsel for the respondent.

Examiner Bennett: I want it now for the record, seeing that you have made an issue of it.

Mr. Haycraft: My responsibility, in the first place, is to the chief counsel of the Federal Trade Commission.

Examiner Bennett: Yes, I understand that.

Mr. Haycraft: The chief counsel of the Federal Trade Commission has been consulted and has authorized counsel 7850
for the Commission to call witnesses in Minneapolis and to have a hearing in Minneapolis. The names of those witnesses and whom they represent I am not permitted to disclose.

(Discussion outside the record.)

Examiner Bennett: Have you a witness ready?

LOUIS LIBERMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

7851

Q. Will you state your name? A. Louis Liberman.

Q. Where do you live, sir? A. 3443 North Shephard Avenue, Milwaukee, Wisconsin.

Q. What is your occupation? A. Merchandise manager of major and minor apparel at the Ed. Schuster & Company stores, Milwaukee, Wisconsin.

Q. How long have you been in that position? A. Thirteen months.

Q. What did you do before that? A. I was idle for a period of six months.

Q. And before that what did you do? A. Apparel merchandise manager of Stix, Baer & Fuller Company, St. Louis, for nearly nine years.

Q. As apparel merchandise manager for Stix, Baer & Fuller, what were your duties? A. To supervise the merchandising, promotion and sales of ready-to-wear.

Q. Garments of what nature? A. Women's and misses' coats, suits, furs, dresses; junior apparel, girls', and sports wear.

Q. Did you do any buying yourself, or were buyers
7853 working under you? A. We had a corps of buyers for all these departments.

Q. What have been your duties since you have been associated with the Schuster Company? A. In the same capacity, merchandising, promoting the sale of apparel.

Q. Do you have buyers working under you now? A. Yes, sir.

Q. How is the business divided, in the Schuster store, as to price lines of merchandise sold? A. Well, any particular department?

Q. Yes, do you have more than one department of womens' dresses? A. In dresses we have three divisions, womens' and misses', and the budget shop.

Q. Now, what price lines do you have in each of those divisions? A. In the budget shop we carry dresses retail-
7854 ing up to—$5.98; in the women's and misses' regular dress departments we start at $6.98, upwards.

Q. In both? A. In both women's and misses'.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. Yes, sir.

Q. When did you first learn of its existence? A. I believe back in 1932.

Q. While you were working for— A. Working for Stix, Baer and Fuller, St. Louis.

Q. What did you learn about it then? A. It was handled more or less through the general merchandise office.

Q. When you came with the Schuster Company, was that concern co-operating with the Fashion Originators Guild? A. To the best of my knowledge.

Q. In what way did the Schuster Company co-operate with the Guild, at the time that you first came with them? A. Endeavoring to carry out the standards of practice that had been established by the F.O.G.A.

Q. Well, what did they do in that respect, anything? A. We had placed the Guild stamp on all orders that were purchased by the buyers in the market, and also through our New York representation. 7856

Mr. Haycraft: Where is that Guild stamp exhibit?

Mr. Albert: He did not use it. He just referred to it. He referred to it from the Declaration of Co-operation.

Mr. Haycraft: It is on here somewhere.

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 536 and ask you whether or not the stamp that you refer to is set forth on that exhibit—the language of the stamp? A. Yes, sir.

Q. Now, at that time was this stamp placed on all orders, or was there any limitation? 7857

Mr. Albert: May we have the time fixed?

By Mr. Haycraft.

Q. When you came with the—when was it you said you said you went with the Schuster Company? A. On July 31, 1935.

Q. Now, will you answer the question? A. What is the question?

(Last question read by the reporter as follows: "Now, at that time was this stamp placed on all orders, or was there any limitation?")

The Witness: To the best of my knowledge the stamp was placed on all orders by the buyers.

By Mr. Haycraft.

Q. Well, do you know whether or not there were any garments that were returned pursuant to the warranty? A. I believe there was, yes.

Q. Do you have any recollection of such returns, as to the names of any of the manufacturers, to whom returns
7859 were made? A. I believe all such records are on file.

Q. You haven't any recollection? A. No.

Q. Have you had prepared for your use in this proceeding a statement of those returns? A. I have.

(Thereupon a paper was marked Commission's Exhibit 542 for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 542 for Identification and ask you if that is the statement you refer to? A. Such a statement is correct.

Mr. Haycraft: I offer that in evidence, Commission's Exhibit 542.

7860 Mr. Albert: I have no objection to the admission of this exhibit in evidence, your Honor, except to the statement that prefixes it, or, rather, to the second line of the statement that prefixes it, "Because Guild stated dresses were copies." I believe the exhibit should go in with the statement "Returns of dresses to vendors"—above the second statement.

Mr. Haycraft: Mr. Examiner, I will be glad to ask the witness some questions on that, but it would not be relevant to this case.

Mr. Albert: Unless he wishes to concede, your Honor, that they were adjudged copies.

Examiner Bennett: Overruled; received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 542, was received in evidence.)

Mr. Haycraft: The witness has made one statement, Mr. Examiner, that I should like to—contrary to my understanding of the situation—and I should like to be allowed to refresh his recollection. 7862

Mr. Albert: Now, if it please the Court—are you through, Mr. Haycraft: Yes.

Mr. Haycraft: Yes.

Mr. Albert: If it please the Court, again I rise to object to statements by counsel for the Commission, leading the witness in no uncertain terms. I think it is both out of place for Commission's counsel to state that the witness has given evidence that is contrary to his interpretation, or contrary to his knowledge, or contrary to the inferences that have been drawn from the investigation that the Commission has made. The witness has given his testimony with respect to a certain matter, and the Commission cannot—certainly cannot attack the credibility of its own witnesses. 7863

Examiner Bennett: This is not the document signed by this witness. I would think that would be sufficient to change his testimony upon it. I will sustain the objection to that, to your objection.

Mr. Albert: Thank you, your Honor.

By Mr. Haycraft.

Q. What was the practice of the Schuster Company in July of 1935 with respect to returning garments to manufacturers under the warranty clause that was stamped on orders?

Mr. Albert: If it please the Court, that is objected to as entirely immaterial. At the same time, the Commission certainly has shown what the practice is with respect to the return of garments that are adjudged copies; it is purely cumulative, and I can see no purpose that can be gained from asking this witness the mechanics of returning dresses.

7865

Examiner Bennett: Overruled; I will let him answer as to that particular form.

(Last question read by the reporter.)

The Witness: Shall I answer, your Honor?

Examiner Bennett: Yes.

The Witness: The practice was that the Guild shoppers that shopped the Schuster stores and made claims on merchandise—or on styles that were on sale—at which time we were so notified that they were copies, we returned the merchandise. This specimen—or this copy you have here—is a direct result of having received instructions and memorandum through the Guild representatives in Milwaukee.

7866

By Mr. Haycraft.

Q. You are referring now to Commission's Exhibit No. 542? A. That is right.

Q. Who was that shopper, do you recall her name? A. I believe in the fall of 1935 there was a shopper there, representative of the Guild by the name of Israel; later succeeded by a girl named Horwitz.

Q. Do you have any knowledge as to how often she shopped your store? A. I have not.

Q. Now, when you returned garments to the manufacturers for the reasons stated, did the manufacturers always accept them? A. No, sir.

Q. What was your experience in that respect?

Mr. Albert: Are we referring to the period after July 1, 1935?

Mr. Haycraft: Yes.

The Witness: I can't recall such correspondence; that is on file.

(Thereupon papers were marked Commission's Exhibits 543-A, B and C for Identification.) 7868

By Mr. Haycraft.

Q. Are you acquainted with Mr. Albert M. Post, who is executive director of the Fashion Originators Guild of America? A. I am.

Q. When did you first meet Mr. Post? A. I can't recall; a number of years ago.

Q. At the time that you became associated with the Schuster Company, was he in his present position as executive director? A. He was.

Q. Do you recall having had correspondence with him with respect to the activities of the Guild in Milwaukee? A. I had.

Q. (Indicating) I show you Commission's Exhibit No. 543-A to C for Identification and ask you if you can identify it as a letter received from Mr. Post? 7869

Mr. Albert: May I see it, your Honor?

Examiner Bennett: The witness has not identified it as yet. Can you identify it (handing paper to witness)?

The Witness: This letter was received by me.

7870 *Louis Liberman—For Commission—Direct.*

By Mr. Haycraft.

Q. From Mr. Post? A. From Mr. Post.

Q. On what date—what date? A. In early September of 1935.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection, your Honor.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibits 543-A to C, was received in evidence.)

7871 (Thereupon a paper was marked Commission's Exhibit 544 for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 544 for Identification, and ask you if you can identify that? A. That is a carbon copy of the reply to the letter.

Q. Carbon copy of your reply to Mr. Post's letter dated September 5th, 1935, being Commission's Exhibit No. 543-A to C? A. That's right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

7872 (The paper referred to, heretofore marked for identification Commission's Exhibit 544, was received in evidence.)

By Mr. Haycraft.

Q. Now, in Commission's Exhibit No. 543-A, a letter from Mr. Post to yourself, reference is made to a Mr. Greenblatt—who is he? A. Mr. Charles Greenblatt was my predecessor at the Ed. Schuster Company store.

Q. This statement is found in the letter: "I am sure you are aware of the situation in St. Louis where practically every store has subscribed. I know that Milwaukee would straighten out very quickly if your store and the Boston store sent their checks." Do you know what Mr. Post was referring to there?

Mr. Albert: I think the letter speaks for itself, if it please the Court; it is obvious that if the rest of the letter was read it would indicate what was meant.

Examiner Bennett: Well, if there is any particular reason to which this refers, I would like to have it. He may answer. 7874

The Witness: May I have the question again?

(Last question read by the reporter.)

The Witness: I believe it was a matter of establishing a local Guild.

By Mr. Haycraft.

Q. Did the Schuster store send in any checks in response to this letter? A. I do not know.

Q. Was there anything done while you were representing the Schuster Company with respect to the formation of a local Guild in Milwaukee? A. No, sir.

Q. At the bottom of page 2 of Mr. Post's letter is a postscript stating the following: "As recently as to-day a Milwaukee store (Hixons, I believe) complained to us 7875 about a certain local condition which could be straightened out in no other manner than by using the Guild." Do you know what Mr. Post referred to in the language I just read to you? A. I do not.

Q. There is a green ink notation in the right-hand margin of page 2; do you know in whose handwriting that is? A. I do not.

Mr. Haycraft: Will you concede that is Mr. Post's handwriting?

Mr. Albert: We will concede that that is Mr. Post's handwriting.

By Mr. Haycraft.

Q. Now, Mr. Liberman, directing your attention to Commission's Exhibit No. 542, and the instances with which you are familiar, when the Schuster Company returned dresses to vendors, because the Guild shopper told you they were copies of styles of Guild manufacturers, do you have any opinion as to the effect of that practice or policy upon the business of the Schuster Company? A. Such merchandise taken out of our shops naturally had a bad
7877 effect in loss of sales.

Q. In what way? A. That we could not meet competition in the lower price brackets.

Q. Competition of whom? A. Chain stores and specialty shops, also basement departments.

Q. Were you required at any time to return what was known as "hot numbers"?

The Witness: Please, your Honor, I would not know just how to qualify that—and answer as to "hot numbers."

By Mr. Haycraft.

Q. Well, are you familiar with the term "hot number"? A. I have heard it used.

7878 Q. Do you know what it means? A. You mean my interpretation of it?

Q. Yes. A. It may be a style that has particular vogue at the moment.

Q. Well, were you required to make returns of such styles? A. We were.

Mr. Albert: I am sorry, I did not get that, Mr. Liberman—you were not or you were?

Mr. Martin: We were.

The Witness: We were.

(Thereupon a paper was marked Commission's Exhibits 545-A and B for Identification.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 545-A and B for Identification and I ask you if you can identify it? A. I received such a letter.

Q. What is the date of it? A. January 13, 1936.

Q. Who is it from? A. Mr. Al Post.

Q. The executive director of the Fashion Originators Guild of America? A. That is right. 7880

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The letter referred to was marked Commission's Exhibits 545-A and B; and received in evidence.)

(Thereupon a paper was marked Commission's Exhibit 546 for Identification.)

Mr. Haycraft: Does counsel for the respondent concede that the pen notations in green ink on the first page of this letter are in Mr. Post's handwriting (indicating Commission's Exhibit 545)?

Mr. Albert: Yes, it is. 7881

Mr. Keller: What is the date of that?

Mr. Martin: January 13th, 1936.

The Witness: That is a carbon copy of a letter that I wrote to Mr. Post (referring to Commission's Exhibit 546 for Identification.)

By Mr. Haycraft.

Q. On January 20th, 1936? A. That's right.

Q. And is it in reply to the letter of Mr. Post, Commission's Exhibit No. 545-A and B? A. That's right.

Mr. Haycraft: I offer it in evidence (Exhibit 546).

Mr. Albert: Is that January 13th?

Mr. Haycraft: Yes.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 546, was received in evidence.)

7883 *By Mr. Haycraft.*

Q. Mr. Liberman, do you have any independent recollection of the subject-matter of these two letters? A. Pardon?

Q. Do you have an independent recollection of the subject-matter of these two letters? A. I believe they are stated right in the correspondence.

Q. I say, do you have an independent recollection aside from the correspondence, as to what the two letters were about? A. No.

Q. (Indicating) I call your attention to the second paragraph of your letter to Mr. Post dated January 20th, 1936, Commission's Exhibit No. 546, reading as follows:

7884 "Relative to the garment involved, wish to state that we were under the impression that anything costing under $4.75 was not to be considered a copy of higher priced merchandise or would conflict with the F.O.G.A." Does that refresh your recollection?

Mr. Albert: Now, if it please the Court, the witness has stated that he has no independent recollection, and he has stated that the transaction is accurately reflected in the letters.

Now, the letters are the best evidence of what transpired between the Guild and himself, and I do not think there is any information of any kind necessary from the witness. Both letters are most full and concise upon the points involved in the letters. The letters are the best evidence of what they show, and I object to any interrogation with respect to the letters.

Examiner Bennett: He may be interrogated as to his knowledge of that particular thing. As I understood it, that is what he is doing now, not attempting to contradict what is in the letter.

Mr. Albert: I beg your pardon? 7886

Examiner Bennett: I think it is not the purpose to contradict what is in the letters, but merely to show this witness' knowledge or lack of knowledge of the situation.

Mr. Albert: May I respectfully suggest to your Honor that I agree that it certainly—the question cannot certainly be directed at an attempt to contradict the letters, and that if he is merely asking the witness his recollection in order to substitute the letters, the letter is already in evidence and speaks for itself, and is the best evidence of the contents.

Examiner Bennett: I will overrule the objection, and let him answer.

The Witness: May I have the question? 7887

(Last question read by the reporter.)

The Witness: May I ask your Honor if I can see the letter from Mr. Post, probably I can derive some information from that?

(Mr. Haycraft hands the letter to the witness.)

The Witness: Matter of Gainmore dress—style 616—was a dress purchased through our New York office, through Cavendish, for our budget shop. I believe it cost $3.75. This letter states——

Mr. Albert: If it please the Court, may I suggest that a mere repetition of what the letter states is not going to be particularly helpful, and will merely clutter up the record?

By Mr. Haycraft.

Q. My question was whether or not the language to which I direct your attention refreshed your recollection as to the subject-matter of the transaction involved therein? A. It is answered in this third paragraph in my reply to Mr. Post.

Q. I will ask you this question now. In the light of the
7889 language to which I have directed your attention, was the Guild stamp, warranty stamp, placed on the order placed by the Cavendish Company for this particular garment?

Mr. Albert: If it please the Court, the witness—

The Witness: To the best of my knowledge.

Mr. Albert: The witness has answered.

Examiner Bennett: Is the Guild stamp covered in those letters?

Mr. Haycraft: No.

Examiner Bennett: How?

Mr. Haycraft: No.

Mr. Albert: May I ask that Mr. Haycraft's question and answer be read? At the time I was making my objection I could not get his answer, and I do
7890 not know what went into the record.

Examiner Bennett: Yes, you may have it.

Mr. Albert: Will you read it, please, Miss Fisher?

(Question and answer read.)

By Mr. Haycraft.

Q. If that is true, then, why did you object to returning the garments?

Mr. Albert: If it please the Court, is the Commission now attempting to impeach his own witness the same as he did before? He is now attempting to impeach the letter that is now in evidence.

Mr. Haycraft: I have never attempted to impeach anybody, Mr. Examiner.

Mr. Albert: He is now attempting to vary or alter the terms of this letter which is in evidence, and it speaks for itself, and I say that the Commission's attorney should be foreclosed from any further examination on this point.

Mr. Haycraft: I am merely trying to clarify the situation through the witness; perhaps the witness 7892
can clarify it and perhaps he cannot, if it please the Court. Candidly, I am puzzled, because I cannot tell why he should object to returning a garment if he put a stamp on it.

Examiner Bennett: What is the question?

Mr. Albert: I think Commission's attorney can very well leave that to the respondents.

Examiner Bennett: What is the pending question?

(Last question read by the reporter.)

Mr. Albert: I press my objection, if the Court please.

Examiner Bennett: He may answer. Overruled.

7893

Mr. Albert: Exception.

The Witness: This particular dress was purchased by the Cavendish office for the Budget Shop, the cost price of which was $3.75.

In my letter to Mr. Post, I stated there that, to the best of my knowledge, we agreed not to purchase copies of dresses under $4.75, I believe. It was a new stamp that was offered, all orders had to be stamped.

By Mr. Haycraft.

Q. Then, is it your testimony that while you put the stamp on all orders, you did not agree to return garments under $4.75, is that it? A. That is as I understood.

Mr. Haycraft: I wanted to get it straight. I will ask to have this document marked for identification Commission's Exhibit 547-A, B and C.

(The document referred to was marked Commission's Exhibits 547-A, 547-B and 547-C for Identification.)

7895 *By Mr. Haycraft.*

Q. I show you Commission's Exhibit 547-A to C for Identification and ask you if you can identify that? A. This is a letter received by me under date of January 23rd.

Q. 1936? A. 1936.

Q. From Mr. Post? A. From Mr. Al. M. Post.

Q. In reply to your letter to him of January 20, Commission's Exhibit 546? A. That is right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Which is the letter of January 20th?

Mr. Post: That is 546.

Mr. Albert: No objection, if the Court please, except to the pencil notations that appear on that letter.

7896

Examiner Bennett: All right. Commission's Exhibit 547-A, B and C, without the pencil notations, is received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 547-A, B and C, was received in evidence.)

Mr. Haycraft: I will ask this be marked for identification Commission's Exhibit No. 548.

(The document referred to was marked Commission's Exhibit 548 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 548 for Identification, and ask you if you can identify that? A. This telegram was received by me from Albert M. Post.

Mr. Haycraft: I offer the telegram in evidence, dated February 5, 1936.

Mr. Albert: Is 547 January 23rd?

Mr. Post: Yes.

Mr. Albert: No objection.

Examiner Bennett: Received. 7898

(The telegram referred to, heretofore marked for iden ication Commission's Exhibit 548, was received in evidence.)

By Mr. Haycraft.

Q. Did you reply to this telegram of February 5, 1936?
A. I believe there was an answer.

Q. Did you reply in writing? A. I cannot recall.

Mr. Haycraft: I will ask that this be marked for identification Commission's Exhibit 549.

(The document referred to was marked Commission's Exhibit 549 for Identification.) 7899

By Mr. Haycraft.

Q. When did you first know that the Schuster Store had been red carded? A. At midnight of February 11th.

Q. How did you learn that? A. Why, I happened to get an early morning newspaper of the 12th; such notice was in the "New York Times," Tuesday, February 12th.

Q. Did you see any publication in "Women's Wear"?
A. Of Tuesday, February 12th.

Q. I will ask you to identify the paper I am handing you now, marked Commission's Exhibit 549 for Identification. A. That's right.

Q. What is that I just handed to you? A. The memorandum on the left is a copy of the news item that I saw in the "New York Times." The copy of the right is the article that appeared in "Women's Wear," under date of February 12th, 1936.

Q. Where were you at the time? A. New York City.

Mr. Haycraft: I offer that in evidence, the exhibit which contains both the newspaper statements.

7901 Mr. Albert: May it please the Court, this is objected to, on the ground that it is in no way binding upon the Guild. It is merely a reporter's conception of something that has happened, without any accuracy contained in the article itself.

(The document referred to, heretofore marked for identification Commission's Exhibit 549, was received in evidence.)

By Mr. Haycraft.

Q. What did you do, Mr. Liberman, after you saw this notice in the newspapers, or these notices? A. I notified Ed. Schuster & Company, Milwaukee.

Q. Did you contact the Guild in any way? A. No, sir.

7902 Q. Subsequent to that time, did you have any conversation with Mr. Post? A. I did.

Q. Do you recall when that was? A. I believe it was Tuesday morning, February 11th.

Q. What did you say to Mr. Post, and what did Mr. Post say to you on that occasion? A. I phoned Mr. Post and told him that I was in town. Mr. Post asked me whether or not I was ready to sign up a new declaration of co-operation. I told Mr. Post that I had not the power

ttorney to sign any such agreement. Mr. Post then ed that it would be necessary to take action against Schuster & Company.

Mr. Albert.

. When was this, Mr. Liberman, please? A. That was sday, February 11th.

Mr. Haycraft.

. Well, that was before February 12th, not after- ds, was it not? A. Beg pardon?

Mr. Haycraft: Read the question. 7904

(Question read by the reporter.)

The Witness: That was before February 12th.

Mr. Haycraft.

Did you have any more conversation with him after had been red carded? A. Not any, none whatsoever.

Mr. Albert: May I interrupt for one moment, if your Honor please? I do not believe I am clear as to when this conversation with Mr. Post took place that he was just referring to.

Mr. Albert.

Did that conversation take place on February 11th? uesday, February 11th, New York City. 7905

Over the phone? A. Yes, sir.

Examiner Bennett: We will take a recess of ten minutes.

(A short recess was thereupon taken.)

Examiner Bennett: Be in order, please.

The Witness: May it please the Court, I would like to make a correction in my statement.

Examiner Bennett: All right. Make it.

7906 *Louis Liberman—For Commission—Direct.*

The Witness: Referring to Exhibit No. 548, this telegram, it occurred to me afterwards that this telegram was turned over to the management of Ed. Schuster & Company, and I believe that they made some decision relative to taking this matter up further with the Guild.

By Mr. Haycraft.

Q. Did you do anything further about it? A. No.

Mr. Albert: May I have that correction repeated?

7907 Examiner Bennett: Read it.

(Answer read by the reporter.)

By Mr. Haycraft.

Q. Did you have any instructions to take the matter up with Mr. Post when you went to New York on February 11th? A. I did.

Q. And what were your instructions at that time? A. To communicate with Mr. Post, and to advise him that I could not at that time sign any new declaration of cooperation.

Mr. Haycraft: I will ask to have marked for identification Commission's Exhibits 550-A and B.

7908 (The documents referred to were marked Commission's Exhibits 550-A and 550-B for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 550-A and B for Identification, and ask you if you can identify that? A. I have seen this before.

Q. Where? A. In Milwaukee, copy of which I received personally.

Q. And it is a letter from whom to whom? A. A letter from Mr. Al. Post to the firm of Ed. Schuster & Company, Inc.

Q. Under what date? A. Under date of February 11th.

Q. Where were you when you got a copy of it? A. I was in Milwaukee.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 550-A and 550-B, were received in evidence.)

By Mr. Haycraft. 7910

Q. Upon ascertaining that the Schuster firm had been red carded, what did you do next with respect to the matter? A. I waited for further developments and information from the store.

Q. How long did you wait? A. Until I returned to Milwaukee, at the end of that week.

Q. Did you make any attempt to get any goods from the manufacturer? A. I personally did not.

Q. Did you issue any instructions at that time? A. In answering the question, I would like to make this statement, that I do not believe the dress buyer was in the market at that particular time, but went subsequently.

Q. Did you have any outstanding orders with Guild houses at that time? A. We did. 7911

Q. Do you have an independent recollection with what houses? A. I cannot say offhand.

Mr. Haycraft: I will ask this document be marked for identification Commission's Exhibit 551.

(The document referred to was marked Commission's Exhibit 551 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 551 for Identification and ask you what it is, if you can identify it? A. Exhibit C of the Comptroller's office shows the list of vendors, also the outstanding orders with Guild houses, as of February 11, 1936.

Q. Was that prepared pursuant to your request? A. It was.

Q. Did you receive it from your Comptroller? A. I did.

Q. Are you satisfied it is correct? A. I am.

Q. Are you familiar with the names of the resources named on there? A. I am.

7913

Mr. Haycraft: I offer it in evidence.

Mr. Albert: May I ask who Esco is on this, Mr. Haycraft?

The Witness: Ed. Schuster & Company.

Mr. Albert: That is objected to, may it please the Court, upon the ground that no proper foundation has been laid.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 551, was received in evidence.)

By Mr. Haycraft.

7914

Q. How many buyers do you have? A. In dresses?

Q. In dresses, in these two departments, 57 and 63? A. One buyer.

Q. One buyer? A. Yes, sir.

Q. Who is it? A. At the present time, or at the time of this?

Q. At the time of the red carding? A. Miss Grace Turner.

Q. Did she make any attempt to buy dresses from Guild manufacturers——

Mr. Albert: That is objected to.

By Mr. Haycraft.

Q. (Continuing) —after February 11, 1936?

Mr. Albert: That is objected to.

The Witness: She so reported to me.

Mr. Albert: That is objected to. No foundation laid. May I ask the Court to admonish the witness that, while I am making an objection, the witness should not attempt to answer the question? 7916

Examiner Bennett: Strike out the answer until there is a ruling on it. Now, read the question.

(Question read by the reporter.)

Examiner Bennett: And you object?

Mr. Albert: Yes, your Honor. There is no foundation laid.

Examiner Bennett: Overruled. He may answer.

The Witness: She so reported to me.

By Mr. Haycraft.

Q. What did she report to you? A. That the firms that she had been accustomed to buy merchandise from at the various price levels, she was unable to see the merchandise, or place orders for Ed. Schuster & Company. 7917

Q. Is Miss Turner now with the Shuster Company? A. She is not.

Q. When did she leave? A. About July 14th.

Q. Referring to Commission's Exhibit 551, I notice under the heading "Disposition," certain notations as to cancellation, balance canceled, and so on, with dates. How were those cancellations made? A. After a period of time that the order was due, the orders were automatically canceled by the order department, the outstanding order department.

7918 *Louis Liberman—For Commission—Direct.*

Q. Does the Schuster Company have a New York office? A. They are a member of the Cavendish Trading Company.

Q. Where are they located in New York City? A. 1412 Broadway.

Q. Does the Cavendish Trading Company have buyers calling on the dress manufacturers in New York City? A. They have buyers that represent Cavendish Trading Corporation, member stores.

Q. Are there Cavendish buyers representing your store, the Schuster Store? A. There are.

Q. Do you know who they are, or were in February, 1936? A. Miss May Snyder and Wilson Rogers.

7919 Q. Do you know whether or not Miss Snyder or Mr. Rogers made any attempt to look at the line of dresses manufactured by Guild manufacturers, or to purchase dresses from such Guild manufacturers? A. It has been so reported to me.

Q. And what did they report? A. That Ed. Schuster & Company were red carded and could not see the merchandise.

Q. Who could not see the merchandise? A. The buyer for Ed. Schuster Company.

Q. You mean Miss Snyder and Mr. Rogers? A. No, Miss Turner, representing Ed. Schuster & Company.

Q. Did Miss Snyder and Mr. Rogers attempt to look at the lines or purchases dresses from the New York Guild manufacturers on behalf of the Schuster Company? A.

7920 I can't answer that.

Q. Has the Schuster Company been able to buy merchandise in any way from Guild manufacturers subsequent to February 11th, 1936? A. They have tried.

Q. Have they been successful? A. No.

Q. Mr. Liberman, do you have an opinion as to the effect upon the business of the Schuster Company of the red carding of that company by the Guild?

Mr. Albert: That is objected to, if it please the Court, as immaterial, and no proper foundation has been laid.

Examiner Bennett: Answer yes or no, whether you have an opinion?

The Witness: It has had.

Mr. Albert: I ask that the answer be stricken as not responsive.

Mr. Haycraft: It may be stricken.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. I will ask you to answer yes or no as to whether you have an opinion? A. I have an opinion, yes. 7922

Q. Has the effect been good or bad?

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid as to the sources of his belief.

Examiner Bennett: He may answer; overruled.

Mr. Albert: Exception.

The Witness: Bad.

By Mr. Haycraft.

Q. In what way? A. It has definitely retarded the display, the sales, and the ways and means of catering to Ed. Schuster and Company's clientele on dresses retailing at $16.95, and above. 7923

Q. Is that all? A. It has put us in very bad competitive position.

Q. In what way? A. That we have——

Mr. Albert: If it please the Court, I ask that this testimony be stricken out, upon the ground that it is a conclusion of the witness pure and simple, and I believe that the answer to Mr. Haycraft's questions called for the facts.

Mr. Haycraft: I did not ask for any facts; I asked for his opinion, that is all he is testifying to.

Examiner Bennett: There is a question pending, is there not?

(Last two questions and answers read.)

Examiner Bennett: Go ahead; overruled.

Mr. Albert: Exception.

The Witness: We have been unable to secure the merchandise which the Ed. Schuster and Company stores have been accustomed to carry over a period of years at price lines of $16.95, $19.95, $22.75, $25 and $29.75.

7925 *By Mr. Haycraft.*

Q. Are those costs or retail prices? A. Retail prices.

Q. What would be the wholesale range of those prices that you have just given the detail of? A. $10.75 to $16.75.

Q. In your opinion, has the red carding had any effect upon the $7.75 cost price line? A. At the time we were red carded it had.

Q. And was that effect good or bad? A. At that time it was bad.

Q. In what way? A. Many of the resources in that price range had joined the Guild, subsequently had resigned.

Q. Do you have an opinion as to whether or not the red carding of the Schuster Company by the Guild has had
7926 any effect upon the prestige of the Schuster Company in Milwaukee?

Examiner Bennett: Have you an opinion, yes or no.

The Witness: I have an opinion, yes.

By Mr. Haycraft.

Q. Has that effect been good or bad? A. Bad.

Q. In what way? A. With reference to securing a type of dress that is only produced by Guild members.

Q. To what class of trade does the Schuster store cater? A. Among the clientele is a type known as half sizes.

Q. What do you mean by that? A. They are cut on special patterns and known generally in the trade as half sizes resources; dresses that are cut for—on lines that fit women that are either short, tall, stout, or take sizes other than recognized standard sizes in apparel.

Q. Whom were your resources for that type of garment? A. Among such resources was Antman and Bart, Anderman and Bob, Harry Frank, Little Brothers, Weinberg and Weinberg, Alper and Barons. 7928

Q. Are these all Guild manufacturers? A. They are.

Q. Were you able to replace these lines of merchandise that you referred to from other manufacturers, subsequent to February, 1936? A. We have not as yet found such resources.

Q. Has that inability on your part had any effect upon the business of Schuster's? A. It has.

Q. What has been the effect? A. Loss of sales volume.

Q. In what price lines? A. Dresses retailing at $16.95 and above.

Q. What would be the cost line of those? A. $10.75, $12.75, $14.75 and $16.75. 7929

Q. Have you made any study of the stock of merchandise in the dress departments under your supervision? A. I have.

Q. Have you formed any opinion as to the effect upon the stocks carried by Schuster and Company? A. I have.

Q. What is your opinion in that respect? A. That it has retarded the sale of merchandise volume—pardon me, I would like to correct that—that it has retarded the sale

of merchandise in the stores and also caused a decrease in sales volume compared with the year previous.

(Thereupon a paper was marked for identification Commission's Exhibit 552.)

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 552 for Identification and ask you if you can identify that? A. I can.

Q. What is it? A. It is a summary of dresses on hand from February 10th to July 6th for the women's and misses' departments at retail price lines of $16.95, $19.95, $22.75, $25, $29.75, $35 and $39.75, showing stocks on hand at these points compared with the year previous.

7931

Q. That is, from February 10th to July 6th, in the year 1935 and 1936? A. And 1936.

Q. Did you take this exhibit into consideration when you based your opinion which you just now gave? A. I did.

Q. Who prepared this for you? A. Through the Comptroller's office.

Q. Prepared in the usual course of business? A. It was.

Q. Are you satisfied it is correct? A. I am.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: I object to it, if it please the Court, upon the ground that no proper foundation has been laid.

7932

Examiner Bennett: I wish you would get the significance of the stock on hand on the business of the store.

Mr. Haycraft: I will ask the witness to testify as to that.

The Witness: What is the question, please?

By Mr. Haycraft.

Q. What is the significance of the figures contained in this exhibit, Commission's Exhibit No. 552, as to the stock on hand? A. This here memorandum shows that after a period of a couple of weeks after we were red carded, we were unable to get the desirable merchandise to sell at these price lines and that our stocks actually suffered—we did not have entree to such lines as the Schuster Company had been accustomed to handling in their stores, and that we could not find—or that the different reports to me were that she could not find—replacements.

Examiner Bennett: Did that have any effect upon the volume of your sales? 7934

The Witness: We—that is I—felt that it definitely did.

Examiner Bennett: All right, I will overrule the objection; it may be received.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit No. 552, was received in evidence.)

By Mr. Haycraft.

Q. Have you made any recent attempt to buy ladies' dresses from Guild manufacturers? A. We have.

Q. How recently? A. I believe during July an order was placed by a Schuster representative. 7935

Q. With whom was this order placed? A. It was placed by our New York representative with the Sheila-Lynn Company.

Q. I hand you Commission's Exhibits for Identification 553-A and B, and ask you if you can identify that? A. This is a letter received by Ed. Schuster & Company relative to an order that had been placed by a representative

of the Cavendish Trading Corporation, representing Ed. Schuster & Company.

Q. What is the date of the letter? A. July 31, 1936.

Q. Who signed it? A. The letter is signed by Myra Horowitz, representing Sheila-Lynn, Inc.

Q. Did you receive that letter? A. It came through the regular course of business, upon my return to New York.

Q. And you also received the paper attached to it? A. That was attached to the memorandum.

Q. To the memorandum, or to the letter? A. To the letter.

Mr. Haycraft: I offer them both in evidence, as
7937 Commission's Exhibits 553-A and B.

Mr. Albert: No objection, if the Court please.

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 553-A and 553-B, were received in evidence.)

By Mr. Haycraft.

Q. How many buying seasons do you have at your store, buying or selling seasons? A. Two seasons.

Q. What are they? A. Spring and autumn.

Q. When do they begin? A. The spring season, purchasing starts in December. In the fall season, it starts
7938 the end of July or the end of June.

Q. Would you say that you are now in your fall season of purchasing? A. That is right.

Q. Have you been able to make any purchases from Guild manufacturers? A. No, sir.

Q. Do you have an opinion as to the effect that that inability is going to have on your purchase of fall merchandise for the Schuster stores? A. I have.

Q. Will you state that opinion?

Mr. Albert: That is objected to, may it please the Court. It is purely conjectural as to what may happen in the future. We haven't any idea of where he may be able to get dresses, or what may happen a week from now, two weeks from now, or two months from now. It is purely prophecy, your Honor.

Mr. Haycraft: On the present status, of course, based on his inability to get merchandise from the Guild.

Mr. Albert: I don't think we can go on the hypothesis that there is going to be a continuation of anything at the present time with respect to the 7940
merchandise.

Mr. Haycraft: Read the question back. I think it assumes that.

(Question read by the reporter.)

Examiner Bennett: All right. You may state your opinion.

By Mr. Haycraft.

Q. You may state. A. I feel, as long as Ed. Schuster & Company is red carded, and do not have entree to such lines as I have mentioned, which, among others, would include the International, A-1, Casino, Willet & Snyder, in the half-size and large size dress manufacturers, I definitely feel that we cannot give to our clientele the type of 7941
merchandise they have been accustomed to buy in the store. It does not place us in a competitive position to cater to such customers that have come into Ed. Schuster's in years past, or seasons past, to buy the type of merchandise that I have enumerated.

(Whereupon at 4.30 o'clock P. M., August 25, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 1 o'clock P. M. to-morrow, August 26, 1936.)

Room 1123, New Post Office Building
433 West Van Buren Street,
Chicago, Illinois,
August 26, 1936.

Met, pursuant to adjournment, 1 o'clock P. M., E.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7943 Examiner Bennett: You may take the witness stand, Mr. Liberman. Any further interrogation?

Mr. Haycraft: Yes, I have some.

Examiner Bennett: Be in order, please.

LOUIS LIBERMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Liberman, yesterday while you were on the witness stand you identified Commission's Exhibit No. 552 as an exhibit showing a summary of dresses on hand February 10th to July 6th, 1935 and 1936, from the six retail
7944 price lines, Departments 57 and 63 of the Schuster Company, and stated that——

Mr. Albert (interposing): What page is that?

Mr. Haycraft: 4461.

By Mr. Haycraft.

Q. (Continuing) —and made a certain statement with respect to that exhibit. I will direct your attention to the testimony on that page, and your reply, and the Exam-

iner's question, and just ask you to read it again so as to familiarize yourself with the contents. A. With reference to the——

Q. Do not read it out loud, just to yourself? A. No, I mean, 552——

Q. Yes, read your answer, and the Examiner's question, and your answer to that. A. (Witness examines record.)

Q. Now, in your answer there you said that it definitely did have an effect upon the volume of your sales; what did you refer to in that answer? A. I referred to one of the major price lines involved in this report.

Q. Which one did you refer to? A. The one at $16.95.

Q. The retail price line? A. The retail price, $16.95. 7946

Q. Now, what effect did the conditions of the stocks, and the inability to replace these stocks, have upon the volume of your sales?

Mr. Albert (interposing): In the $16.95?

Mr. Haycraft: In the $16.95 line?

The Witness: With the permission of the Court, I would like to read some figures here that have been compiled.

Examiner Bennett: Is that part of your answer?

The Witness: Yes.

Examiner Bennett: All right.

The Witness: In Department 57, women's dresses, February to June, inclusive, for the year 1935, total purchases of our entire stock at $10.75 was 21.90. 7947 In 1936 our percentages to total stock purchased at $10.75 was 8.67. Our purchases from Guild houses in 1935 at $10.75 cost was 62.7, or $6402, against $463 in 1936, or 13 per cent.

In the misses' department, at $10.75, our total purchases in 1935 to total stock was 19.30; in 1936, 10.27. Total purchases of $10.75 from Guild houses in 1935, from February to June, inclusive, was

$7294, against $750 in 1936, or in percentage, 1935 to 1 purchases at $10.75 dresses was 84.8, against 17 per cent. for 1935.

By Mr. Haycraft.

Q. 17 per cent. for what? A. 1936—excuse me.

Q. Well, now——

Mr. Albert (interposing): Now, if it please the Court——

By Mr. Haycraft.

7949 Q. (Resumed) —what is your interpretation of these figures? A. Pardon?

Mr. Albert: If it please the Court——

By Mr. Haycraft.

Q. (Resumed) What is your interpretation of these figures that you have given?

Mr. Albert: I ask that the testimony of the witness with respect to the last question be stricken from the record. The witness is reading from a paper not in evidence. He has not used the figures to refresh his recollection. We have not any foundation laid with respect to the accuracy of these

7950 figures, and, under the circumstances, if it please the Court, I think that the witness' answer should be stricken out.

I believe that the impression—at least that I got—was that he was going to refer to figures on testimony orally, from them. Now, I believe that the least that should be done is for Mr. Haycraft to follow the accustomed procedure he has followed, and lay a foundation for placing this particular pa-

per in evidence, so that it is open to us, at least, for a question to be examined upon.

Examiner Bennett: The matter did not come up in that way. The witness was answering a question, and, as I understand, he may use any source which he thinks is available as a foundation for his answer. He is taking the responsibility in using that. Of course, that document on cross-examination is available to you for cross-examination.

Mr. Albert: May I respectfully ask, if the Court please, that the document be marked for identification, so that we may know what we are referring to?

Examiner Bennett: Well, I think that is all 7952
right, if you want it, but I thought you might identify it—I do not think there will be any trouble about the identity of the document; you will have the witness here available.

Mr. Albert: Thank you, your Honor.

Mr. Haycraft: I think I have a question pending, Mr. Examiner.

Examiner Bennett: All right.

(Last question read by the reporter.)

The Witness: It definitely shows, of the major price lines which we were involved in with the red carding of the Guild, that the $10.75 cost price line was where we suffered the most.

By Mr. Haycraft. 7953

Q. Now, have you made any study of the purchases made from Guild houses as between 1935 and 1936, of the $10.75 price line, cost price line, in these two departments—that is, the purchases of garments bought from Guild houses, compared between those two?

Examiner Bennett: He gave figures on that—he just gave figures on that in the last answer, did he not—six thousand?

Mr. Haycraft: That is right.

Examiner Bennett: Seven thousand is another?

Mr. Haycraft: That is right. I should say "sales" instead of "purchases." Will you make that change? Well, I will withdraw it and ask another question.

By Mr. Haycraft.

Q. Have you made a study of sales, the volume of sales by these two departments, as between 1935 and 1936? A. Two departments?

Q. Women's and misses' dresses? A. I don't quite get that.

7955 Q. In the $10.75 price line? A. In the $10.75 price line.

Q. Or any price line that handled Guild merchandise? A. I would again like to refer to some memorandums I have here.

Examiner Bennett: All right.

(Witness refers to paper.)

The Witness: Department 57, women's dresses—

Mr. Albert: Same objection, if the Court please, to the witness reading from any document that is not in evidence.

Examiner Bennett: Yes.

Mr. Keller: No foundation laid.

Examiner Bennett: I will let him answer; the document is available for your cross-examination.

7956

By Mr. Haycraft.

Q. Go ahead. A. From February to June, inclusive, 1935, 1936, at $12.95 retail, we had a drop of 44 per cent in sales. At $14.95, we had a drop of 0.8 percentage. At $16.95, we had a drop in sales of 47 per cent. At $19.95 we had a drop of 5.1 in sales. At $22.75, we had a drop in sales of 33.7. At $25, we had an increase of 47.3. At $29.75, we had an increase of 88 per cent.

Misses' dresses, Department 63, at retail, $12.95, we had a drop in sales of 25.9. At $14.95, we had a drop in sales of 3.44. At $16.95, we had a drop in sales of 33 per cent. At $19.95, we had a drop in sales of 24.1. At $22.75, we had a drop in sales of 28.8. At $25, we had a drop—or had an increase of 6.4. At $29.75, we had a drop of 52 per cent.

By Mr. Haycraft.

Q. What explanation do you have for these decreases in certain lines, and increases in other lines, as you have testified?

7958

Mr. Albert: Objected to, may it please the Court; no foundation laid.

By Examiner Bennett.

Q. Have you an explanation for it? A. I have.

Q. Go ahead and give it. A. That in the fall of 1935, in planning for the spring of 1936, we were planning to go out after some better dress business, and in the months of December and January we went into the market to increase our stocks in these price lines, and to also build up possibilities of greater volume in the higher brackets for the coming year. It was decided on, in our buyers' meeting for 1936, in all price lines and all departments of apparel, to go for higher unit sales.

7959

By Mr. Haycraft.

Q. To what figures does this present explanation that you now give refer? A. To the sales for the period covered in this report.

Q. In what price lines? A. From $16.95 retail to $29.75.

Q. Why is it that you show a decrease in certain of those lines and an increase in others? A. In the better

merchandise, that is merchandise retailing at $25 and above, we had received a fairly representative stock previous to being red carded. The lower price lines, naturally, is merchandise on which you can get much better service in the way of delivery, and it depends a great deal on getting re-orders through on orders on merchandise that has already had customer acceptance.

Mr. Albert: May I ask that the last part of the answer be repeated?

Mr. Haycraft: Read it to him.

(Last part of answer read by the reporter.)

7961 *By Mr. Haycraft.*

Q. Mr. Liberman, can you testify as to the Guild houses from whom the Schuster Company was buying merchandise during the fall of 1935 and the spring of 1936, at the time they were red-carded? A. I can, if I have the list available.

Q. Do you have such a list? A. I have such a list.

Q. Will you refresh your recollection from that list? In doing so, so far as you can, give as much description of the house, of the concern, as you can, as to its type of merchandise? A. Types?

Q. Yes, types. A. In the women's department, I would like to refer to the following vendors: Anderman-Bob Burns, Inc.

7962

Mr. Albert: Can that list be marked for identification? He is again reading from a list.

Examiner Bennett: It will be available, of course. I don't know that we want to fill up the record with that sort of identification. Do you want it identified, Mr. Haycraft?

Mr. Haycraft: I would rather do it just the way it is being done, but if the Examiner rules otherwise, we can identify it.

Examiner Bennett: Well, let's identify it.

(The document referred to was marked Commission's Exhibit 554 for Identification.)

By Mr. Haycraft.

Q. Can you identify Commission's Exhibit 554 for Identification? A. Yes.

Q. What is it? A. It is a memorandum of resources taken from the files of Ed. Schuster & Company on purchases from Guild resources from February to June, inclusive, 1935, and also 1936.

Q. What department? A. Department 57, women's dresses. 7964

Q. What is the source of the information contained therein? A. The source is through the regular course of business, business practice and through the comptroller's office, compiled by direction of the comptroller.

Mr. Albert: May I ask the witness whether he has an additional copy of that with him, so I can follow him?

The Witness: There is no objection?

Examiner Bennett: No, it is all right.

By Mr. Haycraft.

Q. How are you going to testify? A. I will take the original. 7965

Mr. Haycraft: All right. Off the record.

(There was a discussion off the record.)

The Witness: Among the houses I would like to call attention to is Anderman-Bob Burns, Inc., a house that I was informed made exclusively half sizes.

Dresden Dress Co., Inc., also manufacture a similar type of garment under the half size classification.

Harry Frank, a resource for large sizes.

Friedman Dress Company, a resource for women's and large sizes.

A. Goodman & Co., Inc., a resource for half sizes.

LaRue Dresses, Inc., a resource for large sizes.

Lyttle Brothers, Inc., a resource for half sizes and large sizes.

C. H. D. Robbins Co., a resource for daytime misses' dresses.

Sam Steinberg & Co., Inc., a resource for sportswear, sports types, misses' dresses.

Star Maid Dresses, Inc., also a resource for
7967 misses' tailored and sports type merchandise.

Weinberg-Weinberg & Alpern, a resource for large misses' sizes.

By Mr. Haycraft.

Q. Are you familiar with the Fashion Wear Dress Company? A. I am not entirely familiar with them.

Q. Are you familiar with Ginsburg & Abelson? A. I have heard of them, but I am not familiar with them.

Q. Are you familiar with E. M. Marcus & Company? A. I have heard the name, and know it is a resource for misses' dresses, from which we have purchased dresses.

Q. Are you familiar with the Radiant Dress Company, Inc.? A. Yes, it is a resource for misses' large size dresses.

7968 Q. Of this group that you have identified here as resources, I will ask you to testify as to those of this group that can be replaced by manufacturers of dresses outside the Guild.

Mr. Albert: That is objected to, may it please the Court; no proper foundation laid.

Mr. Haycraft: It is a continuation of the same type of testimony had in the previous record, only a little more in detail.

Examiner Bennett: I prefer to have it on the actual trade; that is the best evidence.

Mr. Haycraft: All right. To make a better foundation for it, I will ask you this:

By Mr. Haycraft.

Q. I will ask you whether or not Schuster Company has attempted to replace any of the manufacturers you have named as sources of supply since the red carding? A. We so instructed the buyer, that it was in her duty and functions to find such replacements.

Q. Has she been successful in all cases? A. She has reported back to me that she has nothing. 7970

Q. Now, can you testify as to those instances, in the names of those houses you have listed here, that she was not successful in replacing? A. From personal recollection, among the houses that she tried to buy merchandise from and was unsuccessful, I would like to call attention to the following: Anderman-Bob Burns, Inc., Harry Frank, Lyttle Brothers, C. H. & D. Robbins Company.

Mr. Albert: Now, may it please the Court, I ask the answer be stricken out as not responsive to the question.

Examiner Bennett: That part of it is evidently not responsive. It may be stricken.

Mr. Haycraft: I think I can ask a question which will straighten it out. 7971

By Mr. Haycraft.

Q. Did you issue instructions for the buyer to replace the merchandise which you were purchasing from and had been purchasing from those companies which you have named? A. I did.

Q. With what result? A. That we did not receive at any time during the period covered a representative line of merchandise to replace the vendors mentioned.

7972 *Louis Liberman—For Commission—Direct.*

Q. Are you familiar with the situation with respect to the other resources that you have named? A. I am not entirely.

Q. By that you mean you do not know whether the buyer was able to replace their merchandise or not? A. No, I don't.

Q. Is that what you mean? A. That is right.

Q. I ask you to give the same information with respect to the resources of your misses' department, Department No. 63.

Mr. Haycraft: I ask that this be marked Commission's Exhibit 555-A and B for Identification.

7973

(The documents referred to were marked Commission's Exhibits 555-A and B for identification.)

By Mr. Haycraft.

Q. Do you identify the paper handed you? A. Yes, I do.

Q. What is the number on it? A. 555-A and B.

Q. What is it? A. It is a memorandum or list of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63, identified as misses' dresses.

Q. Was this prepared from the same source as the other? A. It was.

7974

Mr. Haycraft: I will offer this in evidence as Commission's Exhibit 555-A and B.

Examiner Bennett: Any objection?

Mr. Albert: Objected to, may it please the Court; no proper foundation has been laid.

Examiner Bennett: Overruled. Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 555-A and 555-B, were received in evidence.)

By Mr. Haycraft.

Q. Now, I will ask you whether or not you are personally familiar with all the firms named on these exhibits? A. I am not.

Q. I notice there are certain pencil marks after the names of a number of firms in this exhibit. Did you place them on there? A. I did.

Q. And what did they signify? A. Some of the outstanding resources from whom purchases were made during the time specified.

Q. And you are familiar with them yourself? A. With some of them.

Q. Perhaps you had better testify, then, of the list of 7976
names contained in Commission's Exhibit 555-A and B, will you testify as to those concerns with which you are familiar as resources for the Schuster Company, giving a brief description of what you understand them to be? A. Aywon Dress Co., Inc., daytime dresses for misses. Fred A. Block, ensemble dressy type garments. Casino Dresses, Inc., daytime street-wear type. Cecele Dance Frocks, Inc., formal wear.

Q. May I interrupt? I notice that on the exhibit there are certain marks on the left-hand margin in pencil. Did you place those on there? A. I believe I was advised that such firms had resigned from the Guild.

Q. Is Cecele Dance Frocks one of such firms? A. I think it is.

Q. All right. Go ahead. A. Elvia Dress Co., Inc., a 7977
popular price line of dresses. The same applies to M. & S. Extract. F. E. D. Dress Company, Inc., an outstanding line of daytime dresses. International Dress Company, Inc., daytime frocks. Lee Claire Costumes, Inc., formal type dress. Lipman Brothers, a daytime street type of ensemble dresses.

Marie-Lynn Dance Frocks, Inc., formal wear. Parisian Manufacturing Company, Inc., daytime dresses. C. H. D.

Robbins Company, daytime frocks. Schultze-Zuch Company, Inc., formal dresses and gowns. Star Maid Dresses, Inc., tailored and sports type dresses.

Sam Steinberg & Company, Inc., tailored and sports type dresses. Topaz Frocks, Inc., popular price daytime dresses. David S. Westheim Corporation, daytime dresses. Zobin-Mayer, Inc., daytime dresses. Phil Zahn & Co., Inc., daytime frocks.

Q. Out of this list of manufacturers that you have named here, will you testify now as to those that you understand have resigned or gotten out of the Guild since February 11, 1936? A. I would like to ask permission
7979 of the Court, that whatever statement I would make would have to be only from hearsay.

Q. Well, testify as to what you understand. A. Lipman Brothers, Schultze-Zuch Company, Incorporated, Stern & Goldberg, Inc., Topaz Frocks, Wein Frocks, Philip Zahn & Co., Inc., Elvia Dress Co., Inc., M. & S. Extract, Gracette Dress Company, Inc.

Q. Then, is it your testimony that you have access to those houses as resources at the present time? A. To the best of my knowledge.

Q. That is, the last list that you have just given? A. Yes.

Q. I would like to have you testify as to which of this list of manufacturers that are now members of the Guild, whose merchandise you have not been able to replace from
7980 non-Guild houses. A. Not having shopped the market, I could not answer that question.

Q. What about the reports of your buyers in that connection? A. Among the resources I feel definitely we have not been able to replace has been the Aywon Dress Company, Bender & Hamburger, Incorporated, International Dress Company, Inc., Parisian Manufacturing Company, Inc., Parnis-Levinson, Inc., Star Maid Dresses, Inc., Sam Steinberg & Company, Inc., David S. Westheim Corporation.

Q. I will ask you whether or not you took into consideration the information that you have just now testified to with respect to the resources in giving your opinion on yesterday as to the effect upon the Schuster Company of the red carding? A. I didn't get that.

Mr. Haycraft: Read it.

(Question read by the reporter.)

The Witness: It was on such list that I formed my opinion yesterday.

Mr. Haycraft: That's all, Mr. Examiner.

Cross-examination by Mr. Albert.

7982

Q. What is the number of your budget department, Mr. Liberman? A. The classification for that in our records is 61.

Q. And the misses' is 63? A. Correct.

Q. And the women's? A. Department 57.

Q. When you took over these three departments, Mr. Liberman, what were your duties with respect to them? A. To merchandise, to manage and promote sales in these departments.

Q. And, in line with those duties, is it fair to say that it was your obligation to watch the volume of your stock, the turnover, your mark-ups, your mark-downs, and things of that nature? A. It was.

Q. And, without stretching your modesty, I suppose 7983
when you associated yourself with Schuster Stores, and took over these departments, it was your intention and desire to improve upon your predecessor, isn't that so, as regards the record that he made? A. That is correct.

Q. Mr. Greenblatt is no longer with the store? A. That is true.

Q. Have you any idea as to the reasons why he was replaced? A. I have not.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: May I have Commission's Exhibit 543, please?

By Mr. Albert.

Q. Now, Mr. Liberman, you recall that you were questioned with respect to a letter written you by Mr. Post, dated September 5, 1935, being Commission's Exhibit No. 543, A, B and C (indicating)? A. I received the letter.

Q. Now, do you recall that Mr. Haycraft asked you
7985 what it was that Mr. Post was referring to in that letter? A. May I have the question, please?

(Question read by the reporter.)

The Witness: I would have to have that memorandum or testimony.

By Mr. Albert.

Q. Mr. Haycraft asked you this question: "Q."—this statement is found in a letter, and then he quotes from the letter: "I am sure you are aware of the situation in St. Louis where practically every store has subscribed. I know that Milwaukee would straighten out very quickly if your store and the Boston store sent their checks." Do you know what Mr. Post was referring to there? A. I
7986 believe I have made a reply to that.

Q. Do you recall what your reply was? A. That it was with reference to starting a movement for a local Guild.

Q. Now, will you please examine Commission's Exhibit No. 543-A, and point out to me in that letter what you believe to be has reference to any request by Mr. Post for the establishment of a local Guild? A. I took it from the second paragraph—that is the meaning of the second paragraph.

Q. Is that the only paragraph in the letter that you think refers to the question of the establishment of a local Guild? A. That was my supposition from that paragraph.

Q. Now, let me ask you this—and I am quoting from that paragraph: "At that meeting we understood that the stores agreed to support the cost of a local shopper, by making subscriptions to the Guild." Is that what you say refers to establishment of a local guild? A. That is correct.

Q. Do you know what a local shopper is? A. A local shopper is some—is an individual selected and obtained by the—that is a shopper that is—well, now, your Honor, I would request that the question be simplified, whether 7988
a store shopper or an F.O.G.A. shopper.

Q. What did you believe Mr. Post was referring to when he used the words "local shopper"? A. A Guild shopper.

Q. What do you know, or, what is your opinion, as to the duties of a local shopper, who is employed by the Guild? A. Not having been present at the meeting that was held by the Milwaukee retailers, I am not familiar with that situation, and cannot—I am not qualified to give an answer.

Q. Have you never come in contact with the local Guild shopper? A. I have.

Q. What do you understand to be the function of the local Guild shopper? A. The local Guild shopper makes the rounds of the various stores—to some of the stores as I understand it—and goes through stocks and selects 7989
such merchandise as she feels, or has received reports on, are copies of Guild merchandise.

Q. Did you know those to be the duties of the local shopper, on September 5, 1935? A. I presume that's what her duties were.

Q. I asked, did you know that those were her duties when you received this letter, dated September 5, 1935?

7990

Mr. Haycraft: I object to that question. The witness has testified to what he thought——

Mr. Albert: The answer was not responsive.

Mr. Haycraft: ——and understood——

Mr. Albert: The answer was not responsive, your Honor.

Mr. Haycraft: What he thought, he did not say he knew.

Examiner Bennett: Do you know, or did you know?

The Witness: Would you mind repeating the question, please?

7991

(Last two questions and answers read.)

The Witness: I took it for granted that it was.

By Mr. Albert.

Q. Well, then, is it not a matter of fact, that all that this letter referred to and suggests is a contribution to the support of that local shopper? A. I am unfamiliar with any circumstances or any meetings prior to having received this letter regarding contribution to the expense of maintaining a local shopper.

Q. Well, then, how can you testify that this letter referred to the establishment of a local Guild? A. I presumed that from the tone of that paragraph.

Q. Now, this paragraph refers to nothing else except the desire of the Guild to secure the support of a local retailer and the support in maintaining the local shopper, is that not so?

7992

Mr. Haycraft: I suggest that the witness be allowed to read the paragraph.

Mr. Albert: I will let him read it all he wants to.

Mr. Haycraft: And indicate what he had in mind.

(Mr. Albert hands paper to witness.)

The Witness: I again state that I do not know what the respondents' attorney has in mind, only the fact that—of being—to use the initial movement for establishing a Guild and to support this—or by contributing to the support of such Guild through local sources.

Mr. Albert: May I have the answer read?

(Last answer read by the reporter.)

By Mr. Albert.

Q. Did I understand you to say—and if I am making a mistake, correct me—that prior to the receipt of this letter you were not familiar with the matters contained and referred to in this letter— A. Absolutely not. 7994

Q. —as regards to the establishment of a local Guild or a local shopper? A. Absolutely not.

Q. Had no knowledge of it whatsoever? A. None whatsoever.

Q. Were you ever present prior to September 5, 1935, at any conferences or meetings or gatherings which were addressed by Mr. Post? A. I was not.

Mr. Haycraft: Where? That is too indefinite, Mr. Examiner.

Mr. Albert: I do not think that Mr. Haycraft wants me to ask him every city in the United States when he says he was not present at any.

Mr. Haycraft: Unless it refers to Milwaukee, I object to it. That is the reason I am—trying to make it conform to proper cross-examination. 7995

Mr. Albert: As a matter of fact——

Mr. Haycraft: —Milwaukee or St. Louis, one or the other.

By Mr. Albert.

Q. Now, as a matter of fact, Mr. Liberman, were you not present at a meeting addressed by Mr. Post in St. Louis? A. I was not.

Q. I call to your attention the following statement in a letter addressed to you by Mr. Post: "At the time of my last western trip we held a meeting in Milwaukee similar to the one you attended in St. Louis"——

The Witness: If I may, your Honor, refresh Mr. Post's memory, to the fact that I was invited to a luncheon and I was not employed at the time specified, by any concern?

By Mr. Albert.

Q. But you were present at such a meeting, were you? A. I was not.

7997 Q. Well, are you attempting to distinguish the fact that you were not present by the fact that you were not employed by Schuster & Company at the time that you attended such meeting? A. I was not employed at all, and that I did not attend this meeting, and I was invited in at a social luncheon.

Q. Yes? A. And that's all.

Q. Were you present at that luncheon? A. I was present at that luncheon which was given by friends in St. Louis, had nothing to do with F.O.G.A.

Q. Who was present? A. Mr. Roy Lockhart.

Q. Of where? A. St. Louis.

Q. What store? A. Now he has his own shop.

Q. What store did he have then? A. I believe he had

7998 just opened his own shop.

Q. At that time? A. As far as—or slightly—just before.

Q. All right. Who else was present? A. Mr. Herman Hirsch.

Q. What store? A. Stix, Baer and Fuller Company, Mr. Irwin Soger, Kline's Incorporated, Mr. Post and Mr. Golby.

Q. Mr. Golby of the Fashion Originators Guild? A. That's right, and myself, to the best of my recollection.

Q. Do you recall what the purpose was for that luncheon gathering of these representatives of retail stores? A. I do not.

Q. Do you recall what discussion was had at the meeting? A. I do not.

Q. Do you state—is it your testimony—that at that meeting attended by these representatives of retail stores in the St. Louis District, attended by Mr. Golby of the Fashion Originators Guild, and by Mr. Post of the Fashion Originators Guild, that none of the problems or policies of the Fashion Oringinators Guild were discussed? A. I do not, and I was not present as representing any firm who were at that time interested in any of the prob- 8000
lems of the local merchants with the F.O.G.A.

Q. I am willing to concede that you were not interested in them, Mr. Liberman, but I am asking you as to the fact of what was discussed, and as a man present whether or not you had heard it and paid attention to it? A. I was not. I was there merely as a social guest.

Q. And you paid— A. It was not an official meeting, and I was there at the invitation of one of the men present.

Q. You paid no attention to what was said? A. I was not interested.

Q. Aside from whether or not you were interested in what was said, did you pay attention to what was said? A. I did not.

Q. Were you present at the table while the discussion 8001
was going on? A. I didn't know there was a discussion going on.

Q. Well, what did the men talk about? A. I don't know.

Q. You have no recollection whatsoever? A. None whatsoever.

Q. Do you recall when this meeting was held? A. I do not.

Q. Well now, in order that there can be no question about the matter, Mr. Liberman, I ask the indulgence of the Court for possibly repeating this question: Is the only matter contained in Commission's Exhibit No. 543-A upon which you predicate your belief that this letter concerned the establishment of a local Guild, contained in the second paragraph of the letter? (Counsel hands paper to witness.)

Mr. Haycraft: I think that has been answered, Mr. Examiner, I object to it.

Mr. Albert: I am willing to concede that, your Honor. I just want to make absolutely certain that
8003 I understand the witness' testimony, and it will not take very long for him to answer.

Examiner Bennett: All right, go ahead and answer.

Mr. Haycraft: Read it carefully.

Examiner Bennett: Read the question.

(Last question read by the reporter.)

By Mr. Albert.

Q. Is that correct, Mr. Liberman? A. Yes.

Mr. Albert: Very well.

By Mr. Albert.

8004 Q. Now, Mr. Liberman, did you see Commission's Exhibit No. 548, being the telegram to you from Mr. Post, upon its arrival at the store? A. I did.

Q. And you received it? A. I did.

Q. And you turned it over to whom? A. I turned it over to the Board of Managers.

Q. Do you know what action was taken with respect to this telegram, their answer? A. I do not.

Q. When did you leave for New York prior to the time when you stated you were in New York about February

11th, or February 12th? A. I left Milwaukee Sunday, February 10th.

Q. And from February 5th to February 10th you did not know what your Board of Governors—was it, you said? A. Board of Management.

Q. —Board of Management had done with respect to the telegram, Commission's Exhibit No. 548? A. It was handled—I believe that the Board of Management turned this telegram over to the General Merchandise Manager, who left immediately after that for New York.

Q. Do you know what the General Merchandise Manager did with regard to it? A. I do not.

Q. Did you receive any reports on it? Prior to the 8006
time that you arrived in New York? A. I did not.

Q. Who is the General Merchandise Manager? A. Milton Blank.

Q. Do you know whether or not he went up to see Mr. Post in response to this telegram? A. I do not.

Q. Did you come in to New York on that occasion for the purpose of seeing Mr. Post with respect to the contents of this telegram? A. Well, I don't get the question, whether you refer at the time that—that the Board of Management had received this telegram, or later?

Q. Now, you received this telegram February 5th, is that not correct? A. That is right.

Q. And you left for New York on February 10th? A. Yes.

Q. Were you coming into New York for the purpose of 8007
discussing this telegram with Mr. Post? A. It was one of the things that I hoped to take up with Mr. Post after I got to New York.

Q. When did you take that up with him? A. On Tuesday, February 11th.

Q. Now, Mr. Liberman, are you not a bit confused about your dates, when you said— A. Well, if you can find any discrepancies I would like to have you so state.

Q. I mean, you have referred, I believe, to Tuesday as February 12th, and also to Tuesday as February 11th? A. Tuesday——

Q. I mean, in that respect, are you not a bit confused? A. February 11th?

Q. And you spoke with Mr. Post? A. Mr. Post.

Q. On February 11th? A. On Tuesday, February 11th, if that is the correct date.

Q. Well, so that we have no side discrepancies— A. No.

Q. —I suggest that you forget whether it was Tuesday or Wednesday, and just refer to February 11th? A. Well, it was very pertinent that I remember that date.

8009 Q. It is? A. Yes.

Q. Why is it pertinent that you remember it? A. Because being about eight and a half hours late getting into Chicago from Milwaukee, and missing train connections.

Q. But, nevertheless, you referred to Tuesday as February 12th, and to Tuesday as February 11th. A. If I made an error, I am willing to acknowledge it.

Q. All right. Now, the calendar reveals that Tuesday was February 11th. A. Right.

Mr. Haycraft: Monday, February 10th, and Sunday, February 9th.

Mr. Albert: Right.

The Witness: I am sorry.

8010 *By Mr. Albert.*

Q. When did you first meet with Mr. Post? A. Regarding this matter?

Q. Yes. A. Being red carded? On Tuesday, February 11th.

Q. That was during the morning? A. The morning of February 11th.

Q. What was the conversation that you had with him? A. I believe I have answered that question yesterday; it is in the testimony.

Q. Would you be good enough to tell me in a little more detail? A. I think the details are the telegram memorandum. I would like to refresh my memory regarding it. I believe it stated the fact that I called Mr. Post and told him I was in town, and, further, stated that he was anxious to know whether or not I had—was prepared to sign a new Declaration of Co-operation of the F.O.G.A. The sum and substance was that I told Mr. Post that I did not have a power of attorney to make any agreements or sign any new contracts.

Q. What did he say in response to that?' A. Then he stated the fact, if I remember correctly, that he had given us sufficient time in which to think this thing over, and demanded that we give him an immediate answer, and if so notify the firm. 8012

Q. Did not you understand, Mr. Liberman, by Mr. Post's remarks to you at that time, that the Declaration of Co-operation that had been previously signed by Schuster and Company was going to be withdrawn immediately? A. Well, I believe I stated that in my previous question.

Q. So that if you have not stated it specifically, you wish that inference to be drawn from what you stated? A. That is right.

Q. Then, as a matter of fact, on the morning of February 11th, 1936, you knew that Schuster and Company was to be red carded, did you? A. I had not received official notice.

Q. But you were pretty certain of it, were you not? A. Not necessarily. 8013

Q. Have you not just testified that Mr. Post told you that in as much as the matter had been dragging on to this time, you were going to have your Declaration of Co-operation sent back? A. I do not consider that a telephone conversation is binding or has it any—or is it relevant to the question—the action taken afterwards.

Q. So that when you saw in "Womens' Wear" that the Declaration of Co-operation of Schuster & Company had been returned, were you shocked and completely surprised by it? A. It is pretty hard to say just how I felt.

Q. You expected it, did you not? A. I expected it, yes.

By Mr. Albert.

Q. Mr. Liberman, you testified that Schuster & Company was a member of the Cavendish Trading Corporation? A. Right.

Q. Or—is that the correct name? A. Yes.

Q. How many stores are there in that group? A. Not
8015 being positive, I would like to ask a question of our Comptroller, who is present.

Mr. Haycraft: I object to that.

Mr. Albert: Certainly.

Mr. Haycraft: The witness does not know.

Examiner Bennett: If you do not know, well, say so.

The Witness: I don't know.

By Mr. Albert.

Q. Would you say that there are approximately twenty stores in the group?

Mr. Haycraft: I object to it.

8016 The Witness: I don't believe it.

Mr. Haycraft: He says he does not know. I object to any further interrogation; not relevant to the issues in this case.

By Mr. Albert:

Q. Is Stern Brothers a member? A. They are.

Q. Is Frederick Loeser a member? A. They are.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: Laying a foundation, your Honor, for another question.

Examiner Bennett: I will let him answer. Go ahead.

By Mr. Albert.

Q. Was Scruggs Vandervort and Barney a member? A. They are.

Q. Is Harris Drygoods a member? A. They are.

Q. Is Berdyne's a member? A. They are.

Q. Is Ivy a member? A. Pardon?

Q. Is Ivy a member? A. J. C. Ivy, is it?

Q. Yes. A. Yes, they are a member. 8018

Q. Mr. Liberman, have you any objections if I ask your Comptroller how many stores there are in the trading corporation?

Mr. Haycraft: I object to it.

Mr. Albert: Your Honor, it seems to me a very simple point, that certainly the witness can ask the Comptroller who is in the store——

Examiner Bennett: I will let the witness inform himself through his Comptroller if he relies on that.

Mr. Albert: Yes, your Honor.

Examiner Bennett: You may ask the Comptroller, Mr. Liberman.

The Witness: I would like to ask Mr. Kuechenmeister the number of stores. 8019

Mr. Kuechenmeister: Thirteen stores.

The Witness: Thirteen stores members of the Cavendish Trading Corporation.

Mr. Haycraft: I move to strike out all of the testimony of the witness upon this point, up to this point, as to the membership of the Cavendish Trading Corporation.

Examiner Bennett: I will see——

By Mr. Albert.

Q. The Cavendish Trading Corporation is a co-operative organization, is it not? A. To the best of my knowledge.

Q. Do you know how many members of the Cavendish Trading Corporation signed the Declaration of Co-operation? A. I do not.

Q. With the Fashion Originators Guild? A. I do not know.

Q. (Indicating) I show you Commission's Exhibit No. 542, which is headed "Returns of Dresses to Vendors, because Guild stated dresses were copies." What do you mean by "Guild stated dresses were copies"? A. A representative of the Guild came into our stocks and selected some dresses claiming that they were copies of Guild Fashions, and being a co-operative member we selected such dresses that were in our stocks and returned them to vendors.

8021

Q. Do you know upon what basis these dresses were declared to be copies? A. Only through the representative of the F.O.G.A.

Q. Have you any knowledge as to the methods by which dresses are adjudged to be copies? A. I am not entirely clear what the procedure is, no. I am not aware of the method or machinery that was used to select the merchandise.

Q. And since you are not aware of the methods, and since you sent back copies of which you were informed by the Guild shopper, is it fair to say that you have full faith and confidence in the information given you that the dresses requested to be returned were copies?

8022

Mr. Haycraft: Objected to as irrelevant and immaterial; no foundation laid here.

Examiner Bennett: I will let him answer.

The Witness: Whatever procedure, or whatever action was taken concerning these dresses was all

done through the buyer, which I was not familiar with the particular circumstances.

By Mr. Albert.

Q. Do you mean that a buyer returned a dress without first inquiring of you? A. Absolutely.

Q. Did you give any instructions to the buyer that he was to first inquire of you as to whether or not a dress should be returned? A. Not necessarily.

Q. Did you give any instructions to the buyer that any inquiry was to be made by the buyer as to whether or not in fact the dress was a copy? A. No.

Examiner Bennett: We will take a recess of ten 8024
minutes.

Mr. Albert: Thank you, your Honor.

(Thereupon a short recess was taken.)

By Mr. Albert.

Q. Now, Mr. Liberman, have you any knowledge as to the manner—by "manner" I mean mechanics—of the work of the local Guild shopper in relation to your store? A. The only thing I would have would be more or less supposition on my part.

Q. More or less what? A. Supposition, as to what her duties might be.

Q. I do not mean as to what her duties might be. I mean as to how she actually operated when she went into 8025
your store. What did she do when she went into your store? A. I did not see the shopper shop our department, and could not come to any conclusion as to what brought her there, or what her duties were in going through our stock, what the motive was.

Q. You knew who she was, did you not? A. I had met her.

Q. You had met her? A. Yes.

Q. And when you met her, she introduced herself to you as the representative of the Guild, to shop the store? A. Yes.

Q. Did she inform you of the fact that she was going to come into the store and look over your stock, to look for copies? A. I don't recall.

Q. Would you say that she did not? A. That she did.

Q. That she did not tell you that. A. I can't say.

Q. But, as a matter of fact, you knew that is what she was going to do? A. Absolutely; that was the practice.

Q. And, of course, if you cannot tell us definitely as to what she actually did, it is obvious that none of your

8027 buyers made any complaints as to how she acted, did they? A. With the permission of the Court, I would like to clarify that, if I may have that permission.

Examiner Bennett: If you will answer the question, then, if you have any explanation to make you may go ahead. The question asked you is whether any of your buyers made complaint about the shopper.

The Witness: What I was going to say was this: That it happens that Ed. Schuster & Company have three stores in Milwaukee, and the shopper may have gone to any one of the three stores when the buyer was not present and selected such styles from either one of these three stores.

8028 *By Mr. Albert.*

Q. But what she did, she did openly, didn't she? A. That's right.

Q. That is, there was no concealment in what she attempted to do, was there? A. None whatsoever, to the best of my knowledge.

Q. You stated that there are three stores of Schuster & Company in Milwaukee? A. That is true.

Q. And all of the figures that you have been presenting are a compilation of the figures of the three stores combined, isn't that so? A. Correct.

Q. There is no breakdown of these figures for each store that you have presented, is there? A. There is none.

Q. Mr. Liberman, would you be good enough to tell us the price lines of the vendors of the dresses, as set forth in Commission's Exhibit 542? A. I cannot.

Q. Do you know the price lines of any of them? A. Trussel Dress Company, I believe, is a $4.75 wholesale resource. The Irving Frocks, to the best of my recollection, is a $6.75 resource. The Emporium Frocks, I believe, is both a $3.75 and a $4.75 resource. Outside of that, I cannot state. 8030

Q. Do I understand this exhibit correctly to be the total number of dresses returned in all three departments? A. In all three departments?

Q. In all three stores. A. Merchandise for all stores in which that style was in stock. In other words, there may have been one dress at one store, there may have been five in another.

Q. Yes. A. All that particular style was gathered together and returned.

Q. And the total, therefore, of all dresses returned in all departments in three stores was 101 dresses? A. 101 dresses.

Q. That is the figure you have here. A. As stated on that memorandum. 8031

Q. Can you give me an approximation of the total number of dresses handled in all three departments, in all three stores? I don't want it specifically, but as close an approximation as you can give. A. I haven't that information available.

Q. Would you say that it was 500,000 dresses? A. I don't know.

Q. Would you say it was 250,000 dresses? A. I don't know.

Q. Would you say it was 500 dresses? A. I don't know.

Mr. Albert: Have you Commission's Exhibit 552?

Mr. Haycraft: Here is a copy of it. I haven't the original.

By Mr. Albert.

Q. Now, Mr. Liberman, looking at Commission's Exhibit 552, does that refresh your recollection, and is that of
8033 assistance to you in approximating the number of dresses that were handled by Schuster & Company? A. In the price line qualifications mentioned on this sheet.

Q. Only? A. That's all.

Q. And you have no idea whatsoever of the amount of dresses handled in the other price lines? A. I have not.

Q. And you say that, despite your position in Schuster & Company, and the experience that you have had, and the figures that you have attempted to compile for presentation to the Commission, that you can make no estimate of the total number? A. I cannot.

Q. Looking at Commission's Exhibit 542, will you be good enough to tell me which of those returns were of "hot" numbers? A. I cannot answer.

Q. You don't know? A. I don't know. All such action
8034 was taken through the Guild representative and our buyer.

Q. But however hot the number might have been, the greatest number of dresses that you returned in any style, according to this exhibit, was 12, is that correct? A. That is right.

Q. Is this true, Mr. Liberman: That although you have listed, for example, Franken and Klein as having been returned twelve dresses, which is the greatest number of returns on this list that may actually represent, perhaps,

two, three or four different styles, in so far as you know? You don't know that that twelve represents only one style, do you? A. That I could not say.

Q. How often, Mr. Liberman, do you check your figures with respect to the stock on hand? A. There is, in the regular course of business, and through channels already established, a weekly inventory compiled for my benefit.

Q. And those figures are presented to you? A. They are.

Q. And I presume that the last figures you saw were the last week's figures? A. I received them on Tuesday or Wednesday, and that is a record of stock on hand as of the Monday previous.

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Q. So that the figures that you see represent the stock on hand of approximately four or five days before that time, is that correct? A. No.

Q. Roughly speaking? A. No. All inventories are compiled on Monday, all stock taking is completed on Monday. It takes a matter of a day or two to compile the figures and forward them to the merchandise office.

Q. I misunderstood you. I am sorry. Have you seen those figures each week that they were prepared? A. Unless I was away.

Q. Now, can you, drawing upon your knowledge of the figures presented to you from week to week, tell us approximately the stock carried by Schuster & Company during the period from September, 1935, to date? A. I cannot.

8037

Q. What were the last figures that you saw?

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Can you obtain for us the total volume of dresses held by Schuster & Company during 1935, down to February, 1936?

Mr. Haycraft: That is objected to.

The Witness: I cannot.

By Mr. Albert.

Q. Have you any objection to giving us those figures?

Mr. Haycraft: That is objected to.

Examiner Bennett: What is the question?

(Question read by the reporter.)

Mr. Likert: I think I can answer that question for the witness. We prefer not to go through our records.

8039 Mr. Albert: If your Honor please, I am not asking the witness for a specific, accurate figure, even within a hundred, or even a thousand, of the number of dresses that he has. But it seems to me most unusual that a man in his position cannot give me an approximation of the number of dresses on stock in Schuster & Company during the period in question. They have presented these figures. There is no reason why they cannot present the other figures.

Mr. Haycraft: I object to any such assumption that it is natural that if a man is a merchandiser he carries around things in his mind, such detail figures as that. The fact of the matter is, it would be very unusual. I have never seen a man yet who could do it. I don't think there is a man living that

8040 can do it.

Mr. Albert: It is nothing unusual for men in the position of Mr. Liberman to be able to approximate within 10,000, or even 25,000, of the number of dresses handled by Schuster & Company.

Mr. Likert: Is it going to be of any benefit to you, Mr. Albert, to know what the figure is, when the witness has testified he does not know what it is? The witness is unable to give the approxima-

tion. For you to get the accurate information is not going to assist you in determining whether he knows or not. And he does not know.

Mr. Albert: With all due respect, the figure presented may be, perhaps, of just as much benefit for my purpose when it is 50 per cent. of the actual amount as if I had the total actual amount.

Examiner Bennett: Will you go back and read the underlying question?

(Question read by the reporter.)

Examiner Bennett: Your question was answered by the attorney for the witness and, so far as the Examiner is concerned, that disposes of it. That is, 8042
the Examiner has taken that position with respect to every witness. He has no objection to Schuster & Company giving them if they feel like it, but he does not think they are under obligation to give the figures as part of the cross-examination.

Mr. Albert: Exception, your Honor.

Examiner Bennett: All right.

Mr. Albert: I will ask you this question:

By Mr. Albert.

Q. Now, Mr. Liberman, can you, or perhaps I should say, have you any objections to giving me an estimate, approximately, of the total number of dresses sold by Schuster & Company, on an average in its three stores 8043
daily? A. I cannot.

Q. Can you say, Mr. Liberman——

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Will you say, Mr. Liberman, the total number of dresses sold in the three stores of Schuster & Company average approximately in excess of 100 a day? A. I——

Mr. Haycraft: Just a moment, please. Same objection to any further interrogation on this point. The witness has said he could not do it.

Mr. Albert: I have asked him a different question.

Mr. Haycraft: It all goes to the same point.

Examiner Bennett: The witness made some reply on that. Will you read what the witness said?

(Record read.)

By Mr. Albert.

8045 Q. Can you give that? A. I cannot.

Q. Would you say that it was in excess of an average of fifty per day?

Mr. Haycraft: Same objection.

Examiner Bennett: I will sustain the objection We do not seem to make any progress. Let us assume that the witness does not know, or cannot give it.

By Mr. Albert.

Q. Have you any idea, Mr. Liberman, as to the relative position occupied by Schuster & Company in Milwaukee, in comparison with other department stores, in the sale of better dresses, as you have described, that is, above
8046 the $10.75 price line? A. I think we have a very favorable comparison.

Q. Would you say you were about fourth? A. I would not acknowledge that.

Q. You would not say you were the leading store in the sale of better dresses, would you? A. No.

Q. Now, how many dresses are purchased by Schuster & Company in the $16.95 price line, and above, for purposes of display?

Mr. Haycraft: That is objected to. The witness has already testified as to his knowledge.

Examiner Bennett: If he does not know, he does not have to state.

Mr. Haycraft: What is the use of filling the record with it, when he has already said it two or three times?

Examiner Bennett: I don't believe that question has been asked or answered. He may answer.

The Witness: Your Honor, it is a matter of record, of how many dresses at $16.95 we carry in stock.

Mr. Albert: Will you repeat the question? 8048

(Question read.)

The Witness: This record here, Exhibit 552, gives you the approximate amount of dresses we carry at $16.95 at each inventory period taken weekly, and which we feel is a representative number of dresses, and the number of styles for us to do business.

By Mr. Albert.

Q. Isn't it a fact, Mr. Liberman, that Schuster & Company purchases better dresses for purposes of display, in order to attract their patrons, without the expectation of being able to sell?

Mr. Haycraft: That is objected to as irrelevant 8049 and immaterial.

Mr. Martin: No foundation.

Examiner Bennett: I do not see how it is relevant. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. What did you mean, Mr. Liberman, when you stated, in answer to a question of Mr. Haycraft, that your in-

ability to obtain Guild merchandise has retarded the display on dresses retailing at $16.95 and above? A. The term was used that, after all, you have got to have merchandise in stock before you can sell it.

Mr. Haycraft: What page is that, please?

Mr. Albert: 4455.

The Witness: In using that term, I meant stock for display and promotion.

By Mr. Albert.

Q. Did you mean by that simply that if you did not have the dresses, you could not display them? A. That
8051 is right.

Q. And it had no other connotation? A. Well, I would like to get the answer that I gave to that question.

Q. Here is your answer, Mr. Liberman: "It has definitely retarded the display, the sales, and the ways and means of catering to Ed. Schuster & Company's clientele on dresses retailing at $16.95, and above." Now, when you answered that, did you mean that three separate——

Mr. Albert: Withdrawn.

By Mr. Albert.

Q. Did you mean by that that Ed. Schuster & Company was affected in three separate and distinct ways by your
8052 inability to obtain Guild merchandise? A. The three ways that we suffered, lost volume, are covered in that answer.

Q. Are they three separate, mutually exclusive ways in which you are affected? That is what I mean. A. I mean the net result is part of all three.

Q. So that what you meant by "display" is included in the ways and means of catering to Ed. Schuster & Company's clientele? A. I would like to refer to this, all of

which is a part and parcel of promoting and selling and displaying of merchandise, and, in the activities of the dress departments, all three are embodied in catering to the clientele of Ed. Schuster & Company. We have a definite clientele for merchandise at the price line quoted.

By Mr. Albert.

Q. So that all three elements that you have mentioned there are interrelated, is that so? A. That is correct.

Mr. Albert: That's all I wanted to find out.

Mr. Haycraft: It speaks for itself. There is nothing ambiguous about it.

8054

Mr. Albert: I will not give you any lessons in grammatical construction, Mr. Haycraft. It is too late. Will your Honor pardon me for just a moment?

Examiner Bennett: Very well.

(Short interruption.)

By Mr. Albert.

Q. Now, Mr. Liberman, in answer to questions from Mr. Haycraft, you rererred to a certain type of dress.

Mr. Haycraft: What page?

Mr. Albert: 4458.

By Mr. Albert.

8055

Q. And you have characterized it as half-size resources. Can you give us a little better explanation of what you meant by that? A. It is a type of garment which is known in the trade as being built on half-size, whether it is a misses' half-size or women's half-size, and happens to fit a certain type of figure. There are recognized resources for such type dresses.

Q. Is there any other name by which those dresses are known, aside from the actual description of them as half-size resources? I mean, aren't they known as "little women's dresses," also; is that correct? A. Such a term is used.

Q. I mean, in relation to half-size resources, I want to know what you are referring to there. A. Yes, I believe there is such a term.

Q. Are you acquainted with Fairchild's Directory? A. I have seen them, yes.

Q. Fairchild's Directory contains lists of manufacturers in various classifications, does it not? A. I believe so,

8057 yes.

Q. Now, Mr. Liberman, I show you Respondents' Exhibit 21 for Identification, and I show you specifically the subdivision thereof headed "Little Women's Dresses." Is that the type of dress which you were referring to generally——

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continuing) —when you referred to half-size resources? Is that the name also applied to that type of dress, "little women's dresses"? A. There is a heading here, "Little Women's Dresses." Not having used this directory, I cannot say whether that applies to the mer-

8058 chandise in question or not.

Q. But when you said that the title "Little Women's Dresses" was also used to describe half-size resources, is that what you meant, that "little women's dresses" and half-size resources are somewhat synonymous in the industry to describe the type of resource you were referring to on page 4458? A. That may be; but not being a buyer, I had no occasion to use this directory.

Q. I am not asking you that. I am asking you if that is what you mean also by "little women's dresses," half-size resources?

Mr. Haycraft: That is objected to. Counsel is seeking to get the witness to identify something, when the witness did not do so in his examination.

Examiner Bennett: If he knows whether they are synonymous terms, I would like to have him say so. If they are not synonymous terms, to him, I would like to have him say so.

The Witness: I made the statement that I had no occasion to use this directory. It is the function of the buyer to find resources for the merchandise for which he is scouring the market. 8060

Mr. Albert: May I ask the witness' answer be stricken? I think all your Honor wanted to know was whether the title "Little Women's Dresses" was synonymous with his use of the expression "half-size resources," and I believe the witness has already testified that, substantially, that is correct.

Examiner Bennett: I wanted to see whether it does or not.

By Examiner Bennett.

Q. Are the terms "little women's dresses" and "half-sizes" the same terms in the trade? A. They may be used as a similar classification. 8061

Q. They designate the same classification, do they? A. They do, yes, sir.

Examiner Bennett: All right.

By Mr. Albert.

Q. Now, without taking the time, Mr. Liberman, to actually count them, will you accept my statement that in

this listing in Fairchild's of manufacturers selling "little women's dresses," there are 105 manufacturers?

Mr. Haycraft: I object to that question with reference to the directory as an exhibit which is not in evidence. The witness says he never used it, he is not a buyer, he is not in a position to testify to it. I submit there is no foundation laid for such a question, and it is improper cross examination.

Examiner Bennett: I will sustain the objection. I think that is a matter to show later. This witness does not seem to be acquainted with those re-

8063 sources. If you want to offer that document, I will entertain an offer.

Mr. Albert: Well, if your Honor please, we have been referring to it as Respondents' Exhibit 21. I believe that Fairchild's have been previously referred to by some of the Commission's witnesses.

Mr. Haycraft: Not that book.

Mr. Albert: And I certainly do not want to put the full directory into evidence, nor do I think it necessary to put in six or seven pages of this particular exhibit. I think there is no particular secret in what I want to do. I merely want to ask the witness this question.

Examiner Bennett: He does not seem to be informed, his information does not seem to be sufficient that it is worth while clearing up the record on that particular point.

8064

By Mr. Albert.

Q. Have you in any way checked up on your buyers with respect to the resources sought to be contacted by them? A. I have not.

Q. Do you in any way know what resources they contacted in attempting to replace, as you said, the Guild manufacturers? A. I do not.

By Mr. Albert.

Q. Now, Mr. Liberman, when you state that your buyers reported to you, they could not replace Guild resources, have you any knowledge as to what they did in their attempts to replace Guild resources? A. They made the usual rounds, supplemented with the experience and knowledge of the New York market, by our—by the Cavendish representatives.

Q. But you do not know what manufacturers they visited, do you? A. I do not.

Q. And you cannot tell us? A. I cannot.

Q. Mr. Liberman, do you know whether or not Abbate-Swift make half-size dresses? A. I do. 8066

Q. Do you mean by that that they do make half-size dresses? A. Yes.

Q. Does Admiration Dress Company make half-size dresses? A. I do not know.

Q. Does Annetta Waist make half-size dresses? A. I do not know.

Q. Do you know whether or not Avion Dress makes half-size dresses? A. I am not familiar with the resources.

Q. Barish? A. I don't know it.

Q. Barham Dress? A. I don't know.

Q. Baron Dress? A. I don't know.

Q. Bass William? A. I don't know.

Q. Beau Monde? A. I don't know. 8067

Mr. Haycraft: I object further, Mr. Examiner, to reading from the exhibit not in evidence.

By Mr. Albert.

Q. Ben-Wal?

Mr. Haycraft: —and to which I objected to.

Examiner Bennett: I do not believe it makes any difference, if they are resources—the source of his information as to half-size dresses.

By Mr. Albert.

Q. Ben-Wal? A. I can't hear you.

Q. Ben-Wal Dress Company? A. I am not familiar with the resource.

Q. Berkley? A. I don't know it.

Q. Berman & Smith? A. I don't know them.

Q. Better Mode? A. I don't know.

Q. Bettini? A. I don't know.

Q. Black Wear? A. I don't know.

Mr. Haycraft: To save time, Mr. Examiner, I will stipulate in view of the witness' testimony, that he does not know anything about this matter—

8069 that he does not know any other names that were red carded.

Examiner Bennett: All right.

Mr. Albert: He obviously knows some of them. I want to find out what he knows.

Mr. Haycraft: He has already said he did not know. What is the object of further cross-examination on it?

Mr. Albert: I wish to state that we have taken opinions from witnesses on these matters. They have testified on direct examination, and I would like to find out what this man, who occupies the position that he does with Schuster & Company, knows about his business, if he can come here and

8070 give the opinions that he has——

Mr. Haycraft: That is not a part of his——

Mr. Albert: —he has given opinions——

Mr. Haycraft: That is not a part of his duties. He has already testified. This witness is not put on as a buyer in this case.

Mr. Albert: He is superior to the buyer.

Mr. Haycraft: I submit that when we submit a witness for the purpose of testifying as to one

function, one type of business, that he should not be interrogated along lines with which he is not—for which he is not offered, and about which other witnesses who are familiar with the situation may be interrogated. It so happens in this particular case that the buyer for Schuster & Company is not with them any more, and we are unable to produce her at this time.

Mr. Albert: Then I ask, if it please the Court, that all of the testimony with respect to this particular line of examination be stricken from the record.

Mr. Haycraft: Well, now, I——

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Mr. Albert: If we cannot cross-examine the buyer because the Federal Trade Commission does not seek to go after her, and they do not want to permit us to cross-examine this man to show that there is no foundation whatsoever for the opinion as registered, except the remarks of somebody who will never be presented to the Commission, and whom we cannot get——

Mr. Haycraft: The thing is this, this witness is an official of the organization and in charge of the department.

Mr. Albert: Then he should know what he is being cross-examined about.

Mr. Haycraft: Let me get through with my remarks. You have interrupted me twice now.

8073

Mr. Albert: I am sorry.

Mr. Haycraft: In that capacity he has testified as to what has been told by his buyers, what reports have been made to him by his buyers, in the ordinary course of business. I submit he should not be cross-examined as to what his buyers might know or might not know, that is what this amounts to.

If he had testified, or if he did have intimate knowledge of the industry, I would have no objection to it, but I do not see that we are getting anywhere.

Examiner Bennett: Well——

Mr. Haycraft: As I say, I am willing to stipulate that he does not know the resources, outside of the resources he has contacted that happened to come under his own supervision.

Mr. Albert: Therefore, if it please the Court, I believe that his opinion, and his statement, that this merchandise cannot be replaced, should be
8075 stricken from the record as having no foundation, except the words of a woman who is not here, and who, for all we know, may have been discharged because of the fact that she did not contact these resources. There is nothing in the evidence with respect to it.

Mr. Haycraft: Ask him that, if you want to.

Examiner Bennett: Well, now, if you are through debating, I will make a decision.

By Mr. Albert.

Q. Blau Dress Company?

Examiner Bennett: This witness seems to have been acquainted with some resources, and so testi-
8076 fied. He has attempted to characterize them. I am going to let him be subjected to cross-examination as to what he knows about them.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: About the other resources to a reasonable extent.

Mr. Haycraft: Now, I am willing to stipulate that he does not know anything except those that come within his own supervision, in his own organization.

Mr. Bennett: I do not think you could do that, because his testimony has shown differently.

Mr. Haycraft: He has testified he did not; he has testified twice he did not.

Examiner Bennett: I know, but he did testify in specific cases, characterizing resources, and testifying as to having such resources—and let us not——

Mr. Haycraft: Well, Mr. Examiner, I submit that he does not know anything further, outside of his own organization. If by reason of the fact he is merchandise manager of Schuster & Company, he has become familiar with every resource that 8078
Schuster & Company has been buying from, it does not necessarily follow from that fact that he is familiar with resources from whom they do not buy.

Examiner Bennett: Maybe there are some of those resources from which he buys. I am going to let that examination go on. We are wasting time by repeated objections to it.

By Mr. Albert.

Q. Blau Dress Company? A. I don't know.

Q. Bleich Dress Company? A. Pardon?

Q. Bleich? A. Never heard of them.

Q. Blue Belle Frocks? A. Don't know them. 8079

Q. May I ask, when you say you don't know, Mr. Liberman, whether you also mean that you do not know the firm; or that you do not know what it is that they manufacture? A. I don't know the firm, or know the merchandise that they might manufacture.

Q. So that for those that you have answered "I don't know," you would put them in the same class as the Bleich Dress, to which you answered "never heard of them"? A. Correct.

Q. Thank you. Bosnjak Meyer? A. I don't know.

Q. Caron Brothers? A. I don't know.

Q. Cheerful Dress? A. I don't know.

Q. Cohen Brothers? A. Pardon?

Q. Cohen Brothers? A. I don't know them.

Q. Constantine Dress? A. Might I get a clarification of that? There may be—these houses that are mentioned in his directory, may be making half-size dresses and also larger sizes. Now, I think that my statement yesterday covered both lines. Now, some of these houses that you have mentioned may be making womens' dresses that we have bought, but I don't know whether they make half

8081 sizes, little womens or regulars.

Q. Would it be any information to tell you, Mr. Liberman, that the houses that I have just listed are contained in the same category as houses that you have mentioned on page 4458 of the minutes, are also listed in that category as being little women's dresses resources? A. Still does not clarify the question. I mean, that you have asked me if I know that they make a little women's dresses.

Q. Yes. A. I do not know, any such answers as I have given you are to the best of my knowledge.

Q. Very well. Fashion Wear Dress Company? A. I don't know.

Q. Form-Fit Dresses? A. I don't know.

Q. Harry Frank? A. I believe they make both womens and half sizes.

8082 Q. Geffen, M. L. Co., Inc.? A. I don't know.

Q. Joan Sportwear? A. I don't know.

Mr. Albert: I will just take a few more, your Honor——

Examiner Bennett: Very well.

Mr. Albert: —to give us a cross section.

By Mr. Albert.

Q. Pommy Dress Corporation? A. Pardon?

Q. Pommy Dress Corporation? A. Never heard of them.

Q. Radiant Dress? A. I believe they make both womens and half sizes.

Q. Bennie Schwartz & Company? A. Don't know.

Q. Simonetti, Inc.? A. I have heard of the firm, but I cannot qualify what type dress they make.

Q. Smart Woman Dresses, Inc? A. Don't know them.

Q. Max Wiesen & Sons? A. They make half sizes.

Q. Now, let us take the last one, Zuckerman & Rubin, Inc.? A. I don't know.

Mr. Albert: For the record, if it please the Court, I have merely taken at random certain names from a list.

Examiner Bennett: All right. 8084

Mr. Albert: That we believe to be these particular houses, and which we will bring out more specifically on direct.

Mr. Haycraft: I move to strike out all the testimony bearing on that point.

Examiner Bennett: Denied.

By Mr. Albert.

Q. Now, Mr. Liberman, you have testified that as long as you are red carded you cannot give your customers, and I am paraphrasing, the type of merchandise that they want, is that so? A. That's the way we feel about it, yes.

Q. Now, what do you mean by type of merchandise? A. We feel that Ed. Schuster & Company have a certain 8085 standard, certain quality, and a consciousness of fashion right merchandise as any of our competition, and unless we can get the merchandise that we feel will represent the kind of business that we have done in the past, and we hope to sustain for the future, we will not put in such merchandise that we cannot find that represents these qualifications.

Q. You obviously did not understand my question, Mr. Liberman. What is there about this type of merchandise that makes it so necessary for your store? A. From past experience and records and sales.

Q. Can you tell us what elements there are that comprise the type of merchandise that is manufactured by Guild manufacturers and which is what you are looking for? A. Primarily fashion——

Q. By fashion, do you mean style?

Mr. Haycraft: Wait a moment, he has not completed his answer.

Examiner Bennett: Go ahead.

8087 The Witness (resumed): Speaking of fashion, speaking of material, speaking of fit, speaking of fabrics, and quality of workmanship, plus value.

By Mr. Albert.

Q. Would you not say that material and fabric are the same? A. Yes—I am sorry if I repeated.

Q. And would not you say that substantially fit and workmanship were the same? A. No, sir.

Q. Well, what distinction do you make between fit and workmanship? I want to understand you thoroughly, Mr. Liberman. A. Fit is a matter of sizing, of cutting—certain resources that are known that have a standard of patterns.

Q. Yes, but is not that the result of the workmanship?

8088 A. Not necessarily.

Q. What are you referring to, then, in workmanship? A. Workmanship is the completed garment, the sewing of the garment and the finishing of it after it has been cut; they are in two different, entirely different classifications.

Q. Very well. I just wanted to know what you are referring to, that is all. Now, is there any one of those elements which is primarily important to Schuster & Com-

pany in the type of merchandise that it seeks? A. I think primarily what the customer seeks, along with fashion, is fit.

Q. Can you tell me which is of the greater relative importance as between the two, fashion and fit? A. It is a matter of judgment, and after all customers' paramount interest is in getting the kind of garment that she is satisfied with.

Q. Would not you say that no matter how well a garment would fit, the customer would primarily be interested in the fashion and the style that that garment was in? A. I presume so, yes.

Q. And that if she did not like the style, or the fashion 8090
of the garment, she would not even get to the position where she would be interested in seeing whether it would fit or not? A. That may be true.

Q. So that are we safe in saying, in so far as you are concerned, that the first thing that a customer—and of course, we are referring to women customers—looks at, is the influence of a garment, is the fashion and the style?

Mr. Haycraft: I object; he did not say that.

Mr. Albert: Well, I am asking him, if it please the Court——

Mr. Haycraft: Well now——

Mr. Albert: —if that is what he will agree to, or concede.

The Witness: I do not agree to it. 8091

By Mr. Albert.

Q. Is it your contention that your customers looks first to workmanship, to fit, and material——

Mr. Haycraft: Well——

By Mr. Albert.

Q. —before she looks at the style of a dress?

Mr. Haycraft: I am going to object to that, Mr. Examiner.

Examiner Bennett: Overruled.

Mr. Haycraft: No foundation laid for that question.

The Witness: I cannot qualify that. After all, I am not the buyer, nor am I directly responsible for the selection and sale of merchandise on the floor, and I am not here as a prophet to give an answer as to what the customer looks for when she

8093 comes to Ed. Schuster & Company.

By Mr. Albert.

Q. Well, Mr. Liberman, is not what I am asking not alone a question of prophecy, as to the future, but dependent upon your knowledge of what has happened in the past? A. It may have happened.

Q. Well, from your experience in the dress industry, would you not say that the first thing that attracts a potential customer, a lady, to a dress, is the fashion and the style of that dress?

Mr. Haycraft: That is objected to; he has already said it was not.

8094 Examiner Bennett: Overruled; he may answer. You may answer. If it is not the first, say so.

The Witness: I think that is part of the whole.

By Mr. Albert.

Q. Mr. Liberman, how long have you been in the dress industry? A. Pardon?

Q. How long have you been in the dress industry? A. In the dress industry?

Q. Yes, connected with any phase of ready to wear women's dresses? A. Well, as far as the merchandising and retailing of dresses is concerned, it has only known a —or has only been an important factor for about twenty-five years.

Mr. Albert: May I have the answer read?

(Last question read by the reporter.)

Mr. Albert: May I ask that the answer be stricken? All I asked the witness was as to how long he has been connected with the dress industry.

The Witness: I have not been interested in the industry at all, only from the standpoint of merchandising and retailing. 8096

By Mr. Albert.

Q. And you say that your experience covers a period of twenty-five years? A. In the dresses, yes.

Q. During that time, have you ever been in supervision over the buying of dresses direct supervision over the buying of dresses? A. I have.

Q. And in that supervision have you assisted in the buying of dresses? A. It might be so termed.

Q. Well, when you say it might be so termed, what have you in mind as demonstrating that you have assisted in the buying of dresses? A. That I visited showrooms.

Q. That is, that you have gone out with your buyers and looked at dresses, and possibly discussed with them whether this dress should be bought, or that dress should be bought? A. Yes, that's right. 8097

Q. And in connection with those duties you have gone and visited the various markets, is that right? A. That's true.

Q. Have you ever yourself actually been what is technically known as a buyer? A. I have.

Q. For how long a period of time would you say that you were actually a buyer? A. I can't recall.

Q. Can you give us any rough estimate? A. Possibly eight or ten years.

Q. Now, what is there in the style of the dresses manufactured by Guild manufacturers that is desired by Schuster & Company? A. I don't get the question. Will you read it?

Q. (Last question read by the reporter.) A. Well, all I can say it may mean a type.

Q. A certain type or style? A. A certain type of dress.

Q. No, no, you have set forth three or four elements that are taken into consideration by the customer, in purchasing a dress, is that correct? A. That's right.

8099 Q. And you have also, I believe, or, shall I say, Mr. Haycraft has conceded, that perhaps the most important of those elements is style of a dress? A. That's right.

Q. Now, disregarding the other three elements, what is the important feature of the style that is manufactured by Guild manufacturers, which is necessary to Schuster & Company? A. Well, it may be a type, it may be a dress that has a certain eye appeal to-day that we feel that we need. Thirty days from now we may not want it. That is all a matter of time. If we feel that the time is opportune to have selected such merchandise in season, or before the season, or for a time to come.

Q. And would you say that in that timing the Guild manufacturers display, for the purpose of showing to you these styles, ahead of others? A. Not that, no preference

8100 to Ed. Schuster & Company.

Q. No, I did not mean that Schuster & Company was on any preferred list, or was sold in preference to anybody else. My question was directed at this: You stated that there is a timing element in getting the style, it may be necessary now, and not a month from now—correct? A. That is.

Q. Now, in that element of timing, would you say that Schuster & Company looks to Guild manufacturers to first

present the styles that Schuster & Company thinks it needs? A. I do.

Q. What makes style? A. Makes style?

Q. Yes. A. I am not qualified to answer.

Q. After twenty-five years in the merchandise end of the ready-to-wear business, and after ten years as a buyer, you cannot give us any definition of what makes style, or how style is developed? A. Style is a matter of eye appeal, and what might—I would like to have the attention of counsel. It is no reflection on you, but I am addressing my remarks to the attorney here, and I cannot concentrate.

Mr. Post: I apologize.

Mr. Haycraft: Do you want the beginning of 8102
your answer?

The Witness: Yes, if I may have it, please.

Mr. Haycraft: Read it to him.

(Answer read by the reporter.)

A. (Continuing) —and what might be a fashion right garment for one person, would not have any bearing on another. It is the willingness to accept a garment or a fashion upon the customer that makes it. Also, in the number of such customers who are willing to accept it and buy it freely.

By Mr. Albert.

Q. Wouldn't you say that a particular garment becomes 8103
the style by reason of its widespread acceptance by the public generally? A. Not necessarily.

Q. Isn't that what you mean when you say that a dress is in style? A. It may have elements, this garment, that is in fashion.

Q. Yes. Now, from your experience in the industry, can you tell us how style, how a fashion is developed?

Mr. Haycraft: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: Laying the foundation, may it please the Court, for subsequent questions.

Examiner Bennett: He may answer.

The Witness: Would you mind repeating the question?

(Question read by the reporter.)

The Witness: It may be an inspiration that is received from a mode, a historical event, a period of past fashion. It all depends on the ability of a designer or others to capitalize certain elements,
8105 certain factors, or for a popular trend to get the most out of them.

By Mr. Albert.

Q. Where would you say that that, to use your word, inspiration, or adoption of a historical trend, or of a past style, first originates? A. In the mind of the designers.

Q. To bring you down more specifically, would you say that that originates in this country, or on the other side, generally speaking? A. You cannot geographically place any particular fashion.

Q. I agree with you on that. But where would you say most, perhaps, of the inspirations and the establishment of the trend of style developed? A. Would you mind re-
8106 peating the question, please?

Mr. Albert: Read the question.

(Question read by the reporter.)

The Witness: The public conception is that Paris originates most of the styles that are adopted and adapted in this country.

By Mr. Albert.

Q. When you say the popular conception is that they are originated in Paris, do you mean to infer that styles are also originated in this country? A. Yes.

Q. What do you mean when you say that styles are originated in this country? A. There are certain style trends and developments that come from American designers.

Mr. Haycraft: I wish it understood, Mr. Examiner, that I have an objection to this entire line of questioning as irrelevant and immaterial, and not proper cross-examination. I did not go into it at all on direct. 8108

By Mr. Albert.

Q. Now, Mr. Liberman, is it this type of style and the fashion as developed that Schuster & Company seeks from the members of the Fashion Originators Guild? A. That is one of the elements.

Q. That you look for when you purchase from them? A. That is right.

Q. From your experience as a merchandise manager, and as a buyer for ten years, do you acknowledge that there is such an evil in the industry as style piracy?

Mr. Haycraft: That is objected to.
Examiner Bennett: He may answer. 8109

By Mr. Albert.

Q. Speaking for Schuster & Company, of course. A. I have heard of such practices.

Q. Do you also subscribe to the proposition that those practices are an evil in the industry?

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled. He may answer.

The Witness: Well, it is all a question of how you interpret the matter of policy, if you want to qualify it by also saying there may be adaptations or replicas of a fashion that may have appeared at some previous time or period.

By Mr. Albert.

Q. Conceding, Mr. Liberman, for the sake of argument that all present-day fashions originally may have had their first forte hundreds of years ago, and that the present-day
8111 style of dresses is an adaptation of those styles to conform them to present-day practices and to the present-day silhouette of a woman, and to the present-day intelligence, would you say that the copying of those adaptations of the dresses that were originated hundreds of years ago, if you will, was an evil? A. Not necessarily, if the designer received inspiration or ideas from seeing photographs or sketches.

Q. What do you mean by a copy? What is it that is copied? A. A dress may be copied identically, from the standpoint of taking everything out of what we might term an original dress.

Q. Yes. A. That might be termed a copy.

Q. Yes. A. But, on the other hand, as I see this copy-
8112 ing evil, it is very seldom in my experience that we have ever had a direct copy in every detail. And when I speak of every detail, I speak of fashion, fabric, workmanship, findings or trimmings, that you had in the original dress.

Q. Have you had a copy sufficient to resemble, to use your term, the original dress from which it was copied? A. We may have.

Q. And to create confusion in the public mind? A. That has appeared, yes.

Q. Now, insofar as that definition of copy is concerned, isn't and wasn't that an evil in the industry? A. I believe it was an important factor.

Q. In the light of your testimony, Mr. Liberman, is not the program of the Fashion Originators Guild best suited to the elimination of that evil?

Mr. Haycraft: That is objected to. No foundation laid. Irrelevant and immaterial. Improper cross-examination. Particularly in the light of the statement made by counsel for the Commission, as to the lack of an issue on this point.

Mr. Albert: I didn't quite get counsel's last statement. 8114

Mr. Haycraft: Read it to him.

(Record read by the reporter.)

Mr. Albert: If your Honor please, I again ask if we cannot have a specific, definite statement from Mr. Haycraft, instead of equivocal language in an objection of lack of an issue of this matter, and I ask Mr. Haycraft now, in the light of his repeated remarks with respect to the lack of an issue, if the Commission is willing to concede that there is an evil in the industry, and that the program of the Guild is designed to meet that evil. We do not have to meet the same sort of argument in every city to which we go.

Mr. Haycraft: I repeat, I concede nothing. 8115

Mr. Albert: Then I ask him to stop his objections, unless he wishes to tell us why he is objecting.

Examiner Bennett: He may answer, if he has any opinion.

Mr. Haycraft: He has not shown that he knows what the program is.

By Examiner Bennett.

Q. Do you have any opinion upon that? A. I have not formed any opinion.

By Mr. Albert.

Q. Schuster & Company seeks to obtain these styles from the Fashion Originators Guild, does it not? A. It seeks to do business with these firms.

Q. Yes. A. That's right.

Q. Because of the fact that it desires these styles, does it not? A. That is right.

8117 Q. And, of course, Schuster & Company is not the only retail department store, or retail store, that desires to purchase dresses from Fashion Originators Guild manufacturers, are they? There are others, are there not? A. I presume so, yes.

Q. Now, is not the program of the Guild designed for the purpose, in the light of your testimony, that an evil exists with respect to copying, of protecting and maintaining for all retailers the integrity of the merchandise of these manufacturers as well as for Schuster & Company?

Mr. Haycraft: That is objected to. There is no foundation laid for the question. The witness is not a member of the Guild.

8118 Examiner Bennett: I shall sustain the objection to it.

By Mr. Albert.

Q. Have you ever seen the declaration of co-operation signed by Schuster & Company?

Mr. Haycraft: That is objected to.

The Witness: I have.

Mr. Haycraft: As irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: He has answered. Go ahead. Overruled.

Mr. Haycraft: I don't think I got the answer, your Honor.

Examiner Bennett: He said he had.

Mr. Likert: Don't answer, when an objection is made, until there is a ruling.

By Mr. Albert.

Q. Did you discuss this with the officials of Schuster & Company? 8120

Mr. Haycraft: That is objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: Laying a foundation, your Honor.

Examiner Bennett: Overruled.

Mr. Albert: I do not want to be left with the objection, if I jump into the middle of it, that no foundation has been laid.

Examiner Bennett: I will see what it is. Go ahead.

The Witness: Pardon me?

By Examiner Bennett.

Q. Have you discussed that particular thing? A. The matter of the letter of co-operation with the Guild was on file with the F.O.G.A.; at the time I went with Schuster & Company, we were following the rules and regulations and the declarations of the memorandum. 8121

By Mr. Albert.

Q. And you were in hearty accord with the principles of the Guild——

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continuing) —were you?

Mr. Haycraft: Not proper cross-examination, irrelevant and immaterial, whether he was or was not.

Examiner Bennett: What is the question?

(Question read by the reporter.)

By Mr. Albert.

Q. Were you not?

Examiner Bennett: I will sustain the objection.

8123

By Mr. Albert.

Q. Prior to your coming with Schuster & Company, Mr. Liberman, did you have any knowledge of the declaration of co-operation issued by the Fashion Originators Guild?

Mr. Haycraft: That is objected to as irrelevant and immaterial, and not proper cross-examination.

Examiner Bennett: I will let him answer. It may be a preliminary question.

The Witness: I remember such a memorandum.

By Mr. Albert.

Q. As a matter of fact, is it or is it not true that while you were with Stix, Baer & Fuller, you signed, on behalf 8124 of Stix, Baer & Fuller, the declaration of co-operation that was signed by them? Is that so, or is it not? I don't know, I am asking you.

Mr. Haycraft: Just a minute. Do not answer until I object. That is objected to, if your Honor please, as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: The only purpose of it, your Honor, is to demonstrate this witness' knowledge of the

contents of the declaration of co-operation which he has said had already been signed when he went with Schuster & Company, and that, therefore, he had duplicate knowledge. I think the declaration of co-operation is the same, no matter where it is.

Examiner Bennett: I think he testified he had knowledge of the Schuster declaration.

Mr. Haycraft: As a matter of fact, the Schuster declaration is different from the others.

Examiner Bennett: I will sustain that objection. I do not think the other firm is in this inquiry.

8126

By Mr. Albert.

Q. Now, Mr. Liberman, what did you mean when you said that the good will of Schuster & Company had been hurt by your inability to obtain merchandise from Guild manufacturers? A. Do you mean—will you repeat the question, please?

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: On what page is that?

Mr. Albert: 4458.

A. (Continued) In the course of business, we experienced in the spring season, we had customers of Ed. Schuster & Company, who could not find in our stocks 8127
the type of merchandise which we had been accustomed to carry, and from vendors, members of the Guild, with which we could not find similar types for replacement, and we definitely feel we have lost the good will of customers who came for this merchandise and were compelled to go elsewhere to get it. This foundation of fact is reflected in the loss of sales.

By Mr. Albert.

Q. Since you have testified that the copying of original dresses was an evil, do you not admit that the manufacturer of such dresses has a good will to preserve in protecting it? A. I don't believe I get the question.

Mr. Haycraft: Just a minute. I object to that question, as assuming a statement of fact that is not in the record. The witness did not say that he considered it an evil.

Examiner Bennett: If you will revise your question so as to ask him directly whether he thinks the
8129 manufacturer has good will to protect, I will let him answer.

By Mr. Albert.

Q. Mr. Liberman, let me ask you this question: From your experience as a merchandise manager, will you not say that the ability to produce dresses such as are demanded by and desired by Schuster & Company is an item of good will to the manufacturer of those dresses?

Mr. Haycraft: I object as irrelevant and immaterial.

Examiner Bennett: Overruled.

The Witness: I want to get the interpretation of the question.

8130 Mr. Albert: Read the question.

(Question read by the reporter.)

A. I believe it is a matter of reciprocity between the vendor and the retailer.

By Mr. Albert.

Q. Just what do you mean by that? A. I mean there is good will on both sides that has to be maintained.

Q. But, in so far as the manufacturer is concerned, is not his ability to sell his dresses predicated upon the items which you say you demand, his good will?

Mr. Haycraft: Same objection, irrelevant and immaterial to the issues involved in this case, not proper cross-examination.

Examiner Bennett: Overruled. Go ahead and answer it, if you have any answer.

The Witness: I don't quite get the question. I think I answered previously to the questions asked, and, to the best of my knowledge, I covered it.

Mr. Albert: Let me put it this way:

8132

By Mr. Albert.

Q. Will you not say that the desire of Schuster & Company and of other department stores to obtain as much Guild merchandise as possible, due to the factors that you have stated, constitutes the good will of that manufacturer towards his customers? A. Well, there is another factor that we seem to be getting away from, and that is the fact that Schuster & Company stores have to be on a competitive basis with other stores in our communities, and when you say department stores, you are leaving out what we consider the greatest menace to our business.

Q. I am merely speaking now in the abstract, from the manufacturer's point of view. Has not the manufacturer, in establishing and fostering a desire on the part of 8133
Schuster & Company for his style, set up a good will which is of value to him? A. I would not qualify that statement.

Q. Do you say you don't know? I didn't quite understand. A. I cannot qualify the statement or the question.

Q. I don't think I follow you, as to what you mean by that you cannot qualify it. A. I cannot answer the question.

(Whereupon, at 4.30 o'clock P. M., August 26, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock A. M., to-morrow, Thursday, August 27, 1936, at the same place.)

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,
August 27, 1936.

Met, pursuant to adjournment, 10 A. M., E.S.T.

8135 Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please.

LOUIS LIBERMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Cross-examination (resumed) by Mr. Albert.

8136 Q. Mr. Liberman, as merchandise manager, is it not one of your functions to watch the stock on hand in order to see to it that the stock on hand is kept in a proper proportion and ratio to the sales? A. May I have that question?

(Question read by the reporter.)

The Witness: It is.

By Mr. Albert.

Q. And is not the necessity for such observation on your part the attempt to combat the possibility that any depart-

ment is purchasing more goods than it can sell? Because, if a department purchases more goods than it can sell, the surplus is lost by reason of mark-downs, isn't that so, generally speaking? A. Well, I would not qualify that. That is supposition.

Q. Is not that one of your functions at merchandise manager, to see to it that your stock on hand does not exceed by too much the possible market for your sales? A. As far as I am concerned, my answer to that is, that it is the buyer's responsibility in selecting and buying such merchandise that she feels she can dispose of.

Q. You mean by that, that you permit your buyer to consistently buy either too much goods or too little goods, 8138
without any correction on your part? A. May it please the Court, I do not see that there is any record here that shows that the buyer consistently overbought.

Q. I am asking you that. I mean, suppose you noticed that a buyer, over a period of time, is buying a great deal of merchandise for a particular department, and, at the end of your accounting period, be it a week or a month, of the department—I believe you said you get your statistics every week—you find she has a surplus in that department.

Mr. Haycraft: Objected to; no foundation of fact in the record; problematic and suppositional.

Mr. Albert: I am sorry, if your Honor please, but I cannot quite see why Mr. Haycraft cannot 8139
distinguish what is a foundation question from what is not. It seems to me quite obvious that all of these questions are foundation questions themselves.

Mr. Haycraft: They are highly improper, if that is what they are intended to be. You do not base foundation questions on problems, suppositions, and so on.

Mr. Albert: That is all this witness has given us, is opinion based on supposition.

Mr. Haycraft: That is your opinion, not mine.

Examiner Bennett: I don't get just what you a trying to test.

Mr. Albert: I will be glad to tell your Honor the record.

Examiner Bennett: Well, that will be all rig I will be glad to have you do it.

(Thereupon a discussion was had off the record

Mr. Albert: What is the question?

(Question read by the reporter.)

By Mr. Albert.

8141 Q. (Continuing) What is your action with respect that? I mean, don't you attempt to tell her, "Here, y are buying too much goods. Cut it down a bit"? A. We that is a matter of personal judgment. After all, we, our capacity as merchandise managers, try to counsel t buyers, and direct them not to overbuy, or to have surpl stocks, and whatever commitments are made are based past experience and plans for promotion of sales for t future.

Q. And that past experience of sales of stock is depen ent—question withdrawn. What you mean by past expe ence of sales to stock is what you might generally term the industry as your past experience with the turnove A. Past experience as it applies to the operation of t

8142 dress departments in Ed. Schuster & Company stores.

Q. We are not talking about any other store, are Mr. Liberman? A. What might apply to Milwaukee wou not apply to Cincinnati, St. Louis or points South.

Q. You haven't given us any opinions on St. Louis Cincinnati? A. No, but, after all, your are generalizi you have mentioned Ed. Schuster & Company, you generalizing on the general practices. I am confining testimony to what applies to Ed. Schuster & Company.

Q. All right. Now, confining yourself to your testimony on what applies to Ed. Schuster & Company, have you, as divisional or merchandise manager of Ed. Schuster & Company, fixed upon any formula of turnover for your dress departments? A. We take past experiences of the departments in the matter of turnover, or endeavor to reach a certain medium.

Q. What would you say is the medium or the goal which you seek to have your buyers realize? Is it to turn over their stock once a month, or once a week? A. I haven't the figures available.

Q. I am not asking you what the figures are. I am asking you whether or not you, as merchandise manager of 8144
Ed. Schuster & Company, do not know what the goal of Ed. Schuster & Company is with respect to the turnover of stock in these departments, aside from what the actual figures are? A. I don't recall.

Examiner Bennett: He has answered "I don't recall."

By Mr. Albert.

Q. That does not vary from week to week, does it? A. That is a matter that is set up at the commencing of each year.

Q. When did you fix your goal for this year? A. In January, 1936.

Q. What was your goal? A. I don't know. 8145

Q. Mr. Liberman, do you mean to tell this Court that, as merchandise manager of Ed. Schuster & Company, on so broad a proposition as what the goal of Ed. Schuster & Company is as regards the turnover of stock in its dress departments you cannot tell us what that is now? A. I so repeat.

Q. Do you think you could get that information from Mr. Keuchenmeister?

Mr. Haycraft: I object to that.

By Mr. Albert.

Q. Who is in the room at present, and who, I believe, is your comptroller?

Examiner Bennett: The same instruction from the Examiner obtains as was given yesterday. That is to say, you are not under obligation, but you may do it as an accommodation if you care to.

The Witness: I would like to ask counsel of Schuster & Company if that question is in order?

Mr. Likert: The question is in order, but you may reply through me, or I will answer for the company.

8147

The Witness: That's right.

Mr. Likert: We do not have the figures available on what was the average turnover in the merchandise meeting of January, 1936, and we decline to present them.

By Mr. Albert.

Q. Mr. Liberman, I believe you stated that you became merchandise manager of Schuster & Company in the summer of 1935? A. That is right.

Q. And the previous merchandise manager is no longer with Schuster & Company? A. That's right.

Q. Do you know why he was removed? A. I do not.

8148

Q. Did you, upon taking over the position, investigate or compile any statistics with respect to the stock position of Ed. Schuster & Company at that time? A. I don't think the question is very clear. You mention "stock," but you don't say what stock.

Q. What stock would you think I was mentioning? A. I haven't any idea.

Q. It would not be men's clothing, would it? A. Possibly.

Q. How? A. Possibly.

Q. It would not be your nick-nacks department, would it? A. I don't think the question is very relevant.

Q. Now, suppose we stop this foolishness; and realize that I am referring only to the dress departments and that is all that has ever been under discussion here. A. It is perfectly all right with me, if you had mentioned the dress department I would have answered to the best of my knowledge.

Q. You knew very well that that was all I was referring to. Would you mind answering the question now? A. Would you mind repeating the question?

(Last question read by the reporter.) 8150

The Witness: I can't recall.

By Mr. Albert.

Q. At the close of the six months period, on January 1, 1936, or January 31, 1936, did you compile any statistics with respect to the turnover of your stock from the time that you took over the departments, until that time, until January 31, 1936? A. Some figures may be on file in the comptroller's office.

Q. You do not recall them? A. That I had personally compiled such figures?

Q. Yes. A. I do not.

Q. Were they submitted to you? A. They were.

Q. Did you examine them? A. I did examine them. 8151

Q. Did you come to any conclusions as a result of examining those figures?

Mr. Haycraft: That is objected to; it is too indefinite; conclusions as to what

Mr. Albert: The man is a merchandise manager, has been for twenty-five years, looking at figures. I am asking him if he came to any conclusions with

respect to the figures, and then I will find out what the conclusions are. When a man cannot tell me what his turnover is, I do not know whether he has come to any conclusions as a result of seeing figures.

Mr. Haycraft: I object.

Examiner Bennett: Overruled; he may answer.

The Witness: I believe it was not at all necessary to make any comparison of the figures under my management for the fall of 1935 to a similar period of 1934.

8153 *By Mr. Albert.*

Q. Now, as a result of your examination of the figures in the period, the latter half of 1935, in which undoubtedly the influence of Mr. Greenblatt was still felt somewhat—is that unfair?

Mr. Haycraft: I object.

The Witness: It is a fair question.

By Mr. Albert.

Q. I mean, you would say say that his influence was still felt in the department, as regards the purchases that had been made, and everything else, is that not so?

Mr. Haycraft: When?

8154 Mr. Albert: For that period.

The Witness: Well, it all depends on how—I am not familiar with how long Mr. Greenblatt remained, or what influence he had on early fall purchases.

By Mr. Albert.

Q. When you came into the department, your departments were stocked, were they not, when you took over in July?

Mr. Haycraft: Stocked with what?

Mr. Albert: Stocked with dresses, d-r-e-s-s-e-s—is what we are talking about.

Mr. Haycraft: You mean stocked for fall?

The Witness: If I remember correctly that in the early fall—in placing purchases for fall of 1935 there was some labor unrest, and that there was strikes pending, to the best of my recollection; there was not only strikes in the industry, but also in the fabric, and dyeing mills.

By Mr. Albert.

Q. When was that? A. I believe the end—the summer 8156
of 1935.

Q. Well, now, come back to the original question, Mr. Liberman, when you took over the departments in July of 1935, there were dresses in those departments were there not? A. There were.

Q. Whatever there were, they were purchased by Mr. Greenblatt, were they not—they had not been purchased under your supervision, had they? A. No.

Q. So that to that extent, the influence of Mr. Greenblatt was still felt in the department after you took over, is that not so? A. As far as the purchases that had been made?

Q. Yes. A. Previous.

Q. Of course, of course—but, of course, you adopted 8157
new policies new procedures, new methods and everything else, with respect to the department, is that not so? A. Naturally.

Q. Now, at the end of your fiscal year, January 31, 1935—is that correct? A. Yes.

Mr. Haycraft: '36, you mean, do you not?

By Mr. Albert.

Q. 1936? A. 1936.

Q. Did you compute or compile any statistics for the purpose of determining what the turnover had been to the dress departments for that period, in order to formulate plans for the next six months which would be completely under your supervision, without any influence whatsoever from the previous merchandise manager insofar as the purchase of merchandise was concerned? A. I personally did not compile any such figures.

Q. Were they compiled for you? A. I do not know.

Q. You never saw such figures? A. I never saw such

8159 figures.

Q. Then you do not know what your turnover is for the previous six months? A. I do not.

Q. To February 1, 1936? A. The fall of 1935.

Q. Right, for that period? A. Right.

Q. Ending January 31, 1936? A. That's right.

Q. And you do not know, and never did know, the relationship between your stock on hand and your sales for that period? A. I do not.

Q. Because that would be what the turnover would be is that not correct? A. That's correct.

Mr. Albert: That is all, your Honor.

Examiner Bennett: All right, any re-direct?

Mr. Haycraft: Yes, I have some.

8160

Redirect examination by Mr. Haycraft.

Q. You were asked a number of questions on cross-examination as to the designation "little women's dresses," and as to whether or not that designation was synonymous with half sizes in the trade. I will ask you whether or not the designation, or the term, "little women's dresses" would include only half sizes or would it include other

sizes? A. It also included little women's, big women's—or large women's dresses, half sizes, in the same classification.

Mr. Haycraft: Read the question.

(Last question read by the reporter.)

Mr. Haycraft: I am referring now to little women's.

The Witness: Well, there is a size range there that can best be identified by—some of the manufacturers use the twelve and a half to the twenty and a half, and then there is, I believe, another range that starts at twenty-two and a half to twenty-six and a half. Now, in that same category, 8162
you will find other manufacturers that will start at 34½, which is an irregular—that is away from the regular sizing, and fits a type of woman that is not normal figure, and then 34½ will run all the way up to 52, 54½.

By Mr. Haycraft.

Q. In your opinion, would the term "little women's dresses" apply to a dress of size 54½?

Mr. Albert: Or is that for two women?

The Witness: You will find some manufacturers that will sell you anything from an infant's dress up to a 54½, short, long, broad or square, any way 8163
you want to put it.

By Mr. Haycraft:

Q. On page 4562, this question was asked you: "Now, in that element of timing, would you say that Schuster & Company looks to Guild manufacturers to first present the styles that Schuster & Company thinks it needs?" And your reply was: "I do." I will ask you now whether or

not the Schuster & Company looks only to Guild manufacturers to first present the styles that Schuster & Company thinks it needs? A. I would like to confirm that statement that there are other factors, elements of factors that present merchandise at the start of the season.

Q. On page 4571 of the record you were asked this question: "Have you had a copy sufficient to resemble, to use your term, the original dress from which it was copied?" And you replied: "We may have." The next question was asked: "And to create confusion in the public mind? A. That has appeared, yes. Q. Now, in so far as that definition of copy is concerned, isn't and wasn't that an evil in the industry? A. I believe it was an important factor." 8165 Now, I will ask you to explain what you meant when you said you believed it was an important factor? A. That in the copying of higher-priced dresses, speaking specifically in $16.95, retail, and up, there is one—my reaction to the forming of the Guild was to endeavor to curb the copying of merchandise sold in the higher brackets.

Q. Well, have you heard the term "style piracy" used in the industry? A. I have.

Q. Do you understand what it means? A. As far as I am concerned?

Q. Yes. What is style piracy? A. As far as I am concerned, I do not recognize the term "style piracy."

Q. You do not recognize it? A. No.

Q. Why do you not recognize it? A. For the simple 8166 reason that there may be adaptations, or copies made of certain pertinent fashions that have developed in a season, and are brought into price levels that meet the needs, or the—of women and misses, at a point, or at a price line that they can buy dresses. I maintain that that is not a copy. Any trend that might develop, and that can be capitalized upon, measured by factors, redistributed by retailers, I do not consider as a copy.

Q. Well, do you consider that style piracy? A. I do not.

Q. Do you consider it an evil in the industry, those practices just referred to? A. There is all types of industries.

Q. Well, I will say——

Mr. Albert: (Interposing) Dress industry.

By Mr. Haycraft.

Q. (Resumed) —dress industry.

Mr. Albert: (Interposing) Mr. Liberman, d-r-e-s-s.

By Mr. Haycraft.

Q. I will refer first to the retail dealers, as to the retail 8168
end of the dress industry. A. There are certain price levels at which dresses are produced, that, in my estimation, does not conflict.

Q. Will you explain what you mean by that? A. I mean that a dress produced at $3.75 cost, has no relationship to a dress that costs $10.75 or $6.75.

Q. How about the higher brackets? A. The higher brackets, would, I feel, the same—that when you reproduce a dress, or reproduce certain fashions, fashions or trimmings or high-lights of a high style garment, that you take something out of it, when you try and reproduce it for less money.

Q. Do you recognize that as style piracy, that practice? A. I do not.

8169

Mr. Haycraft: That's all.

Recross-examination by Mr. Albert.

Q. Mr. Liberman, you have been in this business twenty-five years? A. As far as dresses are concerned, yes.

Q. You have testified that certain manufacturers make original dresses, better dresses? A. I don't know how

original they are, but they make dresses we are anxious t get and sell.

Q. I believe you have also testified that there are som manufacturers who copy those better dresses, whatev that may be? A. That may be a practice in the industr yes.

Q. Is it or isn't it a practice in the industry, from yo twenty-five years of contact with it? Don't you kno whether it is or not?

Mr. Haycraft: I object to the form of the que tion, and the attitude, the menacing attitude of th cross-examiner. This is not a police court.

8171 Mr. Albert: I haven't picked up a chair yet, I am not menacing yet.

Mr. Haycraft: This is not a police court.

Mr. Albert: The witness is perfectly capable protecting himself.

Mr. Haycraft: He should not be required to.

Examiner Bennett: He may answer.

The Witness: I believe it has been so recognize

By Mr. Albert.

Q. Don't you recognize it as such, and haven't you co in contact with it? A. It all depends. I would like clarify this situation, as far as I am concerned.

Q. Go ahead, clarify it. A. I claim, and I have giv

8172 testimony here this morning, relative to what I consid is a copy, and the relationship to so-called style pira I don't think it is necessary to elaborate on that sta ment.

Q. Let me be the judge of it, and the Court, if you do mind. A. That is my own opinion. Of course, I can overruled.

Q. Now, from the $10.75 price line up, in your expe ence, isn't it a fact that whatever the original source m

be, there are manufacturers who make a practice of copying the design of better dresses manufactured by the better manufacturers? Isn't that so? A. That is true.

Q. Do you subscribe to the honesty of such a practice? A. That is a matter of personal opinion.

Q. Do you think that is honest? A. It is all a question of what he steals out of that dress, as you term it.

Q. He steals the better dress in such a fashion as to affect the value of the better dress?

Mr. Haycraft: That is assuming a fact not in evidence.

By Mr. Albert. 8174

Q. Isn't that so?

Mr. Haycraft: I object to that question.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. When a manufacturer copies a better dress, and attempts to sell that copy at a lower price, in what manner is the value of that better dress affected?

Mr. Haycraft: If any.

Examiner Bennett: There is no testimony from this witness that it is affected. I think his testimony is to the contrary.

Mr. Haycraft: I object to the question. 8175

Examiner Bennett: Unless you lay a foundation that it does affect it, whether in his opinion it does affect it.

By Mr. Albert.

Q. Does it affect the value, Mr. Liberman, from your experience? A. It is all a matter of how the term so-called

original—what it has in it. I have gone on record here in a number of cases the past two days, that when they take out certain fashion points of a dress, that they decrease the value of the original.

Q. All right. Will you agree with me that, to the extent that they copy this better dress, these manufacturers who do the copying are appropriating the work, the brain-child, the inspiration, or genius, anything you want to call it, of this better dress house? Isn't that so, generally speaking? A. May I have the question?

Mr. Albert: Read the question.

(Question read by the reporter.)

8177 The Witness: What information have I that this so-called brain-child of a manufacturer is an original?

By Mr. Albert.

Q. Wherever the better dress manufacturer may have gotten the inspiration for his dress, will you admit that the copying manufacturer did not get the same inspiration, but merely copied what the better dress manufacturer had put into his dress?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

Mr. Haycraft: It is an assumption, Mr. Examiner. It is not in accordance with the record in

8178 this case.

Examiner Bennett: Well, the witness' answer will not agree with it, if that is so.

Mr. Haycraft: I don't think I got the answer.

Examiner Bennett: He has not answered yet.

By Examiner Bennett.

Q. Can you answer the question? A. May I hear the question again, please?

Q. (Question read by the reporter.) A. That would be a supposition on my part.

By Mr. Albert.

Q. From your twenty-five years' experience in the industry, you cannot give me a better answer than that, definitely, one way or the other? A. I still stand on my statement.

Q. Mr. Liberman, if you had a twenty-five dollar dress in your better dress department, and a copy of that dress was being sold at $10.75, in what way, if at all, would the value of that dress to you be affected?

8180

Mr. Haycraft: Objected to. It is too indefinite as to what he means by "copy."

By Mr. Albert.

Q. Do you know what I mean by "copy"?

Mr. Haycraft: There are two or three different kinds of copies that have been mentioned here today and yesterday.

Examiner Bennett: I will overrule the objection, if you want to answer that question, if it is affected at all. If it is not affected, that is something else.

The Witness: I am still of the opinion, and maintain, that when you have a dress that cost $10.75—did you mention retail? 8181

By Mr. Albert.

Q. Selling at $25.00 retail in your store, and selling at $10.75 retail some place else, at dress is a copy, how does that affect the sale of your dress or the value of your dress to you? A. I still maintain that such a dress that

may have the earmarks of being a copy of the original style is only worth what you pay for it, what the customer pays for it.

Q. But, as a matter of fact, when your customer buys that $25 dress in your store, and then goes out and sees the copy some place else for $10.75, can you, from your experience with Schuster & Company, tell us what that customer does? A. I cannot.

Q. You cannot tell it one way or the other? A. It would be only an opinion, and I am not here to try to read customers' minds.

Q. As a matter of fact, when such an event occurs,
8183 doesn't your customer come back to you and complain that she is sore, that the dress she purchased in your store for $25.00 she can purchase some place else for $10.75? A. I have heard of such cases.

Q. Doesn't that happen many times, whenever a copy is discernible by a customer? A. I have heard of such cases.

Q. As a result of that, don't you have to make some sort of an adjustment with that customer? A. Not necessarily.

Q. But, do you? A. I don't know.

Q. Did you ever make an adjustment with a customer as the result of such a statement by her? A. I believe it is the practice on the floor, whenever such instances are brought to the mind of the sales person or the floor walker, they are to explain the difference between a dress retail-
8184 ing at $10.75 and a dress retailing at $25.

Q. What is the explanation that they give? A. I am not aware of that.

Q. Don't you know what your sales girls do? A. I have heard it stated that after all they explain the differences. You cannot qualify a dress retailing at $10.75, that it is going to be the same dress retailing at $25. It is inconsistent.

Q. But they at least attempt to explain to the customer "Yes, Mrs. So-and-So, this dress looks like ours, but here is a difference, and here is a difference." Is that what they do? A. I have never been present when such an adjustment was made.

Q. Have you made any investigation in your store, as to what is going on in that respect, in order to please your customers? A. We have a board of services for such purposes.

Q. And you have no duties in connection with that whatsoever? A. That is a matter of store policy.

Q. As a result of this customer complaint, did you ever have to mark down your better dress prices? A. Not to 8186
my knowledge.

Q. Never? A. Never. I would like to supplement that statement; never had to mark down that dress because there was a copy selling for $10.75.

Q. You had to mark it down because you could not sell it, is that it? A. In the course of time.

Q. Isn't that because of the fact the customers were seeing the copy some place else, and would not pay Schuster's $25 for something they could get somewhere else for $10.75? A. Not necessarily.

Q. You don't know? A. It is not a question of knowing or not. You can buy plenty of dresses retailing for $25.00 from Guild houses, too, the same as you can at a hundred.

Q. If you could not get rid of a dress at $25, and you 8187
knew that a copy of that dress was selling for $10.75 in the town, what would you think was the reason for failing to sell that $25 dress, based on your experience? A. I still maintain that the intrinsic value of that dress when originally purchased at $25 is good, it still has a $25 value to the customer who is willing to accept it.

Q. To the customer who is willing to accept it? A. Yes.

Q. But you do not have those customers, do you? Because if you did, you would not have the dress in your stock over that period of time, would you? A. That is entirely irrelevant, and supposition on the part of the respondents' attorney.

Q. After twenty-five years in the industry, that is the best answer you can give me as to why merchandise remains on hand when you know something cheaper is sold, that looks like your dress? A. That is your supposition.

Q. I am asking you, is that your answer? A. No, it is not.

Q. What is your answer, then? A. It is in the testi-
8189 mony they have. Make the most of it.

Q. Then, the answer that you have given is the best answer, isn't it? A. I still let my testimony stand.

Q. As a matter of fact, from your knowledge of the industry, conceding that your $10.75 dress or your $25 dress is intrinsically of that value, and conceding that lower price copy is intrinsically worth no more than they are attempting to sell it for, isn't it a fact that, in so far as the customers are concerned, a customer will see the $25 dress in the window of your store, let us say, and also see that $10.75 copy in the window of another store in the town and she will come into your store and say, "I saw the two dresses together. Why is it that you sell yours for $25 and I can get it in the other store for $10.75?"

8190 Mr. Haycraft: That is objected to. How could she see the two dresses together?

Examiner Bennett: I will sustain the objection. I think you have gone into this matter to the full extent proper with this witness.

Mr. Albert: Very well, your Honor, if you feel that way.

Examiner Bennett: It seems to me you have been going in circles now for some time.

Mr. Albert: Very well, your Honor, if you feel that way about it, I will discontinue. That's all.

Mr. Haycraft: That's all.

(Witness excused.)

ALTER L. ROWSE was thereupon called as a witness for Commission and, having been first duly sworn, testi- as follows:

ct examination by Mr. Haycraft.

8192

Will you state your name? A. Walter L. Rowse.

What is your occupation, Mr. Rowse? A. Merchan- manager, divisional merchandise manager.

For what firm? A. The Boston Store, Milwaukee; robably Herzfeld-Phillipson & Company, which we are r.

Which you are what? A. A. Well, the Herzfeld- lipson Company, operating the Boston Store in Mil- kee.

You are now general merchandise manager, you say? lo, not now.

What is your position? A. I am divisional merchan- manager.

What does "style piracy" mean?

8193

Mr. Albert: That is objected to, no foundation has been laid.

Examiner Bennett: Do you know what it means?

The Witness: I really—have my opinion.

Examiner Bennett: All right, if you want to have his opinion.

Tightly Bound

By Mr. Haycraft.

Q. What is your understanding of the term "style piracy" as used in this letter?

(Counsel refers to Commission's Exhibit 557.)

Mr. Albert: Objected to as incompetent, immaterial, no foundation has been laid.

Examiner Bennett: I will overrule the objection.

Mr. Albert: Exception.

The Witness: Read the question, please.

(Last question read.)

8195 The Witness: As I understand, by style piracy, is when one manufacturer copies exactly a garment that was designed and created by another manufacturer.

By Mr. Haycraft.

Q. Now, the next sentence in this first paragraph: "Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy." Did you read that before you signed this letter?

Mr. Albert: Now, if your Honor pleases——

The Witness: Yes.

8196 *By Mr. Haycraft.*

Q. What is your understanding of "the protection to the public" that will grow out of the principles declared by the members of the Fashion Originators Guild? A. Will you repeat that question please?

Q. (Last question read.) A. I don't know of any protection to the public.

Q. What was the protection to the retailer? A. The protection to the retailer was assumed that a garment would not be sold at a lower price in a competitive store and thereby causing a necessary mark-down in the store that had the original.

Q. Were you familiar with the manufacturers of womens' dresses that were members of the Guild at the time you signed this declaration? A. To a great extent.

Q. And what price lines did they manufacture? A. $16.75 cost and up.

Q. And approximately what price range were these dresses manufactured—cost price range—sold by retailers including your own store? A. I did not get the question. 8198

Q. At approximately what price range prices were the garments sold that cost from $16.75 up? A. The garments that cost $16.75 were sold usually at $25 and $29.75.

Q. And the next paragraph says: "We do not and will not buy for our ready-to-wear departments any copied or pirated dresses of garments created by members of your association." Do you understand the meaning of the words: "copied or pirated"—to be synonymous, or otherwise? A. I presume they were synonymous.

Q. Was the definition which you gave a moment ago of style piracy your understanding of what a copied or pirated dress was? A. That's right.

Q. The balance of the declaration reads as follows: "Furthermore, we will affix to all of our apparel orders the following clause:—'This order is placed upon the 8199 seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.'" Do you recall whether or not the Boston Store followed the policy of placing that warranty on all orders? A. That was our practice and I don't know of any exceptions.

8200 *Walter L. Rowse—For Commission—Direct.*

Q. Do you know whether or not, as a matter of fact, the Boston Store did return to manufacturers garments because they were alleged to be copies or because they were declared to be copies?

Mr. Albert: May I make inquiry of counsel for the Commission as to whether or not he intends to offer in evidence the sheet of paper that he tore off Commission's Exhibit 557?

Mr. Haycraft: You can ask all the questions you want, but I do not intend to answer them.

Mr. Albert: Now, may I point out to the Court that in the presentation of Commission's Exhibit
8201 557 there was physically attached to that paper another sheet of paper, by reason of which both sheets of paper became one. I made no objection to its being torn off at that time, because I assumed in the ordinary course that the paper to which it was attached, which was offered, would either be referred to by Mr. Haycraft in some manner, or would be offered in evidence.

I now see that Mr. Haycraft is going on to another subject. He has not offered this other sheet in evidence, and in addition, is so discourteous as to not even wish to answer me as to what he did when he tore a sheet of paper off something that is now in evidence, and I ask the Commission, I
8202 ask the Court, in the exercise of its discretion to ask Mr. Haycraft what that sheet of paper was and what its connection is with a matter now in evidence from which it has been torn off.

Mr. Haycraft: I do not mind telling the Court anything, but I decline to discuss the matter with counsel for the respondent.

Examiner Bennett: What document do you refer to? Have you the number?

Mr. Albert: There was a sheet of paper physically attached to Commission's Exhibit 557, which is the declaration of co-operation which was signed. I very frankly state to the Court that I do not know what that paper was, but the fact remains that it was physically attached to a paper now in evidence, and by reason thereof constitutes the same exhibit, in general language, and I believe that the respondents and the Court should be informed of why Mr. Haycraft mutilated a paper which he subsequently put in evidence, before he put it in evidence. I believe we are entitled to see that.

8204

Mr. Haycraft: The paper was not mutilated.

Examiner Bennett: As I understand it, that that one sheet alone was offered in evidence? I am not going into that controversy now.

Mr. Albert: I ask the attorneys for the Commission to produce and to mark for identification the sheet of paper that was attached to Commission's Exhibit 557, and if not, I ask that Commission's Exhibit 557 be stricken from evidence as a mutilated document which is not in the form that it was when it was in the Commission's possession.

Examiner Bennett: Denied.

Mr. Albert: Exception.

Mr. Haycraft: At this time, in view of the statement made by counsel for the respondents, I demand the production of the original of this declaration of co-operation——

8205

Mr. Albert: That has nothing to do with it.

Mr. Haycraft: —to take the place of this copy.

Mr. Albert: He tore something off the exhibit which he put into evidence, and he has not even the courtesy to show the Commission what it was

or why he tore it off. The fact that he wishes to conceal that makes me more insistent to know what it is he is concealing——

Mr. Haycraft: (Interposing) Mr. Examiner——

Mr. Albert: (Interposing) —It would be a very simple thing for him to say that it had nothing to do with it.

Mr. Haycraft: Mr. Examiner, I told you I would be glad to show you the piece of paper.

Examiner Bennett: That is the end of this controversy. You may produce the original of this document. If you wish to show just what the document was that was signed. If you have any papers attached to it which modifies it, why, that is all right. The only thing that was offered here was that one sheet of paper. The only thing that was marked was that one sheet of paper. There is nothing else in controversy.

Mr. Albert: If your Honor pleases, may I point out, that in the very reasonable expectation that Mr. Haycraft was going to mark the paper which was attached to it I made no reference to it whatsoever.

Examiner Bennett: There are a thousand different ways in which papers can get attached to one another in a file, and I am not going into it I am not going into that sort of imagined suspicions.

Mr. Albert: If it please the Court, I have no objection to the record remaining exactly as it is if Mr. Haycraft refuses to give an explanation of why he tore a paper off and offered only one in evidence. If that is his conception of his duties to the Court that is perfectly satisfactory to me.

Mr. Bennett: All right.

Mr. Haycraft: I think there was a question pending, but you may strike it out; I will start over again.

By Mr. Haycraft.

Q. Directing your attention to Commission's Exhibit No. 557, I will ask you to testify at this time as to the reasons that prompted you to sign that declaration as representing the Boston Store?

Mr. Albert: That is objected to as incompetent, immaterial and irrelevant, at the present time, not within the issues of the Commission's complaint.

8210

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception. No foundation has been laid that this witness knows the reasons why it was signed, your Honor.

Mr. Haycraft: The witness signed the paper, Mr. Examiner.

Examiner Bennett: All right.

Mr. Albert: And Mr. Haycraft was very definitely attempting to prove that he did not even know what he was signing.

The Witness: Will you read me the question now?

(Last question read.)

8211

The Witness: My understanding was that unless we signed this declaration we would not be permitted to buy merchandise, and use the lines offered by the members of the Fashion Originators Guild, by the manufacturers who are members of the Fashion Originators Guild.

Mr. Albert: May I ask that the answer be repeated, your Honor? I did not follow it.

(Answer read.)

(Thereupon a paper was marked Commission's Exhibit 558 for Identification.)

By Mr. Haycraft.

Q. What is this paper that I hand you now (indicating)? A. This is a report of the garments returned to manufacturers that were adjudged copies by the Fashion Originators Guild.

Q. Was that prepared under your direction, or under your supervision, in any way? A. It was prepared in our control office.

Q. And furnished by your control office to you? A. To

8213 me, yes.

Q. Did you have anything to do with the returning of the garments during the period of time that you were divisional merchandise manager of the ready-to-wear department? A. All returns made to the manufacturers were authorized—had to be authorized by myself, or whoever was representing me while I was out of the city.

Q. Have you checked this exhibit against the original orders to determine the correctness of the exhibit? A. Our office has done that.

Q. Yes, and you are satisfied it is correct? A. It is correct, as far as——

Mr. Haycraft: I offer this in evidence, Mr. Examiner, and wish to state at this time that I have

8214 the original orders upon which that is based, and if counsel for the respondent wishes to check it—I do not wish to encumber the record——

Examiner Bennett: Yes, I understand.

Mr. Haycraft: —with foundation documents.

Mr. Post: Mr. Haycraft, what is the original returns?

Mr. Haycraft: I should say "returns". The proper title of these documents that I have here, I

understand, is the authority for return of merchandise.

Mr. Albert: May I see just one of them, Mr. Haycraft?

Mr. Haycraft: Yes (handing paper to counsel).

Mr. Albert: And that is a representation of all of them?

Mr. Haycraft: Yes.

Mr. Albert: May I suggest that you put in evidence one of these charge-outs, in order that we can see the general form of them?

Mr. Haycraft: I have no objection.

(Thereupon a paper was marked Commission's 8216
Exhibits 559-A and B for Identification.)

Mr. Albert: I have no objection to Commission's Exhibit 559 going in evidence as a form of charge-out used by the Boston Store with respect to the returns listed on Commission's Exhibit 558, but I object to Commission's Exhibit 558 upon the ground that no proper foundation has been laid.

Mr. Haycraft: Then I withdraw the offer of Commission's Exhibit 559, if that is not a proper foundation. I did that to assist in the proper foundation. If there is an objection to Commission's Exhibit 558, I withdraw Commission's Exhibit 559.

Mr. Albert: What are you doing, bargaining with me? 8217

Examiner Bennett: Are you offering Commission's Exhibit 558?

Mr. Haycraft: I am offering Commission's Exhibit 558.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 558, was received in evidence.)

Examiner Bennett: We will take a recess of ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. Mr. Rowse, what was the policy of the Boston Store with respect to the placing of warranty stamps on orders for merchandise, during the year, immediately after the signing of the declaration, and for some time up through the year of 1934 and beginning of 1935? A. As quickly as we received the stamp, the rubber stamp that was made
8219 for that purpose, we affixed that stamp to all of our orders.

Q. You mean that the orders for dresses in your departments? A. In our departments.

Q. The department over which you have supervision? A. That's right.

Q. Does the——

Mr. Albert: (Interposing) Now, if it please the Court——

By Mr. Haycraft.

Q. (Resumed) —Boston Store——

Mr. Albert (interposing): May I ask that the answer be stricken, and will you wait, Mr. Haycraft
8220 until I complete my objection before you put a new question? I ask that the answer be stricken as not responsive to the question. The witness was asked as to what the policy of the Boston Store was and the answer was with respect to his department.

Mr. Haycraft: That is all right. What is wrong with that?

Examiner Bennett: Yes.

Mr. Albert: What your wanted was the policy of the Boston Store in all the departments?

Mr. Haycraft: I know what I wanted.

Mr. Albert: And not his department.

Mr. Haycraft: I know what I want and know I get interrupted.

Mr. Albert: I place my objection.

Examiner Bennett: He may answer.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. Does the Boston Store have a basement store, or another department outside of those two which you have supervision over, in which dresses are sold, women's dresses? A. The only departments that I had supervision 8222
of were the upstairs departments.

Q. And of those that you have named and given description of in your earlier testimony, does that include all those or were some of those in the downstairs department? A. The departments I mentioned are all upstairs departments.

Q. How did you determine what garments were to be returned to the manufacturers?

Mr. Albert: That is objected to, if it please the Court, as no proper foundation has been laid. There is no evidence before the Court that he did determine that garments should be returned.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception. 8223

The Witness: The garments to be returned to manufacturres were reported to our buyer by the Fashion Originators Guild shopper in our city.

By Mr. Haycraft.

Q. Do you know whom she was? A. They were different—there were three different ones that I can remember of.

Q. Do you have any knowledge as to the procedure followed by the shopper in your store in that respect? A. To my best knowledge, the only request we had to make returns would be when the shopper would receive a report from the New York Guild office, usually showing a sketch of a garment that was reported to be a copy, and she would inquire of our buyers if we had any of these garments in our stock, and our buyers would either know or look to see, and they would tell the shopper whether we had or not. If we had them, the shopper asked us to return them, and they were returned.

Q. Now, with respect to Commission's Exhibit No. 558
8225 were the returns made to the manufacturers named therein, the vendors named therein, pursuant to the arrangement that you have just described? A. I don't know.

Q. In other words, did you return any garments to these manufacturers, as described on this exhibit, which were not called to your attention by the Guild shopper? A. To the best of my knowledge, we never returned any garments to the manufacturers unless requested by the shopper.

Q. That is for the reason that they were copies of Guild dresses? A. That is right.

Q. Now, was there any change in the policy with respect to returns of copies of Guild merchandise during the time that you were in charge of the ready-to-wear division?

8226 Mr. Albert: That is objected to as incompetent and immaterial, not within the issues of the Commission's complaint.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: There was no change in our policy regarding returns.

By Mr. Haycraft.

Q. Did you issue any instructions to the buyers of your division, ready-to-wear division, with respect to the placing of orders for merchandise as to the purchasing of copies of Guild manufacturers' merchandise? A. Our instructions to our buyers were to place the Guild stamp on all orders.

Mr. Albert: I object to it, if the Examiner please, and ask the answer be stricken as not responsive.

Examiner Bennett: I am going to deny the motion.

8228

By Mr. Haycraft.

Q. Did you give any other instructions to your buyers?
A. Pertaining to what?

Q. Pertaining to the purchase of garments from manufacturers outside the Guild, as to the purchase of garments that were copies of Guild garments, garments manufactured by Guild manufacturers. A. There were no definite instructions given.

Q. Did you contact the officials of the Fashion Originators Guild, with respect to the policy of your store, or the policy of the Guild to be carried out through your store?

Mr. Albert: That is objected to, may it please the Court. Commission's Exhibit 557 in evidence speaks for itself as to what the Boston Store is supposed to do and pledged itself to do. 8229

Examiner Bennett: Overruled.

By Mr. Haycraft.

Q. You may answer. A. Read the question.

Mr. Haycraft: Read the question.

(Question read by the reporter.)

The Witness: We did not contact the Guild.

By Mr. Haycraft.

Q. Directly or indirectly? A. The Guild representative called on us several times, but there was no specific discussion, except that he clarified some of the Guild regulations.

Q. Do you know a man by the name of H. O. Bergdahl? A. I do.

Q. Who is he? A. He is the merchandise manager of the ready-to-wear division of the Associated Merchandise Corporation.

Q. What is that organization? A. That is an association of retail stores.

8231 Q. Does the Boston Store belong to it? A. The Boston Store belongs to it.

Q. How long has it belonged to it? A. May I ask information of my comptroller?

Mr. Vogt: December, I would say December, 1933 or January, 1934. We got into the A.M.C. in December, 1933, but the membership might have become effective as of January 1, 1934.

By Mr. Haycraft.

Q. Did you authorize Mr. Bergdahl or anyone in his organization to make contacts with the Guild on your behalf in determining the policies of the Guild and interpreting those policies?

8232

Mr. Albert: That is objected to, may it please the Court, no foundation laid, no evidence presented thus far that Mr. Bergdahl contacted the Guild on behalf of this store or a manufacturer on behalf of this store.

Examiner Bennett: He may answer.

Mr. Albert: The question assumes a state of facts not in the evidence.

By Mr. Haycraft.

Q. You may answer. A. Will you read the question?

Q. (Question read by the reporter.) A. We authorized Mr. Bergdahl to represent us at discussions in connection with the group.

Q. You mean discussion with the Associated Merchandise Corporation or with the Guild? A. In discussions with the Guild.

Q. And did Mr. Bergdahl make reports to you of such contacts that he made? A. He did.

Mr. Haycraft: I will ask that these documents be marked, respectively, for identification, Commission's Exhibits 560, 561, 562-A and B, 563-A and B, and 564. 8234

Examiner Bennett: Very well.

(The documents referred to were marked Commission's Exhibits 560, 561, 562-A and B, 563-A and B, and 564, respectively, for Identification.)

By Mr. Haycraft.

Q. Do you know Mr. Vactor Chambers? A. I do.

Q. Who is he? A. Mr. Bergdahl's assistant.

Mr. Haycraft: I will ask this be marked 565-A and B for Identification and that this document be marked Commission's Exhibit 566 for Identification; also, this one, Commission's Exhibits 567-A to E for Identification. 8235

(The documents referred to were marked Commission's Exhibits 565-A and B, 566, and 567-A to E, respectively, for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 560 for Identification and ask you if you can identify that. A. I received this letter.

Q. Did you receive it? A. Yes, sir.

Q. To whom is it addressed, and the date of it, and who signed it, or sent it to you? A. It is addressed to Mr. W. L. Rowse, Boston Store, April 10, 1935, signed by H. O. Bergdahl.

Q. I show you Commission's Exhibit 561 for Identification and ask you if you can identify that in any way? A. I can.

8237 Q. What is it? A. It is a letter addressed to W. L. Rowse, dated April 15, signed by H. O. Bergdahl.

Q. Did you receive that? A. I received it.

Mr. Albert: What year?

Mr. Haycraft: 1935.

Mr. Albert: May it please the Court, may I ask if Mr. Haycraft is going to offer these in evidence, in order to facilitate matters, that they be offered one at a time, rather than seven or eight or a dozen at one time?

By Mr. Haycraft.

Q. I show you Commission's Exhibits 562-A and B for Identification and ask you if you can identify that?

8238

Mr. Albert: If it please the Court, may I have a ruling upon my request?

Examiner Bennett: Well, I am not going to instruct him. At least, it would take a great deal more time.

The Witness: This letter was addressed to me and I received this letter.

By Mr. Haycraft.

Q. Who is it from? A. H. O. Bergdahl.

Q. The date of it? A. It is dated May 13, 1935.

Q. I show you Commission's Exhibits 563-A and B for Identification and ask you if you can identify that? A. I received this letter, addressed to me, dated July 3rd, signed by H. O. Bergdahl.

Q. What year? A. 1935.

Q. I show you Commission's Exhibit 564 for Identification and ask you if you can identify that? A. I can.

Q. What is it? A. It is a letter addressed to Mr. N. B. Goldstein, dated October 4, signed by Mr. H. O. Bergdahl; and this letter was forwarded to me by Mr. Goldstein. 8240

Q. Give the date of it. A. The date is October 4, 1935.

Q. I show you Commission's Exhibits 565-A and B for Identification and ask you if you can identify that? A. I received this copy of the letter.

Q. From whom? A. It is a copy of a letter addressed to Mr. Vactor Chambers, dated November 19th, 1935, signed by Albert M. Post.

Q. I show you Commission's Exhibit 566 for Identification and ask you if you can identify that? A. I can identify this letter. It is addressed to me, dated November 25, 1935, signed by H. O. Bergdahl.

Q. I show you Commission's Exhibits 567-A to E and ask you if you can identify that? A. I can identify this letter. It is addressed to me. It is dated November 27th, 1935, signed by the initials of H. O. Bergdahl. 8241

Q. You received it, did you? A. I received it.

Q. To what subject matter, generally, do these letters relate?

Mr. Albert: That is objected to, if your Honor please.

Mr. Haycraft: It is a matter of identification, Mr. Examiner.

Mr. Albert: It is not identification, telling us what the substance is. He has identified what they are and that he received them.

Mr. Haycraft: I did not ask him for the substance. I asked him for the subject matter referred to in these letters.

Mr. Albert: I would like to know what the difference is between the substance and the subject matter.

Mr. Haycraft: Go to school, and learn the English language and you will know.

Examiner Bennett: He may answer.

8243 The Witness: These letters are with reference to Guild matters, Fashion Originators Guild.

By Mr. Haycraft.

Q. Were they received in the ordinary course of your business relations? A. They were received in the ordinary course of business.

Q. Did you take any action, in your official position with the Boston Store, upon receipt of these letters? A. If action was required, it was taken.

Q. Were these letters taken into consideration in determining the policy of the Boston Store?

Mr. Albert: That is objected to as immaterial, if your Honor please, referring to something not in

8244 evidence.

Examiner Bennett: I will sustain the objection. If you are going to offer them, offer them; if not we had better have an end to the whole business.

Mr. Haycraft: Very well. I will offer them in evidence at this time.

Mr. Albert: I am glad the Commission has finally disclosed that the A.M.C. had something to do with this case.

Mr. Haycraft: I move that that statement be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Haycraft: At this time, Mr. Examiner, I suggest that we take a recess until 2 o'clock.

Examiner Bennett: All right.

Mr. Haycraft: I shall be glad to allow counsel for the respondent to have access to these exhibits during the noon hour, if he wishes.

Mr. Albert: That is very, very kind and considerate of Mr. Haycraft, but I prefer to have lunch during the noon hour.

Mr. Haycraft: Very well. Then I withdraw the offer. 8246

Examiner Bennett: We will remain in session, then, seven or eight minutes.

(Short interruption.)

Examiner Bennett: We will take a recess until 2.00 o'clock.

Mr. Albert: May I point out to the Court that I have handed back to Mr. Haycraft the exhibits, all of the exhibits?

(Whereupon, at 12.30 o'clock P. M., August 27, 1936, recess was taken until 2.00 o'clock P. M., of the same day.)

8247

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please.

Mr. Albert: If it please the Court, the respondent has no objection to Commission's Exhibits 560, 562-A and B, 563-A and B, 564, 565-A and B, 566, and 567-A to E, going into evidence as communications between the Boston Store and the Associated

Merchandising Corporation, without conceding in any way the truth of statements therein contained, but merely as an evidence of transactions between the A.M.C. and the Boston Store. As regard Commission's Exhibit 561, I believe it is obvious that from a reading of Commission's Exhibit 560, and a reading of Commission's Exhibit 561, that there is a letter, or should be a letter from the Boston Store to the A.M.C., in answer to the A.M.C.'s letter of April 10th, because I believe that it appears from a reading of Commission's Exhibit 561, dated April 15th, that is a reply to a letter from the
8249 Boston Store, and I respectfully object to the admission into evidence of Commission's Exhibit 561, unless the letter to which it is a reply is also offered. Commission's Exhibits 560 and 561 are the two top letters.

Examiner Bennett: Yes. Well, I will receive the documents to which there is no objection, that is, Commission's Exhibits 560, 562, 563, 564, 565, 566 and 567, as Commission's Exhibits of the same numbers in evidence. I do not get the same impression that the attorney who objects does, as to Commission's Exhibit 561.

Mr. Albert: It is quite true, your Honor, he does not mention that, but I think that the tenor of the letter shows that it is a reply to a query
8250 put as a result of Commission's Exhibit 560.

Examiner Bennett: Well, Commission's Exhibit 560 is in evidence. I will overrule the objection, and receive it. (Referring to Commission's Exhibit 561.)

Mr. Albert: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 560, 561, 562-A and B, 563-A and B, 564, 565-A and B, 566 and 567-A to E, inclusive, were received in evidence.)

(Thereupon papers were marked Commission's Exhibits 568, 569-A and B, 570 and 571-A and B for Identification.)

WALTER L. ROWSE thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows: 8252

Direct examination by Mr. Haycraft (continued).

Q. (Indicating) I show you Commission's Exhibit No. 568 and ask you if you can identify that in any way, Mr. Rowse? A. I can identify this letter.

Q. Did you receive it? A. I received it.

Q. Will you describe who it is from, and to? A. It is addressed to the Boston Store, Herzfeld Phillipson, Milwaukee, dated January 6th, from the Fashion Originators Guild of America, signed by Jack Goldston.

Examiner Bennett: That is 1935?

Mr. Haycraft: 1936. 8253

By Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibits No. 569-A and B, and ask you if you can identify that? A. This letter was sent to me.

Q. Did you receive it? A. I received it. It was addressed to Mr. Nathan Goldstein of the Boston Stores and signed by Albert M. Post. It is dated July 1, 1935.

Q. I show you Commission's Exhibits 578-A to D for Identification and ask you if you can identify that? A. There are two letters here.

Q. Are there two letters there? A. Yes, about different things entirely.

Mr. Haycraft: I would like to change the numbering on 570. I would like to change 570-D to the next number, 572, because it is a separate document.

Examiner Bennett: All right.

(The document referred to, heretofore marked for identification Commission's Exhibit 570-D, was changed to Commission's Exhibit 572 for Identification.)

8255

By Mr. Haycraft.

Q. I show you Commission's Exhibits 570-A to C and ask you if you can identify that? A. I received this letter.

Q. Did you receive it? A. Yes.

Q. From whom, to whom? A. Addressed to Mr. Nathan Goldstein, dated February 15, 1935, signed by J. M. Golby.

Q. Of the Fashion Originators Guild? A. Of the Fashion Originators Guild.

Q. I show you now Commission's Exhibit 572 and ask you if you can identify that? A. I received this letter from the Fashion Originators Guild. It is addressed to me, dated June 17, 1935 and signed by J. M. Golby, executive secretary.

8256

Q. I show you Commission's Exhibits 571-A and B and ask you if you can identify that? A. I received this telegram.

Q. From whom? A. It is addressed to the Boston Store and it is dated February 16, 1936, signed by the Fashion Originators Guild of America.

(The documents referred to, heretofore marked for identification, Commission's Exhibits 568 and 572, were received in evidence.)

By Mr. Haycraft.

Q. Mr. Rowse, did the Boston Store ever contribute to the Guild to underwrite the expenses of a shopper in Milwaukee? A. Not to my knowledge.

Q. Did you attend any meeting where that matter was discussed? A. No.

Q. Calling your attention to the last paragraph of Commission's Exhibit 540-B, which is a postscript: "In the matter of violation of trade practices, we propose to 8258 establish a board of appeals, before whom any controversial matter may be brought. We have consulted retailers and requested the establishment of a retail panel, so that any decision, not satisfactory to the retailer, may be submitted to a committee consisting of two retailers and two manufacturers. Such an arrangement would assure ample protection to all parties." I ask you whether, to your knowledge, such a board of appeals was established by the Guild?

Mr. Albert: Objected to, no foundation laid as to the source of the witness' knowledge with respect to that. It is purely a Guild matter.

Examiner Bennett: He may answer. Overruled.

Mr. Albert: Exception. 8259

The Witness: You ask if I know if such a board was established?

By Examiner Bennett.

Q. If you have any knowledge of it. A. I knew there was such a board.

By Mr. Haycraft.

Q. Did you ever receive an invitation to appear before such board? A. No.

Q. Calling your attention to Respondents' Exhibits 38-A and B, I will ask you if you ever made a reply to that telegram? A. I did not make a reply.

Q. Did the Boston Store, to your knowledge? A. I handed this telegram over to another executive.

Q. To whom did you hand it? A. To Mr. Street.

Q. To your knowledge, was any reply made to it? A. Not to my knowledge, there was no reply made to it.

Q. Subsequent to the date of this telegram, do you know
8261 whether or not you were able to get merchandise from Guild manufacturers? A. You mean after this telegram?

Q. Yes. A. I don't know.

Q. How is that? A. I don't know.

Q. You don't know? A. No.

Q. Who had charge of the ready-to-wear division at that time? A. Mr. Dillon.

Q. Mr. F. C. Dillon? A. Mr. F. C. Dillon.

Mr. Haycraft: I will ask that this be marked for identification Commission's Exhibits 573-A and B.

(The document referred to was marked Commission's Exhibits 573-A and B for Identification.)

By Mr. Haycraft.

8262

Q. Showing you Commission's Exhibits 573-A and B, I ask you if you can identify it? A. I can identify this list.

Q. What is it? A. It is a list of members of the Fashion Originators Guild from whom we made purchases during the period February 1, 1935 to July 1, 1936.

Q. Do you know who prepared it? A. Our control office.

Q. Do you know from what source it was prepared or what sources? A. From our purchase records.

Q. Under whose general supervision was it prepared? A. Under Mr. Richard Vogt's.

Q. What position does he hold? A. Controller.

Q. Do you know what the source of the list of the Guild manufacturers was that was used in the preparation of that document? A. I don't quite get the question.

Q. I say, do you know where Mr. Vogt got the list of Guild manufacturers that was used in the preparation of that? A. No, I do not.

Q. You don't know? A. No. 8264

(Witness temporarily withdrawn.)

R. E. VOGT was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your name? A. R. E. Vogt.

Q. Where do you live, Mr. Vogt? A. Milwaukee.

Q. What is your occupation? A. Comptroller of the Boston Store, Milwaukee.

Q. I show you Commission's Exhibits 573-A and B for 8265
Identification and ask you if you know anything about it? A. Yes, sir, I do.

Q. What do you know about it? A. The list was prepared under my direction.

Q. Where did you get the information there as to the names of the Guild manufacturers? A. We used a letter which we received from the Guild at that time, January 13, 1936, showing the names of members, on the back of that letter.

8266 *R. E. Vogt—For Commission—Direct.*

Mr. Haycraft: I will ask that this be marked f identification Commission's Exhibit 574.

(The document referred to was marked Comm sion's Exhibit 574 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 574 and ask you that is the paper you have in mind? A. It is.

Q. Where did you get it? A. It was received from t Fashion Originators Guild.

Q. What use did you make of the names on that e hibit? A. We used this list as a basis or a key or a li
8267 of houses who were members of the Guild, as of this tim

Q. As of January, 1936? A. Yes.

Q. Then, what did you do? A. We checked this li against our purchase records for the dress departments determine from whom we made purchases.

Q. Commission's Exhibits 573-A and B was prepar in that way? A. That is correct.

Q. Do you know whether it is correct or not? A. know it is correct.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Let me understand this.

By Mr. Albert.

8268 Q. Is this list, Commission's Exhibit 573-A, a list manufacturers with whom you did business from Febr ary 1st, 1935 to July 31, 1936, who were members of t Guild on January 13, 1936? A. That is correct.

Q. And there is no intention that this list contained Commission's Exhibit 573-A represents manufacture who are presently all members of the Guild, is that tru A. That is true. We had no way of knowing that.

Mr. Albert: That is objected to, may it plea the Court, upon the ground that no proper found

8269

tion has been laid. The list is entirely immaterial and irrelevant.

Examiner Bennett: Overruled. It is received.

(The document referred to, heretofore marked for identification Commission's Exhibits 573-A and B, was received in evidence.)

Mr. Haycraft: That's all, Mr. Vogt.

(Witness excused.)

8270

WALTER L. ROWSE thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

Direct examination by Mr. Haycraft (continued).

Q. Calling your attention to Commission's Exhibits 573-A and B, I will ask you to testify as to the names of the Guild members on this exhibit from whom you purchased the merchandise in substantial quantities, to your knowledge, that is, from your own recollection.

Mr. Albert: That is objected to, may it please the Court, as being purely a matter of conjecture, as being not sufficiently definite or specific to be of any value whatsoever to the Commission, being a conclusion of the witness, and no proper foundation having been laid.

8271

Examiner Bennett: Overruled.

By Mr. Haycraft.

Q. Go ahead, Mr. Rowse. A. We purchased merchandise from Doloes Dresses, B. G. Garment Company, International Dress, C. H. and D. Robbins, Lipman and Snyder,

Cecele Dance Frocks, Lyttle Brothers, Abbott & Swift, Bender-Hamburger, Feigenbaum and Adelson, Radiant Dress, Dresden Dress, Rosen Brothers.

Q. I probably should have included in my question, whether the purchases you are referring to now were made during the year preceding the time that you left that department, during 1935? A. They were made preceding February, 1936.

Q. Yes. At some time during the year, 1935, would that be true? A. That is right.

Q. Did you mention the name of Louise Mulligan? A. No. I mentioned B. G. Garment Company.

8273 Q. Is that Louise Mulligan? A. Louise Mulligan is a separate company, but we always think of it as the same firm.

Q. Did you look on the second page of this exhibit, in giving your testimony? A. I see some more names here. Gracette Dress, Patricia Dress Corporation, Topaz Frocks, Lipman Brothers.

Q. Are you familiar with Louise Mulligan as a resource for the Boston Store during 1935? A. I am.

Q. Will you testify at this time as to the relationship between the Boston Store and Louise Mulligan, with respect to promoting the merchandise sold by that concern?

Mr. Albert: That is objected to, if the Court please, as entirely irrelevant and immaterial. I do

8274 not quite see the function of bringing in the connection between the Boston Store and Louise Mulligan, in a complaint against the F.O.G.A.

Mr. Haycraft: It is a foundation question.

Mr. Albert: I know; but there are some foundation questions that are so broad you cannot make them specific. I do not think that can be made specific in any manner.

Examiner Bennett: Let us see what the answer is. I will entertain a motion to strike.

The Witness: What did you ask me?

Mr. Haycraft: Read the question.

(Question read by the reporter.)

By Examiner Bennett.

Q. Can you testify, is all you have been asked. A. I can.

By Mr. Haycraft.

Q. Will you do so? A. We made arrangements with the Louise Mulligan Company to have exclusive sale of the dresses designed by Louise Mulligan in Milwaukee. We agreed that we would give them publicity, we would give 8276
them prominent space in our department, we would try to develop that line as the feature line of our junior department. We started the sale of these dresses in the fall, I don't exactly recall the date and sold them continually through the time that I was there.

Q. Did you make any special effort in the way of promotion during that time? A. In the fall, we ran quite a lot of newspaper advertising. We had Louise Mulligan come to Milwaukee, we gave a luncheon, at which time we had fashion writers of the local papers, and prominent women in Milwaukee at luncheon to meet her. We had a style show. We gave prominent window displays.

Q. What success did you meet in the promotion of that line? A. We were very well pleased with it, the manufac- 8277
turer expressed himself as being well pleased with the result.

Mr. Haycraft: I will ask that these photostats be marked for identification Commission's Exhibits 575 to 586, both inclusive.

(The photostats referred to were marked Commission's Exhibits 575 to 586, both inclusive, for Identification.)

8278 *Walter L. Rowse—For Commission—Direct.*

By Mr. Haycraft.

Q. I show you Commission's Exhibits 575 to 586, inclusive and ask you if you can identify them? A. I can identify these as being photostatic copies of our newspaper advertising.

Q. Featuring what? A. This group features Louise Mulligan dresses.

Q. Did you have anything to do with the authorization of that advertising? A. I had the jurisdiction of it at that time.

Q. And where were they advertised, according to these exhibits, in what periodicals or newspapers? A. The
8279 "Milwaukee Journal," the "Milwaukee Journal," the "Milwaukee Sentinel," the "Journal," the "Sentinel," the "Milwaukee Sentinel," "Milwaukee Journal," "Milwaukee Journal," "Milwaukee Sentinel," "Milwaukee Journal."

Mr. Haycraft: I offer these photostatic copies in evidence.

The Witness: Just a second. This copy is not Louise Mulligan (indicating).

Mr. Haycraft: Commission's Exhibit 586 does not refer to Louise Mulligan?

Examiner Bennett: Do you withdraw it?

By Mr. Haycraft.

8280 Q. I ask you to look at it again. A. This 586 is Louise Mulligan.

Q. But it is not illustrated? A. No.

Q. The illustration is Irma Kirby. Who is she? A. She is a designer.

Q. Do you know what firm she is with? A. With Mr. Fried.

Q. Is he a member of the Guild? A. I think he is.

Q. What was the purpose of inserting these advertisements?

Mr. Albert: That is objected to, may it please the Court, as being wholly irrelevant and immaterial, not binding on the respondents herein. I think, before we have a dozen of these exhibits put in, we ought to have a statement from Mr. Haycraft as to what he hopes to prove by this particular line of testimony, as far as relevancy is concerned. I don't think the record should be cluttered up, if eventually there is a possibility that all the testimony is going to be stricken out.

Mr. Haycraft: That was the purpose of the question.

Examiner Bennett: He may answer. 8282

The Witness: What was the question?

(Question read by the reporter.)

The Witness: To create customer acceptance for the garments designed by these designers, purchased at our store.

Mr. Haycraft: I offer these exhibits in evidence.

Mr. Albert: These are objected to, may it please the Court, as being wholly immaterial and irrelevant to the issues presented by the case of the Federal Trade Commission, as representing, if anything at all, merely the private arrangement between a single manufacturer and this particular store; in no way connected with or binding upon, or that can be connected with or made to be binding upon the Fashion Originators Guild. 8283

Examiner Bennett: Up to the present time, that is true. If the Commission's attorney intends to connect it up, he may say so.

Mr. Haycraft: I do intend to.

Examiner Bennett: That is, by showing that these resources were cut off, by another witness?

Mr. Haycraft: Yes, by another witness.

Examiner Bennett: And that the benefit of this promotion was not received?

Mr. Haycraft: Correct.

Examiner Bennett: I will receive them over objection, on the statement that that will be shown.

(The documents referred to, heretofore marked for identification Commission's Exhibits 575 to 586, both inclusive, were received in evidence.)

By Mr. Haycraft.

Q. What was the policy of the Boston Store with respect
8285 to its better dress lines—or its dress lines, I will put it that way—in the departments over which you had supervision in 1935?

Mr. Albert: With respect to what, may I ask? The question is certainly too indefinite.

Mr. Haycraft: With respect to the improvement or lack of improvement in that department.

Mr. Albert: The question is objected to as still being too indefinite—what was their policy with respect to the improvements of their departments. The witness can answer anything to that. I would like to be able to have a question that I could object to, if it is objectionable.

Mr. Haycraft: Read the question.

8286 (Last question read.)

Mr. Albert: I do not know, it may be a policy of not having any dresses, it may be a policy of improving the electric light system. I can get any kind of an answer from a witness on that, your Honor.

Examiner Bennett: Well, see what he answers. You may answer.

The Witness: For the fall season of 1935 we created a new department for the sale of better

dresses; to make room for this department we went into a very extensive remodelling plan, putting in new fixtures, air conditioning, new equipment throughout to facilitate the sale of better type merchandise.

By Mr. Haycraft.

Q. Did you make any changes in the personnel in that respect? A. In the continuation of our policy, in February, 1936, we secured the services of an experienced apparel man to take charge of those departments.

Q. Who is he? A. Mr. Dillon. In addition to that, we added to our departments the services of a fashion co- 8288
ordinator or stylist.

Q. What is the name of these—or is that one person? A. It is one person.

Q. What is her name? A. Miss Drew's.

Q. What would be her duties? A. Her duties were to see that proper displays were made, that in our displays the proper accessories were shown, and to lend her assistance in creating a better style atmosphere.

Mr. Haycraft: That is all that I have to ask.

Mr. Martin: Your witness.

Cross-examination by Mr. Albert.

Q. Was that new department, Department 335, Mr. 8289
Rowse? A. 335, yes.

Mr. Albert: May we have our usual recess now, your Honor?

Examiner Bennett: Would you rather have it now?

Mr. Albert: I prefer it, if there is no objection.

Examiner Bennett: It is all right.

Mr. Albert: It may be a little early.

Examiner Bennett: Take a recess of ten minutes.
Mr. Albert: Thank you.
(Thereupon a short recess was taken.)
Examiner Bennett: You may proceed.

By Mr. Albert.

Q. Mr. Rowse, as the result of your experiences, with the information that you have from the A.M.C., and of your general interest in this entire proceeding, do you not know, or are you not aware, of the fact that if the Boston Store signified its intention to protect the designs of the members of the Fashion Originators Guild of America,
8291 that the members of the Fashion Originators Guild would be very happy to sell you their merchandise?

Mr. Haycraft: Objected to, Mr. Examiner. I do not believe that a question of this kind is entirely proper. It calls for a statement of this witness which might incriminate him and his firm in a conspiracy, and I think he should certainly consult counsel before he answers that question.

Examiner Bennett: Well——

Mr. Albert: I do not quite see how there can be anything incriminating in his statement; but if he knows what we would do if they were willing to——

Mr. Haycraft: Yes, but——

Mr. Albert: —and it certainly is quite an anom-
8292 alous situation that on our way from New York to Boston, Philadelphia, Cleveland, Detroit and Chicago, we now for the first time have counsel for the Commission informing witnesses of their constitutional privilege against self-incrimination, and I do not think there is anything self-incriminating in it whatsoever. I think the question can very readily be answered. The question has been put numerous times before and has been answered.

Examiner Bennett: Counsel is here for the witness; unless he objects, I will ask the witness to answer.

Mr. Whyte: Will you read me that question?

(Last question read.)

Mr. Whyte: I do not think I have any particular objection to that. You are asking whether they would be happy to sell him——

Examiner Bennett: All right, you may answer.

The Witness: I don't know.

Mr. Whyte: —if the Boston Store complied with the rules.

The Witness: I do not know. 8294

Examiner Bennett: It is answered.

Mr. Whyte: He is asking whether they would be willing to do it. That is all.

By Mr. Albert.

Q. Do you know, Mr. Rowse, that other stores who are memers of the A.M.C., who withdrew their co-operation and subsequently signified their intention of protecting designs, have been sold merchandise by members of the Fashion Originators Guild?

Mr. Haycraft: Objected to, irrelevant and immaterial.

Examiner Bennett: I sustain the objection to that. 8295

Mr. Albert: Exception.

By Mr. Albert.

Q. Has the Boston Store made any inquiry, to your knowledge, to determine whether or not members of the Fashion Originators Guild will sell them merchandise if the Boston Store signifies its intention of protecting de-

signs in accordance with the program of the members of the Fashion Originators Guild?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

The Witness: I have no direct knowledge.

By Mr. Albert.

Q. Do you know whether or not any other executives of the stores have any knowledge thereof? A. I don't know whether they do or not.

8297 Q. Can you obtain that information?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: The witness seems to be interrogated about a situation that has not been developed on direct examination. I do not see what advantage you are gaining from it, so far as this record is concerned. The record does not show that this firm has been cut off from any source.

Mr. Albert: No further questions, your Honor.

Mr. Haycraft: That is all, Mr. Rowse. Thank you very much.

Examiner Bennett: Much obliged, Mr. Rowse.

(Witness excused.)

8298

FLOYD C. DILLON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your full name, Mr. Dillon? A. Floyd C. Dillon.

Q. Where do you live, Mr. Dillon? A. Peewaukee.

Q. What State? A. Wisconsin.

Q. What is your occupation? A. I am divisional merchandise manager of ready-to-wear at the Boston Store.

Q. How long have you occupied that position? A. Since February 12th of this year.

Q. February what? A. February 12th, this year.

Q. Before that, what was your occupation? A. I was the manager of the dress departments for the Emporium in San Francisco—buyer, officially titled.

Q. Buyer? A. Buyer, yes.

Q. How long were you buyer for the Emporium? A. Well, for about three years, I would say. 8300

Q. What did you do before that? A. I was a divisional manager of their basement apparel.

Q. How long did you occupy that position? A. About a year.

Q. What did you do before that? A. I was with Bullock's in Los Angeles.

Q. Bullock's? A. Yes.

Q. What were you doing in Bullock's? A. I was a group manager of their basement ready-to-wear.

Q. How long were you in that position? A. Well, I was with Bullock's from 1925, I believe, until 1929, went in there as assistant buyer, and gradually acquired the group manager job. I don't know just how long I did occupy that.

Q. How many years, would you say, that you were experienced in the buying of women's dresses in department stores? A. Oh, about ten years. 8301

Mr. Albert: Was that two or ten, Mr. Dillon?

The Witness: Ten.

By Mr. Haycraft.

Q. In your duties as buyer, assistant buyer, of department stores, before you came with the Boston Store, in

Milwaukee, would you contact manufacturers of dresses in different parts of the country? A. Yes.

Q. In what markets? A. Well, in Los Angeles, San Francisco, Chicago, New York City, Philadelphia.

Q. Boston—were you ever in Boston? A. Not buying dresses, no.

Q. Now, when you assumed your position, your present position, with the Boston Store in Milwaukee, did you familiarize yourself with the resources of that organization in the departments over which you had supervision, and by resources I use that as a trade name meaning the manufacturers who manufacture the merchandise sold

8303 through those departments? A. Yes.

Q. Were they resources with which you were familiar before that time? A. Yes.

Q. Can you testify as to the names of those resources from memory? Do you have independent recollection sufficient to do so? A. Referring to any particular kind of merchandise?

Q. Well, taking the Departments 334 and 354. I believe those departments are under your supervision, are they not? A. Yes.

Q. Who were the principal resources at the time you went with the Boston Store, for those departments?

Mr. Albert: May I ask whether the question is directed at whether or not this witness knew of

8304 those resources prior to the time that he joined them, or is it directed at a reiteration of what those resources were at that time? If the latter, I think it is merely cumulative. We have an exhibit in evidence that tells us what those are, with the previous witness.

Mr. Haycraft: I am trying to qualify the witness and wish to further complete the examination, Mr. Examiner.

Examiner Bennett: All right.

The Witness: I do not understand the question.

Mr. Haycraft: Read the question.

(Last question read.)

Mr. Albert: That is objected to. Commission's Exhibit No. 573 for Identification speaks for itself.

Mr. Haycraft: We are all agreed on that, but that has not anything to do with the question I am propounding.

Examiner Bennett: I understand you are trying to qualify the witness in an endeavor to find out whether he knows who are the resources. Is that the idea? 8306

Mr. Haycraft: Exactly.

Mr. Albert: That is not the question. The question was "Who were the principal resources?" not whether he knew them at that time. That is why I asked Mr. Haycraft to make it clear—and the witness did not know what Mr. Haycraft meant by that. I was trying to save time, but, of course, Mr. Haycraft, with his usual obstinacy, refuses to permit anything he has once said to be—

Mr. Martin: I move that be stricken from the record.

Mr. Haycraft: I insist it stay in.

Examiner Bennett: All right. It is overruled. You may answer.

8307

The Witness: May I have the question again?

(Last question read.)

The Witness: Well, Departments 334—we did business with Bennett-Swift, at the lower end; Bettina——

By Mr. Haycraft.

Q. What was the last name? A. Bettina, Philadelphia.

Q. How do you spell that? A. B-e-t-t-i-n-a, I believe.

Little Brothers.

Q. What price range was Bettina? A. $10.75, whole sale.

Q. Bennett & Swift, what was their range? A. Seven and eights.

Q. Would you mind giving the price line, if you can A. All right. Rosen Brothers women's dresses at $10.7 principally. I have mentioned Little Brothers.

Q. Yes. You said what they were, but you did no give— A. Little Brothers, also in women's sizes, $10.7 and I think a little higher they had, in the misses' and The 354 Department, the number of our resources woul be Aywon, International—both of those are tens and som

8309 are higher. C. H. D. Robbins, tens, eleven and twelv Daytime Dress—did I mention International?

Q. Yes. What price range did that carry? A. Ten chiefly, those are a sample of some of them. There wer quite a good many resources used.

Q. Now, in the Department 335, which, as I understand was a new department at that time, what were your prin cipal resources in that department? A. Well, as to prin cipal resources, I do not believe I am qualified to answe that. I don't remember that. I know who we probabl would be doing business with now, but at the time of re carding I don't know.

Q. Anyway, you can refresh your recollection on tha A. Well, we have a list of better houses that we did bus ness with.

8310 Q. (Indicating) I show you Commission's Exhibit No 573-A and B—see if you can refresh your recollectio from that list. A. Well, Milton Altmark, Bender Hamburger, Dorres Dress, Feigenbaum & Adelson an firms that I am sure we did—were important firms to us they cover the misses' and the women's there. In evenin dresses—Kallman & Morris was probably the most use

Q. Now, about Department 374. A. Well, our mos featured and talked about line there was our Louis

Mulligan line, more or less the personality of the department, and we did business with Harris Dress, and Rosenthal & Kalman and Debutante. I would say they would be our biggest volume houses.

Q. Now, Departments 338 and 358, do you have those under your supervision? A. Yes.

Q. Those are the cheaper— A. Yes, those are mainly at cost.

Q. Were there any Guild houses included in your resources? Do you recall, in those departments? A. In 33—

Q. 338? A. Yes, at the time of our red carding, or at least at the time of our last letter from the Guild, it gave 8312
us a membership list, there were some $6.75 houses listed as Guild members. As I recall it, Gladdy, Tru-Size, was one of them, that we had been doing business with. I don't just recall the others offhand. I could, if I saw a list.

Q. Look on the second page of the exhibit you have in front of you (indicating). A. Yes, Lipman Brothers, Topaz—I would say those would be the main ones in that department. The others are sevens, apparently.

Q. Now, you mentioned the red carding. When did that take place, as far as the Boston Store is concerned?

Mr. Feldman: If you know.

The Witness: I believe it was the 18th day of February, this year. 8313

By Mr. Haycraft.

Q. Do you recall how you first learned of it? A. Well, I believe we learned about it—the action that was taken in the women's wear—we were not aware of the fact that we had been red carded, I don't believe, we had no communication from the Guild that we were red carded.

Q. Now, did you make any attempts to obtain merch
dise from the manufacturers that you knew to be resour
that were Guild manufacturers, after the red cardi
A. Yes.

Q. What did you do in that respect? A. Well, we
some merchandise on order which we wanted to ship,
naturally we were interested in keeping our supply com
and attempted to buy dresses, both—mainly, however,
attempts to—and tried to place orders—was by our buy
in New York, Miss Ogle, Miss Maggy and Miss Hawk

Q. Well, what success did you meet with in that
spect? A. We were not allowed to buy any of the
8315 chandise.

Q. Were you able to get the orders that were pendi
the pending orders filled? A. They were all filled.

Mr. Albert: You say they were all filled?

The Witness: All filled.

By Mr. Haycraft.

Q. Did you attempt to place any new orders? A.

Q. With what success? A. We didn't get them.

Q. Did you have any demand for merchandise at
manufacturers, at the Guild manufacturers, from w
you had been buying? A. Well, we had, and still h
repeated requests for one brand name that we
using; and could not supply that at all.

8316 Q. What brand name was that? A. Louise Mullig

Q. What attempts did you make to satisfy your t
when you found you could not get Guild merchan
A. Well, we done our best to find substitute lines a
some certain items we have been able to take care of
selves. Also, the resignation or withdrawing from
Guild of a lot of the lower-priced people, who we
business with, naturally opened up that market to u

Q. When did that take place, do you recall? A. Which?

Q. When did the resignation you referred to take place? A. Well, I am not sure as to dates. It was, I think, right after this red carding got to be an issue, in the market, probably the third week in February, in March, or along in there. There were quite a few lower-priced lines, I remember, that became available to us again.

Q. Will you indicate which ones those were? A. Well, I am not thoroughly familiar with just when and what on them, but now we can buy—we can now buy from Bennett & Swift, Elvira, I believe, M. & S. Extract, Gladdy, Gracette, Lipman Brothers, Patricia, Rosenthal and Kalman, Tiljane, Topaz. I believe those are all 8318
people that we can now buy from.

Q. Well, how about the higher brackets, higher-priced lines? A. Well, the higher the price line the more trouble we have—it seems just about the same ratio.

Q. Can you testify as to the names of any particular resource that you have not been able to replace with another line of merchandise? A. Yes.

Q. Will you do so, please? A. Yes, we have not been able to replace Dolces Dress, C. H. D. Robbins, Louise Mulligan. Those are distinct types of houses that we obviously have not been able to replace—at least that—there are others.

Q. Will you name some others? A. Well, we have not been able to replace Altmark for a certain kind of clothes, or William Bass, or Feignnbaum & Adelson, or A. 8319
Goodman, or Joe Halpert, Junior Guild in Chicago, Aywon Dress, Daytime, International, Witlin Schneider, Capri, Casino, Dresden Dress, Little Brothers. That is the main.

Q. Those are the principal ones? A. Yes, sir.

Q. Now, Mr. Dillon, do you have an opinion as to the effect upon the business of the Boston Store that is under

your supervision, as the result of the red carding of the Boston Store by the Guild and your inability to replace the resources you have named here?

Mr. Albert: That is objected to, if it please the Court, immaterial and no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

The Witness: May I have the question?

(Last question read.)

The Witness: May I refer to a few notes I have?

8321 *By Mr. Haycraft.*

Q. It is all right with me. First I will ask you—that question may be answered yes or no. A. I can.

Q. Have you an opinion? A. I have an opinion that we definitely have been hurt, yes.

Q. Will you state in what way you have been hurt? A. I would like to refresh my memory a little, if I could.

Q. All right. A. (Witness refers to paper.) Well, first of all, I feel that we have been cut off from our regular sources of supply. I feel that we have lost good will which we have built up through advertising. I feel that we have been weakened in our competitive standing in the city. I feel that we are hampered now in our fall planning, our fall promotional program. The figures that

8322 I have seen as to our gross margin indicate that we are taking more mark-downs than we did previously. A check up on our lists of our customer returns shows that we are getting a higher percentage of returns from our customers than we did previously, and our unit sales records, by price lines, show that there have been a very definite shift towards the lower-price lines. And I also feel that we are barred from the co-operative promotions which are offered us frequently by such magazines in the fashion

field as "Harper's Bazaar," "Vogue," "Ladies' Home Journal," "Good Housekeeping." I feel all of those have been detrimental to our business.

Q. Now, will you explain how it affected the good will of your store? A. Well, we advertised Louise Mulligan dresses. We purchased the line, I understand, at the time that it was first brought out, and consistently purchased the line, ran "ads" on them, putting in windows on them, having fashion shows on them, trying to build the name up—and we cannot buy them any more.

Q. Have you tried to do that recently? A. Yes.

Q. With what success? A. They would not sell us.

Q. Did you try to place an order? A. I did not tender 8324
them an order, I don't know their styles, I can't even see them.

Q. Cannot even see them? A. No.

Q. Did you have any communication from that firm with respect to them? A. We have had telephone calls, and we have had some correspondence. Not long ago I wrote Mr. Gisnet and asked him—who is the buyer there—asked him what his plans were for Milwaukee, for this fall, and he answered my letter, he told me that he was going to sell it to someone else. He already had sold it to a competitor.

Q. What competitor is handling it? A. He did not state the competitor in his letter, but I was over there yesterday and talked with him, and I understand that T. A. Chapman's are going to have the line. 8325

Q. Do you have any other illustration of the effect on your good will? A. Well, it is certain that—in my mind, that people are coming to us, daily, in considerable numbers, expecting to find in our store the best merchandise in the market, and we, in my opinion, don't have it. I think that that goes on every day.

Q. Well, what did you have in mind—will you explain what you meant when you said it weakened your competi-

tive standing? A. Well, our competition with all the other stores in the city, with the exception of Schuster's, have available to them the entire market, no houses are barred to them, as far as I know; whereas we are barred from what we consider to be a considerable number of resources, which we call our best resources.

Q. What did you have in mind when you testified with respect to the effect on your fall promotional program? A. Well——

Q. You have been hampered, I believe you said? A. Well, we have just opened our little shop, which is a department devoted to merchandise in the better end,
8327 $22.75 up, and we feel that people are coming to us, or would come to us in increasing numbers for that class of merchandise. We are not able to get the lines which, in my opinion, would aid us in making a good impression with a new department.

We have also enlarged considerably our collegian department, which is junior sizes, and there, too, we cannot advertise Louise Mulligan dresses, which were the backbone of our publicity in that section. It was a feature of our spring—fall—or spring fashion campaign, in March.

Also, we are not able to take advantage, right at this particular time, of a tie-up, in a publicity way, or dramatizing way, of this Mary of Scotland motion picture, in fashions which have been brought out; I understand,
8328 from the mailing matter that I see from C. H. D. Robbins, that they are exclusive—have the exclusive rights to the promotion of these fashions for Mary of Scotland, and I see other stores tying up with it, in other cities, and I feel that it has a wide appeal if the picture is considered to be good, and I feel that we would have at least taken a window, or an "ad," and tied up in some manner with the theatre on this picture, and on our fashions.

Q. What is the situation with respect to the co-operative promotional offer by "Harper's Bazaar," "Vogue" and

other magazines, from which you are barred? A. I do not understand that.

Q. (Last question read.) A. Well, the situation is this: That from time to time the fashion editors of these magazines send us advance proofs of their fashions, which they are going to put over to their public as being the smart things of the month, or the season, and they offer us a list of the resources from which this merchandise is available, and offer co-operative aids in helping us to dramatize and promote these particular clothes.

"Vogue" allows us to quote, when we tie up with them, "By 'Vogue' so and so, and look on page so and so; we have it."

8330

Or, if it is "Harper's Bazaar," much the same, or "Ladies' Home Journal," much the same sort of a thing, and we find—we did from the start in February, March, that we just can't get in with it at all, because in looking at the list of resources they are overwhelming Guild. There is just practically no one in that magazine. For instance, a certain issue of "Vogue," or a certain issue of "Harper's," or "Ladies' Home Journal"—that there is hardly anybody in there that is not Guild. It would be very—we just couldn't co-operate with them.

Q. Do you have any figures showing the comparison of the sales of merchandise in your department, for the first five months of 1935 compared with the five months in 1936? A. Yes, I have some figures here. They are figures that were taken from our unit control, which show the percentage increase or decrease of three best selling price lines in Departments 334, 335 and 354 this year, as compared with last year, for six months this year. We also have a similar list of three price lines for the Junior Department, 374, by percentage.

8331

By Mr. Haycraft.

Q. Who prepared that for you? A. These figures were from our regular figures we get every day and are supplied me every month in recap form. This particular list here was made by our controller.

Q. Mr. Vogt? A. Mr. Vogt.

Mr. Haycraft: I will ask that these documents be marked for identification Commission's Exhibits 587 and 588.

(The documents referred to were marked Commission's Exhibits 587 and 588 for Identification.)

8333

By Mr. Haycraft.

Q. These figures on these two exhibits are the ones you had in mind when you testified a few moments ago as to the effect upon your price line? A. In part, yes, it indicates something on that.

Mr. Haycraft: I will ask Mr. Dillon to step down, and I will ask Mr. Vogt to reassume the stand.

(Witness temporarily withdrawn.)

8334 R. E. Vogt thereupon resumed the stand as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. I show you Commission's Exhibits 587 and 588 for Identification, Mr. Vogt, and ask you if you know anything about them? A. Yes, I do.

Q. What do you know about them? A. These exhibits show percentages, which compare the number of units sold of various price lines by months, February through July of this year, against the same period last year.

Q. Did you prepare it? A. I prepared this percentage compilation, yes, sir.

Q. From the original records of the Boston Store? A. From the original records of the unit sold by the store, yes.

Q. What price lines are listed there? A. In Departments 334, 335 and 354, price line $16.95, $19.95 and $29.75.

Q. What exhibit is that? A. Exhibit 587. 8336

Q. That is the retail price? A. Yes.

Q. And on Exhibit 588, what price line do you have there? A. On Exhibit 588, $12.95, $16.95, $19.95.

Q. Are those exhibits correct? A. Yes, sir.

Q. You have checked them, have you? A. Yes, sir.

Mr. Haycraft: That's all. I offer them in evidence.

Mr. Albert: I will ask you this:

By Mr. Albert.

Q. What is the percentage of decrease in Department 374, in the $12.95 price line for March? A. I have not attempted to memorize all the figures.

Q. You did not prepare this particular set of figures, 8337 did you? A. It is my handwriting, yes.

Q. I thought this was Mr. Dillon's handwriting?

Mr. Haycraft: Counsel has been asleep, I guess.

Mr. Albert: Not quite. It is merely that Mr. Haycraft did not bring it out.

Mr. Haycraft: You had better read the record.

Mr. Martin: What do you want? A picture of it?

Mr. Albert: May it please the Court, we have here an exhibit being offered in evidence by the Commission as the figures of this store, written in pencil, on the back of stationery of the Palmer House, Chicago.

I do not see any reason whatsoever, why, if figures are being presented, we cannot at least have an exhibit presented that looks as if it were carefully done in the store.

I would like to know whether these have been prepared in the Palmer House during lunch time, or dinner, or some other time.

8339

We are now going to the lowest point, I think, we have ever reached in the Commission's presentation of figures, without telling us how they were arrived at, or where they came from.

I object to these, upon the ground there is no proper foundation laid, and, personally, I think it is an insult to the Commission to put figures like that in evidence.

Mr. Martin: If you had paid attention, you would have known where they came from, and where they were derived from.

Mr. Albert: Personally, from looking at them, I would say they were written out at the Palmer House, at lunch time, or dinner time.

8340

Mr. Haycraft: Does that affect their admissibility?

Mr. Albert: Certainly, if that is the way they were done.

Mr. Haycraft: The witness is here. You can cross-examine him.

Mr. Albert: If this goes in, I am afraid the Commission might present a tablecloth from some hotel.

Mr. Haycraft: I might try that.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Overruled. Received in evidence.

Mr. Albert: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 587 and 588, respectively, were received in evidence.)

Mr. Haycraft: That's all, Mr. Vogt.

(Witness excused.)

Mr. Haycraft: I will ask Mr. Dillon to reassume 8342
the stand.

F. C. DILLON thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Now, referring to Commission's Exhibit 587, I notice that the price line $16.95, retail price line $16.95, is in the first column. What is the usual cost of that? A. $10.75.

Q. I observe that it shows varying percentages of decrease during the months of February, March, April and May, and an increase in June of 150 per cent., and in July of 1 per cent. I will ask you whether you have an explanation for that trend or change of sale? A. We apparently haven't got the right dresses at those prices. 8343

Q. What about June, where you show the increase? A. I cannot recall what caused that. We have from time to time found an item, a style or two, or a type of fabric or type of styling which gave us a lift and got us business.

Q. In the second column, there is a $19.95 retail price line. What is the cost price of that? A. It would vary from ten to eleven to $12.75.

Q. Then, in the third column, $29.75. What is the cost price of that? A. $16.75 to $18.75.

Q. I notice that in the $19.95 column you show a 25 per cent. decrease in February, and then substantial increases in the months of March, April and May, less substantial in June and July, with an average at the end of the period of approximately 177 per cent. increase; while, in the third column, in the $29.75 line, there are varying decreases: February, 28 per cent., March, 63 per cent., April, 67 per
8345 cent., May, 53 per cent., June, 20 per cent., July, 40 per cent., with an average for the period of 55 per cent. decline in sales. I will ask you whether you have any explanation of the increase in the sales in your $19.95 retail line and your decrease in sales in the $29.75 line? A. Yes.

Q. What is it? A. We found an item shortly after our red carding which was "hot;" and we kept riding it, we increased our assortments in that item, and increased our color range, increased the number of styles carried, and we were able to get a good volume, compared with last season, on that price line because we found a good item.

Q. How about the $29.75 line? A. We did not have that good fortune there. We have not been able to find the right source of supply.

8346 Q. Was there any shifting in these lines in that department that you referred to in your other testimony? A. What do you mean by "shifting"?

Q. From the higher price to the lower price. A. What items does that cover? What departments does that cover?

Q. 334, 335 and 355. A. Yes; in that department, in the 334 and 355 departments, we have sevens up through eleven, and a few $12.75 cost, and our $7.75 cost price line made very substantial increases.

Q. As to Commission's Exhibit 588, which refers to Department 374, I call your attention to the fact that with respect to your $12.95 price line, there was a substantial decrease, February, March and April, but an increase in May, and then another decrease in June and July, with a total for the period of approximately 45 per cent. decrease. Do you have any explanation of that?

Mr. Albert: Is that a weighted average, Mr. Haycraft?

By Mr. Haycraft.

Q. Do you have any explanation of that change there in that column? A. You are referring to the $12.95 retail? 8348

Q. $12.95, yes. A. I think at the first part here, February and March, we were probably harmed there particularly due to Rosenthal & Kalman being in the Guild, but I understand they are out now, and we are doing business with them, some. I cannot really say anything more about it.

Mr. Albert: I ask that the witness' answer to the last question be stricken, as not responsive, and a pure conjecture merely from a reading of the exhibit itself, and not predicated upon even the witness' belief that he has any certain knowledge of the matter.

Examiner Bennett: Let me have the question and answer. 8349

(Question and answer read by the reporter.)

Examiner Bennett: I think I will grant the motion to strike that.

By Mr. Haycraft.

Q. I call your attention to the percentage figures in the $16.95 column, the second column in this same exhibit,

showing a decrease in the months of March, April, May and June, but an increase in the month of July, and ask you if you have any explanation of the situation in that price list? A. Well, simply that we are not getting the right junior $10.75 dresses.

Q. I notice, for the month of July, you show an increase in your sales over 1935. How do you account for that? A. How much is the increase?

Q. Fifty per cent. A. You mean the specific items? I am trying to recall what lines we have gotten there, that we have done that.

Q. Were you able to replace any resources during that
8351 month, merchandise? A. We must have been.

Q. What type of merchandise did you sell in your store in that department in July, as compared to previous months? A. $16.95. I cannot recall what the item was.

Q. Mr. Dillon, do you have with you any literature from "Vogue," "Harper's Bazaar," or any of those magazines, illustrating your testimony? A. I believe we have some here, yes. I think these things here bear out what I said. We just received this one last week from "Vogue," which is an advance list on their Paris openings, "First Judgment on Paris Openings," which is going to be in the September 1st issue, and I had our stylist go down this list covering every garment here, and in doing that she compared Guild or non-Guild, according to the last letter we
8352 received from the Guild.

It might have some error in it, due to changes in membership that we are not aware of, but there are 1, 2, 3—this is a hand-knitted jacket, which is not a dress; 3, 4, 5, 6—here is a hat, that is not a dress, 7, 8, 9, 10, 11, 12, 13, 14. Every garment on this page is a Guild house, from a Guild house.

And on this other page, apparently every one is down here. This is a hat (indicating). Everything else is Guild

On this page, Frankie, Inc., an evening dress, is not Guild; another evening dress is not Guild. The balance of the dresses and goods seem to be Guild.

This is a shoe (indicating). On this page is a shoe, a shoe, a shoe, a shoe, and shoes. Dress, Nettie Rosenstein, Guild; shoes, shoes, and bags.

Here are hats, ornaments, Charles Nudelman. Apparently it is almost, say, over 90 per cent, at least, Guild merchandise.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: That is objected to, may it please the Court, as being entirely immaterial and irrelevant to this proceeding. If Mr. Haycraft wants a 8354
concession that by reason of purchase of Guild merchandise at times a store gets some free advertising, which can be withdrawn at any time by the manufacturers, as they see fit, I will concede that perhaps this store lost the benefit of some free advertising. I think that is the whole point involved. There is no necessity for cluttering up the record with all these exhibits.

By Mr. Haycraft.

Q. Is that all there is to it, Mr. Dillon? A. I don't know what he calls "advertising." Such magazines as "Vogue," "Harper's," "Ladies' Home Journal," "Good 8355
Housekeeping," are looked upon by women, in looking at the editorial matter, as speaking about the right styles; they are regarded as knowing their fashions; and to me, it offers a store which is evidently trading up, as we are, it offers an opportunity to capitalize on the authenticity of the clothes, and to give us a chance to glorify them a little, and sort of dramatize the fashions that we have, and I think it is a definite hindrance to us, I am sure that

8356 *F. C. Dillon—For Commission—Recalled—Direct.*

we would co-operate on a number of these during the course of the year.

Mr. Albert: I will take Mr. Dillon's recapitulation of that exhibit, your Honor, without the necessity of copying four or five pages here, typewritten matter, into the record.

Mr. Haycraft: I am not asking that it be copied into the record. That is the reason I ask that it be put in as an exhibit.

Mr. Albert: It is going to have to be printed eventually. I can see no purpose in it.

Mr. Haycraft: No, it doesn't have to be printed

8357 eventually.

Examiner Bennett: It seems to me that the evidence given by Mr. Dillon as to this particular record is quite too indefinite to serve us in following just what is meant by the exhibit, and I think I will sustain the objection to that exhibit.

Mr. Albert: Thank you.

Examiner Bennett: The general trend of the testimony as a whole is in.

By Mr. Haycraft.

Q. Have you ever, in your experience, co-operated with the "Vogue" magazine in such a scheme as is indicated in this exhibit? A. I haven't had the opportunity.

8358 Q. Have you ever done it with any other magazine? A. No.

Q. In your opinion, based upon your experience with this type of merchandise, I will ask you whether or not it would be of any assistance to the Boston Store to have the opportunity of co-operating in such an advertising scheme?

Mr. Albert: That is objected to, may it please the Court, as purely conjectural, as to the effect of

such an advertisement, who sees it, and when it is seen, and how often it is seen. I don't think it can serve much of a useful purpose to have this witness' opinion on it.

Examiner Bennett: I will let him answer.

The Witness: Read the question.

(Question read by the reporter.)

The Witness: It would be of assistance, yes.

By Examiner Bennett.

Q. And, by such an advertising scheme, you refer to advertising with "Vogue" and "Harper's Bazaar," and that sort of magazine? A. This is editorial matter. The 8360
fashion editor of "Vogue," or whichever magazine might be in question, pick styles from the market that they consider to be fashionable and style-right, and they present them in an editorial way to their readers as their pick of the market, and they apparently pay them from Guild houses—or pick them from Guild houses, and it would be not in advertising in the sense of a paid ad, or anything paid between anyone. It is simply an editorial presentation on their part, and our putting some drama around it, and glorifying our clothes on that basis.

By Mr. Haycraft.

Q. That is, as being mentioned in "Vogue," is that what you mean? A. Yes, "Vogue," "Harper's." 8361

Mr. Haycraft: I renew my offer, Mr. Examiner.

Examiner Bennett: I think the discussion on that is so indefinite as to be misleading, and I do not see how anybody is going to follow it. I will exclude that offer.

(Whereupon, at 4.30 o'clock P. M., August 27, 1936, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock A. M. to-morrow, Friday, August 28, 1936, at the same place.)

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,
August 28, 1936.

8363 Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of hearing from Thursday, August 27th, 1936. You may resume the stand, Mr. Dillon.

FLOYD C. DILLON thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

8364 (Thereupon papers were marked Commission's Exhibits Nos. 589 and 590 for Identification.)

Direct examination (resumed) by Mr. Haycraft.

Q. (Indicating) I show you Commission's Exhibit No. 589, Mr. Dillon, and ask you if you can identify that? A. It is a copy of letter I sent to Mr. Gisnet of Louise Mulligan Company, Chicago.

Q. Under what date? A. August 14th, this year.

Q. Was the original of that letter mailed to Mr. Gisnet?
A. I sent it to Mr. Gisnet, yes, sir.
Q. (Indicating) I show you Commission's Exhibit No. 590 for Identification, and ask you if you can identify that? A. It is a letter that I received in answer to my letter; I received this from Mr. Gisnet on—the letter is dated August 15th.

Mr. Haycraft: I offer the two in evidence, Commission's Exhibits No. 589 and 590 for Identification.

Mr. Albert: Objected to, if it please the Court, as immaterial and irrelevant, as regards the particular matter between this store and the particular 8366
manufacturer; no way binding upon the Fashion Originators Guild of America.

Mr. Haycraft: Is it denied that Louise Mulligan is a member of the Guild?

Examiner Bennett: Objection overruled; received.

Mr. Albert: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibits 589 and 590, were received in evidence.)

(Thereupon a paper was marked Commission's Exhibit No. 591 for Identification.)

Mr. Haycraft: That is all I have to ask Mr. 8367
Dillon.

Examiner Bennett: All right.

Cross-examination by Mr. Albert.

Q. Referring to the third paragraph of Commission's Exhibit 590, Mr. Witness, in which it is stated that the manufacturer practically lost the greater half of the spring and summer season because of not selling dresses to you,

do you know whether that is correct? A. We bought his spring line just about one day before the red carding which was February 11th; and, through information which we received from New York, I wired Mr. Post to have this released to us, and he conceded to that, so he did receive shipment in March on the Mulligan dresses. We could not re-order them, but he did not lose, I would not say, the full spring season.

Q. During the time you were unable to obtain Louise Mulligan dresses during the spring and summer season, did anyone else in Milwaukee sell those dresses? A. No. We were exclusive agents.

8369 Q. So, in so far as the manufacturer was concerned, he was unable to sell any dresses in Milwaukee, or did not sell any dresses in Milwaukee of the Louise Mulligan type during that period of time? A. He did not, no, sir.

Q. What did you mean when you said that, through information received from Mr. Post, the dresses were delivered to you which you had ordered prior to the red carding? A. Have we those figures here? I received some communications in the course of business. Here is a wire from Colonel Reilly to Stanley Stone, our store president, which reads: "Have been informed by F.O.G.A. that on the individual requests from red carded stores they probably would instruct Guild members to ship merchandise on orders accepted before present controversy arose."

8370 Q. Have you any objection to showing me that telegram? A. No, sir (handing document to Mr. Albert).

Mr. Albert: I will ask that these be marked for identification Respondents' Exhibits 53, 54, 55, 56 and 57.

(The documents referred to were marked Respondents' Exhibits 53, 54, 55, 56 and 57, respectively, for Identification.)

By Mr. Albert.

Q. Did you have any discussions with Mr. Reilly with respect to the substance of Respondents' Exhibit 53, his telegram? A. No, sir.

Q. Was there any other merchandise outstanding which was delivered to you, which had been ordered prior to the red carding? A. There was.

Q. And was that merchandise all delivered to you pursuant to this understanding referred to in Mr. Reilly's telegram, Respondents' Exhibit 53 for Identification? A. I don't know as to whether that had any bearing on it or not. We only asked for release on that one line. It was advertised in our schedule, and we felt we needed it 8372 very keenly.

Q. But, in so far as the Boston Store was concerned, all merchandise that had been on order prior to the red carding was delivered to it? A. Every piece.

Q. And the Boston Store did not in any way discriminate in the orders that it wanted filled? A. No.

Q. I mean, you asked that all orders be filled, and all orders were filled? A. I did discriminate in asking for Louise Mulligan's.

Q. You mean by that, that you particularly wanted that? A. Yes.

Q. But, let us say, if you had ten orders which had been placed prior to the red carding, you did not say you wanted nine, and you would not take the tenth? A. No. 8373

Q. You said, "Send us the ten," is that correct? I am now merely giving you an assumption. A. We had no worries at all about any other than the Mulligan, and they all came in, and there was no feeling of not getting them at all, they all were delivered, we had no worries about them.

Mr. Albert: I offer into evidence, may it please the Court, Respondents' Exhibits 53, 54, 55, 56 and

57. I believe you had these, Mr. Haycraft. Do you want to look at them again?

Examiner Bennett: Any objection?

Mr. Haycraft: No objection to their admission. I didn't think there was any relevancy, or I would have offered them myself. There was no claim, or testimony, that he didn't get any orders.

Examiner Bennett: They are received.

(The documents referred to, heretofore marked for identification Respondents' Exhibits 53, 54, 55, 56 and 57, respectively, were received in evidence.)

8375 Mr. Albert: May I have the Reilly telegram, Mr. Haycraft? I don't think it is in here. It did not go into evidence; the F.O.G.A. telegram to the Boston, incorporating the Reilly telegram.

Mr. Haycraft: The one I had marked for identification?

Mr. Albert: Yes.

Mr. Haycraft: Here it is (handing paper to Mr. Albert).

By Mr. Albert.

Q. I show you Respondents' Exhibit 38-A and B, Mr. Dillon, and ask you if you saw that, or received that?

8376 Mr. Haycraft: That is objected to, not proper cross-examination, irrelevant and immaterial.

Examiner Bennett: That matter was offered and waived.

Mr. Haycraft: Offered by the other witness.

Examiner Bennett: What is that?

Mr. Haycraft: By Mr. Rowse. Mr. Rowse was the man that identified that exhibit. I did not ask this witness anything about it.

Mr. Albert: It is from the Boston Store, your Honor.

Examiner Bennett: I will let him answer, as to whether he saw it. It may be a foundation for something else.

By Mr. Albert.

Q. What was the answer, Mr. Dillon? A. I have not answered. I want to be sure. I have seen this, yes, I know what this is.

Q. Do you know whether or not any answer was made to that telegram? A. We did not answer.

8378 Mr. Albert: I believe, Mr. Haycraft, I have just been informed that there is some doubt in our minds as to whether or not this was actually received in evidence, or merely identified, so I suggest, in order to keep the record straight, that it be offered in evidence now. I know we told you it had been offered.

Mr. Haycraft: I think we withdrew it, in view of the fact that it was already in evidence.

Mr. Albert: I know. But I say, Mr. Keller now tells me he thinks it was only offered for identification and not offered into evidence. I will offer it now, on this identification, that it was received and no answer given to it.

8379 Mr. Haycraft: He doesn't know. He wasn't there.

Mr. Albert: Well, now, are you testifying, or is the witness testifying? He just testified he saw it, and that there was no answer to it.

Examiner Bennett: Has that been numbered as a Commission's exhibit?

Mr. Haycraft: Yes, 571.

Examiner Bennett: If there is any doubt about it, and you want it in the record, let us put it in.

Mr. Haycraft: I offered it in evidence on page 4656—rather, it was identified on page 4656, and offered in evidence on the same page, and then it was withdrawn on page 4657, because it was admitted to be a copy of Respondents' Exhibit 38-A and B, which was in evidence.

Examiner Bennett: Well, in view of the fact there is doubt as to whether it is in evidence, it is received now in evidence.

(The document referred to, marked for identification Commission's Exhibits 571-A and B, was received in evidence.)

8381

By Mr. Albert.

Q. This telegram says: "Please advise by wire Monday afternoon if your store is among eighteen mentioned above." Was there any wire sent in response to this telegram? A. None that I know of; no, sir.

Q. When the Boston Store did not in any way answer this telegram, wasn't that an indication on the part of the Boston Store of its desire to withdraw its declaration of co-operation?

Mr. Haycraft: That is objected to. This witness is not qualified to answer that question. I submit there is no foundation laid.

8382

Mr. Albert: There is no indication by the witness that he is not qualified to do so.

Mr. Haycraft: The witness cannot determine whether it is or not. I am saying so.

Mr. Albert: That is just the point. I object to Mr. Haycraft saying it.

Mr. Haycraft: That is the basis of my objection, if the Examiner please. This calls for a conclusion on the part of some executive of the Boston Store who is in a position to say so, pass upon it.

We had Mr. Rowse on the stand, when he was here yesterday, and he was interrogated about that at that time. Now, this witness, as I say, is not president or vice-president or in any position to say what the interpretation is.

Mr. Albert: He is not exactly an elevator operator in the store. He is divisional merchandise manager, with his departments precisely affected.

Mr. Haycraft: That is the basis of my objection.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Upon receipt of this telegram, was any discussion had amongst the executives of the Boston Store with regard to it? 8384

Mr. Haycraft: What is that question?

(Question read by the reporter.)

The Witness: I was in some discussions, yes, sir.

By Mr. Albert.

Q. Who was present at those discussions? A. Mr. Street, the general merchandise manager. This is all after the receipt of the wire, he just didn't answer it.

Q. At that conference, was it decided not to answer it? A. No. I think that had been decided by the general management. 8385

Q. Prior to that? A. Prior to that, yes, sir.

Q. As divisional merchandise manager of the Boston Store, and from your discussions with the executives, from your discussion with Mr. Street, the general merchandise manager, can you tell us whether or not the Boston Store, in not answering this telegram, signified its intention of withdrawing its declaration of co-operation?

Mr. Haycraft: I object to that question on the same grounds. It is the same question.

Mr. Albert: I am asking him for his knowledge as the result of his discussion with the executives and as a result of his discussion with Mr. Street.

Mr. Haycraft has stated I heretofore cross-examined Mr. Rowse about it, but now we learn that Mr. Street was the general merchandise manager at that time, put in by a man who is no more of an executive in the store than Mr. Dillon is, and, inasmuch as neither one is here in a personal capacity, but is testifying as a representative of the
8387 Boston Store, it seems to me that any man that represents the Boston Store is qualified to give information with regard to the matter, if he knows.

Mr. Haycraft: I submit, Mr. Examiner, that this is a matter that calls for the conclusion of the witness, a conclusion on the knowedge of the policy and the knowledge of a decision on the part of the store.

It is a conclusion upon a conclusion that he is calling for. And, furthermore, I do not see the relevancy or materiality of the question.

Mr. Albert: The materiality of it is very plain, your Honor. The progress of this hearing has demonstrated that the Commission is seeking to
8388 prove that the first knowledge of any of these stores, the first knowledge any of these stores had of the fact they had been red carded, was when they saw it in "Women's Wear," it sounds very dramatic, and very nice, but the fact that every one of them knew before they ever saw it in "Women's Wear" that their declaration of co-operation had been withdrawn by their own personal action.

It may be they saw it in "Women's Wear" for the first time, but they were fully aware of it long

before that; and while I concede that the point is not a very important one, inasmuch as it has been brought out by the Commission in its particular story, I feel it is my duty to again demonstrate the fallacy behind the Commission's proof with respect to the matter.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

y Mr. Albert.

Q. Was Mr. Reilly authorized to send the telegram re-rred to in Commission's Exhibit 571-A? A. I don't now that. 8390

Q. You have given us very glowing accounts of the ex-llence of the merchandise manufactured by members of e Guild. Would you be good enough to explain a little ore fully just what i is that is so different about Guild erchandise as distinguished from other manufacturers? I haven't in any way intended to imply that all Guild anufacturers, or all non-Guild, are in a certain class. have said that certain manufacturers, whom I men-oned, make a certain kind of goods, or a certain type of oods, or quality of goods, that we have not been able to place, that we find desirable.

Q. What is there about that quality, or dress, which u cannot replace? A. Any particular resource?

Q. Well, what is there that you cannot replace about 8391
ouise Mulligan dresses? A. First of all, it is a branded em, they control the name completely. We had it, ex-usively in this city. We spent money advertising it, win-ws. It is a certain type of goods, a very youthful dis-ctive type of clothes, have a very definite flare to them, at is recognizable; they lend themselves to youthful tractive promotion, and we could not replace them. hat's part of the reasons.

Q. What are the elements that you look for in a dress, Mr. Dillon, when you go out to buy merchandise? A. Well, I take in the element of style. I take in the element of apparent intrinsic value; I look at it from type standpoint to see if it fits the needs of our stocks.

Q. What elements do you consider in purchasing a dress, that you think it is necessary that a dress should have in order to have customer acceptance?

The Witness: Will you repeat that again?

(Last question read.)

The Witness: Well, first of all, it has got to fit when we get it; it has got to have lines suitable
8393 to the likes of the customer; colors have got to be the kind that are needed at the time. We try and buy fabrics that we feel will give suitable service, on stretch or pick-up.

By Mr. Albert.

Q. Is that all, Mr. Dillon? A. I wouldn't say that is all; those are some.

Q. Well, now, I will read back to you what you stated in general words—you stated that the dress must have fit, lines, be of appropriate colors and be serviceable. Now, is there anything else you would like to add to that? A. Of course, the element of price is always ever present.

Q. Is that all? A. That's the main reasons, I would
8394 say.

Q. Do you include in the five elements that you have listed, or is a combination of any of them, that the dress should be in fashion? A. I said lines.

Q. Was that what you meant by style? A. Yes.

Q. Well, now, Mr. Dillon, is not the color of a dress rather a negligible item, as being dependent upon the buyer's selection of the colors—I mean, that is something that she will look for, yes, but something that is not im-

portant because colors are something that can very easily be obtained in a dress, it is not the dominating element, is it?

Mr. Haycraft: I object, that is a triple question, Mr. Examiner, and argumentative. He asked three questions.

Examiner Bennett: Read the question.

(Last question read.)

Mr. Haycraft: Four questions.

Examiner Bennett: Well, I will ask you to break up your question, please.

By Mr. Albert. 8396

Q. Is not color, Mr. Dillon, a question of the buyer's selection? A. They have got to have the color to be able to ship it.

Mr. Post: What was that answer, please?

(Last answer read.)

The Witness: If I might explain what I mean by that—we had in June a call for browns, and we had a very difficult time buying them. It is a peculiar thing, but we did.

By Mr. Albert.

Q. Well, was not that due to the fact that there was a shortage in piece goods, it was brown, and not particularly due to the manufacturers' abilities in any way? A. I don't know, they just—they seemed to take the opinion that it was a—you might say—a buyer's judgment against their judgment, and they decided not to buy piece goods, to back up brown in their "cutting tickets." 8397

Q. What do you mean by fit, Mr. Dillon? A. Well, I think that's an adjective, too. The garment is built in proper proportion to the customer, who we are trying to fit.

8398 Q. Is not the quality of the fit, the quality of the workmanship on the dress, in a great measure dependent upon the price that is paid for the dress? A. Well, that's accepted in the industry, different price lines, pay more for labor or less.

Q. And that is something that a manufacturer can very easily either improve or, shall I say, lessen, in his dress, depending upon how much he sells it for? A. Well, I don't understand.

Q. If he gets a good price for it? A. That's the way it works; that way, in the market.

Q. Isn't that so? A. No, I don't understand it that
8399 way. I understand in the big volume price lines that the manufacturer is working with his labor, on a certain basis, and he cannot lower his price lines or raise his price lines at his discretion; he has a certain standard of labor.

Q. It is fixed by the union, you mean? A. That is the way I understand it; there are some arrangements there.

Q. So that all manufacturers manufacturing dresses in a specific price line must use the same type of labor, is that not so, from the union? A. Not that I know of, no. I think they pay about the same in each market.

Q. Now, Mr. Dillon, with respect to the various elements that you have referred to, which, in your experience in the dress industry, would you say was the most important from a customer viewpoint? By customer I mean customers of your store.

8400 Mr. Haycraft: If there is any difference. I object to the form of the question. I think there is no foundation laid for it. The witness has not testified there was any.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Gentlemen, if you want to confer, I wish you would confer somewhere else.

It is impossible to carry on this examination and a conversation at the other end of this small table. You may answer. Overruled.

The Witness: May I have the question read?

(Last question re-read.)

The Witness: Well, if it doesn't fit, in the final analysis, it doesn't sell. If it is not attractive on a hanger, they generally won't try it on. It is also——

By Mr. Albert.

Q. Well, isn't the first thing that——

Mr. Haycraft: I object. 8402

By Mr. Albert.

Q. (Resumed) —that the customer always looks to see a store, is to try on a dress——

Mr. Haycraft: I object to the witness being interrupted.

Examiner Bennett: Just a moment; finish your answer.

The Witness: It also seems like your question takes an average customer attitude, and we don't deal with people "averagely," we deal with them one at a time, and I can't answer the question, one thing being the thing. It is an element, of a lot of things to make a customer part with her money for a garment. 8403

By Mr. Albert.

Q. Mr. Dillon, the Boston Store endeavors to satisfy its customers and in an attempt to formulate policies to do you take into consideration, do you not, what the gen-

eral average demand is of your customers, is that not so? A. If you would make it read demands, I think we would say we do.

Q. Demands. A. Yes.

Q. Very well. Well, now, what is it, in plain language, Mr. Dillon, that a woman looks for first in a dress when she comes into your store to buy it? A. Well, she looks for something that will make her look more attractive.

Q. And is not that first thing that makes her look more attractive the style of the dress? A. If it doesn't fit, it don't mean anything.

Q. I am not saying after she is acquainted and likes the
8405 style, Mr. Dillon.

Mr. Haycraft: I object to that question, Mr. Examiner. The witness has answered, and it is argumentative. He just does not like the answer, and does not agree with it. I do not think he should be allowed to argue with the witness.

Examiner Bennett: There is not a question pending, is there?

Mr. Haycraft: I assume that is a question.

Examiner Bennett: Read it.

(Last question read.)

Examiner Bennett: Yes, well, that is not a question.

Mr. Haycraft: I move it be stricken.

8406 Examiner Bennett: Yes, it may be stricken.

By Mr. Albert.

Q. The fit of the dress comes after she has been attracted to it by its style, is that not so? A. It would depend upon the garment. We have a section in our better end that all the merchandise is concealed, the customer is in the fitting room; she says she wants a certain type of clothes; the sales person goes and picks them out and puts them on her.

Q. Let me ask you this, Mr. Dillon: In all your experience in the dress industry have you ever come across a woman who purchased a dress that fit her, and which she liked the material, but who was absolutely dissatisfied with the style of the dress? A. Yes.

Q. You have come across such a woman? A. Yes.

Q. How many such women have you come across?

Mr. Haycraft: Well——

By Mr. Albert.

Q. Are you being perfectly honest with us when you say that, Mr. Dillon? And I do not mean to be unkind in asking that question. 8408

Mr. Haycraft: I object to that question, Mr. Examiner. This witness has not indicated anything but fra kness and openness in his testimony. I object to the form of the last question.

Examiner Bennett: Overruled. Go ahead.

The Witness: May I have the question read?

(Last question read.)

Mr. Haycraft: I object to that.

Examiner Bennett: I have ruled, you may answer.

The Witness: I can't answer that, I don't know.

By Mr. Albert.

8409

Q. Is there any explanation that you want to give of what you mean when you say you have come across such women? A. What was that? Did I say I came across it, do you mean?

Q. Yes. A. I don't remember that I said that.

Q. Well, let me then reframe that question and ask you another. Have you come across any women, in your experience in the dress industry, who bought a dress because

it fit, but who at the time when they purchased the dress did not like the style or were dissatisfied with the style? A. Yes, I have.

Q. Can you recall the circumstances of the purchase? A. Yes, I think—in the average bridal party, for instance.

Q. Oh, oh, oh!

Mr. Haycraft: Ha, ha!

The Witness: They all wear the same dress, and some of them don't like them, and some of them do, but there are quite a——

By Mr. Albert.

8411 Q. Well, aside from these bridal dresses, which is more or less of a uniform—or maternity dresses, or, shall I say, mourning clothes, is there any woman that ever purchases a dress because it fits her when she does not like the style? A. Yes.

Q. You still say there are? A. Yes.

Q. Well, now, what—can you give me an example of such a dress? A. Yes, I think that such dresses are sold during the course of a year in stores which are, you might say, hurry-up dresses. A girl gets a call on the telephone at 5 o'clock, and she has a date for 6.30 or 7. She comes dashing in for a new dress, and she has just got to have a new dress, and maybe she don't like it, the certain one she has picked out, but it fits her, and does something
8412 for her, and she might ordinarily pass it up, and come back in a week, but she buys it.

Q. By that you mean she is dissatisfied with a few of the little things that may be in that dress, is that what you mean? A. Well, you said dissatisfied with the style?

Q. Yes. A. Didn't particularly care for it?

Q. Yes. A. That's what I mean.

Q. As a matter of fact, when a woman cannot find exactly what she wants, she still picks that particular dress that she doesn't like from among a number of other styles is that not so? A. Yes.

That she likes a good deal less, is that not so? A.

And that she would not be seen wearing at a dog if she could help it, is that not so?

Mr. Haycraft: I object.

Mr. Albert: I was not trying to characterize the dresses that he was selling, Mr. Haycraft; the witness understands me. We are talking about feminine psychology, pure and simple.

Mr. Haycraft: I object to the form of that question.

Examiner Bennett: Overruled.

Mr. Keller: That is a deep subject. 8414

Mr. Albert: I do not qualify as an expert.

The Witness: What is the question?

(Last question read.)

The Witness: I don't see——

Mr. Albert: I did not say dog race.

r. Albert.

Now, Mr. Dillon, let us tie this up and get down to Aside from wedding dresses, maternity dresses, ing clothes, and the occasions when a woman comes l says she must have a dress in the next fifteen or minutes, and she will take anything that looks half-resentable, was there ever a time when a woman purchase a dress when she is out shopping and 8415 g for dresses, and in no particular hurry, merely e it fits her, or because it is good material, and in of the fact that she does not like the style? A. I there are lots of cases; they do, yes.

Well, can you give me any other examples? A. Yes, k that a number of women like to come into the and pick out two or three dresses. They may like The sales person may like one on her, and her friend

with her may like one on her, and she will leave our store, say, and go to another store, and pick out two or three dresses. She is buying these dresses, but she don't intend to keep only one of them, and she goes by opinions of other people, and her family, and if she picks out a dress—a sort of committee meeting in lots of homes after they get home.

Q. Yes. It may not be her decision entirely.

Q. But, as a matter of fact, when she finally makes up her mind with respect to it, no matter what influences have been brought to bear on it, she is satisfied with the style, is that not so? A. I wouldn't say so. I have heard younger girls say that their mother made them buy that

8417 green dress, and that she cannot wear it, it makes her ill.

Q. But when they bought it, they thought it was pretty good? A. No, the mother may have thought so.

Q. How did the mother select the dress? A. I couldn't say.

Q. The mother thought it was a pretty good dress, did she not? A. Yes.

Q. And she picked it out of all the other styles, did she not? A. Probably so.

Q. Now, taking into consideration all of the things that you see, all of the types of merchandise, and instances, and occasions, wherein a woman may perhaps buy a dress, the style of which she does not like, and granted, for the sake of argument, that your enumeration of instances demonstrates that women do not like the style at the time she

8418 bought the dress—what percentage, would you say, of your entire sales of dresses would that take in? A. I can't say.

Q. Can you give me any estimate? A. No.

Q. Would it be a very small percentage? A. I haven't any idea.

Q. Do those occasions happen very often? A. Apparently, or I couldn't have recalled a number of instances right along the row.

Q. I mean, after all, aren't you drawing upon your vast experience in the industry to know that those things do happen, and that we all know that they happen, but that they do not happen very often?

Mr. Haycraft: Is that a question? If it is, I object to it. I objected to one statement a while ago, and we found out afterwards it was a question, and I object to it. If it is a question, I object to it.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: I will sustain an objection.

By Mr. Albert. 8420

Q. Well, now, Mr. Dillon, is it then your contention, and do you want the Commission to believe, that insofar as woman, in the general sense, that insofar as woman is concerned, when woman comes into a store to buy a dress the most important thing that she looks for first is the style of that dress?

Mr. Haycraft: Read the question.

(Last question read.)

Mr. Haycraft: I object to that question. It is too general, not definite enough, and does not summarize his testimony.

Mr. Albert: I am asking him if that is what he wants us to understand. 8421

Examiner Bennett: I will sustain the last objection. I think it is not a summary of the testimony. His testimony has a trend the other way, it seems to me.

By Mr. Albert.

Q. Is it not a fact, Mr. Dillon, that the most important thing to a woman in a dress, when she comes in, before she

will even attempt to try it on, or see whether there is any good fit to it, or see whether it is serviceable, is the style of that dress?

Mr. Haycraft: That is objected to.

Examiner Bennett: Overruled; he may answer.

The Witness: I think my knowledge of woman psychology is not boundless, but I think the average woman—or woman, as you term her, looking at garments—looks at them in the eyes only of how they will look on her, what they will do for her figure and her attractiveness, the style of them; she may like certain styles, but she knows from her feminine
8423 knowledge that that particular thing won't be good for her. She may think that is a fine style all right, but she looks at a dress only through her own eyes, as to what it will do for her, make her more attractive.

By Mr. Albert.

Q. Then, is it your contention that, that the design of a dress is not its most important selling factor? A. I do not know that.

Mr. Albert: May I have the answer to the previous question read?

(Previous answer read as follows: "I think my
8424 knowledge of woman psychology is not boundless, but I think the average woman—or woman, as you term her, looking at garments—looks at them in the eyes only of how they will look on her, what they will do for her figure and her attractiveness, the style of them; she may like certain styles, but she knows from her feminine knowledge that that particular thing won't be good for her. She may think that is a fine style all right, but she looks at a dress

only through her own eyes, as to what it will do for her, make her more attractive.")

By Mr. Albert.

Q. Is it your contention then, Mr. Dillon, that if a style s believed by the potential customer not to be suited to ier, that she would wear to-day a knee-length style because t did look well on her? A. I have no contention at all long those lines.

Q. Do I understand by your last answer, Mr. Dillon, hat a woman will not buy a dress which is in the fashion rend because she does not believe it will look good on her? A. I don't understand that at all. 8426

Q. Well, let us say that to-day long dresses are in style. A. Long dresses?

Q. Long dresses are in style. A. Yes.

Q. And, for some particular reason, long dresses do not ook good on a woman. Is it your contention that she will wear knee-length dresses to-day? A. Yes, sir. We all know Queen Mary's hats; we have had the same hat ever since they have taken pictures.

Q. But there is only one Queen Mary, isn't that so? A. All right. You said "woman."

Q. As a matter of fact, Mr. Dillon, what we are referring to, is it not, is a cross-section of your customers? A. We do not cater to cross-section. We take them one at a time. 8427

Q. You cater to the wants and the needs of each individual woman? A. We endeavor to yes, sir.

Q. And you carry styles and dresses for each individual woman? A. That is our aim, yes, sir.

Q. Now, Mr. Dillon, isn't it a fact, from your experience, that the vast majority of individual women will only buy a dress if it is in the last word of style? A. Well, my

definition of style is a fashion that is worn by a lot of people, so I would have to answer that with that in mind. That is what style is; if it is worn, it becomes a style.

Q. You are acquainted with the type of dress that is worn by the women in India, aren't you, Mr. Dillon, roughly speaking? A. No.

Q. These loose, flowing garments? A. No.

Q. Haven't you ever been to the movies? A. Yes.

Q. Haven't you see these loose, flowing garments that the women wear in India? A. I don't know whether they are from India, or Hollywood.

Q. I mean, they wear them in India, don't they? A. I
8429 don't know.

Q. Haven't you any conception of what is worn in India by the women? A. Nothing definite, no.

Q. Have you any conception of the type of garment that is worn by Chinese women? A. I have seen them wear clothes in San Francisco. I don't know what they wear in China.

Q. Have you any conception of the clothes that are worn by women in Bali-Bali? A. I have seen some paintings.

Q. Or, I should say, perception of the lack of clothes worn by the women in Bali-Bali? A. I have no knowledge of it, no.

Q. You have knowledge only of the clothes that are worn by women in this country, and Queen Mary? A. I
8430 do not have any first-hand knowledge, no.

Q. Were you ever in England? A. No.

Q. You saw Queen Mary's clothes in the movies—the hat? A. It was the cause of editorial comment in "Harper's Bazaar"; I think there were quite a series of pictures, for a period of years.

Q. Have you no conception that you could give us of the loose, flowing gowns that are worn by women in India? You seriously want to tell us that?

Mr. Haycraft: I object to that question.

Examiner Bennett: I do not see what it means to our inquiry right now. It may be relevant; I don't know.

Mr. Albert: It is very quickly tied up, your Honor.

Examiner Bennett: All right. Go ahead—he may answer.

The Witness: I don't know anything about what they wear in India.

By Mr. Albert,

Q. Would you say that millions of women in India wear these loose, flowing garments? A. I don't know what they wear. 8432

Q. They are unlike any dress that is worn in this country? A. I don't know what they wear in India at all.

Q. And is the rest of your testimony just as frank as that, Mr. Dillon?

Mr. Haycraft: I object to that question.

Examiner Bennett: Objection sustained.

Mr. Haycraft: It is manifestly improper.

Examiner Bennett: Sustained. Mr. Dillon, you know, is not selling dresses in India, or helping to sell them.

Mr. Albert: But he has testified, if it please the Court, that fashion is set by the fact that many women wear dresses. The very simple question I would like to put to him is if that would be the style in this country. 8433

Examiner Bennett: Isn't that pretty near quibbling?

Mr. Albert: Not quite, your Honor. I have got to quibble with a witness who quibbles.

Mr. Haycraft: Don't quibble with this witness, then. This witness has done no quibbling.

By Mr. Albert.

Q. Is it your contention, Mr. Dillon, that insofar as you need styles for the dresses that are sold in your store, you can obtain those styles, for the most part, only from Guild manufacturers? A. May I have that question?

(Question read.)

The Witness: May I have it again, please?

(Question re-read by the reporter.)

8435 The Witness: I have not attempted to state any relative proportion of our need of Guild merchandise. I don't know what they are making now. I only know from the type of house, and I do know that we need certain things that we do not now have, and I would very much like to have the opportunity to have my buyers and myself go into those houses that we are barred from, and see what they have got, be able to buy them.

By Mr. Albert.

Q. In other words, it is just an intellectual curiosity on your part to see what the Guild manufacturers are selling, not predicated upon any knowledge of their past ability 8436 to manufacture merchandise? Is that what you are complaining about?

Mr. Haycraft: I object to that. That is not what he said.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Now, Mr. Dillon, on page 4687 of the record— A. Pardon me. May I have a drink of water?

Examiner Bennett: You may have a recess to get a drink of water, if you wish.

Mr. Albert: May we have a general recess now?

Examiner Bennett: Very well.

(A short recess was thereupon taken.)

Examiner Bennett: You may continue, Mr. Albert.

Mr. Albert: What was my last question?

(Last question read, as follows: "Q. Now, Mr. Dillon, on page 4687 of the record——")

By Mr. Albert.

Q. (Continuing) —you testified that you have not been 8438
able to replace the dresses that you had formerly obtained from the Dolces Dresses, C. H. D. Robbins and Louise Mulligan, and you stated those are distinct types of houses. You also testified on page 4690 of the record that your customers come to you daily in considerable numbers, "expecting to find in our store the best merchandise on the market, but we, in my opinion, do not have it."

On page 4699 of the record, you testified, "We apparently haven't got the right dresses at those prices."

On page 4705 of the record, in referring to advertisements appearing in "Vogue" and similar publications, and your inability to join in those advertisements, you said that it offers an opportunity to capitalize on the authenticity of the clothes. 8439

Were not all those references to your necessity to obtain merchandise from Guild sources, referring more to the style of the dresses furnished by Guild sources than to any other element? A. No.

Q. Is it your contention that non-Guild members cannot get as good material as Guild manufacturers for their dresses? A. I do not make any contentions at all on the thing.

Q. Is it your contention that non-Guild members cannot obtain as good labor to turn out a dress in the same needled fashion as Guild members? A. I do not make any contention along those lines at all.

Q. You have given various reasons for the fluctuation, or perhaps I should say the decrease, in the sales volume in Departments 334, 335, 354 and 374 for the period February, 1936, to July, 1936, in which period you first took over those departments, in comparison with the period February, 1935, to July, 1935, during which time you were not in charge of those departments. Would you not add as an element in the percentage of decrease in the sale
8441 volume the reflection in those departments, in their sales, of your opinion that style is not the most important element in the purchase of a dress to a woman?

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Albert: I think it is a perfectly fair question.

Examiner Bennett: I will let him answer.

Mr. Albert: I just want to reduce this whole line of testimony, now.

Examiner Bennett: All right. If he has an answer, he may give it.

The Witness: May I have the question, please?

(Question read by the reporter.)

The Witness: I cannot understand that at all.

Mr. Albert: All right. I will reframe it.

8442

By Mr. Albert.

Q. You have given us figures which generally show that from February, 1936, to July, 1936, four of your departments, for the most part, had a decrease in total sales volume, is that correct? I am referring to the exhibits that you put in evidence. A. Let me see the exhibit, will you, please?

Q. Commission's Exhibits 587 and 588. A. May I have the question?

(Question read.)

By Mr. Albert.

Q. Over the comparative period in 1935? A. This refers to three price lines only, in each instance.

Q. Yes. A. The figures I am talking about here, this is a true picture. It is not a statement of the entire departmental operations.

Q. Well, insofar as it concerns those three departments, it shows generally that in those departments there was a 8444
decrease in sales volume over the similar period of last year, isn't that so?

Mr. Haycraft: That is objected to. It is contrary to the witness' testimony. He has restricted his testimony to three price lines.

Mr. Albert: I am sorry.

By Mr. Albert.

Q. Three price lines in those departments? A. Yes.

Q. And you have offered those as being indicative of the departments, have you not, or is it testimony or is it the intention of the Boston Store that the decrease was only in those three price lines in those departments? A. In looking at this department here, I consider these the ele- 8445
ments of where we live more or less in them, they are the heart price lines.

Q. Yes. A. And in getting a picture of the trend of a department, I try to keep to the fundamentals. Those are the three main price lines, the ten cost, ten, eleven, twelve, in there; that is quite a market; and the fifteen to eighteen dollar cost, that is another big market, twenty-nine dollar retail.

Q. Then you offer these figures as a cross-section of the department? A. They are the price lines of these three departments.

Q. In those three price lines there was a decrease in the total sales volume in 1936, from February to July, over the same period in 1935, isn't that so? A. No. In 1935 we showed a big increase.

Q. You complain, do you not, that in Department 374, for the period February 1st to July 31st, 1936, in your $12.95, $16.95 and $19.95 price lines, there was a decrease of 45 per cent.; 40 per cent. and 55 per cent., respectively, over the same period in 1935, do you not? A. If it is what

8447 is on the paper, I do.

Q. Those are the figures, yes. You also complain, do you not, that in Departments 334, 335 and 354, in the $16.95 and $29.75 price lines, there was a decrease over the same period in 1935 of 4 per cent. and of 55 per cent., respectively, is that not so? A. If that is on the paper, I do.

Q. You did not take over these departments until February of 1936, isn't that so? A. Yes, sir.

Q. There was another gentleman in charge of those departments in 1935, isn't that so? A. Yes, sir.

Q. You have given us various opinions as to the reasons for this decrease over the similar period in 1935, is that not so? A. I don't understand that.

8448 Q. In explaining these figures, you have set forth as your opinion various reasons as to why there was a decrease in these departments, haven't you?

Mr. Haycraft: That is objected to; there is no such testimony. The figures were submitted and identified to support his opinion of what the effect of the red carding was. He did not do what counsel said he did. He referred to these as confirming what he had already testified to.

Examiner Bennett: I think he went into some detail. He may answer.

Mr. Albert: Will you read the question?

(Question read by the reporter.)

The Witness: My whole feeling about these figures is t at this reflects the merchandise that is available at these price lines last year and this year. I read from these figures that apparently we did not have the right merchandise this year, compared to last year.

By Mr. Albert.

Q. And that is why there was a decrease? A. Yes, sir. 8450

Q. Now, would you add as an element to be considered, as a reason to be considered for that decrease, the fact that since you have taken over the departments, and under your aegis, the conception under you is that style is not the most important element to be considered in furnishing dresses to women customers?

Mr. Haycraft: That is objected to. There is nothing to show that it was any different before, or at the present time. There is no probative value to that question. It is irrelevant and immaterial, no foundation laid.

Examiner Bennett: It is speculative, but I will let him speculate. Go ahead.

Mr. Albert: That is all we have had this morning, your Honor, is speculation. 8451

Mr. Haycraft: I object to that, and move it be strick n.

Mr. Albert: There has been a lot of short selling this morning.

Mr. Haycraft: You asked for it, and got it.

Mr. Albert: I am perfectly satisfied, Mr. Haycraft, perfectly satisfied the way it stands.

Examiner Bennett: Go ahead with the answer.

The Witness: May I have it again?

Examiner Bennett: It is very interesting, this conversation between you and Mr. Haycraft, but it is not getting us very far.

(Question read by the reporter.)

By Examiner Bennett.

Q. Can you answer that question? A. I can answer it.

By Mr. Albert.

8453 Q. If you say you would rather not answer it, Mr. Dillon, I will withdraw the question. A. I would rather not.

Q. You would rather not? A. I would rather not answer it. I don't understand what you are driving at.

Mr. Albert: I will withdraw it.

By Mr. Albert.

Q. Now, Mr. Dillon, what is it that is printed in "Vogue," in "Harper's Bazaar," and these various magazines that you have testified to as setting forth the trend of the fashions? A. What is there that is printed?

Q. Yes. A. Well, we have them here, if you would like to refer to them.

Q. I would like your description of them. A. They are

8454 editorials, fashion editorials of magazines.

Q. I mean, as regards the fashion; I don't mean what the editorials are, puffing, and everything else. A. The editorials are the heart of the magazine, in those instances.

Q. I am sorry. My statement may reflect the fact I do not read "Vogue." Tell us what there is in it. A. The custom is to have the fashion editor of "Ladies' Home Journal," for instance, go around the market, the manufacturers' showrooms, see what is going on, even do a little

constructive suggesting sometimes in lines, and they select various clothes which they consider to be very much in the mode, or which are about to become the mode in their judgment, and they present them to their readers, who pay the price to buy these magazines for that information, and they present this information to them on what is what in clothes.

Q. Is it true, and I am now asking you for information, that the only thing that a woman can see in "Vogue," when a dress is set forth in "Vogue," is the style of that dress? A. I still come back to my statement, whenever they look or think about fashions, they only think of it put on themselves; it can be done in color, showing a lot of 8456
accessories, and how they can use it; it can be done in just as many inventive ways as the magazine can to make it appeal to her.

Q. Then, is it your contention that the Guild manufacturers are more successful than any other manufacturers in getting up styles which will appeal to women from day to day, time in and time out? A. I don't like the word "styles." I think they get a better garment, which involves more than what I think you call style.

Q. What is a "hot" number, Mr. Dillon? A. Oh, I don't know whether you mean——

Q. What? A. What usage do you make of that? What do you mean by that, yourself?

Q. Well, referring to dresses. A. Yes.

Q. Now, in a dress, what constitutes a "hot" number? 8457
A. With me?

Q. A "hot" number is a term used in the industry, is it not, in reference to dresses? A. There are all kinds of different ideas in the market; if you want my idea of what a "hot" number is, I will tell you. I don't know what.

Q. Is your conception of what is a "hot" number different from the industry conception of a "hot" number? A. I don't know.

Q. Well, let us have your definition of a "hot" number. A. A number that sells very rapidly, and allows us to reorder.

Q. What is the most important element in a dress that makes it a "hot" number? A. The whole dress, everything.

Q. Would you say that a Mother Hubbard, of excellent material, excellent workmanship and excellent needlework, was a "hot" number, or would it become a "hot" number? A. For the Mother Hubbard department, it might be.

Q. Aside from that, it would not be any "hot" number,
8459 would it? A. I don't know.

Q. And then, as I take it, in so far as you are concerned, Mr. Dillon, you cannot say that the style of a dress is the most important thing to a woman? A. I would not say that, no.

Q. Very well. How many dresses would you say are sold a day in the Boston Store?

Mr. Haycraft: That is objected to, irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will sustain it.

By Mr. Albert.

Q. There is in evidence Commission's Exhibit 558, Mr. Dillon, demonstrating that from the period September 10,
8460 1935, until February 11, 1936, the Boston Store returned eighty-four dresses as having been adjudged copies of other dresses. Would you say that the Boston Store sells more or less than eighty-four dresses a day?

Mr. Haycraft: That is objected to, Mr. Examiner, not proper cross-examination.

Mr. Albert: May I ask, why it is not proper cross-examination, in the light of this?

Mr. Haycraft: May I just be allowed to talk to you and make my objection, without being interrupted?

Examiner Bennett: Go ahead, make your objection.

Mr. Haycraft: This exhibit was not identified by this witness, he knew nothing about it, it was before his time. It was identified by a previous witness on the stand, who was cross-examined with respect to it. I object to it as not proper cross-examination.

Mr. Albert: I respectfully urge, if it please the Court, that the previous witness was put on as a 8462
representative of the Boston Store, not as Mr. Rowse. We are not interested in Mr. Rowse, and, with all due respect to the gentleman on the stand now, he is put on as a representative of the Boston Store, and not as Mr. Dillon personally, and that any cross-examination with respect to this particular store, which is a particular niche in this hearing, can be had of any witness representing this store.

Mr. Haycraft: That is about the weirdest interpretation of the law of evidence in a trial, and of cross-examination——

Mr. Albert (interposing): I cannot help it if Mr. Haycraft is having nightmares.

Mr. Haycraft: —that I have heard of in a long 8463
time.

Examiner Bennett: Well, of course, a man hardly has knowledge of things that he has not testified about.

Mr. Albert (interposing): That does not mean that he has not the knowedge of it, your Honor.

Examiner Bennett: I sustain the objection. There is no use of talking further upon it.

Mr. Albert: Exception.

Examiner Bennett: You may have an exception.

Mr. Haycraft: I wish to point out at this time, Mr. Examiner, that pursuant to a statement made by counsel yesterday, we have obtained other witnesses and have them waiting to testify.

Examiner Bennett: Yes, well, I do not see that —I say there is nothing to be done except go ahead and make your objections as the points come up.

Mr. Albert: That is all.

Examiner Bennett: Anything further?

8465 Mr. Haycraft: No redirect.

Mr. Albert: Nothing else; I suggest that all the testimony be stricken out, your Honor.

(Witness excused.)

Examiner Bennett: Do you desire to call another witness?

Mr. Haycraft: Yes, I have another witness. Just a moment, there is one witness that I would like to call for just one exhibit. Mr. Vogt, come back to the stand for just a moment.

R. E. VOGT thereupon resumed the stand as a witness for the Commission, and, having previously been sworn,

8466 testified further as follows:

Direct examination by Mr. Haycraft.

Q. Mr. Vogt, I call your attention to Commission's Exhibit No. 591 for Identification, and ask you if you know anything about that paper (indicating)? A. I do.

Q. What is it? A. It is a statement of sales, Louise Mulligan dresses, made between August, 1935, and March, 1936, in six price lines.

8467

Q. Did you prepare it? A. It was prepared under my direction.

Q. Have you checked it against the record? A. Yes.

Q. And you know it is correct? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Examiner Bennett: Is that all?

Mr. Haycraft: He may want to ask him some questions regarding it.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Thereupon the paper referred to, heretofore marked for identification Commission's Exhibit 591, was received in evidence.)

8468

(Witness excused.)

MRS. FRANCES MALSH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

The Witness: I just want to say that my hearing is not keen, and I would like to hear everything.

Examiner Bennett: I see.

Direct examination by Mr. Martin.

8469

Q. State your full name. A. Mrs. Frances Malsh.

Q. Now, Mrs. Malsh, where do you live? A. 5120 Harper Avenue.

Q. Chicago? A. Yes, Chicago.

Q. What business are you in? A. Well, in the ladies' apparel—that is, I was.

Q. Where is your place of business? A. At the same address, 5120 Harper Avenue.

Q. Is that a store, or a residence? A. No, it is a residential, it is an apartment, high-class apartment building.

Q. Now, just what do you sell, just what do you include in your apparel line? A. Well, ladies' outer-wear and silk garments, and also knit-wear.

Q. Now, Mrs. Malsh, did you ever hear of an organization known as the Fashion Originators Guild of America? A. Yes, I did.

Q. When did you first hear of that organization? A. Well, when I went to New York, two years ago.

Q. How long have you been in business? A. Very close to fifteen years.

8171 Q. Have you always conducted the same type of business? A. No, no, I had a floor shop, a very large floor shop, downstairs shop, street shop.

Q. When was that? A. Well, that was when I first started.

Q. And when did you move your business to where you are now? A. Well, I had a very unfortunate occurrence.

Q. How long have you been in your present location? A. Well, I have been in the present location four years, almost four years, and I have been conducting an upstairs shop for approximately nine years, five years I was downstairs on the floor.

By Mr. Martin.

8172 Q. Mrs. Malsh, have you ever heard of the Michigan Avenue Guild of Chicago? A. Well, I did after I received a letter for me to call on Mr. Fletcher.

Q. Do you recall when that was? A. Well, right after I returned from that trip to New York.

Q. Which trip? A. When I first heard of the Originators Guild.

Q. When you first heard of the F.O.G.A.? A. Yes. I signed an agreement there that I would join, of course

not knowing that—asked me to, as a matter of fact, sir, and then after refusing me they asked me to call on Mr. Fletcher.

Mr. Albert: Now, I ask that the answer of the witness be stricken; it is not responsive to the question.

Mr. Martin: I think it was responsive, your Honor.

Examiner Bennett: It may stand.

Mr. Albert: Exception.

By Mr. Martin.

8474

Q. Now, Mrs. Malsh, I hand you Commission's Exhibit No. 225 for Identification, and ask you can you identify that (indicating)? A. Yes, I can.

Q. What is it? A. That is my signature.

Q. Well, what is it, your signature to what? A. Well, it is an application to the Guild.

Mr. Albert: Now, if it please the Court, may I ask in referring to Guilds, distinguish as to what she is referring to. There has now been reference to the Michigan Avenue Guild and to the Fashion Originators Guild.

Mr. Martin: All right, just a moment.

By Mr. Martin.

8475

Q. Read it, Mrs. Malsh, and tell us what Guild you refer to. A. "I do hereby apply for membership"—do you want me to read it out loud or to myself?

Mr. Albert: No.

Mr. Martin: No, just read it to yourself.

The Witness: Well, I suppose that meant, the general Guild, I don't know whether this means—it is the Guild in New York, I suppose.

Mr. Albert: I object.

The Witness: The real Guild, and this is a part of it.

Mr. Albert: If it please the Court, I object and ask that it be stricken. We are not interested in what she supposes it refers to. The question was what Guild does it refer to.

By Mr. Martin.

Q. Read it and see what name is mentioned in there.
A. Michigan Avenue Guild.

8477 Mr. Martin: I offer that in evidence (referring to Commission's Exhibit 225).

(Whereupon, at 2.15 o'clock P. M., August 28, 1936, the hearing in the above-entitled matter was adojurned, to reconvene on Monday, August 31, 1936, at Minneapolis, Minnesota, in Room 307, Old Federal Building, at 10 o'clock A. M., Central Standard Time.)

8478

Room 307, Federal Building,
Minneapolis, Minnesota,
August 31st, 1936.

Met, pursuant to adjournment, 10 A. M., C.S.T.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission. 8480

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

HAROLD G. CANT, of Kingman, Cross, Morley, Cant & Taylor, 1010 Security Building, appearing for The Dayton Company, Minneapolis, Minn.

SAMUEL H. MOSLON, of Brill & Moslon, 500 Builders Exchange Building, appearing for Roy H. Bjorkman and Roy H. Bjorkman, Inc., and Minneapolis Fashion Guild, Minneapolis, Minn.

PROCEEDINGS. 8481

Examiner Bennett: Be in order, please.

Mr. Haycraft: Mr. Examiner, I would like to have fifteen minutes.

Examiner Bennett: Do you want some more time?

Mr. Haycraft: Give me until——

Examiner Bennett: All right, sir.

(A short recess was taken.)

8482 *Proceedings.*
Roy H. Bjorkman—For Commission—Direct.

Examiner Bennett: Are you ready?

Mr. Haycraft: Yes.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Haycraft: Mr. Bjorkman, will you come over, please? You will be sworn.

ROY H. BJORKMAN thereupon called as a witness for the Commission, and, having been first duly sworn, testified
8483 as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Roy H. Bjorkman.

Q. Address? Where do you live? A. Home address or the business address?

Q. Give us both. A. 4509 Moreland. 931 Nicolett Street, business address.

Q. What business are you engaged in? A. Ladies' ready-to-wear.

Q. At the address you have last given? A. 931 Nicolett, yes.

Q. How long have you been in that business, Mr. Bjork-
8484 man? A. In this business?

Q. Yes. A. Twenty-seven years.

Q. Not all at that address, though? A. Thirteen.

Q. Do you specialize in any particular type of ladies' ready-to-wear? A. Well, medium and the high grade.

Q. What price range do you sell at retail? A. We sell sport things from $10 and up, silk dresses from $15 and up, coats from $19.95 and up, furs from $100 and up. During the summer period we naturally have the less expensive cotton things from $5.95 and up.

Q. Who would you say were the principal competitors that you have in that particular line of merchandise? A. Well, unfortunately, we think everybody on Nicolett Avenue, ha, ha, ha!

Q. Name some of your principal competitors? A. Principal? Well, Raleighs, Jackson-Graves, Young and Quinlan.

Mr. Albert: Would you mind going a little slower? Jackson-Graves?

The Witness: Jackson-Graves, John W. Thomas, Harolds, Dayton Company, Powers. Those are our principal—and the Jenny Lee, Dubois, Donaldson.

8486

By Mr. Haycraft.

Q. And have they been your principal competitors, say, during the past ten or twelve years? A. Yes.

Q. Are some of them in and out? Have some of them come in and gone out? A. No, they have been all here except Harolds. Harolds was organized about two years ago. The Atkinson store had been in the picture. They have consolidated with Thomas.

Q. When did that consolidation take place? A. In the last year.

Q. Now, these stores that you have named, are they engaged in the sale of ladies' ready-to-wear in the same price range that you have indicated in your reply or do they include the wider price ranges in their business? A. 8487
Naturally a little bit wider, because they go into the very cheap—I mean in the basement ranges which we do not carry.

Q. Without imposing on your modesty, I would like to ask whether your store is considered one of the best stores in Minneapolis? A. Yes, we are considered probably the most exclusive specialty store in Minneapolis, because we got about $135,000 in walnut fixtures which I think gives it a good front.

Q. I will give you a chance to do some advertising. A. We don't know whether that is good advertising or not any more.

Q. Have you been active at all in trade association work among the retail dealers in ladies' ready-to-wear in Minneapolis?

Mr. Moslon: Just a moment. Just a moment. Objected to as irrelevant and incompetent, purely intrastate transaction.

Examiner Bennett: Read the question and the objection.

(The record was read.)

8489 Mr. Haycraft: Foundation.

Examiner Bennett: Overruled. I am going to hear what you want to bring out.

Mr. Moslon: Please note an exception.

Examiner Bennett: Overruled. I am going to hear what is going to be brought out.

The Witness: Yes, I have been—I have been active ever since I have been in Minneapolis as far as our own Ready-to-Wear Group, which has always met—always met periodically here in the discussion of sale periods and all that.

Q. Have you had a formal organization during the past ten years?

8490 Mr. Albert: That is objected to, if it please the Court.

Mr. Moslon: May we note the same objection to this question, please?

Examiner Bennett: Overruled. Overruled.

Mr. Moslon: Exception noted, please.

Mr. Albert: Objected to on the part of the respondent F.O.G.A. as calling for a conclusion of the witness, no proper foundation has been laid.

Examiner Bennett: Yes. I have already ruled on it. Go ahead.

By Mr. Haycraft.

Q. Go ahead.

Examiner Bennett: You may answer.

The Witness: May I have that again? Did you say "have"?

(The question was read.)

The Witness: Well, it all depends on what you mean here by a formal. We have never had a formal organization, no.

8492

By Mr. Haycraft.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. Very much, sir.

Q. When did you first hear of that organization? A. Well, that is going back quite a ways. I think it was about the fall of 1932, I believe.

Mr. Haycraft: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 592 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 592 for Identification and ask if you can identify it? A. Yes, sir, I can identify that. 8493

Q. What is that? A. Why, it was the meeting we had——

Q. Just a minute. I am not asking you what the subject matter of it is. I am just asking you what the paper is. A. I am trying to explain it, if you will be patient a moment.

Examiner Bennett: Just the date and the par ties.

The Witness: Oh.

Examiner Bennett: Give the date.

Mr. Haycraft: They won't allow you to tell wha is in it.

The Witness: December 28th, 1932.

Examiner Bennett: Letter from whom to whom

The Witness: Letter from Mr. Bjorkman to Mr Golby of the Fashion Originators Guild of America

By Mr. Haycraft.

8495 Q. Did you write the original of that letter? A. Yes sir.

Q. This is a carbon copy? A. That is right.

Examiner Bennett: Was it sent——

By Mr. Haycraft.

Q. And the original was sent to Mr. Golby, was it? A That is right.

Mr. Haycraft: I offer that in evidence.

(The paper referred to was handed to Mr. Al bert.)

Mr. Albert: That is objected to, if it please th Court, upon the ground no proper foundation ha

8496 been laid, not binding upon the respondent F.O.G.A and not within the issues of the complaint in so fa as the matter—concerns matters purely intrastat and without the jurisdiction of the Commission.

Examiner Bennett: Will you let me see the docu ment?

Mr. Haycraft: Just a moment. Counsel is read ing it.

(Commission's Exhibit 592 for Identification was handed to the Examiner.)

Examiner Bennett: Have you the letter to which this was an answer?

The Witness: I don't think that there was an answer to that letter.

Examiner Bennett: Well, it was written evidently in answer to another letter, "replying to your letter of the 24th," and so on.

Mr. Haycraft: I couldn't find it.

The Witness: Isn't it there? I don't know.

Examiner Bennett: All right.

The Witness: That is all my secretary could find. 8498

Examiner Bennett: I will overrule the objection and receive it.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit 592, was received in evidence.)

Examiner Bennett: I understand that there is no point made of the paper being a copy? The Commission can demand the original.

Mr. Albert: May I point out to your Honor that in keeping with the policy of the respondent F.O.G.A. and not contesting the fact that originals are not presented——

8499

Examiner Bennett: Yes.

Mr. Albert: In that sense I have no objection to the letter except that we have no copy of the original and haven't it in our files, and I have asked Mr. Post as to whether or not he recalls having received such a letter and he says that he does not.

Mr. Haycraft: Does Mr. Post have the letter?

Examiner Bennett: I don't care about the question, I just wanted to be sure that it was not raised.

Mr. Albert: No, your Honor.

Mr. Haycraft: I would like to inquire of the respondents if they have the letter of December 24th, from Mr. Golby to the witness?

Mr. Post: December 24th?

Mr. Haycraft: Yes. 1932.

Mr. Albert: No.

The Witness: I can elucidate a little bit further on that if you would like to have me.

By Mr. Haycraft.

Q. If you can explain——

8501

Examiner Bennett: Give the whole story.

Mr. Haycraft: I will get at it in a moment. You will have it in just a moment. I want to see if this other letter is here, that is all.

Examiner Bennett: All right.

Mr. Haycraft: Did you find it, Mr. Post?

Mr. Post: No.

Mr. Haycraft: All right.

By Mr. Haycraft.

Q. Now, then, I will ask the witness. In this first paragraph it says: "Replying to your favor of the 24th, we have already called a meeting of the outstanding merchants which will be held at the Athletic Club Friday afternoon, December 30th."

8502

The second paragraph says: "I will endeavor to form an organization that will co-operate and affiliate with the parent organization in New York. I will keep you posted on the outcome."

Now, I ask you, Mr. Bjorkman, what preceded this letter to which you referred to?

Mr. Albert: That is objected to, if it please the Court, as incompetent, immaterial, outside of the

scope of the investigation by the Federal Trade Commission, and in no way binding upon the respondent F.O.G.A. We are back in 1932 now.

Examiner Bennett: I will overrule the objection. You may answer.

Examiner Bennett: I shall overrule the objection. He may answer.

The Witness: I was very much interested in the Fashion Originators Guild. I have been in this business twenty-seven years and I was very enthusiastic about it. We discussed it naturally with a few of the outstanding manufacturers, including Mr. Rentner and Mr. Golby. That was before Mr. 8504
Post was with the organization. We had lunch together in New York. I was heartily in accord with their ideals and their purposes and I naturally said, "Okay. I will go home and see if I can get this crowd together as a local Fashion Group." That was all——

Mr. Maslon: You have answered the question.

Mr. Martin: I object. Let the witness answer the question without interruption by counsel.

Mr. Maslon: He has answered.

Mr. Martin: I object to any interruption.

The Witness: In fact, I was practically through. I called the meeting and we sold them all on it and they were all in favor without a dissenting vote, 8505
with one or two exceptions, but they all saw the ideal possibilities, so they were all in favor of giving it a trial.

Mr. Haycraft: I will join with counsel for respondent and ask the witness to try to confine his answers to my questions. I do not want you to volunteer anything.

The Witness: You asked me what occurred, and that was the inspiration of the letter.

By Mr. Haycraft.

Q. Had there been a meeting prior to this of the Minneapolis group? Had you been to New York? A. On the part of the Guild?

Q. Yes. A. No.

Q. Had you been to New York on the part of the Guild? A. No.

Q. You were in New York on other business? A. No.

Q. Do you have a brother in New York buying dresses in New York? A. No, I don't know of any.

Q. You don't know of any? A. No.

Q. Were you ever engaged in that business? A. No.

8507 Q. As I understand your testimony, while you were in New York on your business trip, you discussed this matter of the Guild? A. Well, as a matter of fact, we discussed it in a casual manner, their aspirations.

Q. Did they say anything to you about getting the Minneapolis group to co-operate? A. No, no. In fact, I really volunteered.

Q. You volunteered? A. Yes.

Q. Then what did you do after you got home? A. We just called a meeting at the Athletic Club and discussed it, that was all. Nothing formal was done.

Q. Let us take it up step by step.

(Thereupon a paper was marked Commission's Exhibit 593 for Identification.)

8508 *By Mr. Haycraft.*

Q. First I will ask you if you recall the context of the letter of December 24th from Mr. Golby? A. I am sorry, I don't, only that it was just a short letter, thanking me and of appreciation for my intended support and asking me if I had called the group of ladies' ready-to-wear merchants together. That was all.

Q. Now, I show you Commission's Exhibit No. 593, and see if you can tell me what that is? A. Yes, sir.

Q. Did you send the original of that letter to Mr. Golby? A. Yes, sir.

Q. This is a carbon copy? A. That is right.

Q. What is the date of it and who signed the original? A. December 30th, and I signed the original.

Mr. Haycraft: I offer the paper in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

Mr. Haycraft: We have two counsels here, Mr. Examiner, who want to look at the paper.

Examiner Bennett: I want to tell you there is very much of an echo derived from where you are sitting, so speak rather plainly. Do you want me 8510 to look at it? That is the one you are offering?

Mr. Haycraft: That is the one.

Examiner Bennett: It will be received.

(The paper referred to, heretofore marked Commission's Exhibit 593 for Identification, was received in evidence.)

(Thereupon papers were marked Commission's Exhibits 594 and 595 for Identification.)

By Mr. Haycraft.

Q. Mr. Bjorkman, do you remember the personnel that you appointed, as indicated in your letter of December 30th, 1932? 8511

Mr. Albert: That is objected to, if the Court please, as immaterial and irrelevant, not binding upon the respondent F.O.G.A., outside of the issues of the complaint.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I honestly don't believe I can.

By Mr. Haycraft.

Q. Was Donovan, of Dayton Company? A. I think Mr. Larson of Dayton was, if my memory is correct. I really would hate to say, but if my memory is correct, Mr. Larson of Dayton and Mr. Laihff and Mr. Young, Quinlan and myself.

Mr. Maslon: Will you just answer the question, and don't guess, please?

By Mr. Haycraft.

Q. I hand you Commission's Exhibit No. 594 for Identification, and ask you if you can identify that? A. Yes, sir.

8513

Q. Did you receive it? A. Yes, sir.

Q. From whom to whom? A. Mr. Golby to myself.

Q. Dated? A. January 3rd, 1933.

Mr. Haycraft: Offer this in evidence.

Mr. Albert: It is objected to, if it please the Court, as outside of the scope of the complaint and not within the jurisdiction of the Federal Trade Commission.

Mr. Haycraft: May I ask a question in respect to that last objection, Mr. Examiner?

Examiner Bennett: What?

Mr. Haycraft: Before you rule I would like to ask the witness a question, before you rule on the objection.

8514

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Is this letter in reply to your letter of December 30th, 1932, or does it relate to the same subject-matter? A. Let me see that letter, please. (After examining let-

ter) This was not in reply to any letter. This was just a volunteered letter;

Q. This letter here (indicating)? A. That is right.

Q. That is right? A. Yes, sir.

Examiner Bennett: Overruled. Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 594, was received in evidence.)

By Mr. Haycraft.

Q. Now, it says in this letter from Mr. Golby, dated January 3rd, 1933, Commission's Exhibit No. 594, "We are anxiously awaiting the report of your Committee is drafting and trust that it will be favorable. If you desire copies of minutes of the various Retail Guilds that are now functioning for the benefit of the ready-to-wear business, please do not hesitate to call upon us and we will forward to you such copies as we have on hand." Do you recall whether or not you asked for such copies? 8516

Mr. Albert: Objected to; immaterial.

Examiner Bennett: Overruled. He may answer.

The Witness: I don't recall asking for it.

By Mr. Haycraft.

Q. I asked you if you recall asking for them? A. I don't recall.

Q. I show you Commission's Exhibit No. 595 for Identification and ask you if you can identify it? A. Evidently I did. 8517

Q. Do you identify this as a copy of the telegram? A. Yes.

Q. Who sent it? A. I did.

Q. To whom? A. James Golby.

Q. What date? A. January 7th.

Q. What year? A. 1933.

Mr. Haycraft: Offer it in evidence.

Examiner Bennett: 595?

Mr. Albert: It is objected to, if the Court please, outside of the scope of the Commission's investigation.

Examiner Bennett: May I see the telegram, please?

(Telegram handed to the Examiner.)

Examiner Bennett: Overruled, and received.

(The telegram referred to, heretofore marked for
8519 identification Commission's Exhibit 595, was received in evidence.)

(Thereupon papers were marked Commission's Exhibits 596-A, B and C for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 595 for Identification, and ask you if you can identify that?

Examiner Bennett: That is three sheets.

Mr. Haycraft: Three pages.

The Witness: Yes, sir.

By Mr. Haycraft.

8520 Q. Did you receive that? A. Yes, sir.

Q. From whom? A. Maurice Rentner.

Q. Who was he at the time? A. Chairman of the Fashion Originators Guild of America.

Q. Under what date? A. December 6th, 1932.

Mr. Haycraft: It is offered in evidence.

Mr. Albert: This is in four or five times.

Mr. Haycraft: Can you give me the number of it?

Mr. Feldman: At least once.

(Discussion had off the record.)

Examiner Bennett: Have you offered it? They said it was in evidence already.

Mr. Haycraft: I have offered it. I say I am waiting now to see if we can find the number, and then I will withdraw it. I will withdraw the offer for the time being, if I will be allowed to refer to it.

Mr. Albert: Yes, certainly.

(Thereupon a paper was marked Commission's Exhibit 597 for Identification.)

8522

By Mr. Haycraft.

Q. Now, I hand you Commission's Exhibit No. 597 for Identification, and ask you if you can identify that one? A. Yes, sir.

Q. Did you receive it? A. Yes, sir.

Q. From whom? A. Mr. Golby, December 24th, 1932.

Q. Calling your attention to Commission's Exhibit 592, I will ask you if this was the letter you referred to in your letter of December 28th to Mr. Golby? A. Yes, that is it.

Q. I show you Commission's Exhibit No. 596-A to C for Identification, and ask you if that is the letter referred to in Commission's Exhibit No. 597, the first paragraph? A. Yes.

8523

Mr. Haycraft: I offer Commission's Exhibit No. 597 in evidence.

(The paper referred to, heretofore marked for identification Commission's Exhibit 597, was received in evidence.)

Mr. Albert: I renew my objection.

Examiner Bennett: Overruled; received.

By Mr. Haycraft.

Q. I now call your attention to Commission's Exhibit No. 595, and ask you whether or not you recall receiving from the Guild, from Mr. Golby, copies of the minutes of their retail Guilds?

Mr. Albert: Objected to as immaterial, if the Court please.

Examiner Bennett: Overruled; you may answer.

The Witness: Yes, sir.

(Thereupon a paper was marked Commission's Exhibits 598-A to H for Identification.)

8525

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 598-A to H, and ask you if you received this from Mr. Golby? A. Yes, sir.

Mr. Haycraft: Offered in evidence.

Commission's Exhibit No. 598-A is an original letter from Mr. Golby dated January 7th, 1933, addressed to Mr. Bjorkman.

I haven't heard whether there is any objection to it or not.

Examiner Bennett: Received. Are you making an objection to Exhibit No. 598?

Mr. Albert: Oh, yes.

8526

Examiner Bennett: All right, sir. We will take up the objection, first.

Mr. Albert: Respondent F.O.G.A. objects to Commission's Exhibit No. 598-A—I withdraw that.

Respondent objects to Commission's Exhibit No. 598-B through to H, on the ground that the minutes refer to matters which are not binding in any manner whatsoever upon the F.O.G.A., contains

minutes of certain hearings of an organization upon whom at the present time we do not believe any hearings are going to be held, and refers to matters that have long since antedated the complaint, with respect to which the Federal Trade Commission is investigating; refers to matters of procedure that have long since been superseded by other matters and procedure since the taking of these minutes, and contain matter which, if gotten in this manner through this witness, is impossible for the Fashion Originators Guild to cross-examine upon them.

Now, if the Commission wishes to show that the 8528
Minneapolis Guild in drafting its program sought assistance by using the programs of other Guilds as models, I think that a simple statement of that kind is sufficient without putting into the record the minutes of the uptown retail Guild, which are in no manner or means binding upon the Fashion Originators Guild, and as to which we cannot examine this witness who knows nothing about them.

In addition, if it please the Court, I wish to specifically point out that the uptown retail Guild is not a named respondent in this proceeding, so that the context and substance of what occurred at its particular meetings has no relevancy or bearing whatsoever upon this proceeding. I have not ob-
jected to Commission's Exhibit No. 598-A by rea- 8529
son of the fact that I state that I can see no relevancy to the fact that the Commission wants to bring out the point that the Minneapolis Guild sought assistance in formulating its program by attempting to be guided by the programs of others, but if the Commission permits such testimony to go into evidence, I don't think it will be of very great importance.

8530 *Roy H. Bjorkman—For Commission—Direct.*

However, to permit these minutes to go in, I believe it is very vital as against the Fashion Originators Guild, since it is impossible for us to cross-examine upon it, and certainly by reason of the fact that these matters have all been superseded since that time and they long antedate the period about which the Federal Trade Commission complains.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(The papers referred to, herefore marked for identification Commission's Exhibits 598-A to H, were received in evidence.)

8531

By Mr. Haycraft.

Q. Now, Mr. Bjorkman, do you recall now who attended your meeting held in January, 1933? A. You mean January or December?

Q. December, 1933? A. Yes, I can. You mean the stores or individuals?

Q. Stores or individuals, either one. A. Yes. There was Young and Quinlan, Raleigh's Jackson-Graves, Thomas, Atkinson, Dayton's Powers' Bjorkman's, Mary Jones, Donaldson.

Q. The representatives of those various organizations were the merchandise managers? Were they buyers or what? A. Heads of the store and the merchandising men.

8532 They were all executives.

Q. Now, at that meeting what took place with reference to the formation—with respect to the co-operation with the Fashion Originators Guild of America, if you recall?

Mr. Maslon: Just a moment. I object as calling for a conclusion of this witness.

Examiner Bennett: You were present at these meetings?

The Witness: Yes.

Examiner Bennett: All right. What took place?

Mr. Albert: May I ask whether there were any minutes taken of that meeting?

The Witness: No, no.

y Mr. Haycraft.

Q. You may answer. A. Well, we organized, or we met r lunch and discussed the possibilities and the feasibility this organization—of this organization's aspirations New York, and also for the possible improvement of r own retail conditions here on Nicolette Avenue.

Q. Did you agree to do anything about it? A. Well, ere was no action taken at all. 8534

Q. All right. I show you Commission's Exhibit No. 9-A and B; do you recall receiving that letter? A. Yes,

Q. I would like to have you refresh your recollection to the first paragraph of the letter, as to what action as taken at that meeting. A. Well, I will explain why is——

Q. First answer: I am asking you whether or not this freshes your recollection? A. Yes, sure.

Q. Of what took place at the meeting? A. Yes, sir.

Q. Having refreshed your recollection, now will you tify as to whether or not there was any agreement or tion taken at that first meeting? A. There was no ac-n. That is what I said. There was no action taken and 8535 minutes or anything. We just discussed the possi-ities of it.

Q. Was there any agreement as to further procedure?

Mr. Albert: That is objected to, as to whether or not there was any agreement, as calling for a conclusion of the witness.

Examiner Bennett: You may answer.

Mr. Albert: Exception.

The Witness: May I have that question?

(The question was read.)

The Witness: Well, there were a few of these merchandise men that didn't feel that they could act for the institution, like Mr. Snyder of Powers, who is the merchandise man. So they went home to discuss it with the heads of the institution.

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Overruled.

Mr. Albert: The question is, is there an agreement or not. I think the question can be answered "Yes" or "No."

8537

Examiner Bennett: Denied. Go ahead.

The Witness: I have answered.

By Mr. Haycraft.

Q. Was there any agreement or understanding that these individual stores would write letters to the Guild, the Fashion Originators Guild of America, setting forth their ideas?

Mr. Albert: That is objected to as calling for the conclusion of the witness as to whether or not there was an agreement. I think that what the Commission wants is a statement from this witness as to what was said and the Court can deem for

8538

itself whether or not that constituted an agreement.

Examiner Bennett: Well, I don't expect the witness to tell in detail what each man at that lunch party had said. If he can tell the substance, he is doing very well.

Mr. Haycraft: You may answer.

Examiner Bennett: I will overrule the objection.

(The question was read.)

The Witness: I didn't think that there was—that this letter—rather——

By Mr. Haycraft.

Q. Well, I think you can just stop right there. A. No, no.

Q. Let me ask you this question: Was there any understanding or agreement that you as charmain of the group would write such a letter to the Guild? A. No.

Q. Was there any plan made for future action by your group? A. Yes. We were going to meet again later to discuss it further. 8540

Q. Did you ask the members that were present at that meeting to submit at a later meeting their reactions to the plan of the Guild? A. You mean the various merchants?

Q. Yes. A. We were going to have another meeting.

Q. What was the idea of the further meeting? A. Well, of course, there were a few of these individuals that couldn't act for the institutions. They didn't have the authority. This is one of them. I think this is the only letter that we received, I believe, out of the twelve or fourteen members that met.

Q. This that you refer to is a letter— A. Mr. Snyder of Powers——

Q. To yourself? A. Yes, sir.

Q. Under what date? A. January 17th, 1933. 8541

Q. Did the Powers Mercantile Company later affiliate itself with the Guild? A. Very much so.

Mr. Albert: Now, if it please the Court, I haven't been able to hear that last question and the answer. There seems to be a little private colloquy between Mr. Haycraft and the witness. May I ask that it be repeated?

(The record was read.)

Mr. Maslon: What Guild are you talking about?

The Witness: Minneapolis Retailers Guild.

Mr. Maslon: I object to that as immaterial, not within the scope of this proceeding, confined to purely intrastate transaction.

Examiner Bennett: What was that statement?

(The record was read.)

Examiner Bennett: Overruled.

Mr. Albert: Now, if it please the Court, Commission's Exhibit No. 599-A and B, is a letter from one——

Examiner Bennett: I don't know just the status of that. It seems to have been more or less identified. I don't know that it has been offered.

8543

Mr. Haycraft: Yes, I have offered it, Mr. Examiner.

Examiner Bennett: You have? All right.

Mr. Albert: It is a letter from the Powers Mercantile Company, whoever that may be, to Mr. Bjorkman containing certain ideas and theories of the Powers Mercantile Company in no way binding upon the Fashion Originators Guild, in no way binding upon the Minneapolis Guild, in no way germane to the proceedings here, dated January 17th, 1933; and in addition, if it please the Court, I object to it upon the ground that no proper proof whatsoever has been presented with respect to the

8544

letter in question. It is a letter from a fourth party to a third party, the relevancy of which as regards the Fashion Originators Guild has not been brought out.

(The letter referred to was handed to the Examiner.)

Mr. Albert: I think in line with your Honor's previous rulings with respect thereto, it should be excluded. Certainly the Fashion Originators

Guild is utterly cut off from any cross-examination with respect to this particular letter. Insofar as our ability to probe into it is concerned with respect to the Powers Company, we are cut off.

By Examiner Bennett.

Q. Were you at this time or afterwards co-operating with the Fashion Originators Guild of America? Had you signed the articles of co-operation? A. No.

Q. You never did? A. As an individual? No.

Q. I mean as a firm? A. Yes. Well, no. We all signed.

Q. Do you understand what I am asking? A. We 8546
signed as the group, you know. I mean, as an association.

Q. I am asking you individually whether you had signed a document agreeing to co-operate with the Fashion Originators Guild? A. I really don't recall.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 4, Mr. Bjorkman and then see if you can answer the Judge's question?

Examiner Bennett: I wanted to see the status——

Mr. Albert: There is no testimony here whatsoever, your Honor, as to the Powers Company, as to who they are, or what they are, and that letter ob- 8547
viously refers to a period of time even antedating the formation of the Minneapolis Guild.

Mr. Haycraft: I will have to reply to that, Mr. Examiner.

Examiner Bennett: Just a moment, please. I wish you gentlemen would keep your peace until I get through with this man.

Mr. Haycraft: All right, then. I just want to——

Examiner Bennett: You have had your obje tion at great length.

The Witness: We hadn't signed anything that time.

Examiner Bennett: I beg your pardon?

The Witness: I say we hadn't signed anythi at that time.

By Examiner Bennett.

Q. But you did later? A. As the group. I don't thi —not as an individual firm.

Q. I am asking you as a concern? A. Yes.

8549 Q. You know what I mean; don't you? A. Yes, I u derstand.

Q. Yes. I see. And you have testified that the oth parties to this letter co-operated also? A. Yes, sir.

Examiner Bennett: All right. That is all wanted to find out.

Mr. Haycraft: All right.

The Witness: Ultimately they became one the best boosters of the organization.

Examiner Bennett: Yes.

The Witness: That is, the store did.

Mr. Haycraft: I would like to have the witne speak so that I can hear it.

The Witness: Sorry.

8550 Examiner Bennett: I guess he won't corru the Court.

Mr. Haycraft: I am not fearful of that, yo Honor.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(Thereupon the papers referred to, heretofo marked for identification Commission's Exhib 599-A and B, were received in evidence.)

Mr. Albert: May I at this time inquire of Mr. Haycraft as to whether or not anybody from the Powers Company or Mr. Snyder are going to be put on the stand whom we can question with respect to the contents of that letter that is now going into evidence through this witness, who doesn't know anything whatsoever about the policies of the Powers Company?

Examiner Bennett: I think it has been identified.

Mr. Haycraft: I don't think it is necessary to argue that, Mr. Examiner. If Mr. Snyder is available I will be more than glad to have him testify. 8552

By Mr. Haycraft.

Q. Is Mr. Snyder here? A. He is available.

Mr. Albert: Unless Mr. Haycraft states that he is going to call Mr. Snyder, I move that be stricken from the record.

Examiner Bennett: Will you let me see the document again?

(The document referred to was handed to the Examiner.)

Examiner Bennett: The letter has been identified. I don't know what you are talking about.

By Mr. Haycraft. 8553

Q. Did you hold another meeting? A. Yes, sir.

Q. And do you have any recollection of when this second meeting was held? A. No, I don't. We held lots of them at various times.

Q. Would you say it was shortly after January 17th, 1934? A. Yes, it was shortly after.

Q. '33? A. Yes. I just mentioned to the Judge that while that letter was sent by Mr. Snyder, Mr. Snyder be-

came one of the biggest acting forces in our local organization, even after that letter, and is one of the officials today.

Q. Now, Mr. Bjorkman, did you as—strike that out. I call your attention to this paragraph on page two of Mr. Snyder's letter: "It would be our suggestion that we write the Fashion Originators Guild and tell them that we are in accord in Minneapolis with their efforts to eliminate the abuses of unfair competition, unethical style piracy, and price cutting; and that while we cannot subscribe to the extent of signing their agreement, because of certain things contained there, yet we will strive to eliminate
8555 whatever we can of these abuses through our retailers co-operative group, and also further solicit their co-operation in aiding us in eliminating the sale of certain styles or fashions." Do you recall whether or not any draft of such letter was prepared?

Mr. Albert: That is objected to, if it please the Court.

By Mr. Haycraft.

Q. (Continuing) By yourself or a committee appointed by you?

Mr. Albert: That is objected to, if it please the Court, as wholly immaterial, I don't think the
8556 Commission is interested in drafts with respect to something, if it is only a draft and which was never accomplished or carried to fruition in any way. I mean, if this type of testimony keeps up I think we will be in Minneapolis until Christmas.

Examiner Bennett: Overruled. You may answer.

By Mr. Haycraft.

Q. Do you recall? A. No.

Q. Do you recall whether or not you representing the group submitted to the Fashion Originators Guild, Incorporated, a letter embodying the ideas of—a letter or memorandum embodying the ideas of the Minneapolis group? A. Yes, but that was about a year or two after, I believe. You see, this is over a period of about three or four years.

Q. This was in January, 1933? A. Yes, well, but I mean that there was nothing formed or drafted for a couple or three years, I believe.

8558

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked Commission's Exhibit 600 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 600 for Identification and ask you if you can identify that paper? A. Yes, sir.

Q. What is it? A. It is a copy of a declaration of an organization or of a formal organization which was organized in December of 1935, because we had met more or less as a loosely formed body and we hadn't had any rules, regulations, constitution at all, so that is what this is.

8559

Q. Who prepared it? A. Well, there was a committee, Mr. Donovan, Mr. Hyman and Mr. Bjorkman.

Q. Mr. Donovan representing whom? A. The Dayton Company.

Q. Mr. Hyman representing whom? A. B. A. Atkinson.

Q. And you represented your own firm? A. That is right.

Q. Was this paper discussed at the meeting—at any meeting of your organization? A. Plenty of them.

Q. What, if anything, was done with it other than discussion? A. Well, in fact, this was signed and was sent in to the Fashion Originators Guild. It was accepted unanimously by the group.

Mr. Haycraft: I offer this exhibit in evidence. You mean the original was sent to the Fashion Originators Guild?

The Witness: Yes.

Mr. Albert: May we have the date of Commission's Exhibit No. 600 for Identification?

8561 The Witness: We can give you the exact date. It was in the summer of 1935, around June and July, I think.

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit No. 600, as having long since charged into the valley of death.

The Witness: Ha, ha.

Mr. Albert: Having been superseded by a subsequent agreement which is in evidence.

Examiner Bennett: What was Mr. Albert's statement?

(The statement referred to was read.)

Mr. Albert: No proper foundation has been laid with respect to Commission's Exhibit No. 600.

8562 Examiner Bennett: I would like to see that document, please.

Mr. Albert: No proper foundation of any kind has been laid with respect to that.

The Witness: We had been functioning as an organization, but we hadn't had——

Examiner Bennett: Overruled. Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 600, was received in evidence.)

(Thereupon papers were marked Commission's Exhibits 601-A and B, 602 and 603 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 601-A and B and ask you if you can identify that, in any way? A. Yes, sir.

Q. What is it? A. It is the first attempt of the Minneapolis Fashion Retailers Guild, that is, for a declaration of co-operation in anti-piracy policy, with the Fashion Originators Guild of America, and after considerable discussion, a long time co-operation within ourselves, we organized this and we sent it into the Fashion Originators Guild. 8564

Q. Do you know when that happened? A. Yes. It was in June, I believe, in 1935.

Q. That is, you sent the original of this in? A. Yes, that is right.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: Mr. Bjorkman, is Commission's Exhibit No. 601-A—has that exhibit ever been signed?

Mr. Haycraft: The original.

The Witness: Yes.

Mr. Albert: Or is this merely a draft of something? 8565

The Witness: No.

Mr. Albert: Of something that was proposed?

The Witness: This was signed. This is just an extra copy of it.

By Mr. Haycraft.

Q. (Indicating paper to the witness.)

Mr. Albert: Do you know whether or not this was accepted by the Fashion Originators Guild?

Mr. Haycraft: That is objected to at this time.

The Witness: It was rejected.

Mr. Albert: Now, if it please the Court——

Mr. Haycraft: Just a moment. Mr. Examiner, I move that the answer be stricken. May my objection be ruled on?

Examiner Bennett: Why——

Mr. Haycraft: I will let the answer stand. I withdraw my objection.

Examiner Bennett: I will let him answer.

Mr. Haycraft: Yes.

The Witness: May I have that question again?

8567 Mr. Haycraft: No, it is all over. There is no question pending.

Mr. Albert: Commission's Exhibit No. 601-A and B, if it please the Court, is objected to upon the ground that it is entirely immaterial and irrelevant by reason of the fact that it is practically solely a draft of something that the Minneapolis Guild wanted to do, and is not binding in any way upon the Fashion Originators Guild and never having been accepted by the Fashion Originators Guild, and no proof of acceptance offered by Mr. Haycraft.

Mr. Haycraft: The fact that it was not accepted is a very important factor in this, so that is one of the reasons I am offering it.

8568 Mr. Albert: If it is an important factor why didn't you bring that out that it wasn't accepted?

Mr. Haycraft: I will let you do that.

Examiner Bennett: Can you fix the time of this document?

The Witness: Yes, sir. June, I think, of 1935, the original is dated.

Mr. Haycraft: I would like at this time to call for the original if the respondent has it.

Mr. Albert: May I point out to the Court that there is an agreement that has been placed in evidence, which I believe is Commission's Exhibit No. 42.

Mr. Haycraft: Not of this paper.

Mr. Albert: Between the Fashion Originators Guild and the Minneapolis Guild which merges all previous conferences, agreements, or understandings, of any kind, nature and description, and Commission's Exhibit No. 601-A and B, by virtue thereof is entirely immaterial.

Mr. Haycraft: I would like to have the record show that I have requested respondent to produce 8570
the original of this paper, 601-A and B.

(A discussion ensued between the witness and Mr. Maslon out of the hearing of the court reporter and the Examiner.)

Mr. Albert: I further object to the introduction of Commission's Exhibit No. 601-A and B, upon the ground that there is insufficient foundation with respect to the fact that the F.O.G.A. ever got that proposed draft which was never accepted; upon the ground that the substance thereof is in no way binding upon the Fashion Originators Guild.

Examiner Bennett: The objection is overruled. It may be received as Commission's Exhibit No. 601-A and B.

Mr. Albert: Exception. 8571

(The paper referred to, heretofore marked for identification Commission's Exhibits 601-A and B, was received in evidence.)

By Mr. Haycraft.

Q. Now, Mr. Bjorkman, do you recall whether or not Mr. Post and Mr. Golby were in Minneapolis at a meeting

8572 *Roy H. Bjorkman—For Commission—Direct.*

of the Minneapolis Guild on or about May 13th, 1935? A. Yes, sir.

Q. Where was that meeting held? A. Raddison Hotel.

Q. Do you recall who attended? A. Well, I think every ready-to-wear merchant in Twin Cities was there. We invited the St. Paul merchants also. About thirty-five or forty attended.

Q. Who addressed the meeting? A. Well, Mr. Post was introduced. He was introduced, he was quizzed, and answered.

Q. Do you recall what Mr. Post said on that occasion? A. Not in totality. He was there to answer the objections
8573 of a few members of the Guild or local merchants here.

Q. What were those objections?

Mr. Albert: That is objected to, if it please the Court, as outside of the scope of the complaint of the Commission, referring to matters not complained of by the Commission and also referring to matters which had the sanction of the law at the time they were discussed or proposed or acted upon.

The Witness: Probably I should change that.

Examiner Bennett: Do you remember what objections he acted on?

The Witness: They were not objections. It was lack of understanding or misinformation. It was
8574 more of an educational talk as there were a lot of misunderstandings to be cleared up.

By Mr. Haycraft.

Q. Well, what were the objections or misunderstandings? A. Well, the only objection that was of any size here was of the question of the price ranges that were to be involved.

Q. Involved in what? A. Well, I believe when the Guild first started, they started with a price line $16.75 and up wholesale and then there was a less expensive group at $10.75. They were anxious and ambitious to join the group, and then after they were—and then there were some objections by a few merchants over the country, I understand. There were one or two in our group here, I understand that did not know whether they wanted them or not, and Mr. Post, as I recall it, he was here on that subject more than anything else.

Q. What did he say about that? A. Well, I can just speak of it here in general matters. After he left, that was in—— 8576

Q. The 13th of May? A. That was in May, last year. We had various meetings after that time.

Q. Let us find out what Mr. Post said at that meeting? A. He was trying simply to sell the organization on the fact that they did not ask the $10.75 group to come in. They asked to join the organization, and they were perfectly willing to have them——

Q. We have too many "those," Mr. Bjorkman. A. Yes.

Q. Who did not ask the $10.75? A. The Fashion Originators Guild did not ask the $10.75 group in, neither did the retailers, I understand. They wished to join the Fashion Originators Guild.

Q. You mean the $10.75 manufacturers? A. Yes. There were one or two organizations, I don't know what they call themselves, but the $10.75 manufacturers wished 8577 to join the F.O.G.A. It was perfectly satisfactory with the F.O.G.A. if it was satisfactory with the majority of merchants over the country who had signed cards or were in the various organizations. And then I believe it devolved that even the $6.75 manufacturers wanted to join the Guild. Well——

Q. Was that discussed at that meeting? Or later? A. No, that was discussed at that meeting.

Q. All right. A. If I recall. There was a question, I believe, of the possibility and of the advisability of the less expensive groups to be admitted, if they wished to be admitted. However, there was no time, there was no decision reached at all on the less expensive lines.

Q. What did Mr. Post say about that? A. Well, that was all left to the future. I mean, it was perfectly all right, I believe, from the Fashion Originators Guild standpoint if the merchants were agreeable, the majority of the merchants.

Q. Did any of the Minneapolis merchants express themselves during that meeting on that point? A. Yes. One,
8579 possibly two, quite emphatically.

Q. What about? A. Well, they did not—oh, no, that is wrong on the $10.75 there was no exception. It was agreeable down to the $10 price range, but there were one or two that I believe were interested, or I believe were not in favor they were going to go into the less expensive range.

Q. Do you remember who they were? A. I think the Dayton Company was one and at that time I believe Powers were one.

Q. Do you recall were there many others?

The Witness: Were there others, Dane?

A Voice: I do not recall.

The Witness: You were at that meeting, weren't
8580 you? No, I guess you were not. Mr. Larson was there. I recall there were two.

By Mr. Haycraft.

Q. There might have been others that you do not recall? A. There might have been others, yes.

Q. At that meeting or subsequent to it, was there anything said by Mr. Post with respect to a new contract or agreement between the Minneapolis Guild and the Fashion Originators Guild?

Mr. Albert: If it please the Court, there is nothing in evidence as yet as to any agreement or contract between the Minneapolis Fashion Guild and the Fashion Originators Guild.

Mr. Haycraft: We have already got a couple in evidence this morning.

Examiner Bennett: I will overrule the objection.

Mr. Albert: Exception.

The Witness: The Fashion Originators Guild were not pleased with the agreement or with the declaration of anti-piracy in co-operation that we had worded so there was nothing said at that meeting, no, but there was at a subsequent time. 8582

By Mr. Haycraft.

Q. When subsequent, how long afterward? A. Just a ew weeks subsequent, I think it was, around June or uly.

Q. I show you Commission's Exhibit No. 663— A. Well, ou have the material there.

Q. —for Identification, and ask you if that will refresh our recollection as to when it began to be a subject of iscussion between you and the Fashion Originators uild? A. Well, these contracts, as you have them there n your material, they were copies of contracts from the arious other Guilds that they had at that time. However, 8583 e did not like them, so we composed our own.

Q. You mean Mr. Golby sent you some copies? A. That right, of the others.

Q. Of Chicago and Baltimore? A. I don't know what hey are. They were Chicago and Baltimore, those two, nd possibly the New York Uptown Guild.

Q. Now, Mr. Bjorkman, so that there will be no ques- ion as far as the record is concerned and particularly for he benefit of counsel for the respondent, I will ask you

at this time to give us the various steps that were taken by the Minneapolis Guild to enter into an agreement with the F.O.G.A., Fashion Originators Guild of America, Inc. calling attention first to Commission's Exhibit 601-A, and ask you to testify as to the circumstances surrounding the execution of that document and what was done with it and so on.

Examiner Bennett: I will ask him to go ahead and make a full explanation, regardless of what is in the record.

Mr. Haycraft: Just forget what is in the record and make a full explanation.

8585 Mr. Albert: I think it would be the best.

By Mr. Haycraft.

Q. I am directing your attention first to 601-A and B that is the first agreement.

Examiner Bennett: Give us the whole history. You can use the documents.

The Witness: Well, we, naturally, in an organization of this kind, where we have got humans to contend with, some of them are a little more selfish than others.

Examiner Bennett: Well, make it as short as you can.

8586 The Witness: We tried to make up an agreement that that would be satisfactory to the Guild and still would protect our province as retailers and that was why we made a few of these exceptions.

By Mr. Haycraft.

Q. Which one of the documents are you referring to? A. This first here.

Examiner Bennett: That appeared in 601?

The Witness: 601-A and B. The exceptions were the price lines. That was really the only exceptions in the agreement that was submitted.

Examiner Bennett: That was submitted to the Guild?

The Witness: That was submitted to the Guild and rejected.

Mr. Albert: At what time, Mr. Bjorkman?

The Witness: Oh, June, or, no, about the first of July, 1935, so then we immediately drew up another. This was rejected, too.

Examiner Bennett: And that is what number? 8588
That is illustrating what number?

The Witness: 672-A.

Examiner Bennett: And that was submitted and rejected?

The Witness: No, that was rejected also.

By Mr. Haycraft.

Q. A to D? A. A, B, C, D, that was rejected also.

Examiner Bennett: Then what did you do?

The Witness: Then we did proceed to——

Mr. Haycraft: Let us get the date of this last one. When was that submitted and when was it rejected?

Mr. Feldman: Approximately? 8589

The Witness: This was in July, 1935, and then in late August. This is the 26th day of August, we drew up an agreement which was satisfactory to the F.O.G.A., and this was the agreement.

By Mr. Haycraft.

Q. 695? A. That is right.

Q. Now, between July, when 672 A, B, C, D, was submitted to the Guild, and August 26, 1935, when 695-A to

E were submitted to the Guild, what was going on with respect to 672-A to D? A. Well, that was accepted temporarily, I believe here, was it not?

Q. That is what the correspondence shows. A. That was my recollection.

Examiner Bennett: Just testify.

The Witness: That was accepted, but with reservations and exceptions.

By Examiner Bennett.

Q. And that is the whole story as you know it? A. Yes.

8591 Q. I want you to answer one question. Was this first document drawn, that is, I am referring to 671-A and B, was this the first document drawn relating to co-operation with the Guild? A. Yes, sir.

Q. Co-operation by the Minneapolis— A. Yes, sir.

Q. And when was it first drawn? A. May; late in May or June, 1935.

Q. And during all the time from 1932 to that time when you were in constant communication with the Guild, according to the record here, you had no formal agreement? A. No.

Examiner Bennett: I see; all right.

Mr. Haycraft: That concludes the direct examination of Mr. Bjorkman.

8592 Examiner Bennett: Do you want to go ahead with cross-examination?

Mr. Albert: No further questions, Mr. Haycraft?

Mr. Haycraft: No.

Mr. Albert: Is the Commission going to put in letters of that kind without attempting to explain them in any way? Your Honor, we have over an hundred and possibly 200, willy-nilly.

Examiner Bennett: The Commission has stated it has rested with this witness and it is the end of

its examination. You can go ahead and cross-examine.

Mr. Haycraft: It is the contention, Mr. Examiner, that the documentary evidence that has gone in——

Examiner Bennett: You can do as you think best, but there is no need for filling the record up with a lecture.

Mr. Haycraft: I simply wish to say, Mr. Examiner, it is the contention of counsel for the Commission that the documents that have gone into evidence speak for themselves and all explanations necessary to their contents that are necessary have been made. 8594

Examiner Bennett: It is not necessary to go into any controversy here. Let each one handle his own side of the case and if he does not handle it right, it is too bad for him.

Mr. Albert: May I ask, in the light of the fact it is 4.29, that we adjourn?

Examiner Bennett: That is perfectly all right. You may adjourn until to-morrow at 10 o'clock.

(Whereupon, at 4.30 o'clock P. M., August 31st, 1936, an adjournment was taken until 10 o'clock A. M., September 1st, 1936.)

8595

8596 *Roy H. Bjorkman—For Commission—Direct.*

Room 307, Federal Building,
Minneapolis, Minnesota,
September 1st, 1936.

Met, pursuant to adjournment, 10 o'clock, A. M., C.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearance.)

PROCEEDINGS.

8597 Examiner Bennett: Be in order, gentlemen, please. This is a reconvening of the hearing from Monday, August 31st, 1936.

ROY H. BJORKMAN thereupon resumed the stand as a witness for the Commission, and, having previously been sworn, testified further as follows:

Mr. Haycraft: Before Mr. Bjorkman is examined, I should like to have him identify some exhibits that are already in the record, put in in New York City. It won't take but about five minutes.

Mr. Albert: Well, now, if it please the Court, we have here a record of some 300 pages without the exhibits, 200 pages of which are questions by Mr.
8598 Haycraft. "Did you receive this?" "Did you mail this?" and questions of that kind.

Now, I object to our having to pay or being by force of circumstances forced to pay for a record which we understood from Mr. Haycraft's opening statement here has been gone into in New York. I do not see any necessity of piling up the costs of this proceeding in question. They have gone thus far. If they are in in New York, they are in.

Mr. Haycraft: Of course, some exhibits were identified by Mr. Post in New York City as having been sent or received by him. 8599

Examiner Bennett: Is there any further necessity for identification? If they were received before, they were received.

Mr. Haycraft: Some of them were sent by him and I want to show that this witness received them.

Mr. Keller: He admitted sending them.

Examiner Bennett: Did Mr. Post say he sent them?

Mr. Haycraft: Yes. Very well, I simply wanted to make sure. I do not want to be met with the objection later on, or the contention later on that these exhibits were not received. 8600

Examiner Bennett: I think they are sufficiently offered in evidence.

Mr. Haycraft: Very well.

Mr. Albert: Now, if it please the Court, owing to the difficulties which the stenographic staff met in trying to keep up with all of these exhibits, that went in yesterday, the respondent was not furnished as customary with a copy of the record containing copies of these exhibits and it was impossible to see them last night, and I ask the indulgence of the Court for a few moments while I compare three or four exhibits now that we could not get last night, which are of vital importance. 8601

Examiner Bennett: Very well, a short recess.

(Thereupon a short recess was taken.)

Mr. Albert: We are ready to proceed up to a point.

Examiner Bennett: You may proceed.

Cross-examination by Mr. Albert.

Q. I show you Commission's Exhibit No. 601-A, and ask you when that was sent to the Fashion Originators Guild? A. You asked if it was sent?

Q. When it was sent? A. I cannot recall exactly. We did not keep——

Q. Approximately? A. Approximately, I think it was in May, 1935, just a year ago.

Q. Now, was that first declaration of co-operation or agreement, whichever word you wish to use, that the Minneapolis merchants sent to the Fashion Originators
8603 Guild? A. It is my recollection it was.

Q. Now, I show you a letter dated February 1st, 1933, on the stationery of Roy H. Bjorkman, and ask you if that refreshes your recollection as to which was the first declaration that was sent? A. Yes, sir, I recall this now.

Examiner Bennett: That is in the record?

Mr. Albert: Yes.

Mr. Haycraft: What is the number of the exhibit?

Mr. Albert: 602.

By Mr. Albert.

Q. So that, Mr. Bjorkman, when, in response to the gentle leading of Mr. Haycraft, you stated that Commis-
8604 sion's Exhibit No. 601-A was the first agreement that had been sent, you overlooked Commission's Exhibit No. 602?

Mr. Haycraft: Don't answer that question. Ask that it be stricken as not in conformance with the record. There was no leading by Mr. Haycraft, gentle or otherwise.

By Mr. Albert:

Q. Now, Mr. Bjorkman, you have testified that Commission's Exhibit No. 601-A and B was a draft of the proposed

agreement which had not been accepted by the Fashion Originators Guild, is that so? A. Yes.

Q. And you also testified that Commission's Exhibit No. 672-A to whatever it is, was also sent to the Fashion Originators Guild and was temporarily accepted by the Guild pending the redrafting of that agreement, is that not so? A. Yes, sir.

(Thereupon papers were marked Respondents' Exhibits 58-A to D for Identification.)

Examiner Bennett: The next Respondents' number is what?

The Reporter: 58-A to D. 8606

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 58-A, 58-B, 58-C and 58-D and ask you if this refreshes your recollection as to the chronological order of the instruments that were prepared. Please answer "Yes" or "No"? A. May I have that question again? You say "chronological order." Do you mean this was—what number this was?

Q. No. Yes, with relation to the others? A. All right.

Q. Will you just answer "Yes" or "No," please? A. How can I answer "Yes" or "No" when you ask for chronological order?

Q. No, no. I say, does it refresh your recollection as to the chronological order? A. Yes, yes. 8607

Q. Now, isn't it so that Commission's Exhibit 601-A was first prepared, that thereafter Respondents' Exhibit No. 58-A to D was prepared and temporarily accepted?. A. That is right.

Q. That thereafter Commission's Exhibit No. 672-A was prepared and completely rejected? A. That is right.

Q. And thereafter Commission's Exhibit No. 695 was finally agreed upon between the parties? A. That is right.

Q. So that——

Examiner Bennett: It was finally rejected?

Mr. Albert: Yes.

Examiner Bennett: In the meantime, while 672 was being submitted and considered——

Mr. Albert: Yes. If your Honor will read this. It is purely a style piracy co-operation.

Examiner Bennett: Yes, I see.

Mr. Albert: And 635 which is the agreement that was finally signed?

Examiner Bennett: Yes.

Mr. Albert: Is perhaps more inclusive with respect to the agreement between the parties.

8609 Examiner Bennett: I see, but this remained in force until its rejection.

Mr. Albert: Temporarily. In answer to your Honor's question, a further explanation of Respondents' Exhibit No. 58 was——

Mr. Haycraft: Just a minute. I object to referring to that unless it is in evidence. I want to know something about it.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 58-A and 58-B, C and D.

Mr. Haycraft: Would you mind handing it to me?

Mr. Albert: No. I am sorry.

(The paper writings referred were handed to Mr. Haycraft.)

8610 Mr. Haycraft: I would like to ask the witness a question.

Examiner Bennett: All right. As a basis for an objection?

Mr. Haycraft: Yes.

Redirect examination by Mr. Haycraft.

Q. Is it your testimony that Respondents' Exhibit No. 58——

Mr. Haycraft: By the way, Mr. Examiner, I think we ought to have separate exhibit numbers on these. I see they have got "A, B, C, on three different documents.

Mr. Albert: They all refer to the same documents, your Honor.

Mr. Haycraft: I know, but they are all three different documents. They ought to be 58, 59 and 60. Two of the documents are letters and one document is an agreement.

Examiner Bennett: Yes, we will fix that. I think we will have them separately numbered.

(The paper writings heretofore marked as Respondents' Exhibits 58-A, B, C and D and received in evidence were renumbered as Respondents' Exhibits 58, 59 and 60-A and 60-B.) 8612

By Mr. Haycraft.

Q. Is it your testimony that Respondents' Exhibit No. 60-A and B was signed by members of the Minneapolis Guild and submitted to the Fashion Originators Guild prior to the submitting of Commission's Exhibit No. 672-A, B, C and D? A. No, sir, no.

Q. What is your testimony in that respect? A. I was confused yesterday, Mr. Haycraft, because I forgot the first agreement we signed, which was—I have refreshed my memory this morning. February 1st, 1933, which was really a declaration of co-operation. I mean, there was no agreement, you see? So that would be the first (indicating). 8613

Q. 601-A? A. The second rejected. This proposed. This is third (indicating).

Q. 672-A to C? A. That is right.

Q. Rejected? A. Rejected.

Q. All right. A. And this was accepted temporarily.

Q. 60-A and B? A. Yes, sir.

Mr. Haycraft: Then with that explanation of the witness I have no objection.

Examiner Bennett: Received.

Mr. Albert: If your Honor please, just a moment. Mr. Haycraft has again succeeded in disturbing the order or changing the order of these documents.

Mr. Haycraft. May I show you something off the record here?

Mr. Albert: Yes.

(Thereupon a discussion was had off the record.)

8615 Examiner Bennett: We will resume therefore, then.

Recross-examination by Mr. Albert.

Q. Now, Mr. Bjorkman, regardless of the chronological order of Commission's Exhibits 601, 672 and Respondents' Exhibit No. 59 and Respondents' Exhibits 60-A and B, is the agreement or declaration which was temporarily accepted pending the drafting of Commission's Exhibit No. 695? A. I really can't be sure of either of those two, Mr. Albert. Just as I have said here, there has been such a mass of confusion here that I think from the correspondence here in the letter that it was. I mean, that this letter here, which I sent here, because I do recall that Mr. Gerner was out of the city and this was sent down with Abe

8616 Shapiro. Then I believe that was one that was temporarily accepted due to the fact that they had wired us that we couldn't see the lines and all of that unless this was in, so we did rush the thing through. That was the reason, I believe, that Mr. Hyman and his committee did draw this up in the short manner here so we were able to buy goods.

Q. In order that there would be on record some declaration of co-operation by the Minneapolis Guild, pending a final agreement?

Mr. Haycraft: I object to that question as not being a summary of the witness' testimony.

Mr. Albert: I am asking him the question, your Honor, I am not summarizing.

Mr. Haycraft: I object to the form of the question. No foundation has been laid for it. He can't speak for the Guild.

Examiner Bennett: I will let him answer, if he can.

The Witness: May I have the question?

(Question was read.)

The Witness: Of course, it seems to me that letter of this here showed our spirit of co-operation. 8618
We tried to get together with them. To my best knowledge at the present time that is the record now that was temporarily accepted.

Mr. Albert: Indicating Respondents' Exhibit No. 60. May we go off the record for a moment?

Examiner Bennett: Yes.

(Thereupon a discussion was had off the record.)

Mr. Albert: You have no objection to photostatic copies of this going into evidence and being handed back the originals?

Mr. Haycraft: No.

By Mr. Albert.

Q. Mr. Bjorkman, perhaps it might help us if you can 8619
ell us who drafted these documents; do you know? A. Well, there were various—there were various committees. The first committee in this Exhibit No. 601-A was Mr. Dayn Donovan, Mr. Hyman and myself. Now, wait a minute. Just excuse me. Will you please strike that from the record? The first committee was Mr. Larson and Mr. Perry Snyder and myself, that drafted the short—or this 601-A.

Q. You mean by that that you dictated it? A. Oh, no.

Q. Who dictated it? A. Well, that was all worked out together in the committee meetings between Mr. Larson, Mr. Snyder and I.

Q. Yes. The substance of it? A. Mr. Larson's office. It was all brought at that time. In fact, I think that Mr. Larson dictated it to his secretary and then it was approved by the meeting of the Guild.

Q. What about 672-A? A. 672-A, to my recollection, was drafted by a committee of Mr. Donovan, Mr. Hyman —now, wait a minute. That is wrong. By Mr. Snyder, Mr. Donovan, Mr. Hyman and myself.

8621 Q. That is in regards to substance? A. Yes.

Q. Do you remember who it was that actually prepared and dictated it? A. I think Mr. Hyman.

Q. Dictated it? A. I am not certain, but I believe so.

Q. Who was the committee on Commission's Exhibit No. 695, which is the final draft? A. Well, I think this was accepted. This is your regulation form of contract here, this one.

Q. You just copied that off from the form of contract; is that it? A. I think so, yes.

Q. All right. Now, Mr. Bjorkman, I show you Commission's Exhibit No. 602. I call your attention to the following language: "The following members of the Minneapolis Ready-to-Wear Retailers' Association are sure that they are in sympathy with the manufacturers' difficulties and problems especially pertaining to the piracy of designs. Would you mind explaining what those difficulties and problems were at that time? A. Well, I think I can explain that most simply. It is expensive for a manufacturer that makes a line or collection of dresses retailing, we will say, from $55 to $200; that pays considerable money sending a staff of designers to Europe, purchasing expensive materials, trimmings and so on. After they are designed, they will then be copied for one-half

8622

one-third, or one-quarter of the price, and be absolutely reproduced as far as detail is concerned and the color or scheme. That was really, I think, their main idea.

Q. When you say that they were being reproduced or copied, what do you mean by that? A. Just that. You have a very nice suit on this morning, Mr. Albert. In fact, we can take the same thing over here to a tailor and probably have it reproduced as far as the coloring, the style and design, but it wouldn't have the workmanship of that, the fabric. To all intents and purposes it will be the same suit until it was worn a little while.

Q. What is it that you were referring to in that letter by using the general term "style piracy"? A. Just that. The 8624
stealing of ideas.

Q. Do you mean that these manufacturers had original ideas in the design of their dresses? A. Originally in this respect? In my philosophy there is nothing original.

Q. Yes. A. I mean, that we take an idea here, take an idea there, and we take our own creative ability and we put our own personality into it, and that is ours. But, however, the same ideas have been elsewhere through the pages of history. These manufacturers go to Europe and they will buy models. They will get an idea from a color. They get an idea from a cuff, a belt, or a skirt, or a color, a trimming. And that will be incorporated into their own ingenuity, and a new gown is born; and while it is his own personality and idea, there are a lot of other fellows' ideas involved in it. But to all intents and purposes it is that 8625
man's creation because it is different until some other man sees it and then he will say, "I will build the same thing exactly only that I will make it cheaper."

Q. Do you mean that the creative genius, if you will, of the designers of these better manufacturers evolve creations which are a combination perhaps of old ideas, but which in the combination are entirely new?

Mr. Haycraft: Objected to. I object to the use of the language "creative ideas."

Mr. Albert: That is a fine objection, if it please the Court.

Examiner Bennett: Read the question, please.

(The question was read.)

Mr. Haycraft: I also object to it as not being within the issues of the case.

Mr. Albert: If it is not within the issues of the case I ask that all of the letters that have been put in through this witness be stricken from the record, and we won't have anything to ask this wit-

8627 ness about.

Mr. Haycraft: I have no objection, Mr. Examiner, to this witness testifying as to his understanding of the terms as they were used in these exhibits, but I object to going farther than that and getting this witness to testify as to what the manufacturers themselves may do, and so on.

Mr. Albert: Now, if it please the Court, this witness has been tendered an exhibit, and letters upon letters have been tendered as to official pronouncements and the official opinions and the official actions of the Minneapolis Retail Guild, and as a result of the whole thing, the foundation has been laid by Mr. Haycraft in putting in these letters. I certainly believe that I can go at least so

8628 far as to show the background of what Mr. Haycraft was referring to in putting these letters in evidence.

By Examiner Bennett.

Q. Mr. Bjorkman, have you ever manufactured dresses? A. Yes. We have a dressmaking shop; we have a tailor shop; and we have a fur shop.

Q. Yes. A. But not in the manufacturing end. I mean, it isn't—it is a retail establishment.

Q. Have you ever made what you call original designs? A. Well, they have been—we will say that they have been different.

Q. What? A. We will say that they have been different.

Q. What do you mean by that? A. Well, here is a dress. You like the top of it, we will say, and you like the skirt of another; you like the fabric of another gown.

Q. Yes. A. You like the color of another gown.

Q. Have you ever been in the business commercially as a manufacturer? A. No. No. 8630

Q. Making—. A. No.

Q. —dresses? A. No.

Q. In large quantities? A. No.

Q. And studying them in volume? A. No. I haven't.

Examiner Bennett: I don't believe that this witness is qualified to discuss the manufacturers' problems. He can discuss the retailers' problems to a fair-the-well, and I will hear him on consumers' problems, but I think that you have very much better sources of evidence as to manufacturers' problems, and I wish that you would get that information from the manufacturers, not from retailers. I will therefore sustain the objection, if that question is just as I remember it. You might read 8631 the question.

(The question was read.)

Examiner Bennett: Yes. Well, I think I will sustain an objection to going into that from a manufacturers' standpoint. I am perfectly willing to let him go into it from a retail standpoint.

By Mr. Albert.

Q. Now, Mr. Bjorkman, at the time in question, was style piracy a problem that necessitated action by retailers? A. Yes, sir.

Mr. Haycraft: Just a moment. I object to that question as not being proper cross-examination, because the exhibit refers to manufacturers' problems.

Examiner Bennett: Well, I will let him go into that. I think if we can get any light on that, it is all right.

8633 Mr. Albert: Thank you, your Honor.

By Mr. Albert.

Q. What was that problem, Mr. Bjorkman? A. Well, too—it is my opinion that the entire field of womanhood was losing all confidence in the ladies' ready-to-wear business.

Q. Would you mind elaborating on that? A. Well, a design would be brought over from Europe that was an exact original design by some French couturiere, and it would be purchased in every price line from $6.75 up to, well, we will say Hattie Carnegie, so that same design and color as the original would be shown all the way from $10 retail to $195 retail; and so, frankly, women were commencing to lose confidence in the business. People she
8634 will run into—she would buy a dress for $100, and she will see it is $75, $60, $25, $10 and down. And to me it was the end of the industry from a profitable standpoint both from the retail and the wholesale standpoint.

Q. Specifically, Mr. Bjorkman, from your experience, what was the actual result in a store of its having on hand an original design or a new interpretation of the fashion selling at let us say $50 and a copy of that interpretation being sold by a competitor for $15 or less.

Mr. Haycraft: Just a moment. I object to that question, Mr. Examiner. It is not a proper question.

Examiner Bennett: I will overrule the objection.

Mr. Haycraft: Irrelevant.

The Witness: Well, it means nothing but losses and mark-downs, that is all.

By Mr. Albert.

Q. That is, you couldn't keep on selling your dress for that price; could you? A. That is right.

Q. And you had to bring down the price of your dress 8636
with resultant losses; isn't that right? A. Yes, that is right.

Q. And as a matter of fact that practice precluded you from reording that dress; isn't that so? A. That is right.

Q. So that you lost the sale value of the dress in being unable to reorder it, and the manufacturer lost the value of his creation in being unable to sell you any further dresses at that price; isn't that so? A. That is right.

Q. Now, with the customer angle, Mr. Bjorkman, what was the reaction of your customers? Can you give us more specifically than the mere fact that womanhood was losing faith in American dressmakers?

Mr. Haycraft: The same objection. It has nothing to do with the issues in this case and it is not 8637
proper cross-examination.

Examiner Bennett: Go ahead.

The Witness: Well, are you a married man?

Mr. Albert: I am sorry, I am not. My worry is in combating Mr. Haycraft.

The Witness: Ha, ha. Any man that is a married man, that has had a wife gone out and buy a gown, I don't care whether it has been $10 or a

hundred dollars, when she comes home and she has seen it over across the street for less, or she is going out to a party and she has run on to three or four of them, I think he will know just exactly how women feel in that regard. Every woman would love to feel that she is an individual personality and she doesn't care to see anybody else in a gown like she has. I mean, fundamentally——

By Mr. Albert.

Q. You refer to style? A. Style and individuality. It must be different. Now, with a man it is different. We
8639 all look more alike as far as our suits and clothes are concerned, but when a woman goes out to a party here, if you want to ruin her day for her, you just want to have two or three in the same party in the identical dress.

Q. Have you any knowledge specifically as to the reactions of a woman when she has purchased, let us say, an original design from your store and then sees a copy of it at a lower price in another store? A. Well, it means that if she has already purchased the gown, most of the time we have to refund the difference, or we have to refund the whole thing. That has happened many, many times.

Q. Many, many times? A. Many times, yes.

Q. Now, Mr. Bjorkman, I notice here the signatures of a number of concerns of Minneapolis. I am referring to
8640 Commission's Exhibit No. 602. Were representatives of all of these firms at a meeting prior to signing Commission's Exhibit No. 602? A. That is right.

Q. Who was there from B. A. Atkinson, do you recall? A. I believe it was Mr. Hyman.

Q. May I presume that you were there on behalf of— A. Mr. Hyman and Mr. Weingarten, I believe, were both there.

Q. Were you there on behalf of Bjorkman? A. That is right.

Q. Who was there on behalf of the Dayton Company? A. Mr. Larson and Mr. Donovan, I believe.

Q. Who was there on behalf of Donaldson Company? A. I am sorry. I can't recall.

Q. Do you recall who was there on behalf of Powers? A. Mr. Snyder.

Q. Mr. Snyder. So everybody had a representative there? A. Yes, sir.

Q. And the matter was completely thrashed out; was it? A. Yes.

Q. And was the consensus of opinion, or did everybody unanimously agree that style piracy was an evil and that they would like to do something to eliminate it? A. Yes. 8642

Mr. Haycraft: Object.

Examiner Bennett: I will sustain an objection to that.

By Mr. Albert.

Q. Was there any dissent of any kind of the signing of Commission's Exhibit No. 602? A. Not of the phraseology involved therein.

Q. I show you Commission's Exhibit No. 653-A and B and ask you whether or not the signatories to that letter agreed to this paragraph in the letter: "We shall be very happy indeed to co-operate with the efforts of the Fashion Originators Guild in every way to further the elimination of evils of the entire industry and to raise the industry to 8643 a much higher level of ethics with a decided improvement in profits."

Mr. Haycraft: That is objected to. The exhibit speaks for itself.

Examiner Bennett: What?

The Witness: What is the question?

By Mr. Albert.

Q. Whether or not everybody agreed to that statement? A. Yes.

Mr. Haycraft: Just a moment. I have an objection pending. All the signatures are attached to it. I assume that they agreed to it, why go into it?

Examiner Bennett: The signatures of the people who signed it are indicated there, aren't they?

Mr. Albert: Yes, sir.

Examiner Bennett: The document speaks for itself.

8645 Mr. Albert: It is merely this, your Honor. The exhibit was signed by Mr. Bjorkman. There was merely an attached statement as to who was present at the meeting.

Mr. Haycraft: He testified. He explained the matter fully.

Examiner Bennett: I don't see that we are getting anywhere by questioning whether those people were sincere in putting their signatures on the paper. Unless you have something else in mind——

By Mr. Albert.

Q. Was the consensus or the unanimous opinion of

8646 those present, Mr. Bjorkman, that copying of interpretations of original designs was an unethical practice in the industry?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection.

Mr. Albert: I don't get your Honor's ruling.

Examiner Bennett: I will sustain the objection. I think you are asking him too much. I don't know how any man could conscientiously answer that kind of a question.

By Mr. Albert.

Q. Annexed to Commission's Exhibit No. 653-A and B, Mr. Bjorkman, is Commission's Exhibit No. 653-C, in which you list certain retailers in Minneapolis as being present at the meeting. Did any of them, do you know or can recall, dissent from the proposition that the copying of styles was an unethical practice in the industry?

Mr. Haycraft: That is objected to as irrelevant, immaterial. The document speaks for itself.

Examiner Bennett: I will sustain the objection to that.

Mr. Albert: Exception. 8648

By Mr. Albert.

Q. Mr. Bjorkman, I believe you testified that a certain questionnaire had been sent out by the Fashion Originators Guild in respect to the price lines to be included in the Guild program? A. Yes, sir.

Q. Did you receive such a questionnaire? A. We received a questionnaire which was——

Q. I believe you have it in your file; have you not? A. Yes, we have.

Q. May I ask you to produce it, please? A. I don't know whether I took it back yesterday or whether it was here this morning or not.

Q. I show you Commission's Exhibit No. 623-A and B for Identification and ask you if that is the questionnaire that is referred to? A. Yes, sir. 8649

Mr. Albert: I offer that in evidence.

Mr. Haycraft: I object to it as irrelevant and immaterial, no probative value in this case.

Examiner Bennett: Let's see what it is.

Mr. Haycraft: The witness has testified on direct examination that this was something that he

made up himself, something which was not sent to the respondent. It has no bearing on the issues in the case.

Examiner Bennett: Just what was done with it?

The Witness: Pardon?

Examiner Bennett. Just what was done with this paper?

The Witness: That was sent out to all the retailers.

Examiner Bennett: By whom?

The Witness: By the Fashion Originators

8651 Guild.

Examiner Bennett: That is of America?

The Witness: Yes.

Examiner Bennett: Sent out to you?

The Witness: Yes, personally and they were after it for the feelings we had in regard to those questions in point. We underlined them but we just neglected to send it in. That was all.

Examiner Bennett: You never did respond to it?

The Witness: No; we filled it out, but we didn't send it in. Those were our personal papers.

Examiner Bennett: What is your purpose in offering it. It doesn't contradict anything that is in the record.

8652

Mr. Albert: It is an endeavor to show——

Examiner Bennett: It isn't binding even on this body of people who for some reason didn't send it in. Is it your object to get that matter in the record as binding or showing the sentiment of those people? I think that it doesn't do it.

Mr. Albert: If it please the Court, this particular questionnaire was sent out to all retailers. I believe it was also the subject of a conference which

was addressed by Mr. Post and the subject matter of this was taken up at that meeting.

Mr. Haycraft: Oh, no. I object. There is no foundation for that statement.

Mr. Albert: I said, "I believe."

Mr. Haycraft: I know. I object to that.

Examiner Bennett: Yes. Well, I will sustain an objection at this stage of the game. I don't think it is qualified.

By Mr. Albert.

Q. Do you know whether or not, Mr. Bjorkman, the Minneapolis Guild as such sent it in signed? A. We did not. 8654

Q. The questionnaire? A. We did not.

Q. Do you recall, Mr. Bjorkman, whether or not at the first meeting that was addressed by Mr. Post, at which Mr. Golby, I think, was present, these questions were not read by Mr. Post? A. They were.

Q. They were read? A. Yes.

Q. Do you recall whether or not a discussion was had with respect to them? A. Beg your pardon?

Q. Do you recall whether or not a discussion was had with respect to them?

Mr. Haycraft: I object to any further examination. It is not a proper examination. This exhibit that he is talking about is not the—— 8655

Mr. Albert: He has testified to it, if it please your Honor.

Mr. Haycraft: I know, but that doesn't make any difference. That doesn't lay a foundation for this line of inquiry.

Examiner Bennett: Go ahead, you may answer.

The Witness: This was laying a foundation for this first agreement here on price lines. That was

8656

the main reason for Mr. Post being here. And these were the questions we as a group decided we didn't care to answer those questions as a group, but we have shown our sentiments in this agreement here, which is as far as the price lines are concerned.

Mr. Haycraft: By agreement, you mean Commission's Exhibit No. 601, 672?

The Witness: Well, the first was 601-A.

Mr. Haycraft: And 672?

Mr. Feldman: It was that proposed agreement.

8657 The Witness: Yes, that is right.

CHARLES J. LARSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Charles J. Larson.

Examiner Bennett: Thank you.

The Witness: L-a-r-s-o-n.

Direct examination by Mr. Haycraft.

Q. You have stated your full name, Mr. Larson? A.

8658 Yes.

Q. Where do you live? A. At 4831 Penn Avenue, south.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. Retail merchant—merchandising.

Q. With what firm are you associated? A. With the Dayton Company.

Q. Do you occupy an official position with the Dayton Company? A. Yes, sir; I am the general merchandise manager.

Q. Are you also a director? A. Yes, sir.

Q. As general merchandise manager what are your duties? A. Well, I am responsible for all of the merchandise activities in our business. I supervise the work of the divisional merchandise managers, who report directly to me.

Q. And under you do you have a divisional merchandise manager over at the ladies' ready-to-wear department? A. Yes, we have one for the upstairs division, and one for the basement division.

Q. Who are they? A. Mr. Dayne Donovan is a divisional manager in the upstairs store.

Mr. Albert: Sorry, I didn't get that name. 8660

The Witness: Dayne Donovan, D-a-y-n. And Mr. F. J. Tupa is the divisional merchandise manager in charge of apparel in the basement store.

By Mr. Haycraft.

Q. How long have you occupied your present position, Mr. Larson? A. Ten years.

Q. How long has Mr. Dayn Donovan occupied his present position, approximately? A. About eight years.

Q. And Mr. Tupa? A. I would say about five years. I couldn't say exactly, offhand.

Q. Before you were general merchandise manager, what did you do? A. I was the general manager of the basement store. 8661

Q. For how long a period of time? A. Seven years.

Q. What was your previous experience? A. Before that I was—I had charge of the physical plant.

Q. At Dayton's? A. Yes. All of this pertains to my employment there. It is covering a period of thirty-two years.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Well, I have heard of them, naturally.

8662 *Charles J. Larson—For Commission—Direct.*

Q. Do you recall when you first heard of the Fashion Originators Guild of America, Inc.? A. To the best of my recollection, late in the fall of 1932.

Q. How did they come to your attention, at that time? Just how did the Guild come to your attention at that time? A. I—this is a long time ago. I would say the first time that it came to my notice was when a meeting was called, to the best of my recollection. Mr. Bjorkman telephoned and asked us to have a representative at a meeting to discuss co-operation with the F.O.G.A.

Q. That was in the fall of 1932, you say? A. Well, I would say it was late in the winter of 1932.

8663 Q. I show you Commission's Exhibit No. 592, and ask if that will refresh your recollection as to the time of that meeting, also Commission's Exhibit No. 593? A. Yes.

Q. Having had your recollection refreshed, would you say the meeting was—when would you say the meeting was that you had? A. I would say it was late in December, 1932.

Q. Now, do you recall what transpired at that meeting? A. Yes, in a general way.

Q. Can you testify as to what took place? A. Well, the question of the F.O.G.A. came up; it was discussed, its aims and how it would work out in our business.

Q. Who brought the matter to your attention? A. Mr. Roy Bjorkman.

8664 Q. What did he say about it? A. Well, my recollection is that Mr. Bjorkman felt that it was something that might be of help to the people in the retailing of garments.

Q. What did he say were the aims? A. Well, frankly, I don't remember that they particularly discussed the aims. The question of their work in eliminating copying of fine garments in the lower-price lines, that was—that subject was discussed.

Q. Was the term "style piracy" used? A. Frankly, I don't remember.

8665

Q. Are you familiar with the term "style piracy"? A. I have heard a great deal of it in the last two or three years.

Q. Have you heard of it— A. I had never heard the expression used before.

Q. Before when? A. Before—well, I would say before the summer of 1933—the spring season, rather, of 1933, I had never heard the expression used before.

Q. Had you heard the expression "pirating of designs"? A. I had never heard it; that is, to the best of my recollection, I never heard of such a thing.

Q. Well, in what way did Mr. Bjorkman present the plan of the Guild? A. I wouldn't say that Mr. Bjorkman particularly presented it. They were there. We were there as representatives from the different stores to discuss it, and I don't remember that Mr. Bjorkman particularly presented it.

8666

Q. In calling your attention to Commission's Exhibit No. 593, does it refresh your recollection as to what was discussed?

Mr. Albert: If it please the Court, may I at this time note my objection to counsel for the Commission attempting to obtain from this witness what Mr. Bjorkman said at this conference, when Mr. Bjorkman himself was on the witness stand and was perfectly capable of testifying as to what he said and what everybody else said.

8667

By Mr. Haycraft.

Q. Have you refreshed your recollection? Does this refresh your recollection? A. No, frankly, I don't remember.

Q. Was there any other meeting of the Minneapolis retailers at which this matter was discussed? A. Yes, there were several meetings. I couldn't say how many.

Q. At about what time? A. Why, to the best of my memory there were meetings called, several, between, we will say, Christmas time and the latter part of June in 1933.

Mr. Albert: 1934 you mean. No, it is 1933. That is right.

The Witness: 1933.

Mr. Albert: That is right. I am sorry.

By Mr. Haycraft.

Q. I show you Commission's Exhibits No. 604 and 605 and ask you if you can identify them? A. Yes; I remember the letters.

8669

Q. Did you prepare either or both of them? A. I dictated both of them.

Q. What did you do with them after you dictated them? A. We sent a copy of this to Mr. Bjorkman.

Q. Commission's Exhibit No. 605? A. Yes.

Q. Commission's Exhibit No. 605? A. That is 605 (indicating), and I enclosed Commission's Exhibit No. 604 as an explanatory letter to Mr. Bjorkman.

Q. What was the occasion of preparing these exhibits?

Mr. Albert: That is objected to, if it please the Court, as immaterial. The exhibit is in evidence and speaks for itself.

Mr. Bennett: Well, overruled.

8670

Mr. Albert: Exception.

The Witness: May I have that question again, please?

(The question was read.)

The Witness: The Fashion Originators Guild through their secretary, I believe at that time it was Mr. Golby, had communicated with Mr. Bjorkman as chairman of the Minneapolis group, saying that the group of manufacturers who at that time

were members of the Guild wanted a statement from the Minneapolis group and from its individual members as to their agreement or sympathy with what they were trying to do and the penalty for not filing such an agreement would be that they could not or would not be allowed to view their fall lines.

Q. This was in January, 1933, Mr. Larson? Was that in January, 1933? A. That was in January, 1933.

Q. I show you Commission's Exhibit No. 602, and ask if you can identify that? A. Yes, I remember this form.

Q. Did you sign the original or did you authorize Mr. 8672
Bjorkman to sign the original for you? A. My recollection is that the earlier forms of that agreement were sent in to Mr. Golby to see whether or not such a statement would be satisfactory to them. To the best of my recollection, the earlier statements were not signed.

Mr. Albert: Now, if it please the Court, I ask that the answer of the witness be stricken as not responsive. He was asked whether or not he authorized that letter to be signed, not what is happening with other letters or whether or not they had first been sent to New York for approval. I also object to the question in its entirety upon the ground that Mr. Bjorkman, who has previously testified that Mr. Larson saw the letter and that Mr. 8673
Bjorkman was authorized by Mr. Larson to send the letter in.

Examiner Bennett: Overruled.

Mr. Albert: May I have a ruling on my motion to strike the answer as not responsive?

Examiner Bennett: I have ruled on it. Denied.

Mr. Albert: Exception.

Mr. Haycraft: Mark this the next exhibit number.

(The paper referred to was marked Commission's Exhibit 696 for Identification.)

Examiner Bennett: Are these additional exhibits?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 696——

Mr. Haycraft: Mark those.

(The papers referred to were marked Commission's Exhibits 697, 698-A and B, 699-A and B and
8675 700 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit Nos. 696 to 700, inclusive, and ask you if you can identify those papers.

Mr. Albert: What is that number?

The Witness: Yes, sir, I remember that communication.

By Mr. Haycraft.

Q. Did you receive it? Did it come to your desk? A. It came to my desk. It was addressed to Mr. Dayton.

Mr. Haycraft: I offer the exhibits in evidence
8676 I might say, Mr. Examiner, this exhibit dated June 21, 1933, Commission's Exhibit No. 696, is signed by J. M. Riley of the A.M.C., Associated Merchandising Corporation. I think I probably had better describe it a little better.

Mr. Albert: Wait a minute. I will give it to you in a moment. Mr. Haycraft, Commission's Exhibit No. 698-A and B, and 699-A and B, and Ex-

hibit No. 700 are already in evidence as Commission's Exhibits what—?

Mr. Keller: 99, and also Commission's Exhibits Nos. 3-A, B, C, D and E.

Mr. Albert: Do you wish to refer to them by those numbers? I don't see the point in putting in these documents again. I have no objection to the admission in evidence of Commission's Exhibits Nos. 696 and 697.

Mr. Haycraft: Well, with the understanding, Mr. Examiner, that Commission's Exhibit No. 698-A and B, and 699-A and B are in evidence as Commission's Exhibit No. 99, and Commission's 8678
Exhibit No. 700 is in evidence as Commission's Exhibit 3——

Mr. Keller: No, Commission's Exhibit—yes, 3-A.

Mr. Haycraft: —3-A, I will not pass the offer of those exhibits, but will——

Mr. Albert: No objection——

Mr. Haycraft: I understand that there is no objection to Exhibits Nos. 696 and 697. I assume that those will be received.

Examiner Bennett: All right.

(The documents referred to, heretofore marked for Identification Commission's Exhibits Nos. 696 and 697, and received in evidence.)

By Mr. Haycraft. 8679

Q. Mr. Larson, did you attend any of the meetings of the merchandise managers referred to in Commission's Exhibit No. 696 and the meeting referred to in Commission's Exhibit No. 696, in the first paragraph? A. No; I did not.

Q. Did you attend any meeting of merchandise managers of retail stores when this matter was considered, the

subject matter of this letter? A. To the best of my recollection, the F.O.G.A. was never discussed at any meeting of the general merchandise managers.

Q. That you attended? A. That I attended.

Q. Who is Mr. P. J. Riley that signed Commission's Exhibit No. 696? A. He is a director of Retail Research Association and the Associated Merchandising Corporation.

Q. What was your affiliation with the organization? A. We are one of the member stores.

Q. Did you attend the meeting of the Executive Committee mentioned in the last paragraph of Commission's
8681 Exhibit No. 696? A. I did not.

Q. Are you a member of that committee? A. All store principals are ex-officio members of the Executive Committee.

Q. Of the American Merchandising Corporation? A. Of the Associated Merchandising Corporation.

Q. Of the Associated Merchandising Corporation. Well, upon the receipt of this letter, Commission's Exhibit No. 696, with the other documents attached, which have been described as 698 to 700, but which are in evidence as Commission's Exhibit Nos. 99 and 3-A, I will ask you what you did with respect to the subject matter.

Mr. Albert: That is objected to as immaterial.

Examiner Bennett: Overruled. You may an-
8682 swer.

By Mr. Haycraft.

Q. Go ahead. A. May I have that question again, please?

(The question was read.)

The Witness: Well, we recognized the fact that it would be necessary for us to have an agreement with the Fashion Originators Guild in order to have

access to their showrooms; that is, the shpwrooms of the members.

By Mr. Haycraft.

Q. When you say "us" you refer to whom? A. The Dayton Company.

Q. Yes. Now, go ahead with your answer. A. That is all.

Q. What did you do about it? Did you sign Commission's Exhibit No. 700 for Identification or Commission's Exhibit No. 3-A and return it to the Guild? A. We did not.

Q. Why not? 8684

Mr. Albert: That is objected to, if it please the Court, as immaterial, calling for a conclusion of the witness, and no foundation has been laid whatsoever with respect thereto; in addition, calling for matters outside of the scope of the complaint of the Federal Trade Commission.

Examiner Bennett: I will let him answer. Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: We did not sign that agreement during our entire business career. We have had an unwritten law, under no conditions, if we can possibly avoid it, sign any agreements to buy merchandise from anyone. That was the reason that we did not sign their form agreement. Furthermore, we object to signing anybody else's agreement. 8685

Mr. Haycraft: Mark this.

(The paper referred to was marked Commission's Exhibit 701 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 701, and ask if you can identify that? A. Yes, I can.

Q. What is it? A. It is a statement of our frame of mind and our indication of co-operation with the manufacturers, that we drew up and signed and sent to the F.O.G.A.

Q. Is this a carbon copy of it? A. This is a carbon copy of it.

Q. I will ask—I am sorry I asked you that question. I will ask you to examine it again before you answer. Is it a carbon copy? A. Well, in all probability this is the
8687 original and the copy went to them. Usually when we draw contracts we keep the original ourselves and send the copy to the other party.

Q. At any rate, the copy or the original of this contract was sent to the Guild? A. Right.

Mr. Haycraft: I offer that in evidence.

(The paper referred to was handed to Mr. Albert.)

By Mr. Haycraft.

Q. In whose handwriting is the pencil notation on there "File Important"? A. It is mine. It is mine.

Mr. Albert: No objection.

8688 Examiner Bennett: Received. I would like to see it, if I may.

(The paper referred to, heretofore marked for Identification Commission's Exhibit 701, and was received in evidence.)

By Mr. Haycraft.

Q. Did you receive any reply to that statement that has just been identified as Exhibit No. 701? A. I don't remember ever having received a reply to it.

Q. Did you continue to buy merchandise from the members of the Guild after that was forwarded? A. Yes.

Mr. Haycraft: Mark this the next exhibit:

(The paper referred to was marked Commission's Exhibit 702 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 702 for Identification, 702-A and B, and ask if you can identify that in any way? A. Yes, I recognize the letter. It was turned over to me.

Q. By whom? A. Mr. Phillips. 8690

Q. A. A. Phillips? A. And this is a letter from J. M. Golby of the Fashion Originators Guild as to A. A. Phillips.

Q. The pencil notation in the upper right-hand corner, do you recognize that? A. Positively.

Q. Who wrote it? A. Mr. Allen Phillips.

Q. Can you read it? I don't know as I can. Can you make it out? A. Well, yes.

Q. You can make it out?

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Albert: Mr. Haycraft, the offer that you made of Commission's 702-A and B, is already in evidence as Commission's Exhibit No. 12-D. May I suggest that you merely incorporate into the record 8691 the written notation of Mr. Phillips that shall apply to Commission's Exhibit No. 12-D instead of having to retype that.

Mr. Haycraft: I would like to have this one go in just as it is, Mr. Examiner, this time.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I would like to have this go in as it is on account of the pencil notations contained thereon.

Examiner Bennett: You want the pencil notations? You are not offering the pencil notations?

Mr. Haycraft: Yes, I am offering the whole thing.

Mr. Albert: If it please the Court, I object to the exhibit going in except in the condition in which it was received.

Mr. Haycraft: This is in the condition it was received by the witness.

Mr. Albert: So that if nine people write on that before the witness gets it, I suppose that it is Mr. Haycraft's contention that it is competent? The letter itself, your Honor, is already in as Respond-

8693 ents' Exhibit No. 12-D.

Examiner Bennett: I will receive the letter without the notations.

Mr. Albert: Thank you.

Mr. Haycraft: Exception noted as to that, Mr. Examiner.

(The paper referred to heretofore marked for Identification Commission's Exhibits 702-A and B was received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 653-A to C and ask if you saw the original of that or are familiar

8694 with it in any way?

Mr. Albert: Now, if it please the Court, I object to the question as being entirely immaterial in addition, being an attempt to contradict the testimony of the previous witness, Mr. Bjorkman, who testified that the Dayton Company and his representatives were fully apprised of the contents of that letter and knew that it was being sent and subscribed to the substance of the letter.

Mr. Haycraft: The question might be eliciting information which would be corroborative.

Mr. Albert: If it is merely corroborative, then it certainly would be immaterial.

Mr. Haycraft: Oh, no.

Mr. Albert: I don't think Mr. Haycraft needs corroboration of his own witnesses.

Mr. Haycraft: It is very kind of you. The Commission might not think so.

The Witness: I did not see the letter.

Mr. Albert: Exception.

By Mr. Haycraft.

8696

Q. Are you familiar with its contents? A. Yes.

Q. Did you authorize the sending of it, Mr. Larson?

Mr. Albert: May I have that question? I didn't hear it.

(Question was read.)

Mr. Albert: That is objected to, if it please the Court, Mr. Bjorkman has already testified that he was authorized to send it.

Examiner Bennett: Well, we will get information from any source we can. The fact that Mr. Bjorkman so testified does not preclude the Commission.

Mr. Haycraft: I am not positive that he did. I am assuming that he did. 8697

Examiner Bennett: Well, whether he did or not.

The Witness: I would like to call attention to the fact that I did not attend at this meeting.

By Mr. Haycraft.

Q. Did Mr. Donovan call it to your attention? A. I don't remember his having called it to my attention. I heard the matter discussed at a later meeting.

Q. Now, the letter to which I directed your attention is dated March 21, 1935. Did you attend meetings of the Minneapolis Guild subsequent to that date during the year 1935, when the question of making an agreement with the Fashion Originators Guild, Inc., was discussed? A. May I—did you say 1935 or——

Q. 1935. A. Or 1933?

Q. 1935. Dated March 21, 1935. My question was whether you attended meetings. A. 1935——

Mr. Haycraft: Read the question.

(Question read.)

The Witness: Yes, I did.

8699 Mr. Haycraft: Mark this the next one.

(Thereupon the paper referred to was marked for Identification Commission's Exhibit 703-A and B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 703-A and B, and ask you if you can identify that? A. Yes; I am familiar with that.

Q. What is it? A. It was a form of agreement drawn up by the Minneapolis Guild and submitted to the Fashion Originators Guild of New York.

Q. Who drew this memorandum, this agreement? A. I think I personally dictated the final—this draft. There
8700 were different meetings of committees.

Q. Were you on the committee? A. Yes, I was. I was on one of the committees.

Q. Can you fix the date when this draft of agreement was prepared by you? A. Not any more than—I have a clear recollection that it was during the summer, or early summer of 1935.

Q. Do you recognize the handwriting in the upper right-hand corner in pencil? A. Yes, I do.

8701

Q. Whose is it? A. J. M. Thomson, who was at that time—was assistant to Mr. Donovan.

Q. Does that date refresh your recollection (indicating)? A. Yes, it confirms it. It was in the summer of—early summer of 1935.

Q. Would you say it was June 12, 1935? A. Yes, that would be approximately correct.

Q. What did you do with this paper which you have identified? A. Copy of this was sent to the F.O.G.A. by Mr. Bjorkman as chairman of the Minneapolis Guild.

Q. That is, you turned it over to Mr. Bjorkman for that purpose? A. Well, that is what it was for. It was a form of agreement—agreement to the Minneapolis Guild.

8702

Q. I show you Commission's Exhibit 601-A and B, and ask you if you can identify that in any way? A. My recollection is that this was undoubt—was one of the various forms that were submitted at our several meetings. To the best of my recollection, that would be one of the earlier forms that we discussed.

Mr. Albert: Referring to 601?

Mr. Feldman: A. and B, yes.

The Witness: That would be 601.

By Mr. Haycraft.

Q. Would you say it was discussed and used in formulating Commission's Exhibit 703-A and B? A. Yes; I would say so.

8703

Mr. Haycraft: I offer in evidence Commission's Exhibit 703-A and B.

Mr. Albert: This agreement was never sent to the F.O.G.A., was it, Mr. Larson?

The Witness: Not to my knowledge.

Mr. Albert: Commission's Exhibit 703-A?

Mr. Haycraft: Better let him see what you are talking about. Show it to him.

The Witness: I want to see it before I answer it.

(Paper writing handed to the witness.)

The Witness: In my opinion this is the draft—this particular form was sent to the F.O.G.A.

Mr. Albert: Upon what do you predicate your opinion?

The Witness: Because it was turned down.

Mr. Albert: Did you receive any letter turning it down?

The Witness: The Minneapolis Guild did.

Mr. Albert: Have you ever seen such a letter?

The Witness: I beg your pardon.

8705 Mr. Albert: Have you ever seen such a letter?

Mr. Haycraft: I object to that, Mr. Examiner.

Mr. Albert: Now, if it please the Court——

Mr. Haycraft: I think I should be allowed to proceed in my own way to examine this witness without being interrupted.

Examiner Bennett: What is the question?

Mr. Haycraft: To obviate it further, I withdraw the offer of the exhibit at this time.

By Mr. Haycraft.

Q. What was the occasion of preparing this Commission's Exhibit No. 703-A and B, Mr. Larson?

Mr. Albert: That is objected to, if it please the

8706 Court, as being entirely immaterial. The witness has been—or, rather, the offer has been withdrawn, I assume as a result of a decision of Mr. Haycraft not to offer it in evidence.

Mr. Haycraft: I am going to offer it in evidence later on.

Mr. Albert: This is a further attempt.

Mr. Haycraft: I am laying a further foundation for it. I will proceed in my own way.

Mr. Albert: I want to object to it, if it please the Court. It is an attempt to contradict a previous witness, Mr. Bjorkman, who testified fully with respect to the various drafts that were presented, and he is the proper and appropriate man to testify what drafts were presented, and if Mr. Haycraft—which had been prepared. If Mr. Haycraft wanted to examine about it he should have put it in through Mr. Bjorkman who would be able to testify definitely as to whether or not it was sent to the Fashion Guild, and with all due respect to the witness, he doesn't know of his own knowledge whether it was sent.

8708

Examiner Bennett: Yes, will——

Mr. Albert: I don't quite understand this business of leaving things out with Mr. Bjorkman who knows fully of them, and trying to put them in through this witness, who is merely a subordinate in the man's guild.

Examiner Bennett: Well, I have already passed upon that. I don't understand that the fact that some witness who is called by any party to a transaction and testified, that that precludes the party calling him from proving any other fact that may be at variance from it. It is not in any way an impeachment as is abundantly shown, recollections of a man engaged in the transactions are rather feeble on this situation. At least, they are not entirely clear, and I wish—I think we should get light from any source we can get it.

8709

Mr. Albert: May I point out to your Honor——

Examiner Bennett: I understand that the testimony of this witness up to this time is that the document was prepared and submitted to Mr. Bjorkman by a committee to be transmitted to the Fashion Originators Guild, and it was his under-

standing that it was so transmitted. Now, that is his testimony as to that particular document, and it seems to qualify it as an exhibit in the case.

Mr. Albert: Exception.

Mr. Haycraft: Then I will reoffer it at this time, Mr. Examiner.

Examiner Bennett: It may be received.

(The paper referred to, heretofore marked for Identification Commission's Exhibits Nos. 703-A and B, were received in evidence.)

By Mr. Haycraft.

8711 Q. I will ask you, Mr. Larson, what was the occasion of preparing this Commission's Exhibit No. 703-A and B?

The Witness: May I have the question again?

By Mr. Haycraft.

Q. What was the occasion? How did you come to do it? A. Well, we did it upon the demand of the Fashion Originators Guild that we must have an agreement of some sort in order that our buyers might have access to their lines.

Q. Who made that demand upon you? A. Well, it was made by the Fashion Originators Guild, and also by some of their representatives through letters that came, through the statements of the members, through our own buyers

8712 that without an agreement they would not have access to their shown rooms after, I believe it was, the fifth of July, to the best of my recollection.

Q. Was that matter discussed at the meetings of the Minneapolis Guild? A. Repeatedly.

Q. And who appointed you on the committee to draw up this agreement? A. Why, to the best of my recollection the chairman, Mr. Bjorkman. The meetings were rather informal.

Q. Had any of these meetings been attended by Mr. Post, the executive director of the Guild? A. I believe one.

Q. Did you attend that meeting? A. I did.

Q. Do you have any recollection of what he said at that time? A. Why I have a recollection of the substance of his statement.

Q. What was it? A. The substance of Mr. Post's statement was that they must have an agreement signed as a group but signed by the individual stores and it must conform in substance at least, if not in exact verbiage to the standard agreement upon his statement that every agreement that they had signed were identical and that they 8714
were identical with the one that they were submitting to us.

Examiner Bennett: We will adjourn until two o'clock for luncheon.

(Thereupon, at 12.30 o'clock P. M., the hearing in the above entitled matter was adjourned until two o'clock P. M., Tuesday, September 1st, 1936.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please.

Mr. Haycraft: What was the previous question and answer? 8715

(Previous question and answer read by the reporter.)

Mr. Albert: Will you bring out the time on that, as to when it was?

By Mr. Haycraft.

Q. Can you fix the time approximately, please, when Mr. Post addressed the local group that you referred to in

8716 *Charles J. Larson—For Commission—Direct.*

your last answer? A. I could not fix the exact date. I would say to the best of my recollection it would be in June of 1935.

Q. Was the Dayton Company at that time willing to take the action recommended by Mr. Post?

Mr. Albert: That is objected to if it please the Court. The exhibit is in evidence and speaks for itself. Calls for a conclusion of the witness and no proper foundation has been laid. Also object to the question as leading.

Examiner Bennett: I will sustain the objection to that. I think we better arrive at the fact of the
8717 matter as to whether they did take any action, or took that action.

By Mr. Haycraft.

Q. I believe you said this morning that Commission's Exhibit No. 703-A and B, which you identified, which was received in evidence, was not acceptable to the Guild, that is the Fashion Originators Guild? A. That was my understanding.

Q. I show you Commission's Exhibit No. 666-A and B and ask you if you have ever seen that before? A. I could not state that I ever saw the telegram. Some of those were read over the telephone to the various stores and some of them were brought up and read at our meetings
8718 I do not recall ever having seen that identical telegram.

Q. Do you recall of receiving any notification from Mr. Bjorkman of the contents of this telegram? A. Well, I remember its being discussed. We were informed that the draft that we had submitted was not satisfactory.

Q. Did you have a meeting of the local guild at or about that time? A. Twenty-seventh. My recollection is that toward the end there were so many communications passing back and forth and the time is drawing so close that

I believe some of those things were transacted over the telephone.

Q. Well, what do you mean "the time was drawing so close"? A. You see those lines opened July 5th and it was practically at the time the buyers from the various stores were going to market, the dead-line was drawing pretty close.

Q. I show you Commission's Exhibit No. 168 and ask you whether that will refresh your recollection as to whether there was a meeting at or about that time of the Minneapolis Guild or the committee of that Guild? A. Well, I should judge that would indicate the meetings was called. 8720

Q. Do you remember attending any meetings at that time? A. To the best of my recollection, I attended all of the meetings during the thirty or sixty days before the agreement was signed.

Q. Now, I show you Commission's Exhibit No. 60-A and B and ask you to identify that?

Mr. Albert: 60-A and B, did you say?

Mr. Haycraft: Respondents' Exhibit 60-A and B.

The Witness: Yes, I saw this.

By Mr. Haycraft.

Q. Is that your signature? A. Yes, sir.

Q. C. J. Larson? A. Yes. 8721

Q. On Respondents' Exhibit No. 60-B to the Dayton Company? A. That is my signature.

Q. Do you recall the circumstances under which you signed that? A. Yes.

Q. What were they?

Mr. Albert: That is objected to as immaterial, the document speaks for itself.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let him answer.

Mr. Albert: Exception.

The Witness: Answer?

Examiner Bennett: Yes.

The Witness: Well, frankly, we felt they were not willing to concede any of the conditions which we thought were fair and reasonable. The Guild practically delivered an ultimatum that we must agree to that in toto or not have access to their lines, and we signed it.

8723 *By Mr. Haycraft.*

Q. Well, what happened after you signed it? Were you given access to their lines? A. Yes.

Q. Was this agreement fully and wholly satisfactory to them? A. To the Guild?

Q. To the Guild. A. As far as I know. I never heard anything to the contrary.

Q. I show you Commission's Exhibit No. 695-A to E and ask you if you recognize that? A. Will you repeat that question again?

Q. (Previous question read by the reporter.) A. I have no recollection of having gone over or read this statement, or I mean this contract, approved it. I have no recollection.

8724 Q. Do you recall signing a contract of that nature?

Mr. Albert: That is objected to as immaterial. The contract is in evidence as having been authorized by the Dayton Company, assuming the testimony of Mr. Bjorkman——

Examiner Bennett: He may answer if he has a recollection of signing it.

The Witness: I have no recollection of having signed a second agreement. I remember, of course,

8725

very definitely of signing our own form. I have no recollection of having signed this one. If they have a signed copy, I presume I did.

By Mr. Haycraft.

Q. Do you have any recollection of being told by Mr. Bjorkman that the Guild was not satisfied with the form that you submitted on or about the first of July, and which you identified a few moments ago as Exhibit No. 60-A and B?

Mr. Albert: That is objected to, if it please the Court, as being immaterial.

8726

Examiner Bennett: Overruled. He may answer.

The Witness: I don't remember being told that by Mr. Bjorkman.

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 674-A and B, 677, 678-A and B and ask you if they refresh your recollection in that respect? I also call your attention to 676, for the same purpose. Here is the other one (indicating). A. Will you state that again?

Q. Do they refresh your recollection? A. No, they do not. I have no recollection of our having had any discussions with the chairman or meetings regarding the change of the wording in the agreement. So far as we were concerned, we felt that when we signed the agreement, which they accepted as, particularly accepted as an indication of our co-operation that insofar as we were concerned, the wording would not be particularly relevant to us. We had agreed, as we understood, agreed to do what they asked us to do. I have no recollection of—any clear recollection of a discussion following that.

8727

Q. Did the matter of the co-operation with the Fashion Originators Guild come to your attention at any time after

July, 1935? A. So far as I know, there was never any question or any friction in our dealings with any of the F.O.G.A. members after the contract was signed.

Q. At least, it never came to your attention? A. Not that I ever heard of.

Q. I show you Commission's Exhibit No. 704-A and B and ask you if you can identify that? A. Yes, I read this telegram when it came in.

Q. Did you receive it? A. I did not. It came to Mr. Dayton. At least, he showed it to me.

Q. From whom is it? A. Fashion Originators Guild signed it.

8729 Q. To whom? A. To the Dayton Company.

Q. Under what date? A. February 16th, it was received in Minneapolis, or 17th. It is a night letter, I believe.

Mr. Haycraft: Offer it in evidence.

Mr. Albert: The respondent, F.O.G.A. will concede Commission's Exhibit 704-A and B, now offered in evidence has been previously offered and is in evidence as——

Mr. Keller: As 571-A.

(Discussion off the record.)

By Mr. Haycraft.

Q. Did you know anything about the controversy indi-
8730 cated in this telegram? A. Yes, I knew of it, naturally. I knew there was a controversy on.

Q. What did you know about that? A. Very little except what was reported in the trade papers.

Q. Had you had any notice from the Fashion Originators Guild prior to the receipt of this telegram with respect to— A. Not to my knowledge.

Q. —with respect to the subject-matter in the telegram? A. Not to my knowledge.

Mr. Haycraft: Your witness.

Cross-examination by Mr. Albert.

Q. Did the Dayton Company, Mr. Larson, make any answer to that telegram? A. My recollection is that we did not reply to it at all.

Q. When you received that telegram, what did it mean to you? A. Will you state that question again, please?

(Question read by the reporter.)

The Witness: Of course, I can only say what 8732
our interpretation of it was.

By Mr. Albert.

Q. Well, let us have your interpretation. A. Our interpretation was that they were delivering an ultimatum to us that we would either have to back down from the stand taken by the Associated Merchants Corporation or else, of course, be barred from seeing the lines of the Guild houses.

Q. And the only thing that you knew about the standing of the Associated Merchandising Corporation was what you read in the trade papers? A. (No response.)

Q. Do you want to change your previous testimony that 8733
all you knew about what was in that telegram was what you read in the trade papers or do you want to make some explanation? A. Pardon me, I did not say that.

Q. I am asking you if you want to make some explanation of what you meant? A. I did not say the only thing we knew was what we saw in the trade papers.

Q. What was more important, what you knew about that telegram from the A.M.C., or what you learned from the trade papers? A. Well——

Q. Did you get any information from the A.M.C.? A. We had some correspondence from A.M.C.

Q. In response to Mr. Haycraft's question you did not tell us that, did you? A. He did not ask me that.

Mr. Albert: May I have read back what Mr. Haycraft's question was, please?

Examiner Bennett: You may.

(Thereupon the record was read by the reporter.)

Mr. Albert: That is all.

By Mr. Albert.

8735 Q. Did you know more about what you heard from the A.M.C. than what you read in the trade papers? A. Did I know more about what——

Q. You knew of the contents of this telegram from what you had learned from the A.M.C., or what you had learned from the trade papers? A. I learned the contents of that telegram from reading the telegram.

Q. You know what the matter referred to, do you not? You know it referred to a controversy of some sort, do you not? A. Yes.

Q. With respect to that controversy, where did you get most of your information from, the A.M.C. or from the trade papers? A. I do not know that I can say, or care to say which was the most and which was the least.

8736 Q. It is immaterial what you care to say. I would like to know what you know about this thing which, as I understand it, is what the Dayton Company is complaining about. Is that how little you know about the business? A. We have not made any complaint.

Q. This telegram refers to a letter signed by Mr. Riley. was Mr. Riley authorized to sign the letter which was incorporated in that telegram? A. In so far as I know yes, he is authorized by the executive committee.

Q. Did you know prior to the time that he sent that letter that he was going to send it? A. I did not.

Q. Did your store know anything about it? A. If I did? Mr. Dayton may have known. If he did, he did not say anything to me about it.

Q. Wouldn't he, in the ordinary course of his business in the line of conferring with you as your executive position in the store, mention such an important thing to you? A. Not necessarily.

Q. Did anyone else in the store know anything about it? A. I do not think so.

Q. Well, if Mr. Dayton mentioned it at all, he would mention it to you? A. I would think so.

Q. And if anybody else knew anything about it, then Mr. Dayton is the only one who knew anything about 8738
that? A. If he received such a letter, I do not know that he received such a letter.

Q. When did you first see this telegram? A. The day it came into the store.

Q. You saw it immediately upon its receipt or very soon afterwards? A. Well, I presume reasonably soon.

Q. Did you discuss it at all? A. Yes, there was some discussion of it.

Q. Well, did you not ask Mr. Dayton whether or not he had seen that letter before you went out under Mr. Riley's signature, as being authorized by the Dayton Company? A. No, I did not ask Mr. Dayton that.

Q. Did you inquire as to whether or not Mr. Riley had authority to write that letter or had obtained proper 8739
authority prior to writing it? A. I did not have any occasion to inquire.

Q. In other words, so far as you were concerned and the Dayton Store was concerned, if Mr. Riley had not specifically requested the Dayton Company's authority to send this letter, you would ratify his action in sending the letter on behalf of the Dayton Company? A. Will you state that complicated question again, please?

Q. Very simple question, Mr. Larson. If Mr. Riley did not ask for authority from the Dayton Company to send the letter which he did send, then the Dayton Company was ratifying his action in sending the letter? A. If he did not ask it and we granted it, that would ratify it. I would say that under those circumstances we had ratified it, yes.

Q. Do you know what prompted the sending of this letter by Mr. Riley? A. Do I know what prompted sending the letter?

Q. Yes. A. Do I of my own personal knowledge know what prompted it?

8741 Q. I am not asking you to put yourself in Mr. Riley's shoes. I am asking you, do you know why the letter was sent, in plain language? A. It is quite obvious.

Mr. Haycraft: I object to the form of the question. I object to the form of the question.

Examiner Bennett: Well, it has been answered. He said he knew. He said it was quite obvious.

By Mr. Albert.

Q. What was the reason it was sent? A. Part of the controversy.

Q. What controversy? A. Between the F.O.G.A. and the A.M.C. stores and the other stores that were engaged in the controversy at that time.

8742 Q. What was the controversy? In other words, what was all the shooting about, do you know? A. I have my own opinion of what it was about. You are asking me if I know, that is a different matter.

Q. Well, let us have your opinion as to the controversy in hand and predicated upon which you ratified Mr. Riley's letter. A. Our understanding of the controversy was that the A.M. C. felt that the original agreement that the A.M.C. made and several of the A.M.C. stores only

included or bound them on price lines at $10.75 and above.

Q. You accented the fact? A. I beg your pardon?

Q. I say, you accented your statement with respect to the A.M.C. agreement? A. Right.

Q. Was that in conflict with your agreement? A. We had no such agreement. Obviously, it is a matter of record. We had an agreement covering down to these price lines.

Q. And, despite that signed agreement, which was the definite commitment of the Dayton Store, you felt that you were perfectly satisfied to have your declaration of co-operation sent back in order to stand in line with Mr. 8744
Riley's letter and the other A.M.C. stores, is that correct? A. We would have been satisfied to have it sent back, which was not done. It was not sent back.

Mr. Albert: May I have that last question and answer?

(Question and answer read.)

By Mr. Albert.

Q. Well, if we were to substitute the words "deem withdrawn" for the words "sent back," would your answer be the same?

Mr. Haycraft: Object to that.

The Witness: You say, would we have been satisfied? 8745

By Mr. Albert.

Q. I believe that your answer was that you felt satisfied to have the Guild take the action that it did, except that it did not send back the declaration of co-operation. You are referring to the phyical fact that the declaration of co-operation was not physically mailed back, were you

not? A. We were not concerned whether they mailed it back, or not.

Q. Is it a fair statement, then, to say, Mr. Larson, that, except for the fact that Mr. Riley sent a letter, as set forth in Commission's Exhibit 704-A and B for Identification, and the desire of the Dayton's Store to follow with the other A.M.C. stores and ratified by Mr. Riley's letter, the Dayton Store would to-day still be co-operating?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

The Witness: Will you state that again? These are very involved questions you ask.

8747 (Question read.)

Mr. Haycraft: That is too ambiguous, it seems to me.

The Witness: No one can answer that question.

Examiner Bennett: Can you answer it?

The Witness: I cannot answer such a question.

By Mr. Albert.

Q. You understand the question, do you not, Mr. Larson? A. Do I understand the question?

Q. Yes. A. I think as much as anyone could understand such an involved thing. There is a print question of authority involved there. I do not know that I am either authorized or qualified to state whether or not it
8748 would be satisfactory to the Dayton Company.

Mr. Albert: May I have 602, 601, 602, 695, 673?

(Paper writings were handed to counsel.)

By Mr. Albert.

Q. I show you Commission's Exhibit 601-A, Mr. Larson, and ask you if you ever saw that before? A. I could not positively state that I saw this identical—this form. My

recollection is that these were drawn either by the chairman or possibly a committee, and the contents were then discussed and my recollection is that a revised agreement was then drawn or copied, was sent in. That is my best recollection.

Q. Can you give us in chronological order Commission's Exhibit 703-A with respect to 601? A. Yes, I think 601 was the first draft. And what is the number of this?

Q. 703. A. 601 and 703. My belief is that 601 was the first draft and 703 was the second draft.

Q. Immediately following 601? A. Well, I cannot say it was immediately following.

Q. Well, were there any other drafts between 601 and 8750
703? A. Not to my knowledge, not to my knowledge.

Q. Now, can you tell us the chronological order of Respondents' Exhibit 60-A with respect to the two previous exhibits, 601 and— A. You are asking now the order in which 703-A and 60-A?

Q. Right? A. Well, it would be my recollection that 60-A was the latter draft.

Q. That would be after 601 and— A. After 601 and 703.

Q. And 703? A. That would be my recollection.

Q. Can you tell us the order of Commission's Exhibit 672-A?

Mr. Haycraft: That is objected to. The witness was not interrogated about that. I say, I did not 8751
ask him about that exhibit.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I did not ask him about the exhibit which has been handed to him.

Mr. Albert: No; all Mr. Haycraft did was put in a draft of another agreement, which has upset the whole line that we so patiently worked on this morning.

Mr. Haycraft: I move that be stricken.

Examiner Bennett: I will let him answer.

Mr. Haycraft: I move the statement of counsel be stricken.

Examiner Bennett: It may be stricken as to the personal statement.

The Witness: Now, may I have the question, please?

(Question read.)

A. Well, this one (indicating), there is no number on this one Here it is, 672-A. I cannot tell you the order on that.

8753

By Mr. Albert.

Q. I show you Commission's Exhibit 695, and ask whether or not, regardless of the order of the previous drafts which you have been shown, this was the final agreement, which was entered into? A. I—well, I testified before that I have no recollection of signing the second agreement. Now, I do not recall it.

Q. Do you question at all that your signature is affixed to the instrument, or do you mean you just do not recall having signed it? A. I do not recall having signed it.

Q. There is no doubt in your mind that you did sign it? A. I would not question if they have a signed agreement.

8754

Mr. Haycraft: Right at this time, I call for the signed agreement.

Examiner Bennett: The original?

Mr. Haycraft: The original.

Examiner Bennett: All right. The original will be produced if there is any question as to authenticity.

Mr. Albert: May I point out to the Court Commission's Exhibit 695-A is in evidence as Commission's Exhibit 4, that the copy was supplied to Mr. Seidman, the Commission's investigator, to check and recheck as to the accuracy thereof, and as a result of the Commission's having put this document into evidence as Commission's Exhibit 4, we haven't the original copy, and it has been put into evidence by the Commission without any question whatsoever as to the authenticity of the questions thereon.

I do not understand the purpose of Mr. Haycraft's question. Is he now challenging the fact 8756
that this was signed?

Mr. Haycraft: I am just wondering. You are challenging the witness. I think the best thing, today, if you are going to ask this witness, is to produce the agreement where his signature can be seen.

Mr. Albert: The witness has testified he does not doubt it was signed, but he does not recall having signed it.

Mr. Haycraft: He said he did not doubt, if you ·d the signature, he signed it.

Mr. Albert: Will you wire to New York for that?

Examiner Bennett: Well, it is within the power of the respondents to clear up this matter.

Mr. Albert: I have asked Mr. Post to wire to 8757
New York for the original.

Mr. Feldman: The only question is as to how long it will take to get here, but we will wire.

Examiner Bennett: It is not a matter of emergency.

Mr. Albert: We will be here for a couple of days.

By Mr. Albert.

Q. Mr. Larson, when was the first time that the Dayton Company announced its intention of supporting the Guild program with respect to style piracy? A. You mean in regard to any communications to the Guild?

Q. Yes. A. Well, I would say somewhere in the last part of June or first of July in 1933.

Q. Not before then? A. No.

Q. You are positive of that? A. Yes. You mean that we indicated to them?

Q. Yes. A. Well, I have no recollection of any communication to them that either agreed or disagreed with
8759 their program.

Q. Did you authorize anyone to indicate to the Fashion Originators Guild the fact that you supported their program? A. Did we authorize anyone to? You mean a written authorization?

Q. Either written or oral. A. I don't know. We may have stated during our meetings that we were sympathetic toward the movement. As a matter of fact, we probably did during their discussions.

Q. Prior to the receipt of Commission's Exhibit 696, had you at all taken up the question of co-operating with the Guild program? A. Pardon me? I couldn't hear that.

(Question read.)

8760 The Witness: Taken up with the F.O.G.A.?

By Mr. Albert.

Q. Taken up with anyone. A. I have no recollection of taking it up with—I don't believe we took it up with anyone else except the Guild.

Q. Had you had any discussion prior to that exhibit with respect to the policy of the Guild as to whether or not you— A. Yes, I had heard and taken part in some discussions.

Q. With whom? A. During our meetings that were called by the Minneapolis group to discuss this movement. 8761

Q. But aside from this discussion with the Minneapolis group, you had not in any way taken it up with anybody directly in the F.O.G.A.? A. Not to my recollection.

Q. As a result of the discussion that you had with the Minneapolis group, had you made any inquiry of the F.O.G.A. prior to the receipt of Commission's Exhibit 696 with respect to its support? A. I have no recollection of any correspondence with the Guild about the movement. We thought—we understood, at least in a general way, what the movement was in its object.

Q. I show you Commission's Exhibit 602 and ask you whether or not you or Mr. Dayton or Mr. Donovan or anybody else connected with the Dayton Store authorized the listing of the Dayton Store as a co-operating store at that time? 8762

Mr. Haycraft: That is objected to. The witness testified with respect to that on direct examination; a mere repetition of it.

Examiner Bennett: Overrule the objection. He may answer, if he knows.

The Witness: Will you repeat the question?

(Question read.)

The Witness: I remember this (indicating). I remember this letter. It—at least, we would construe it to say that we agreed to their program. This is a result of one of the early meetings, discussing it, we would construe it to mean that we subscribed to all of it. 8763

By Mr. Albert.

Q. Isn't that the only thing that existed between the Dayton Company and the F.O.G.A. with respect to its acknowledgment of the programs of the F.O.G.A. down to 1935?

Mr. Haycraft: 1935? That is objected to, contrary to the witness' testimony.

Examiner Bennett: Read the question.

(Question read.)

The Witness: No, it is not.

By Mr. Albert.

Q. Now, do I take it, then, that the affixing of the name of the Dayton Company to Commission's Exhibit 602 was authorized? A. It was agreed to.

Q. What was Dayton's conception of the evils, abuses and handicaps of the industry that it intended to support
8765 when it permitted its name to be affixed to that exhibit, Commission's Exhibit 602?

The Witness: Will you read the question, please?

(Question read.)

The Witness: First, I would like to submit that this does not agree to any program to remedy the evils. We have never admitted, nor did we recognize that they were evils. We merely stated in there that we were sympathetic toward it.

By Mr. Albert.

Q. Well, what were you in sympathy with? A. The movement and the claims that they would be helpful to the industry.

8766 Q. What was meant by this phrase or sentence, Commission's Exhibit 602, to which you have permitted the name of the Dayton Company to be affixed: "It will be their intentions to support only such manufacturers that are ethical, and have high ideals and standards and to endeavor to use every reasonable safeguard to prevent the plagiarism, pirating and copying of style"? A. I don't know what it meant. You had the man who wrote it here this morning. Ask him.

Q. Do you mean to tell this Commission that the Dayton Company permitted itself to be listed as a store supporting the principles laid down in Commission's Exhibit 602 without knowing what it meant? Is that what you want this Commission to believe? Is it the policy of the Dayton Store? A. Are you asking me a question?

Q. Yes. A. We did not subscribe to that. We merely said we were sympathetic toward that movement. That is all it states in your letter.

Q. The letter states: "The following members of the Minneapolis Ready-to-Wear Retailers Association," and you are listed as being a member, is that correct? A. We attended that meeting. 8768

Q. Were you a member? A. Of the Retail Dealers Association?

Q. Minneapolis Ready-to-Wear Retailers Association? A. At that particular time, there was no organization. There was merely a meeting of a group.

Q. Did you wish to be accepted in that group? A. We considered ourselves in it.

Q. When you permitted yourself to be listed in this letter, you meant to be included in that Minneapolis group, isn't that so? A. We assumed that we were included.

Q. Aside from whether you assumed that you were included, or not, did you intend to make a representation in that letter that was not so as to your being a member of that group? A. I would like to call your attention to the fact, if you please—— 8769

Q. Certainly, call attention. A. There was no agreement there. We signed no letter. The chairman of that drew it up, quoting the stores that were present and quoting the sentiment of the meeting, that they were sympathetic to this movement.

Q. You were present? A. My recollection is I was present at that particular meeting.

Q. You did not dissent in any way from this letter going out? A. I have no recollection even that a letter was authorized to be sent. That was the sentiment expressed at the meeting.

Q. If Mr. Bjorkman testified that this letter was authorized and consented to by every representative of every one of the stores listed there, was he wrong in his testimony about it? A. We did not dissent to it, I can tell you that.

Q. You were present when the letter was discussed and the contents declared? A. When the letter was prepared?

Q. Yes. A. I could not testify to that. That letter was

8771 not prepared at the meeting to the best of my recollection.

Q. Didn't you know the substance of this letter before it went out? A. If you mean by that did I read the letter, no.

Q. Was it read to you over the telephone? A. Not to my recollection.

Q. Was the substance of it discussed by you and told to you by Mr. Bjorkman or anybody else? A. Not after the letter was drafted.

Q. Did you assist in the drafting of the letter? A. I did not.

Q. Did you know what was going to be sent? A. No. I didn't know the exact statement.

Q. Despite the fact that you did not know what was sent and you did not know whether there was any au-

8772 thorization to send it, you did not know what the contents of it was at the time it was sent; you want this Commission to believe that the Dayton Company permitted its name to be affixed to this document without knowing what was going out? A. We expressed out attitude at the meeting that we were sympathetic toward the movement.

Q. Did you also express your attitude to be: "In fairness to the manufacturers' aims, purposes and objectives, to eliminate the evils, abuses, and handicaps of the in-

dustry, naturally, it will be their intentions to support only such manufacturers that are ethical, and have high ideals and standards, and to endeavor to use every reasonable safeguard to prevent the plagiarism, pirating and copying of style"? Did you also subscribe to that? A. Not necessarily.

Q. Well, what were you in sympathy with, if you were not in sympathy with that? A. We were in sympathy with the general movement to, as far as possible and practicable, to discourage copying.

Q. What do you mean by "copying"? A. Reproducing one manufacturer's style by another manufacturer.

Q. And do you agree that that practice is an unethical 8774
practice? A. Why, I have no particular opinion on it one way or the other, no strong opinion on it.

Q. In other words, copying is cheating, isn't it? A. I don't know; I cannot say as to that.

Q. Let's all go back to our old school days. We liked to call it copying, but the teacher called it cheating, didn't she?

Mr. Haycraft: I object to that.

Mr. Albert: I think I ought to be allowed a little latitude with this witness, your Honor.

Examiner Bennett: What was the question?

(Question read.)

Examiner Bennett: I will sustain the objection to that. 8775

By Mr. Albert.

Q. Do you know what plagiarism is, Mr. Larson? A. I could not define it positively.

Q. Do you know what the pirating of a style is? A. No, I do not. I never heard the expression until recent years.

Q. What is your conception of the meaning of the expression to-day? A. Well, I presume, at least it is my

opinion that they mean by it the copying of a style that someone else has had the designer produce for them. That is only my conception of what it means.

Examiner Bennett: If you have any opinion on that, you may answer.

By Mr. Albert.

Q. Well, now, let us turn to Commission's Exhibit No. 605, which I believe you testified you dictated. A. Pardon me? Is this a draft that I testified to my recollection I dictated?

8777 Q. Yes (handing document to witness). A. Well, that is not one and the same thing.

Q. Of course not. A. Well, this is the accompanying letter.

Q. Right. Now, you dictated Commission's Exhibit No. 605, did you not? A. Yes, I did.

Q. Are you in the habit of using words, the meaning of which you do not know? A. I don't know.

Q. Well, now, from your dictation, will you be good enough to explain to us what you mean by "Naturally, it will be their intention to support only those manufacturers who are ethical and have high standards, and they will endeavor to use every reaonable safeguard to prevent plagiarism, pirating and copying of designs"? Now, what do you mean by your language in that instance? A. You

8778 ask what we mean when we say this?

Q. Yes. A. To the best of our ability, I would say that meant what we stated.

Q. Do you know the meaning of the word "ethical" in the letter?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let you answer, if you can.

The Witness: I cannot define "ethical."

By Mr. Albert.

Q. How many years have you been with the Dayton Company, Mr. Larson? A. A long time, thirty years or more.

Q. Do you mean to tell me that for the thirty years you have been with the Dayton Company, have reached the position that you occupy, and you cannot tell me what is ethical and unethical conduct? A. You asked me to define it.

Q. What did you mean by the use of the word "ethical" in your dictated statement in Commission's Exhibit No. 605? A. I can tell you our conception of ethical is fair dealing, if that satisfies you. 8780

Q. In what respect were you using the term "fair dealing," in which you dictated? A. We said here that we would support manufacturers who were ethical. Most of these manufacturers are people who we have been doing business with for years, many of them; we were satisfied that they were responsible, fair dealing houses, and we continued to do business with them.

Q. What conduct did you have in mind when you were distinguishing this conduct as being ethical from some other conduct that was unethical? What was the unethical conduct that you had in mind? A. I don't know that we had any particular definition of unethical conduct in mind.

Q. What did you mean by "unfair dealing," that you would not deal with others that were unfair? A. I don't know that we had any particular group in mind. If they were a group of houses that were committed to practices which are generally conceded to be unfair, we would have no disposition to support them. 8781

Q. I do not wish to know, Mr. Larson, out of fairness to you, which houses you considered as using unfair conduct, but I would like you to tell me what it is that you

have reference to, what conduct it was you believed was unfair and had reference to in that statement. Forget any specific house you might be thinking of. I just want an understanding of what you thought was unfair.

Mr. Haycraft: Object to that. There is nothing in the exhibit to indicate anything about unfairness.

Mr. Albert: The witness is attempting to enlighten us as to what he meant by the term "unethical."

Examiner Bennett: I will let you answer, if you have an answer.

8783 Mr. Albert: Thank you.

The Witness: Read that question again. It is a very involved question.

(Question read.)

The Witness: Well, that is an extremely difficult question, I would say, to answer. I could possibly cite if that were a house or houses which the Guild would call attention to as people that this association we were writing to resorted to practices that were unreasonable or unfair or what they termed "unethical," if it was called to our attention, I think we would instruct our people not to patronize them.

Mr. Albert: May I ask the answer be read?

8784 Mr. Haycraft: I object to that, the answer being repeated. It is not the witness' fault that counsel does not listen to it.

Mr. Albert: I throw myself on the mercy of Mr. Haycraft, and ask permission that the stenographer read the answer to me.

Mr. Haycraft: I think, Mr. Albert, when counsel asks the witness questions, the witness is entitled to the courtesy of having counsel listen to his reply.

Mr. Albert: I could not follow the answer.

Examiner Bennett: Read the answer.

(Answer read.)

Mr. Albert: Now, I ask that the answer be stricken as not responsive. I did not ask him what he would do. I asked him what it was and what conduct deemed to be unfair in accordance with his statement in Commission's Exhibit No. 605. I would like to get a statement of what the practice is of those who co-operate with the Guild.

Examiner Bennett: Denied.

Mr. Albert: Exception.

By Mr. Albert. 8786

Q. What unfair or unreasonable practices are there you stated you would not support in your last answer?

Examiner Bennett: What was that question?

(Question read.)

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained. I think we have gone far enough into that.

Mr. Albert: Exception.

By Mr. Albert.

Q. Is the unfair, unethical or unreasonable conduct to which you have reference to copying by some manufacturers of original styles produced by other manufacturers? 8787

(Question was read.)

The Witness: My answer would be in there unless possibly under particularly—particular circumstances the mere copying would not necessarily constitute unethical conduct.

By Mr. Albert.

Q. But you are referring to a general situation. Perhaps there were specific cases, but we are talking now

about something that is prevalent in the industry. That is all I am talking about.

Examiner Bennett: Read the question.

(Previous question read.)

The Witness: That was just answered.

Mr. Haycraft: He has answered.

Mr. Albert: That is satisfactory, your Honor.

The Examiner: Yes, it is answered.

By Mr. Albert.

Q. I show you Commission's Exhibit 701 and ask if any transmittal letter was sent with that? A. I didn't hear
8789 that.

Q. Was any transmittal letter sent with Commission's Exhibit 701? A. Not to my recollection. This is a letter. This is a letter.

Q. Yes, but was any explanatory letter of any kind sent along with it? A. Not to my recollection.

Q. That was sent in exactly as is to the Guild, is that so? A. That is correct, to the best of my recollection. This is three years ago.

Q. And I believe at the time this was identified by you, you stated that that illustrated your frame of mind, isn't that the phrase that you used? A. Yes.

Q. What was your frame of mind with respect to style piracy when you sent this Commission's Exhibit 701 in to
8790 the Guild? A. Well, I think I testified before that the term "style piracy"—I never heard of it before, never knew that we had—never considered nor found it an evil. They apparently felt that it was a very serious evil, that these efforts were being organized to reduce at least vicious copying. They simply termed it "style piracy." I never heard the term used before.

Q. That is, up to that time, what had previously been referred to in the industry as the copying of styles was

labelled "style piracy"; is that what you mean? A. Apparently they elected that term.

Q. But prior to that time, copying of styles was known to you; was it not? I mean, are you distinguishing now the fact that commencing on or about that period the practice in the industry of copying styles began to be known as "style piracy," but prior to that time had not been so designated? A. Why, I don't assume that that was the truth. They called it copying instead of "style piracy."

Mr. Albert: I think it is about time for our usual adjournment.

Examiner Bennett: All right. We will take a 8792
short recess of about ten minutes.

(A short recess was had.)

Examiner Bennett: You may resume.

By Mr. Albert.

Q. I believe you testified, Mr. Larson, that you dictated Commission's Exhibit 703-A? A. To the best of my recollection, I dictated this particular draft.

Q. Did you also dictate the following: "And believing these principles to be fair and necessary for the proper protection of the public, the retailer, and the manufacturer"?

Mr. Haycraft: Is that all? 8793

Q. (Continuing) "We wish to go on record as intending to co-operate toward attaining that protection subject to the rules and regulations adopted by the Minneapolis Fashion Guild." Did you dictate that? A. I dictated it.

Q. Did you also dictate the following: "The Fashion Originator members will not sell their product to anyone within the City of Minneapolis not a member in good standing of the Minneapolis Fashion Retailers Guild"? A. Did I believe that they would do it?

Q. Did you dictate that? A. I dictated it, yes.

Q. Was that dictated at your instigation? A. No.

Q. Was that suggested as a result of a desire on the part of the Dayton Company to have that clause included in the agreement? A. No, not at all.

Q. The Dayton Company was not in favor of having that clause in the agreement; is that what you mean? A. We would have preferred that it hadn't been in.

Q. In other words, you were not in favor of that clause being in there? A. No.

Mr. Albert: That is all.

8795 Examiner Bennett: Anything more?

Mr. Haycraft: Nothing more.

Examiner Bennett: All right.

The Witness: Am I excused?

Examiner Bennett: Yes.

(Witness excused.)

Mr. Haycraft: I will have Mr. Snyder come forward at this time.

PERRY W. SNYDER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

8796 *Direct examination by Mr. Haycraft.*

Mr. Albert: Now, if it please the Court, I believe a great number of times thus far the respondent has requested that witnesses or persons intended to be called as witnesses be excluded from the hearing. We had that same matter come up this morning. I believe this gentleman has been here present while I was cross-examining Mr. La

son, and while it is quite true that I don't protest his being present, because I was busy cross-examining Mr. Larson, I wish to protest the fact that I was not informed by the Commission that anybody was present whom they intended to call as witnesses. I think it has been sufficiently manifested by the respondent that we do not care to have people present, especially during cross-examination, who are intended to be called as a witness.

Examiner Bennett: The matter is not one of vital importance. It is a matter of discretion.

Mr. Haycraft: I can't hear you, Mr. Examiner.

Examiner Bennett: I say the matter is not a 8798
vital matter. It is one of discretion and I am not going into that. I will ask, however, that the Commission not have witnesses who are to cover the same ground in the room while other witnesses are testifying.

Mr. Haycraft: That has been observed, Mr. Examiner, from the beginning.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: I say that policy has been observed from the very beginning at your request.

Mr. Albert: If it please the Court, I don't think Mr. Haycraft should assume the responsibility that testimony given by a witness will not be covered by any other witness. I am quite willing to believe 8799
that as far as Mr. Haycraft's intentions are concerned that he doesn't believe that one witness will testify to the same thing as another witness will testify to. But we don't know what is going to happen on examination.

Mr. Martin: If your Honor please, I would like to call the attention of the Court that this witness only came into the court room after the recent recess, and I think he was only here while Mr. Albert

asked probably three questions, during which time he was reading some papers here.

Examiner Bennett: Well, that was my observation. I was not sure about that, but at any rate we are not going into that.

By Mr. Haycraft.

Q. You have been sworn? A. Yes, sir.

Examiner Bennett: What is the name?
The Witness: Snyder, S-n-y-d-e-r.

8801 *By Mr. Haycraft.*

Q. State your first name for the record. A. Perry W. Snyder.

Q. Where do you live, Mr. Snyder? A. Minneapolis.

Q. What is your occupation? A. Merchandise manager, Powers Mercantile Company.

Q. What business is that concern engaged in? A. Department store.

Q. What do you have under your supervision as merchandise manager? A. What is generally known as the apparel division.

Q. Does that include ladies' ready-to-wear? A. Yes, sir.

Q. How long have you been divisional merchandise manager of Powers Mercantile Company? A. Ten years.

8802 Q. I show you Commission's Exhibits 599-A and B, and ask if you can identify that in any way? A. Yes, sir. A letter written to Mr. Roy Bjorkman, January 17, 1933.

Q. Written by you? A. Yes, sir.

Q. Do you recall the occasion of sending this letter to Mr. Bjorkman? A. I do not.

Q. There isn't any question in your mind but what you sent it? A. No, sir.

Q. Do you recognize your signature? A. Yes, sir.

8803

Q. Do you have any independent recollection of the meetings of the ready-to-wear men in Minneapolis at the Athletic Club where the matter of the program of the Fashion Originators Guild of America was discussed? A. Only a faint recollection that at about that time the plan of the Guild program was outlined to us and being an important thing in the ready-to-wear business we discussed it.

Q. Do you recall now who outlined it to you? A. I think Mr. Bjorkman acted as chairman at that meeting.

Q. Did he explain what the program was of the Guild? A. I don't recall it well enough. I believe that we read some—whatever correspondence we had at that time re-

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garding it.

Q. I show you Commission's Exhibits Nos. 454-A to M, and ask you to examine it and see whether or not you are familiar with the correspondence included among those exhibits. Have you examined the papers I have handed you? A. Yes.

Q. Have you seen the originals of those photostats or anything similar to them? A. I don't know whether I have seen the originals of these or not.

Q. You have observed the dates on them? A. Yes.

Q. Do you know whether or not the subject-matter of those exhibits was discussed at the meetings you attended in January, 1933, as shown by Commission's Exhibits 599-A and B?

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Mr. Albert: If it please the Court, I would like to warn the witness to look at the date on the exhibit that he has there and to look at the date on the exhibit that is supposed—allegedly is the letter, and I would like to point out to the Commission that the letter in the hands of the witness at the present time is dated some time in June. The letter which he wrote is dated some time in January. I don't see how that letter can refresh his recol-

lection with respect to the contents of his letter in January. I object to the materiality of the question.

Mr. Haycraft: I move that the statement of counsel for the respondent be stricken as surplusage, and improper, and indiscreet, and discourteous.

Examiner Bennett: It may be stricken.

By Mr. Haycraft.

Q. What is the date on the exhibits that you have in your hand? A. December 16, 1932.

8807 Q. What is the date of the letter that I showed you, Commission's Exhibits 599-A and B? A. January 17, 1933.

Q. Now I will ask you my question again.

Mr. Albert: If your Honor pleases, I want to apologize to Mr. Haycraft. I thought that the letter that the witness had was the other Rentner letter of some time in June.

Examiner Bennett: All right.

Mr. Haycraft: Read the question.

(The question was read.)

A. I can't recall that far back distinctly enough to tell you.

8808

By Mr. Haycraft.

Q. Can you recall whether any correspondence with the Guild was read in the meeting by Mr. Bjorkman? A. No; I don't recall that there was any direct correspondence read.

Q. Do you recall whether or not he read to you or allowed you to examine his so-called declaration of co-

operation of the Guild at that time? A. I do not recall that we did. I can only assume that we did from my own letter.

Q. And you refer to Commission's Exhibit 599-A and B? A. (Witness nods head affirmatively.)

Q. In this letter you have stated: "It is our belief at Powers that the Program and contract as outlined by Fashion Originators Guild of America is not wholly practical and not one to which we can subscribe to the extent of signing it." Will you tell me whether you have any recollection as to what you had in mind when you made that statement? A. We were beginning—we were just at the beginning of the discussions of the Guild program at 8810
that time, and I presume that was our feeling at that particular time, when we were not fully acquainted with the plan and program.

Q. Do you recall now what there was in the plan that you did not consider practical at that time? A. No, I do not. I think it was things we did not fully understand at the time.

Q. Did you ever sign a declaration of co-operation? A. No. By that I take it that you mean——

Q. By your own firm? A. The Fashion Guild form.

Q. Yes. I mean by that, did the Power Mercantile Company ever sign a formal form of co-operation in anti-piracy between it and the Fashion Guild of America? A. Independently, no.

Q. Referring to the first, second, third and fourth numbered paragraphs of this letter—and I will not read it 8811
into the record—I will ask you whether or not there were questions in your mind or they comprised questions in your mind at the time you wrote that letter?

Mr. Albert: That is objected to, if it please the Court. The exhibit is in evidence.

Examiner Bennett: Read the question, please.

(The question was read.)

A. The letter states that there were questions in our mind at that time.

Q. What I am trying to find is whether or not you now subscribe to the statements that you made in your letter at that time, that is all. Not entirely, no.

Mr. Haycraft: Will you please read the question?

(The question was read.)

By Mr. Haycraft.

Q. By that you mean some other points were cleared up since that time?

8813

Mr. Albert: That is objected to, if it please the Court, leading the witness.

Examiner Bennett: I will let him answer.

A. Well, that is a big question. I would say that many of points have been cleared up since that time.

Q. Would you say that all of them had (handing paper to witness)? A. Yes, in a degree.

Q. Will you explain that answer? A. Well, the first question is: What is a copy and what is an adaptation? I think it has been proven since then that is doesn't make any difference.

Q. That they are one and the same thing, you mean? A. No; not necessarily the same thing, but at that time there must have been some reason in our minds to—as to the use of the term "copy" and "adaptation."

8814

Q. What is the distinction between the two? A. It is a very difficult thing to answer, and I think that the time has proven that it doesn't make any difference.

Q. What do you mean "it doesn't make any difference"? A. Because we have been, so far as the Guild is concerned, dealing entirely in whether the merchandise were copies or not.

Q. Not dealing with whether they were adaptations? A. (Witness nods head affirmatively.)

Q. In your judgment and opinion what is the difference between a copy and an adaptation? A. A copy in my personal opinion is where a direct copy of it is made, as far as the style is concerned; and adaptation is taking certain general ideas from the original and making it into another number, making it into another item.

Q. In your opinion, is there apt to be any confusion between the two? A. Somewhat, yes.

Q. That is what you had in mind when writing that paragraph in the letter? A. That is right.

Q. What about the second point? Has that been cleared up? A. Yes. 8816

Q. How has that been cleared up? A. In that we have not had the trouble with the getting satisfactory merchandise in the lower price lines that we anticipated at that particular time.

Q. By that you mean——

Mr. Keller: Will you speak louder, please?

By Mr. Haycraft.

Q. What about the next point? A. Yes; I think that has been answered in our experience since.

Q. In what way? A. The fact that we have been able to get merchandise which eliminated this thing which seemed like a problem at that particular time. 8817

Q. What was the problem at that time? A. The foregoing plan preventing a particular style from being sold at any price except the one at which it was originally brought out.

Q. And what is your answer to that? A. I say that time has proven, experience since that time has proven that the problem which we anticipated here has not developed. In other words, similar merchandise is available which answers the purpose for an original style.

Q. What about the next one? A. Our experience has answered that question also.

Q. What is the answer? A. It has been satisfactorily answered in that we have been able to obtain—let me change that answer. I have gotten it incorrect. I would say in this that there are some cases where exact copies are not available to stores handling Guild merchandise but that we have found that similar merchandise is available satisfactory to take the place.

Q. By "satisfactory to take the place," you mean it will sell equally as well as so-called hot numbers of non-Guild manufacturers?

8819 Mr. Albert: That are copies of Guild manufacturers, I think is what the witness said.

The Witness: Yes.

By Mr. Haycraft.

Q. Where do you get the garments? Do you get those garments from Guild manufacturers? A. You mean copies of other Guild merchandise?

Q. You said something could be used in place of the copies of the Guild manufacturers which you said sold just as well? A. Not from Guild.

Q. Where do you get those? A. Where do we get them? We get them from other dress manufacturers. They may be Guild and they may not.

8820 Q. Then, I take it, from your testimony that your competitors who are not co-operating with the Guild, have no advantage over you in the sale of low-priced merchandise in the Minneapolis market; is that correct? A. Very little, if any.

Q. Would you say that is true of Lerner's?

Mr. Albert: Objected to, if it please the Court, no foundation.

The Witness: I don't know whether I can answer that question. What is the question?

(The question was read.)

Examiner Bennett: Can you answer that?

The Witness: I said I don't believe I can answer that question.

Examiner Bennett: I see. In other words, you don't know whether it is true or not?

The Witness: No.

By Mr. Haycraft.

Q. I take it, then, you are 100 per cent. sold on the Guild program at the present time and are an active member of the local Minneapolis Guild? 8822

Mr. Albert: If the witness can answer that question 100 per cent., your Honor.

The Witness: It contains two questions.

By Mr. Haycraft.

Q. Are you sold on the Guild program, Fashion Originators Guild, 100 per cent. at the present time? A. I don't think that it is possible to say 100 per cent.

Q. Are you a member of the Minneapolis local Guild? A. Yes, sir.

Q. Have been since it was organized? A. (Witness nods head affirmatively.)

Q. Now, in this second numbered paragraph: "Can we afford to shut ourselves off from that broad section of the market which now, particularly on the lower-priced lines that are so important, get most of its style inspiration from the creation of the higher-priced manufacturers"—Was it true at the time that you wrote this letter that there was a broad section of the market that got most of its style creation from the higher-priced manufacturers? 8823

Mr. Albert: That is objected to, if it please the Court. The exhibit speaks for itself. We are now going back on direct examination of the witness as to what he has already testified to. It has been rather difficult to determine whether Mr. Haycraft is questioning on direct or whether he is cross-examining, but I think this is patent cross-examination.

Examiner Bennett: The witness, as I understood it, said that is his conception, or was his conception at the time of the situation.

Mr. Haycraft: I think that is true.

8825 Examiner Bennett: Well, I presume it is true in all particulars if it is true. I will sustain the objection.

By Mr. Haycraft.

Q. Well, then, I will ask the witness whether or not there is at the present time a broad section of the market that gets most of its inspiration from the creations of higher-priced manufacturers.

Mr. Albert: That is objected to. It has been previously testified to by the witness.

Examiner Bennett: Overruled. You may answer.

8826 A. I think that probably is a little true.

Q. Is that still true? A. Yes.

Q. And when you say your question had been answered, you did not mean that the market had changed, but you referred to your ability to get other garments; is that it? A. I think the market has changed somewhat, perhaps, but I think the thing which seemed to be a big problem at that time has not been proven to be as much of a problem as we expected it to be.

Q. But it still is a problem? A. If it were not, there would be no occasion for the Guild's efforts.

Mr. Haycraft: I ask that the answer be stricken.

Mr. Albert: If Mr. Haycraft leads with his chin, I don't think we should be blamed if he is hit.

Mr. Haycraft: I ask that the witness be instructed to give a responsive answer.

Examiner Bennett: It may be stricken. Please answer. Read the question.

(The record was read.)

By Mr. Bennett. 8828

Q. Just answer whether it is or not, whether at the present time it is still a problem. A. Yes, it is still a problem.

Examiner Bennett: Yes. That is all.

Mr. Haycraft: That is all.

Cross-examination by Mr. Albert.

Q. At the time you wrote this letter of January 17, 1933, Mr. Snyder, you stated: "While we are in accord with the principles in respect to style piracy, we cannot sign this agreement." What were the abuses of style piracy, to which you have reference?

Mr. Feldman (indicating paper writing): Third paragraph. 8829

A. The copying of—the copying of styles of merchandise, styles of dresses at lower prices.

Q. Woud you say that that abuse has been somewhat eliminated as a result of the Guild program?

Mr. Haycraft: That is objected to.

Mr. Albert: That comes into the question, if your Honor please.

Examiner Bennett: Overruled.

A. Yes, we believe that some improvement has been made.

Mr. Albert: That is all.

(Witness excused.)

8831 DAYNE DONOVAN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your name. A. Dayne Donovan.

Q. Where do you live, Mr. Donovan? A. 2212 Newton, South.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. I am a division merchandise manager with the Dayton Company.

Q. How long have you occupied that position? A. I was merchandise manager for the Dayton Company since 1923.

8832 Q. Have you been manager during that entire time? A. Yes; I have, in various departments, not always the same.

Q. How long have you occupied your present position? A. Three years.

Q. Before that what position did you occupy? A. Well, I had a similar position but a fewer number of departments.

Q. What departments do you have under your supervision now? A. You would like them by number or by description?

Q. Both. A. Department 300, women's and misses' suits department; Department 310, women's coats.

Q. Would you mind giving the price range, if you can, on these? A. All right. Suits——

Q. Women's and misses' suits? A. Misses' suits, all ranges, from, well, roughly, $7.95 to $195. And, of course, includes summer items, linens, and things like that.

Mr. Albert: Retail price?

The Witness: I am giving you the retails right through. Women's coats, the same is true.

By Mr. Haycraft.

8834

Q. 310? A. 310. That is 310, $7.95 to $195, $250, perhaps. Misses' coats, 320, the same range as women's coats. 312, larger-sized coats, the same ranges as the other departments. 332, larger-sized dresses running from $8.95 to $100. 333, women's model shop dresses from $39.50 to $200. 353, misses' model shop dresses, the same price ranges as the women's. 334, women's Barbara Lee dresses.

Mr. Albert: Women's what?

The Witness: We call them Barbara Lee. They are medium priced dresses ranging from $17.95 in the summer to $35. And 354, misses' medium priced Barbara Lee dresses, the same price range. 338, women's budget dresses ranging from $5.95 retail to $19.95, to $22.95. And 358, misses' budget dresses, the same price ranges as the women's. 371, junior or sub-deb coats, suits, dresses, and sports wear, ranging from all prices; starts at a dollar in sports items, and up. And the next is Department 380 on sports wear. Again price ranges vary with the article carried from $1.95 up to $200.

8835

Q. May I interrupt just a moment? Is this Department 371—you say it has coats, suits, dresses, and what else? A. Sports wear, junior sports wear in junior sizes.

Q. Well, the dresses and suits, where do they begin? A. Dresses and suits the same as the other suit departments, from $7.95 up to $69.50 or $59.50, as the occasion requires.

Q. How about the 380? A. 380 is the sports wear department, and we carry a large variety of items in the sport department, some of them like slacks and shorts from $1.95 up to $8 or $10 and so on. It is hard to give you a complete range there, but we carry good ranges in

8837 all departments. And I have one more. Department 390. Blouses and sweaters starting at a dollar on occasion and as high as $18.75. That should be blouses, sweaters and skirts. Pardon me. Are there fourteen departments there, Mr. Haycraft?

Q. Yes. What are your duties in connection with these particular departments you have just enumerated? A. I supervise the selection of the merchandise that goes into those departments. I work with the buyers on occasion in the market, although not regularly. I help the departments in the preparation of advertising plans and the preparation of selling budgets for the season or for the month. I assist in the watching to see that we carry profitable selling lines, that we carry representative assortments at all times and that our merchandise stand-

8838 ards are sufficient as the Dayton Company wishes us to have it, in quality and price range. Our selling force is aggressive in doing its job, and I presume fifty other minor things, which are in the regular course of supervision.

Q. Does each one of these departments have a buyer? A. Not each one. Some buyers handle two departments.

Q. When was it that you became merchandise manager in charge of these fourteen departments? A. It was in October, 1933. You understand that I had some of these prior to that time.

Q. What did you have prior to then? A. Prior to that time I had Departments 333, 353, 334, 354, 400 and 371.

Q. What was your title at that time? A. It was divisional merchandise manager, as well.

Q. Who had charge of the other departments, or were they in existence? A. They were in existence. Mr. Allen Phillips has charge of the ones that I have not mentioned.

Q. Will you testify as to who the buyers are at the present time for these various departments and indicate, if you can, their approximate length of service? A. Length of time we have had them in our employ?

Q. Yes. And length of time in the position of buyer in these departments. A. All right. Department 300, 8840
suits. Mrs. Lucille Welch is buyer. She has had the title of buyer for eight months. She assisted in the department and I took direct charge of the purchasing before that time in addition to my duties as divisional merchandise man.

Q. All right. A. Mrs. Nellie Johnstone is in charge of our model frocks shop, is in charge of our four departments, 333, 353, 334 and 343.

Q. That is 333, 343, 353 and 354? A. That is right. Those are generally our better dresses. We comprise what we call the model shop and the Barbara Lee section, and their price range runs from $17.95 although $25 is the regular price line on up to $195 or higher. Mrs. Johnstone came with us, I believe, in August or September, 8841
1933. I wouldn't like to be held too closely on that. I know it has been several years.

Mr. Albert: That is close enough.

The Witness: Now, Mr. Thomson has been buying our inexpensive or budget dresses since last February 1st.

Q. That is 338 and 358? A. 358.

Q. Is he your assistant? A. Prior to that time, he was my assistant in the merchandise office. Then we dispensed with Mrs. Chase, who had been buying the lower-priced dresses, or budget dresses, on the 1st of February, and Mr. Thomson replaced her.

Q. This year? A. This year, possibly '36.

Q. Miss Myrtle Pender has been buying for Departments 312 and 332, the larger-sized departments, I believe, since 1931, considerable length of time in any case. Mrs. Helen Hoefield has been buying Department 371 or the junior or sub-deb apparel, as we call it, since about

8843 1932. Mrs. Florence McKenny has been buying sports wear, Department 380, since February 1st, 1936. And Mrs. Saul, Elizabeth Saul, has been buying the blouses and sweaters since about 1931.

Now, from 1931 to 1936, to February 1st, 1936, Miss Saul also bought sports wear, at which time they divided both of these departments and put Mrs. McKenny in charge of sports wear and Mrs. Saul in charge of the blouses, sweaters and skirts.

Examiner Bennett: We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4.35 o'clock P. M., an adjournment was taken.)

8844

8845

Room 307, Federal Building,
Minneapolis, Minnesota,
September 2nd, 1936.

Met, pursuant to adjournment, 10 o'clock A. M., C.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: You may proceed.

8846

DAYNE DONOVAN thereupon resumed the stand for the Commission, and, having been previously sworn, testified further as follows:

Direct examination by Mr. Haycraft.

Q. At the last session, Mr. Donovan, you were listing the buyers of the various departments in Dayton's, I think, all except for Departments 310 and 320. A. The buyer there is Mrs. Estelle Baker, and she joined us in June, 1930, as buyer.

Mr. Albert: Is that for both?

8847

The Witness: 310 and 320 both, yes. Am I too far away for you?

By Mr. Haycraft.

Q. What are the functions of the buyers for these various departments? A. Well, the buyers are responsible for the accomplishment of the sales plan which we lay out in two six-month seasons. They are responsible for the gross profits, for the net profits, for the character of

merchandise which is shown, for their advertising. In fact, I have heard Mr. Dayton state that he cannot think of anything for which the buyer is not responsible, which pertains to the conduct of their department.

Q. Do they work on a budget for their various departments? A. What sort?

Q. Either buying or selling? A. You mean a stop budget?

Q. Yes. A. They have plan stop budgets figures, and they are planned or presumed to be relatively close to them.

Q. To what extent do they report to you? A. They
8849 report to me, well, I can only say in a general way. I do not hold them for whether or not they stock this line or that line particularly or not—I do expect them to keep fashionable merchandise and keep abreast or probably ahead of our competitors. They consult on advertising plans, on our stock figures from week to week, and on their sales plans and figures, and report to me at the end of each trip as to what they have accomplished.

Q. What are the seasons in Minneapolis observed by Dayton's, buying or selling seasons? A. We start—there is no buying season especially. We start our selling season, on what we call spring lines, February 1st, and it ends the first of August. The fall season starts, of course, on the 1st of August and ends on the 1st of February.

8850 Q. Take the spring lines that you sell from the 1st of February to the 1st of August; when do you buy the garments sold during that time? A. We buy a few of them probably in latter December, a portion in January, another portion in February, and we continue to buy them until I would say July 4th or 6th. We go down on July 5th and we clean up what lines we need.

Q. Do your buyers make more than one trip to market during the season? A. Yes, they make anywhere from

two to eight trips or nine trips, depending on the department.

Q. What are the principal markets for women's and misses' dresses, suits, coats, for the spring season? A. Well, New York, that is, of course, the principal market for all of those things that you have mentioned, coats, suits and dresses.

Q. What are the minor markets? A. We use Chicago, some Boston, a little, a trifle perhaps in Philadelphia, not very much, use St. Louis a little, again not very much, and we have been using Los Angeles some, San Francisco a little, and we have a local market where we buy a few things in Minneapolis and St. Paul. The major market, 8852 of course, is New York.

Q. Now, with respect to the fall season, what is your buying practice for garments that you sell in the fall season? Where do you buy them? A. When?

Q. Where and when? A. We start buying fall garments June 15th. We get into it heavily right after the Fourth and we continue very strongly in August and September, October, and a lesser amount in December, a still lesser amount, but still a little in January. Then we are through with fall purchasing.

Q. Do you have the same market for your fall merchandise that you have for your spring? A. Yes, roughly the same. They might vary a per cent. or so, depending on—

Q. Is there any difference between the type of merchandise you purchase for your fall selling season and your 8853 spring selling season? A. Oh, yes, there is a great deal of difference.

Q. Will you describe that? A. Well, the character of the garments is entirely different.

Q. Will you explain? A. Well, a winter coat is quite a different proposition than a spring coat. We sell a great deal more higher-priced winter coats because of the furs, which make them high-priced, because the value in these

is more than the average value in the spring coat and they have to be heavier and, as a rule, interlined for us.

In our territory, at least, the price range is quite different in the spring and fall. We seem, in this country, to sell lower-priced merchandise in the spring, although not as large a quantity. Our fall season is the largest and considerably the higher-priced season of the two. The reason is we have about eight months of winter in this country and the women are willing to spend on winter wardrobes, apparently, and less to spend on summer wardrobes. The summer wardrobes are wardrobes which fill in for occasional demand, hot weather, although we

8855 sell some high-priced things in the spring.

Q. Is there any difference in the type or character of dresses or suits sold to women and misses in the fall and spring? A. The same is true. The fabrics that are used in the fall are higher-priced, better fabrics. We sell many more higher-priced dresses in the fall than in the spring by quite a margin. The margin there is very marked.

Q. Are they silk or other fabrics? A. You mean in the fall?

Q. Fall and spring; make a comparison. A. We sell silks in the fall, we sell wool, we also sell a few in the spring, but not many. We sell quite a few synthetic in the fall, sell what we call costumes in our better dress department, which are of better fabrics, higher priced, and usually fur trimmed.

8856 Q. What means do you employ in attracting the trade to your store to buy your merchandise, referring now to the departments under your supervision? A. Well, we have a number of mediums. We use the newspapers. We have a publication of our own, which goes out four times a year, called the "Datonian." We participate in certain magazine promotions which are—which have other stores along with them as well as our own. We use windows and occasionally use mail. I think those are the chief mediums by which we sell our merchandise.

Q. What would you say is relatively the standing of the Dayton Company in the Minneapolis territory as to the volume of women's dresses and suits and coats sold?

Mr. Albert: Objected to as irrelevant.

Examiner Bennett: Will you read the question?

(Question read.)

Examiner Bennett: Overruled. You may answer.

The Witness: I assume you mean generally, or do you mean the three lines you mentioned?

By Mr. Haycraft. 8858

Q. The garments which are sold in the departments over which you have supervision? A. I believe we sell more in total than any other store.

Q. Now, in addition to the departments which you have described, under your supervision, do Dayton Company have a basement store where garments of this nature are sold? A. Yes, they do.

Q. In your departments, will you testify as to the type of clientele that you cater to? A. I think I could best describe that by saying we cater to the medium and better trade. That is, the person of moderate means on up to the very well-to-do woman. We carry, of course, a good substrata of goods for the distinctly lower-priced women, but our main efforts are directed towards the medium and 8859 better clientele.

Q. How are the garments displayed in the various departments for the public to make their selection? What is the practice in Dayton's as to that? A. Well, the better garments, the higher-priced garments are, as a rule, displayed very sparingly. There may be two or three out to indicate the character of the merchandise we are carrying, and as you work into the lower-priced departments,

we have a larger proportion of our garments on the floor, so that the customer can see and select from them.

Q. Now, you say your better garments; what department would you include in that? A. I would call our better dresses, the dresses from Departments 333, 334, 353 and 354. In the other departments we have no separate subdivision between better and lower-priced garments, although I will give you my idea of the price ranges, if you wish.

Q. Will you do it, please? A. Pardon me?

Q. Yes. A. We consider better coats in the fall season from $79.50 up. We carry them in a separate division in our stock and sell them in a separate place. 8861 We carry better suits in with the cheaper suits, but we consider suits as suits retailing from $69.50 up, in the fall season. Our sports wear is not divided. We consider better sports wear as dresses selling from $22.95 up.

Q. Yes. A. Does that cover enough for you?

Q. Yes, that is satisfactory. A. I am referring to the fall season.

Q. Was there any difference in the spring? A. Yes.

Q. What would be the difference? A. In the spring I would call better suits, suits selling from $39.50 up. Better dresses are the same as I have indicated for the fall. Better coats in the spring are coats retailing for $49.50 up.

8862 Mr. Albert: $49?

The Witness: $49.50 up.

A. (Continuing) —and better sports wear would be dresses retailing from $17.95 up. I am leaving knits out of consideration. If you wish me to give them, I will.

Q. Now, your Department 371, known as the junior sub-deb department, I believe, that includes not only coats, suits—not only suits and dresses, but also coats; is that correct? A. That is correct.

Q. And it sells sweaters and such things as that? A. And sweaters, skirts, blouses and knitted apparel in junior sizes.

Q. What portion would you say of that department is given over to the sale of suits and dresses? Would you testify as to that? A. I will endeavor to break them down by sections, if you wish.

Q. All right. A. I would say that 60 per cent. of that department's business is dresses. By that I mean silk and wool daytime and evening dresses. I would say 15 per cent. comes from the sale of coats. I would say another 15 per cent.—I will change that. Ten per cent. from the sale of suits, and the balance—what have I got? 8864
Ninety per cent.? The balance, whatever it may be, is misses' sports wear, knitted apparel, skirts, blouses, a few belts, and things of that kind.

Q. What is the situation in Department 380 in that respect, 380 and 390? A. The percentage?

Q. Yes. A. As to the break-down?

Q. Break them down. A. There I would state again about 60 per cent. of our business comes from the knitted dresses. About 20 per cent. comes from silk and wool and synthetic sports dresses. The balance from such articles as slacks, shorts, Cullottes, knitted sports capes, riding apparel, and one or two very small items. We do not carry bathing suits in that department. Blouses and sweaters, Mr. Haycraft, is a separate section.

Q. In your opinion what reputation does the Dayton 8865
Company bear in this community as a place to obtain women's garments? A. I believe it bears a good reputation. I don't mean to imply that it bears the very best. I think there are a few stores in the country that bear a slightly better reputation for garments, but I think ours is distinctly good.

Q. I am referring, of course, to this community served by Dayton's—and, by the way, how large a territory would

you say is served by Dayton's Department Store? From where do your customers come? A. Yes, I understand. Our customers come from over the State of Minnesota, from Montana, the Dakotas, the western part of Wisconsin, the northern part of Iowa, in the main. We get a few requests for certain lines and things from various parts of the country.

Q. In your opinion is there any department store in this area that you have described that has a higher reputation than Dayton's for the character of merchandise that you have to sell in your department? A. I believe that there is no store in this territory that has as high a reputation, as good a reputation.

8867

Q. What factors, in your opinion, are responsible for the reputation that Dayton's has, that the Dayton store has that you have just referred to? A. I believe that reputation is due to careful and conscientious endeavor on the part of the ready-to-wear division to carry the merchandise that the people of the Northwest want, to obtain it no matter what the difficulty for them, if it is at all possible to obtain it, price it fairly, very reasonable in the matter of returns, very truthful in their advertising and manner of presentation of their merchandise.

Q. Does the character or the type of source of supply of garments sold in your department have anything to do with the factors as you have just enumerated them? A. It is a very important part of building and maintaining a reputation.

8868

Q. Will you explain that? A. I mean simply that the kind of merchandise offered as to quality, up-to-dateness in style and a range of assortments by size, by color, and by style selections is a very important factor in maintaining a good reputation in the garment business.

Q. Are you familiar with the Fashion Originators Guild of America, Incorporated? A. As a retailer I am fairly well familiar with it.

Q. When did you first learn of its existence? A. In the latter part of 1932 or the early part of 1933.

Q. How did it come to your attention? A. I believe I was informed that Mr. Larson had attended a meeting of Minneapolis retailers at which the Fashion Guild proposition to curb copying was broached to them.

Q. Did Mr. Larson discuss it with you at that time? A. I don't believe I could call it a discussion. He mentioned that there had been such a meeting. I do not know how much importance he attached to it at the time. He recognized, I presume, that there would be a discussion later.

Q. Did you hear any more about it later? A. Yes, late 8870
in the spring of '33.

Q. What occurred? A. I believe that our store was somewhat hesitant as to whether or not the plan proposed was practicable or not, but the Guild informed us that we could not visit the good lines or see the good lines unless we co-operated. I know that there was some form of declaration or some document sent which signified that we would co-operate with them.

Q. Of what importance to a retail dealer such as Dayton's is the opportunity to use lines of display, to see them on the part of the manufacturers? A. Well, we feel that it is of importance, of paramount importance.

Q. Why? A. Because we feel obliged to offer our clientele the best that can be obtained in the market, and 8871
we have to have access to the whole market in order to judge what is best and make selections which we believe will please our customers.

Q. What is the custom of the garment manufacturers with respect to the display of their merchandise at the time they offer it for sale to the retailer? A. Well, custom in what respect, Mr. Haycraft?

Q. How do they display it so that you can see it? What is the custom? What do your buyers do when they go to

buy merchandise? A. Well, we see most of the merchan dise, naturally, in the showrooms, displayed on a model living model in the case of the better manufacturers; in th case of cheaper manufacturers, it is shown on a hanger or in the hand, as they say. We also see a good deal o merchandise which is brought to us in our office in New York for our inspection, and occasionally lines are brough to us out of Minneapolis. I believe that covers the chie ways in which we see our merchandise.

Q. What was the program of the Guild that was brough to your attention in the summer of 1933?

Mr. Albert: I think the witness said in th
8873 spring of 1933, your Honor.

By Mr. Haycraft.

Q. Well, the spring of 1933, if that is correct. I meant— A. I don't know. There may have been more to the orig inal declaration which they asked us to sign than I no recollect. The intention and the main purpose of it, as I understand it, was to eliminate copying as low as $16.7 or $16.50. I believe those were the price lines used the

Q. Cost price? A. Cost price.

Q. What would be the usual retail price for a garmen costing $16.50 in your store? A. The usual retail pric would be $29.75. We do mark them occasionally less; don't think ever more.

8874 Q. What was the method employed to protect copying as you understand it, in the Guild program?

Mr. Albert: What period of time, may I as your Honor?

Mr. Haycraft: In 1933.

By Mr. Haycraft.

Q. When you first learned of it?

Mr. Albert: Approximately what month?

Mr. Haycraft: I haven't got the month. If the witness has it in his mind he will give it to you.

The Witness: This original declaration of the intention, or declaration which was signed, which the Guild did accept, I believe was sent in in July, either June or July of last year. It is barely possible it was August but it was about the middle of 1933. And they asked us not to buy copies down as low as $16.50, and not to give out garments to copy, and I believe they asked us to stamp our orders so that copies might be returned if we inadvertently bought them within the prescribed ranges.

By Mr. Haycraft. 8876

Q. Did you continue through that year to get merchandise from the Guild manufacturers in 1933? A. All of '33 we bought Guild merchandise as much as we wished.

Q. How about '34? A. Yes. We got all the merchandise we desired in the Guild—from the Guild people in 1934.

Q. Beginning in the year 1935 was there any further development of the Guild program that came to your attention? A. Yes; I believe that they talked about taking in the Dress Creators League. In other words, extending the program so that we would not be permitted to buy copies as low as $10.75.

Q. How did you learn that? A. I believe that I learned of it through our New York office, Mr. Bergdahl. 8877

Q. Connected with the American Merchandising Corporation? A. That is right.

Q. Did you meet anyone from the Guild during the early part of 1935 with whom such program was discussed? A. I recall that in, I believe it was May or early June Mr. Goldston, I believe, visited us from the Guild with a view of getting our co-operation on extending the program of protection as low as $10.75.

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked for identification Commission's Exhibits 705-A, B and C.)

By Mr. Haycraft.

Q. I show you now Commission's Exhibit Nos. 705-A B and C, and ask you if you can identify that? A. I could identify the letter.

Q. What is it? A. It is a letter from Mr. Albert M Post of the Fashion Originators Guild of America to Mr D. Donovan of the Dayton Company, dated May 3rd, 1935

8879 Q. Does this refresh your recollection? As to when Mr Goldston called upon you? A. I would say it is prior t May 3rd, 1935.

Q. That is, his visit was prior to that time? A. I be lieve so.

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked Commission's Exhibit 706 for Identification.)

By Mr. Haycraft.

Q. Did you reply to this letter from Mr. Post? A. I re member that I did reply to it, or I believe I did reply to it

Q. I show you Commission's Exhibit No. 706 and as if that is a carbon copy of your reply? A. That is th

8880 reply.

Q. Did you send the original of this to Mr. Post? A. did.

Mr. Haycraft: I offer it in evidence, 705-A, and C, and 706.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 705-A, B and C, and 706, were received in evidence.)

By Mr. Haycraft.

Q. I call your attention to the last paragraph on page 2, which says: "I have a letter of April 29th, from our Mrs. McDonald. Apparently the returns that you made were not accepted, and certainly without the use of the warranty clause their position is both legally correct and essentially fair." Who was Mrs. McDonald? A. Mrs. McDonald was the person who was known as the Guild shopper. She worked under the direction of the Guild, and 8882
they, indirectly at least, paid her a salary.

Q. What did she do as Guild shopper in Minneapolis? A. Well, all that I know of that she did was to hunt for copies of merchandise which was presumed or known to have been originated by the Fashion Originators Guild and report those copies both to the stores who were signatories of the agreement and to the Guild.

Q. Did she visit Dayton's? Had she been doing it at that time, in May, 1935? A. I believe she had visited our store once or twice.

Q. Had you met her on previous occasions? A. I had known Mrs. McDonald by sight for a long time. I do not know as there was any formal introduction. I knew that is what she was. She told me there was no attempt 8883
to hide the fact.

Q. What did she say to Dayton's or any employee of Dayton's with respect to the garments that she found that she said were copies of Guild garments? A. Yes.

Q. That is, copies of garments manufactured by members of the Guild? A. She asked me to return those copies, since we were members of the Guild.

Q. Had you been doing it prior to May, 1935? A. I believe we had returned them in every instance. I have no recollection of any time we failed to return a copy.

Q. I notice in your reply to Mr. Post, dated May 8, 1935, Commission's Exhibit 706, you state in the second paragraph: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement dress departments, all of which compete with the chain stores and mail order houses, which, by the nature of their business, have no need of the F.O.G.A. and no conditions with them. It is possible that this fact really need not concern us, but, at least, it has been one reason for our hesitation." Now, I will ask you what you meant by "our hesitation"? A. Well, I believe we had proposed a new contract, going as low as $10.75, and re-
8885 quired definitely all orders to be stamped with the so-called warranty clause, and we had indicated to the Guild that we would continue to co-operate on the basis of the old agreement or to co-operate on the basis that we had been co-operating with the Guild, and that we hesitated on that account for fear that it might be difficult for us to do the business we had felt we were entitled to do if we carried out the Guild program in full.

Q. Who were the chain stores that you had in mind at that time? A. Well, Lerner's was one. There is another store, which I believe is a part of a chain, called Morrison's. I do not think at that time they were members of the Guild. There is a little shop called Avon, which I believe is part of a chain, and I do not believe they were at that time Guild signatories. I frankly do not know
8886 whether Sally's was a participant in the Guild program or not. They were in competition at any rate.

Q. What price range did they sell at? A. Lerner's sold principally up to and under $10 or $12. Sally's up to $25, I believe, retail, and the other stores varied somewhere between $6.98 and $18 or $20.

Q. How would those stores affect Dayton's? What did you have in mind in writing this letter? A. Well, if they had access to merchandise, copied—not copied, which was

salable, and which would attract business away from us, and if a part of the market was close to us and not close to them, it naturally gave them an advantage over us, and we questioned whether that was good business for us to go into an agreement which permitted that.

Q. Now, in this third paragraph of your letter to Mr. Post, you state: "We cannot quite agree with you, however, that we are the only store not using the warranty clause, as we are quite sure a number of other Twin Cities stores are also not using this clause." What had you done to inform yourself with respect to that statement? A. I asked Mr. Thomson, who was assisting me in the office at that time, to telephone some of the other stores—there are 8888
four or five whom we consider important handlers of merchandise—and asked whether or not they were using the warranty clause.

Q. What did you find out?

Mr. Albert: That is objected to, if it please the Court, as the extremest kind of hearsay that the Commission has yet attempted to put in.

By Mr. Haycraft.

Q. Were these stores co-operating with the Guild at that time?

Mr. Albert: That is objected to, if it please the Court; no foundation has been laid. What would this witness know about what other stores were 8889
doing? I don't think he knows it personally anyhow.

Examiner Bennett: Well, find out what he knows. Make a foundation.

The Witness: What is the question? I am sorry.

Examiner Bennett: Just make a foundation.

By Mr. Haycraft.

Q. Do you know anything about whether or not the stores Mr. Thomson called up were co-operating with the Guild? A. I know that most of them felt they were co-operating with the Guild.

Mr. Albert: I ask the answer be stricken as not responsive to the question. I believe the Court's instruction to Mr. Haycraft was to lay a foundation and find out the source of this witness' knowledge, whatever it may be.

Mr. Haycraft: Let me have Commission's Exhibit 602.

8891

Mr. Albert: Do you mean Respondents' 60-A?

Mr. Haycraft: No.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 602 and ask you whether or not you called upon any of the names of retail dealers attached to that exhibit for the information which you gave to Mr. Post with respect to the warranty clause? A. I called on Mr. Hyman of Atkinson's, or Mr. Thomson did at my direction.

Q. What did you find out there?

Mr. Albert: That is objected to, purest hearsay. This witness does not know anything else except what Mr. Thomson told him, somebody else told him. We are in Minneapolis, if the Commission wants that information, they certainly can call these stores.

8892

Examiner Bennett: I will overrule the objection and hear it for what it is worth.

Mr. Albert: Exception.

Examiner Bennett: It is information secured in the regular and usual course of business, is it not?

The Witness: It was.

Examiner Bennett: Yes.

The Witness: Mr. Thomson called Mr. Hyman of Atkinson's and noted on a slip of paper that Mr. Hyman said they were not using the stamp. He called either Mr. Newton or Mr. Dunfy at Donaldson's and obtained information from them. He called Powers Mercantile Company and obtained information from them. He called John W. Thomas Company and obtained information. He called one or two others, I am not certain as to which.

By Mr. Haycraft.

8894

Q. Will this refresh your recollection (handing paper writing to the witness)? A. That is the notation Mr. Thomson left on my desk after calling these stores here enumerated. That indicates whether they were or whether they were not using the F.O.G.A. stamp on May 6, 1935.

Q. What was the information furnished you by Mr. Thomson with respect to the names of retail dealers?

Mr. Albert: Same objection.

By Mr. Haycraft.

Q. (Continuing) On Commission's Exhibit 602, as to whether or not they were using a stamp in May, 1935?

Examiner Bennett: Overruled.

8895

Mr. Albert: Exception.

The Witness: Young-Quinlan's answered that they were not using the stamp, various ones that they were not using the stamp. Jackson-Graves answered that they were using the stamp. Harold's answered that they were not using the stamp. Donaldson's answered that they were not using the stamp. Raleigh's answered that they were not using the stamp. John W. Thomas answered that

they had been using the stamp for two months and were using it at the moment. Jackson's answered that they were not using the stamp, emphatically. We received no answer from Maurice L. Rothschild's.

By Mr. Haycraft.

Q. Was the information, which you just now have related, the basis of your statement in the third paragraph of Commission's Exhibit 706 to Mr. Post? A. What is it?

Q. Which I read to you a moment ago? "We cannot quite agree with you that we are the only concern not
8897 using the warranty clause." A. That is the basis for that paragraph.

Q. Did you meet Mr. Post when he came to Minneapolis following this letter? A. No, I did not.

Q. Where were you at the time Mr. Post was in Minneapolis, May 13, 1935? A. I was either in New York or in California.

(Thereupon a document was marked Commission's Exhibit 707 for Identification.)

By Mr. Haycraft.

Q. Mr. Post was in Minneapolis on May 13, 1935. I will ask you whether or not Commission's Exhibit 707 for Identification will refresh your recollection as to where
8898 you were?

Mr. Albert: Careful, there are 3,000 miles difference, Mr. Donovan.

Mr. Haycraft: Move that be stricken.

The Witness: I was in New York when I sent this wire.

By Mr. Haycraft.

Q. What is the date of the wire? A. May 13, 1935.

Q. While you were in New York did you attend a meeting of the ready-to-wear department managers of stores that were members or co-operating with the Associated Mercantile Corporation? A. I cannot say positively; I believe I did.

Q. Will this telegram refresh your recollection on that (handing telegram to the witness)? A. No. This does not refresh my recollection on that particular point.

Mr. Albert: May we have that telegram marked for identification, your Honor? 8900

Mr. Martin: It is in.

Mr. Haycraft: Where have you been, Mr. Counsel?

Mr. Albert: I do not know, New York or California. Definitely in this country, though.

By Mr. Haycraft.

Q. When did you return from this trip that you were on, return to Minneapolis? A. I do not know definitely; approximately May. 18th.

Q. Well, subsequent to your return, what were the developments with respect to the Guild program in Minneapolis, as you recall them? A. The Guild?

Mr. Albert: May we have this specifically noted, your Honor, whether we are speaking now about the F.O.G. A. or Minneapolis Guild? 8901

By Mr. Haycraft.

Q. Very well. Fashion Originators Guild of America, Incorporated. A. The question was, what were the developments subsequent to my return from this particular trip?

Q. That is right. A. Following from May 18, 1935, on?

Q. Yes. A. The Guild requested us to sign a new program with them, including the stamping of all orders and including protection of dresses, I believe in all price ranges, and stated that our previous arrangement was now unsatisfactory and urged us to do so either through a Guild action or through an individual store action, that is, local Guild action or through individual store action, and urged us to do it in a hurry if we wished to see fall lines. We, as a Guild, feeling that there was some doubt as to the practicability and as to the advisability of stamping all price ranges of dresses and as to the practicability

8903 and advisability of allowing the retailers or the style and so-called Piracy Committee in New York to judge whether or not our dresses were copies, drew up a declaration proposing that dresses at $6.75 and below not be considered as copies and that we be the judges of whether or not a dress was a copied style, or not, in other respects agreeing with the Guild program.

Q. I show you Commission's Exhibits 703-A and B and ask if that was the agreement you have in mind (handing paper writing to the witness)? A. This is the proposed agreement which we drew up at that time.

Mr. Albert: The Dayton Company drew up at that time, you mean?

The Witness: No, the Minneapolis Fashion

8904 Guild.

By Mr. Haycraft.

Q. What was done with that agreement to your recollection? A. It was offered to the Fashion Originators Guild of America.

Q. Did they accept it? A. For approval.

Q. Did they accept it? A. They did not.

Q. Well, then, what was the next step? What happened next? A. After they had wired us that the proposed agree-

ment that we drew up was unacceptable to them and outined the reasons, I believe that, at our suggestion, drew up another one, which was based upon an agreement in use by Fashion Guilds at other cities, and which had been and was acceptable to the Guild. However, the two exceptions we requested were, of course, eliminated in this new agreement that was drawn up and sent in by our Minneapolis Guild.

Q. You are referring now to the final one? A. No, it is my recollection that was just the second one. It was not the final one. I think there were three before we got one that would stick.

Q. I show you Commission's Exhibit 672-A to D, and 8906
ask you if you can identify that? A. That, I believe, is a copy of the second agreement which we sent in.

Q. Was that accepted? A. No, not in total. I believe the wording of the wire was that it was accepted temporarily as a declaration of intention but that there would have to be certain alterations made in parts of it before it could be finally accepted.

Q. I now show you Respondents' Exhibit 69-A and B, and ask you if you are familiar with that document? A. Well, I think that is the final one that was sent in.

Q. I show you Commission's Exhibit 695-A to E, and ask you if you are familiar with that one?

Mr. Albert: If your Honor please, in order that we do not have the same confusion, I suggest that 8907
in the exercise of your discretion you ask Mr. Haycraft to show the witness the five or six or seven drafts which were drawn before the final one. He obviously does not know now what it is all about. I do not want to waste time on this all over again.

Examiner Bennett: Well, I think he has them all now, except——

The Witness: Except this one.

Mr. Albert: No, he missed one, your Honor.

Examiner Bennett: What?

Mr. Albert: He missed one. He missed Exhibit 601, I think.

Mr. Haycraft: I would like to be allowed to conduct this as I see fit without being lectured and hampered.

Mr. Albert: I am not lecturing. I am trying to save time.

Mr. Haycraft: By counsel for the respondent.

Examiner Bennett: All right.

Mr. Martin: That is a novel condition for you.

8909 The Witness: I am amending my previous answer.

Mr. Albert: You mean amend or change?

Mr. Haycraft: I object to the statement of counsel.

The Witness: I am now inclined to think that this was the last; it was one of the two, I think. There is no date on it that I can see.

By Mr. Haycraft.

Q. Did you notice the date? A. No, I have not. There is no date on it that I can see.

Mr. Albert: As yet.

8910 The Witness: About the 26th of August. Oh, yes, this is the final one because I recollect that it was the latter part of August before we finally got one that was acceptable.

Mr. Haycraft: All right.

The Witness: Unless that one is more recent. I do not think it is.

Mr. Albert: What was that addition to the answer?

(Previous answer read.)

(Mr. Haycraft handed a paper writing to the witness.)

By Mr. Haycraft.

Q. There was a letter of transmittal, I might inform you, on this, which was marked for identification, dated July, 1933. A. Then that is the final one.

Q. That is Commission's Exhibit 695-A to D is the final one? A. That is the final one.

Q. Now, Mr. Donovan, were you consulted with respect to the position to be taken by Dayton's with relation to the Fashion Originators Guild, Incorporated, program in Minneapolis? 8912

Mr. Albert: At what time, may we ask?

Mr. Haycraft: In the summer of 1933, after you had returned from your trip?

The Witness: Yes, I attended several meetings of the local Guild, and the matter was discussed at times in our store.

By Mr. Haycraft.

Q. Now, at the meetings of the local Guild, who attended besides yourself? A. I did not attend all of them, because, of course, I am absent part of the time, but the ones I did attend, they were usually attended by all of the prominent dealers of ready-to-wear here in the city, the specific ones, I presume you have a record of. They were nearly all represented. 8913

Q. Did you attend any meeting of the local Guild on or about June 12, 1935? A. If there was a meeting at that time, I did attend it.

Q. Referring to Commission's Exhibits 703-A and 703-B, will ask you whether or not you have any recollection of the meeting at which that agreement was framed? A. I remember having seen this agreement and agreeing to it

after it was drawn up. I have no definite recollection of attending that meeting at which it was drawn up.

Q. Does this agreement 703-A and B represent Dayton's position with respect to the Fashion Originators Guild program at that time?

Mr. Albert: If it please the Court, the witness can be excused for calling a draft an agreement, but I object strenuously to Mr. Haycraft calling a draft an agreement.

Examiner Bennett: What was the question?

(Question read.)

Examiner Bennett: Let us not quarrel about
8915 the word "agreement"; let us make it document.

The Witness: That document did represent the feelings of the Dayton Company at that time.

By Mr. Albert.

Q. Has there been any change in the position of the Dayton Company since that document was prepared? A. I do not think that there has been any substantial change in their feelings.

Mr. Albert: May I have the last answer?

(Answer read.)

By Mr. Haycraft.

8916 Q. Did you make any recommendations to the officials of the Dayton Company with respect to the policy of the Dayton Company in their relations with the Fashion Originators Guild of America, the program of that Guild? A. I urged that we sign up with the Guild on whatever basis they would take us.

Q. For what reason? A. Because I felt the conduct of our business required that we have merchandise such as Guild manufacturers make.

Q. During the year 1935, did or did not Dayton Company co-operate with its program in Minneapolis? I mean by "Guild," "Fashion Originators Guild, Incorporated." A. I would say we co-operated fully during 1935 and Mrs. MacDonald, I believe, stated to Mr. Larson that we had given as good as or the best co-operation of any store in town.

Q. Did you continue that co-operation during the year 1936? A. We did not.

Q. When did you discontinue the co-operation? A. We discontinued it some time following the red carding boycott which was imposed on it.

Q. Do you recall when that was? A. February, 1936. 8918

Q. Can you give us a more definite date than that? A. Well, the first I heard of it was February 25th, although I have knowledge of the fact it was started on February 17th.

Q. Where were you on February 17th? A. I was taking a week's vacation. I was on the island of Bermuda.

Q. You learned it on your return? A. Yes. The boat was due back on the 25th and I learned it on the 26th.

Q. Where were you when you learned of it? A. In our New York office.

Q. Well, now, at the time that you learned of the boycott of Dayton's by Fashion Originators Guild, Incorporated, what did you do about it? A. Will you repeat the question, Mr. Haycraft? 8919

Examiner Bennett: Will you repeat the question?

(Question read.)

The Witness: To the best of my recollection, nothing at that immediate time.

By Mr. Haycraft.

Q. Well— A. It seemed to have been an accomplished fact; there was not much to do.

Q. Did you make any attempt to buy any merchandise from Guild manufacturers subsequent to that date? A. We have, at various intervals, attempted to buy from Guild manufacturers.

Q. With what success? A. No success.

Q. Now, at the time that— A. May I amend that, Mr. Haycraft? It might come up later. I would say with very little success.

Mr. Albert: Are you beginning to lay foundations, Mr. Donovan?

The Witness: I do not know. I am just answering the best I can.

8921

By Mr. Haycraft.

Q. Are you in a position to testify as to the extent to which the Dayton Company was purchasing merchandise from the members of the Guild prior to the red carding, say during the latter part of 1935?

Mr. Albert: May it please the Court, since we seem to be going into figures, I would suggest this is a fairly good time to take our usual recess, if Mr. Haycraft has no objection. It is about twenty-five after eleven.

Examiner Bennett: That is all right. Do you care to have a recess?

8922

Mr. Haycraft: No, I am not asking for it.

Examiner Bennett: Well, is this a good stopping time?

Mr. Haycraft: Not any better than any other.

Mr. Albert: Well, if it is not any worse, your Honor, I would like to have the recess now.

Examiner Bennett: All right. We will take a recess of ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

Mr. Haycraft: Have you the last question?

The Reporter: Yes.

Examiner Bennett: You may resume.

Mr. Haycraft: Read the last question.

The Reporter: "Q. Are you in a position to testify as to the extent the Dayton Company was purchasing merchandise from members of the Guild prior to the red carding, say, during the latter part of 1935? A. Yes, I am."

By Mr. Haycraft.

Q. Will you please do so, and in your answer indicate, 8924
if you can, the type of merchandise and the price line or department where it was used.

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid as to the sources of the witness' knowledge.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I may answer?

Examiner Bennett: Yes.

The Witness: May I refer to some memos I have in my pocket?

Mr. Haycraft: Yes.

Examiner Bennett: Yes. They will be subject 8925
to inspection if you refer to them.

The Witness: This memo refers to the Guild manufacturers whom we were using in the fall of 1935 and the per cent. of purchases from all Guild manufacturers by departments, in the fall of 1935.

Mr. Albert: Can you fix the months, Mr. Donovan?

The Witness: No, I cannot. This is for the entire season.

By Mr. Haycraft.

Q. What department number is that? A. In the suit department, Department 300.

Q. Go ahead. A. We used 3.4 per cent. of merchandise from Guild houses. Our chief sources of supply being Mangone and Carmel.

Q. How do you spell Mangone? A. M-a-n-g-o-n-e. Phillip Mangone & Company.

And Departments 310 and 320 in the fall of 1935, Mangone and Carmel were again our chief sources of supply and we used between 3 and 4 per cent. of Guild merchandise there also.

8927 In Department 332, which is larger-sized dresses, we used 7 per cent., or, to be accurate, 6.9 per cent. of our merchandise from Guild's houses, and our chief resource there was J. L. Friedman Company.

In Department 333, which is one of our women's better dress divisions, the one handling the bulk of our higher prices merchandise, we used 82.5 per cent. Guild manufacturers' merchandise, the chief of whom was A. Traina Company, Mathews-Cadetsky, Edgarette, Joseph and Ben Barnett, Jennie Moscovitz, Jackson-Beinard and Herman Biespel.

In Department 373, which is the corresponding division in misses' sizes of our—of the top of our better dress business, we used 91.4 per cent. of Guild merchandise.

8928 Our chief resources there were Maurice Rentner, William Bass, Isenberg Sons & Company, J. J. Rothenberg, Herman Biespel, Strauss-Miller and Rudolph.

Mr. Albert: What was that last?

The Witness: Rudolph.

By Mr. Haycraft:

Q. Let me ask you a question there. Did you mention Louise Barnes Gallagher, Incorporated? A. We used

Louise Barnes Gallagher, yes, also. I didn't mention it before. I have a somewhat longer list than what I am giving you. I am picking out the ones that seemed to me to be very important.

Q. How about Milgrim's? A. Yes, also Milgrim's.

Q. How about Charles Lang? A. Lang. We used Rose Barrach & Lahm.

Q. Spectators Sports, Incorporated? A. We used Spectators Sports. There is a much wider list than I am giving you. I am just giving you the high lights of people we bought from.

Q. What about Milton Altmark? A. Well, Milton Altmark was used in this department but used more in the 8930
next price range below under what I would classify as 354 department.

Q. All right, proceed. A. In Department 334, which I might say are medium priced dresses——

Mr. Albert: What price range do you mean by that?

The Witness: I mean that they start at $25 and run to thirty-nine seventy-five retail. We used 66.7 per cent.

By Mr. Haycraft.

Q. Is that 334 now? A. 334, Guild merchants. Our chief resources there were Baron Dress, Dolces, Henry Gans, Grossman-Greenberg and Joseph Greenberg. There 8931
were a number of others.

Department 354, medium priced dresses retailing from twenty-five to thirty-nine dollars and seventy-five cents, used in the fall of 1935 76.8 per cent. merchandise from Guild houses. Our chief resources were first Milton Altmark, William Bass, Casino Dresses, Charles Lahm, J. M. Silverman, Jack Hertzog, Star-Friedlander, and numerous other small accounts with the Guild.

Q. Ma I ask you whether or not you bought any from Capri Frocks? A. Yes.

Q. Bender & Hamburger? A. Yes, indeed.

Q. You mentioned Eisenberg? A. I did not, but we also bought some.

Q. Fiegenbaum & Adelson? A. Yes.

Q. Mary Lee Dance Frocks? A. Mary Lee, yes.

Q. Did you mention Frank Starr-Friedlander? A. I believe I mentioned Starr-Friedlander.

Q. Proceed. A. Department 338, women's budget dresses, selling from $7.96 to $22.95 retail, we used 24.1 per cent. merchandise from Guild sources, the chief of
8933 which were Rosen Bros., C. H. D. Robbins and Lyttle, I believe it is Lyttle Bros.

Q. Did you also buy from Bob Burns? A. We did.

Q. E. N. Marcus? A. We did.

Q. And Bernard Ginsberg and Adelson? A. Yes, we did.

Q. Proceed. A. Department 358, which is the misses' sports division, corresponding to 338, dresses retailing at $7.95 to $22.95; I have no figures on them through an oversight on my own part, as to the percentage of merchandise bought from Guild resources. I can secure that if you wish it. I just plain forgot to put it down. Our chief resources there were Witlin Schneider, Aywon dresses, Daytime Dresses and International Dresses. We used, in addition, a large number of other Guild resources
8934 Q. Now, you have given the principal resources in the principal departments that you mentioned? A. I did not.

Q. Proceed. A. In Department 371, Junior Dresses suits and sports wear, we used, in the fall season of 1935 28.1 per cent. of Guild merchandise, that is, merchandise from Guild houses. Our chief resources there were Mulligan Dresses, Incorporated, Ben Ginsberg, Junior Guild Junior League, Bon Ray, Will Steinman Junior Dresses and Lang-Cohen.

Q. Did you mention International Junior Dresses? A. We bought from them. I did not mention them.

Q. Proceed. A. In Department 380, sports wear, for the fall season, our purchases from Guild manufacturers amounted to 4.8, 4.8 per cent, the department total. Our chief resources there being Sam Steinberg, Star Maid, Incorporated.

I might call your attention to the fact that I am referring only to silk and wool sports dresses, excluding knitted dresses and knitted suits, concerning which I testified that more than half of our department's business comes from——

Q. Well, what about 371, did you include anything about the dresses in that in your testimony there? 8936
A. Yes, I included Ben Ginsberg, the most important coat and suit house to us.

Q. I see. A. Formerly.

Q. Does that complete your testimony with respect to Guild resources in the fall of 1935 or do you have others? A. That completes the list of the major purchases, and the percentages we bought from Guild houses with the exception of Department 358, where I haven't the percentage available. The resources I have named, I would classify as major resources, but we used other Guild resources at times for certain articles which they were making, as we needed them, and some of them were in the process of development and would have been very large resources this fall. 8937

Q. I will ask you to obtain that percentage at the noon recess, Mr. Donovan. A. I will.

Q. What were your principal resources beginning in the spring season before you were red carded in those same departments? A. All right, Department 300 had none that I would classify as main resources for spring garments, in the spring of 1935.

Mr. Albert: May I ask the answer be repeated
(Answer read.)

By Mr. Haycraft.

Q. You are giving spring garments for the spring
1935? A. Is that what you asked me for, Mr. Haycraft
A. All right. A. The coat departments, Department
310 and 320 bought 6.5 per cent. of their merchandise i
the spring of 1935 from Guild manufacturers, of whom
Grossman-Spiegel was the chief. We bought a few thing
from Philip Mangone and perhaps Eisman Bernstein, pe
haps one or two others. Department 332, larger-size
8939 dresses, bought 10 per cent. of this merchandise from
Guild houses in the spring of 1932 and there Friedma
was our main account.

By Mr. Albert.

Q. You mean the spring of 1935, don't you? A. Pa
don me, I am sorry.
Q. You said 1932. A. I am sorry, I mean 1935. I
Department 333, the top of our better dress busines
bought 75 per cent. of its resources from Guild resource
in the spring of 1935, chief of whom were Andy A
Trainor, Ed Gerrick, Matthews Kadetsky, Joseph Green
berg, Herman Beispiel and Gardner & Schwartz. There
were also other Guild resources used. Department 35
8940 the top of our misses' better dresses, used 77.4 per cen
of its merchandise in the spring of 1935 from Guild re
sources.

By Mr. Haycraft.

Q. What was that percentage again? A. 77.4 per cen
Our chief resources in that period were Maurice Rentne
Straus Miller, William Bass, Bender-Hamburger, Herma

Beispiel, Eisenberg Sons & Company, Mary Lee, Rudolph, Nettie Rosenstein. There were many others also used for——

Q. Among the others would you mention Civite? A. I used Civite.

Q. Capri Frocks? A. We used Capri.

Q. Joseph Halpert? A. We used Joseph Halpert.

Q. You mentioned Bender-Hamburger? A. We used Bender-Hamburger.

Q. Did you mention Rudolph Gowns? A. I mentioned it, I called it Rudolph, but it is the same; Rudolph Gowns.

Q. Did you mention Straus Miller? A. Yes, I mentioned Straus Miller. 8942

Q. Did you mention Milton Altmark? A. No, I did not mention him. Again, he is a more important resource in the next lower-priced division.

Q. But you did buy from him? A. I bought some from him.

Q. All right, A. Department 334, which is our middle grade dresses, in women's sizes, used in the spring of 1935, 44.8 per cent. of its purchases from Guild resources. Our leading resources, there were Dolces Dress, Joseph Ginsberg, Grossman-Ginsberg, and we also used a number of other resources.

Q. Among those others were Henry Gans, Incorporated? A. Yes.

Q. La Rue Dresses, Incorporated? A. Right.

Q. Frank-Starr Friedlander? A. Yes. 8943

Q. A. Goodman, Incorporated? A. Yes.

Q. All right. A. Department 354, which is our medium grade dresses, retailing from $25 to $29.75, misses' sizes, used in the spring of 1935, 60.2 per cent. of Guild manufactured merchandise. $25 is the more readily got price but we considered $29.50.

Q. What is the department number and the per cent.? A. Department 354, and the per cent. of Guild merchandise used was 60.2.

Mr. Albert: 60?

Mr. Haycraft: 60.

The Witness: 60.2. Our chief resources there were Milton Altmark, Milton Bass, Bender-Hamburger, Capri, Casino, Fiegenbaum & Adelson, A. Goodman.

Q. A. Goodman, did you say? A. A. Goodman, Mary Lee, Starr-Friedlander, but we also used other Guild houses.

Q. Included in your other Guild houses were Eisenberg & Sons? A. Right.

8945 Q. Joseph Halpert? A. Yes.

Q. Kane-Weill? A. Yes.

Q. J. M. Silverman-Levy? A. Yes.

Q. Paul Parnes? A. Paul Parnes.

Q. That is all; proceed. A. In Department 338, budget dresses retailing from 7.95 to 22.95 in women's sizes, we used 13.5 per cent. Guild merchandise in our spring merchandise purchases.

Mr. Albert: That is Department 338?

The Witness: 338, 13.5 per cent. Our chief resources were Rosen Brothers, Barnett-Ginsburg-Adelson, but we bought from other Guild houses as well.

8946 Q. Did you include in the other Guild houses the International Dress? A. I presume we bought a few things in women's sizes. I do not recollect. They are considered to be mostly a misses' and junior line.

Q. Little Brothers, Incorporated? A. Yes.

Q. C. H. D. Robbins & Company? A. Yes, substantially.

Q. That is all. You may proceed. A. In Department 358, in the spring of 1935, 358 being the misses' budget dress division, selling dresses $7.95 to $22.95, I regret

that I have again omitted the percentage of purchases from Guild houses, which I will obtain at noon. Our chief resources there were Whitman-Snyder, Aywon Dress, Daytime Dresses and International Dress, but we bought many dresses from other Guild houses as well.

Q. Of the four that you have named, which would you say was the principal one? A. Whitman-Snyder.

Q. Did you buy from B. and G. Garment Company? A. Yes.

Q. Fed Dress? A. Yes.

Q. Gilbert Dress Company? A. Yes.

Q. C. H. D. Robbins? A. I do not recollect. It is possible that is so. In that department. He again is 8948 generally considered to be a women's resource.

Q. All right. Proceed. A. Department 371, Junior Coats, Suits, Dresses and Sports Wear, bought in the spring season of 1935, 14.8 per cent. of Guild merchandise from Guild resources, and the chief resources there were Bonray, Ben Ginsberg, Joan Junior, Will Steinman, David Westheim, Junior Guild and Mulligan. Mulligan started—they got going under the name of Mulligan, Incorporated, late in the spring, and some purchases came in June and July——

Q. That is Louise Mulligan? A. That is the same Louise Mulligan that was such a large resource in the fall of '35.

Mr. Albert: Did you mention them in the fall 8949 of 1935 or were you going to say that is the same resource that was mentioned in Chicago?

Mr. Haycraft: He mentioned it.

The Witness: I think I mentioned it, Mr. Albert.

Mr. Albert: I wasn't sure, Mr. Donovan. I just wanted to know.

The Witness: It is the same concern. Department 380——

By Mr. Haycraft.

Q. Just a moment. I want to ask you a question about 371. A. Yes.

Q. Did you buy from any other Guild resources than those you have named? A. Yes, we did.

Q. Did you buy any from Arkkay Junior Frocks? A. Yes, we did.

Q. Ashley Frocks? A. Ashley?

Q. Yes. A. Yes.

Q. Gilbert Dresses, Incorporated? A. Yes, sir.

Q. International? A. Yes.

Q. Junior League? A. Yes.

8951 Q. Nathanson and Beck? A. Yes.

Q. That is all. A. Department 380, handling sport dresses, again I have no figure as to the actual amount bought of Guild resources. It is not particularly large, however. Our chief resources were Star-Maid——

Mr. Albert: You mean that you omitted to put down the figures or that it is so insignificant that you didn't put it down?

The Witness: No. I omitted to put it down. I have no notation of any kind. I put this down rather hastily and I apparently forgot one of two departments. We bought from other resources aside from these two, however.

8952 *By Mr. Haycraft.*

Q. Did you buy any from David Crystal? A. We bought from Crystal, yes.

Q. William Bass? A. Pardon me. I did not get the name.

Q. William Bass? A. Yes.

Q. David Goodstein? A. Yes.

Q. Campus Modes? A. Yes.

Q. Kane-Weil? A. Yes.

Q. Townley Frocks? A. Townley?

Q. Townley. A. Townley? Yes.

Q. Yes. Rubinger Sportswear? A. Rubinger?

Q. Yes. A. We bought from them. I am not—however, that is knitted apparel. Rubycraft.

Q. Knitted apparel? A. I believe it is. I know we bought from Rubycraft.

Mr. Albert: Now, if it please the Court, may I ask that the list from which Mr. Donovan has been reading and the list from which Mr. Haycraft has been prompting the witness be marked for identification? 8954

Examiner Bennett: Mr. Donovan's list——

Mr. Haycraft: That is a rather peculiar request, Mr. Examiner.

Examiner Bennett: Mr. Donovan's list will be available for cross-examination, and the list that the attorney is using, I have nothing to do with. They are his notes, his private notes, and I am not going to pay any attention to that request.

By Mr. Haycraft.

Q. Have you completed your testimony, Mr. Donovan? A. Yes, I have.

Q. Now, included in your resources of Guild houses, in the year 1935, were there any what is known as confined 8955
lines; that is, lines that were confined to the Dayton Store in this territory? A. There were some. Did you ask in the spring or fall, or does it make any difference?

Q. Either one. A. There were some. I can think of three offhand that were confined to us in this territory.

Q. What ones were they? A. Louise Mulligan confined his or her products to the Dayton Company in Minneapolis. Grace Ashley of St. Louis confined the par-

ticular dress which she was making to us in Minneapolis, and Star-Maid confined a sports dress which they were making to us in Minneapolis.

Q. Were there any trade names used by these manufacturers that were featured by the Dayton Company? A. Well, the Mulligan dresses were featurel as "Mulligan Dresses" and sold under that name, promoted and advertised under that name. And we are having numerous requests to-day under that name.

Q. What about Grace Ashley? A. I am not so certain whether they were promoted as "Grace Ashley" dresses in the newspapers. I am trying to think whether the
8957 dress bore the label "Ashley Dress." I am not clear. We promoted them as "Grace Ashley Sports Dresses," sold them as such.

Q. What about the Star-Maid? A. Star-Maid had a line using the name of a famous English shirt maker, "Kay Wragge," W-r-a-g-g-e, which name they confined to us, and by which we referred to these dresses in our advertising and in our promotion.

Q. Now, was there any other manufacturer, member of the Guild, resource of the Dayton Company, that sold a line of dresses that were featured or promoted by the Dayton Company as such? A. Well, Maurice Rentner confined to us the promotion and the dresses covered by his booklet, "Quality Street," which we issued or mailed out through our own store and which I believe falls in the
8958 classification you are inquiring about.

Q. Was the sale of "Quality Street" confined to Dayton's in this territory? A. In the fall, yes, it was.

Q. In the fall? A. "Quality Street" dresses in the booklet, and the booklet itself was given to us for our use and confined to us.

Q. Were there any others?

Mr. Albert: May I interrupt just a moment, your Honor, and ask the witness to bring that booklet this afternoon?

Mr. Haycraft: Will you do that?

The Witness: Very well. Yes, I will.

By Mr. Haycraft.

Q. Were there any others that you can recall now? A. I believe that there were one or two more, but I frankly can't recall them. I think they probably were of lesser importance than these. For instance, Kane-Weil had a "Dress of the Month" promotion in which I believe we participated. I think those dresses were confined to us. I think there were one or two other instances like that.

Q. Did any of the members of the Guild who were resources of the Dayton Company engage in advertising in 8960
ladies' fashion magazines or other magazines read by women featuring their lines of dresses, where the Dayton Company was mentioned as a place where the dresses might be found? A. Well, we participated in some of those propositions. There are a number of them. We, for instance, participated in a promotion organized by the fashion editor of "Good Housekeeping" magazine, in which merchandise was selected by their fashion editor and by a group of stores in various—from various manufacturers.

Q. Do you recall the names of manufacturers that were featured in this advertising? A. Well, Grosman-Spiegel, I think was one.

Q. When was that? A. Well, it was toward either December of last year or March of 1936. As I recall it, they 8961
came out at about three-month intervals.

Q. Any others? A. Ben Ginsberg was in one, at least; and Junior League, I am sure was in one; and there were others. Occasionally they were not Guild but for the most part they were Guild.

Q. See if this will refresh your recollection as to the Guild houses who co-operated with the "Good Housekeep-

ing" magazine and the Dayton Store (indicating a copy of "Good Housekeeping" magazine). A. Yes, it does.

Q. When was that? A. This is in the March, 1936, "Good Housekeeping" magazine.

Q. What Guild resources? A. The Guild resources used here were Grosman-Spiegel, Junior Moderns, Ben Ginsberg, Rentner, Miller, Joan Junior. That is all. Ben Ginsberg has two garments in here.

Q. Was there any advantage to such co-operative promotional advertising to the Dayton Company? A. Yes. We believe it was an advantage in the ones which we went into.

8963 Q. In what way? A. We believe it promotes sales, principally, promotes prestige, helps our reputation.

Q. Did you enter into any co-operative promotional advertising with any other magazines other than "Good Housekeeping" from 1935 or in early 1936? A. Yes. We have at times gone in on other of these group propositions. I believe we have been in one or two "Harper's Bazaar" promotions. I believe we would have gone into one this spring had we had access to Guild lines, and we would have gone into one this fall had we had access to Guild lines.

Mr. Haycraft: Mark these.

(The papers referred to were marked Commission's Exhibits 708, 709, 710, 711 and 712 for Identification.)

8964

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 708, 709, 710, 711 and 712, and ask if you can identify those? A. Well, these cover—they are communications addressed by various Guild houses to a member of our organization in which they indicate that the cause of Guild restrictions—

Mr. Albert: If it please the Court, may I ask that the substance of those documents be not described until they are offered in evidence?

Mr. Haycraft.

Q. Will you describe each of those exhibits as to who ey are from and to and the date? A. Commission's hibit No. 708——

Q. For Identification. A. Is from Maurice Rentner, ted February 21, 1936, to The Dayton Company. Is at all?

Q. Take the next one. A. The communication from ace Ashley of St. Louis, dated August 29, 1936, to Mrs. 8966 McKenney of The Dayton Company.

Q. That is Exhibit No. 712 that he just read.

Examiner Bennett: Seven hundred what?

The Witness: 712.

Mr. Haycraft: Strike that out.

Mr. Haycraft.

Q. Let's take it up in order, if you don't mind. Take 9 next. A. 709, a letter from Milton Altmark, dated bruary 18, 1936, to The Dayton Company.

Q. 710? A. 710, a letter from our New York office to dated February 18, 1936, to Miss Johnston of The Day- n Company.

Q. 711? A. 711, a letter from Fred A. Block, dated 8967 gust 27th, 1936, to The Dayton Company, Minneapolis, nnesota.

Q. 712? A. I did identify—oh, excuse me. 712, a let- from Grace Ashley of St. Louis, dated August 29th, 36, to Miss F. McKinney.

Q. I show you Commission's Exhibit No. 710 again. ho is R. E. Friedland? A. He is an employee in our ess Division at our New York office.

Q. All right.

Mr. Albert: By "your New York office" do you mean the A.M.C. office?

The Witness: The A.M.C. office.

By Mr. Haycraft.

Q. To what Guild manufacturers does this letter refer? A. It refers to Mary Lee.

Mr. Haycraft: I offer these letters in evidence.

(The paper writings referred to were handed to Mr. Albert.)

8969 Mr. Haycraft: Mr. Examiner, the hour of 12.30 is approaching. I have a luncheon engagement. I would appreciate it very much if we could take a recess at this time.

Examiner Bennett: All right. We will take an adjournment until 2 o'clock.

(Whereupon at 12.25 o'clock P. M. the hearing in the above-entitled matter was adjourned until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

8970 Examiner Bennett: There was an offer pending of several exhibits, 708 to 712, inclusive.

Mr. Albert: That is right.

Examiner Bennett: And they were being read by the respondent's attorney.

Mr. Albert: With respect to Commission's offer of Commission's Exhibits 708, 709, 710, 711 and 712, the offer into evidence of these exhibits is objected to on the ground that they are in no manner

binding upon the respondent F.O.G.A., no proper foundation or proof has been laid of the authority of the signers of these letters to so sign them on behalf of the companies allegedly having mailed the letter, and no proper proof or explanation has been made of the substance thereof to make them at all intelligible.

Examiner Bennett: The objection is overruled, and the documents are received as Commission's Exhibits 708 to 712, inclusive.

Mr. Albert: Exception.

(Thereupon the documents heretofore marked for identification Commission's Exhibits 708, 709, 710, 711 and 712 were received in evidence.) 8972

By Mr. Haycraft.

Q. At the time Dayton's were red carded, which you say was about February 17th, 1936, did they have any orders outstanding with any of the manufacturers that you have mentioned here as resources? A. Yes.

Q. Can you testify as to the names of the resources with whom Dayton's had outstanding orders at the time of the red carding? A. I can testify accurately if I have a list, I can testify accurately, or I can testify from memory if that serves, but a good many of them.

Q. Testify from memory, if you will. A. We had outstanding orders with Philip Mangone, Mary Lee, Milton 8973
Alfmark, Maurice Rentner——

Q. Wait a minute now. A. The Star Maid, Louise Mulligan, with Herman Beispiel, Kondazian Pappas. Those come particularly to my mind. I know there were a good many more, more than that.

Q. Can you refresh your recollection from this paper (handing paper writing to the witness)? A. Yes, those were the resources.

Q. Will you testify, having refreshed your recollection as to what resources you had orders with at the time of the red carding? A. Yes, Philip Mangone——

Mr. Albert: If it please the Court, if the witness is going to read that exhibit, I ask it be offered in evidence, and a proper foundation laid for it. He is not refreshing his memory; he is reading it.

Examiner Bennett: Did you have anything to do with the preparation of that document?

The Witness: Yes, sir.

By Examiner Bennett.

8975 Q. You had it prepared for you? A. No, I prepared this myself.

Q. You prepared it yourself? A. Yes.

Q. Does this refresh your recollection? A. It does.

Examiner Bennett: All right, go ahead and read from it.

The Witness: Philip Mangone, Carmel, Grossman-Spiegel, Friedman Dress, A. Trainor, Suttre Fox, Herman Beispiel, Jennie Moscowitz, Grossman Greenberg, Dolces, Baran Dress, Maurice Ventner, Davidow, Mary Lee, Rudolph, Milton Altmark, Kandazean Pappas, Eisenberg, William Bass, Hume Gold, Virginia Hume Gold, Ben Ginsburg, Mulligan, Incorporated, Junior Guild, Adler & Adler, Sam Steinberg, Star Maid.

8976

By Examiner Bennett.

Q. Do you know that to be a correct list? A. The names I have down here positively are correct because I prepared them from orders which were outstanding, but there may be one or two that are not down here.

Q. That is correct so far as it goes? A. It is correct so far as it goes and it goes at least 98 per cent. of the way.

By Mr. Haycraft.

Q. Were those orders filled? A. Most of those orders were filled.

Q. Was any attempt made to re-order from the manufacturers you have named? A. Yes, there were one or two attempts made.

Q. With what success? A. The re-orders were not filled.

Q. Did your buyers make any attempt since February, 1936, to obtain merchandise from these manufacturers? 8978 A. Yes, we made some definite attempts to obtain merchandise from some of these manufacturers and we have frequently visited showrooms, hoping that they would offer to sell us, which they did not, and we have gone so far as to write at times to make sure that they still would not sell us, having heard in a few cases they might have dropped out of the Guild, and we have kept generally in rather constant touch with these men.

Q. Have you ever been able, since February, 1936, to place an order with any of the members of the Guild with whom you had been dealing? A. We have succeeded in obtaining a very little merchandise.

Q. What percentage of your usual requirements of 8979 Guild merchandise have you been able to get since February, 1936?

Mr. Albert: That is objected to, if the Court please. I do not think there is any.

Examiner Bennett: Well, if you have any knowledge of that situation. Have you any knowledge of that situation?

The Witness: May I ask if I understand the question correctly? Since we were red carded on

new orders, what percentage of our requirements have we been able to get from Guild houses?

Mr. Haycraft: That you had been formerly getting from Guild houses, your Guild requirements.

The Witness: That is on new orders, since the red card boycott.

By Mr. Haycraft.

Q. Yes. A. 3 per cent., at a guess.

Mr. Feldman: Is that a guess?

The Witness: Yes, I believe it is a guess. I have made no study at all of it.

8981

By Mr. Haycraft.

Q. Now, Mr. Donovan, do you have an opinion as to the effect of the inability of the Dayton Company to obtain merchandise from Guild houses that you had been purchasing from before you were red carded upon the business of the Dayton Company, that is under your supervision?

Mr. Albert: That is objected to, if it please the Court, as immaterial and irrelevant, no foundation has been laid for the source of his knowledge.

Examiner Bennett: You are answering the question: "Have you an opinion?" You may answer. Overruled.

8982

The Witness: I have an opinion.

By Mr. Haycraft.

Q. Will you state what your opinion is?

Mr. Albert: I press my previous objection, if it please the Court, no foundation has been made as to the basis of the opinion upon which it is predicated.

Examiner Bennett: The foundation has been laid in the description of his job with the Dayton Company, I imagine. I will overrule the objection.

Mr. Albert: Exception.

Examiner Bennett: Will you give your opinion, whatever it may be?

The Witness: My opinion is that the failure to obtain merchandise from Guild houses during the spring season has had a very adverse effect on our business since the date of the red card boycott, and that that effect will be even more marked this fall.

Mr. Albert: I ask the latter part of the answer be stricken out as not responsive to the question. The question is: "What effect did it have?" 8984

Examiner Bennett: I will let it stand.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. In what way, Mr. Donovan, has it had an adverse effect upon the business of the Dayton Company under your supervision as to the spring period? A. We lost volume. By that, I mean sales, and the consequent gross profit on those sales. It has had a damaging effect on our reputation in the city of Minneapolis and has made us less competitive. We have been forced to disappoint many customers for special orders, special merchandise, which we had been in the habit of carrying and that they could no longer find in our stock. We have been to extra expense in the matter of trying to locate new resources, both expenses in actual traveling time and by our salaries. We have taken extra losses on markdowns, due to experimenting with totally new lines and endeavoring to replace, unsuccessfully for the most part, some of the Guild lines. Those come to my mind immediately. 8985

Q. In your opinion has it had any effect on the investment you had in consigned branded lines? A. I am sorry, I did not understand that.

Examiner Bennett: Give us the question.

Q. (Question read.) A. Yes, it has.

By Mr. Haycraft.

Q. Now, taking up the first item that you mentioned, will you explain to us in what way and to what extent your inability to obtain merchandise from Guild resources has affected your volume of sales and gross profit? A.
8987 We bought many kinds of merchandise from Guild manufacturers, which we have not been able to replace and hence, naturally, we lost the amount of the sales that those Guild houses would represent to us, and we have been forced to turn away customers who asked for specific items, which we could no longer have, and that represented loss of volume and gross profit.

Q. Have you any figures in mind which show the extent of those losses? A. The only figures I could give you is that of our showing on the spring season, particularly in certain departments, where the Guild effect was so very disappointing, and since we have been making good showings before that time, and since other departments not affected made good showings, I am quite sure that the
8988 supposition would be that we lost because we could not have these lines.

Q. What departments do you have in mind? A. In our women's departments, women's better dresses.

Q. What number? A. 333 and 338. The loss there was, I believe, unnecessary or would be unnecessary had we had access to the Guild lines, the loss in the junior department would be unnecessary had we had Guild lines.

Q. Junior department, what is the number of it? A. 371.

Q. Is that the sub-deb department? A. That is right.

Q. I show you Commission's Exhibit 713 and ask you to identify that. A. Yes; that is a table that I prepared.

Q. What does it refer to? A. It represents units sold in junior dresses at 12.95 up to 22.95 for the spring of 1935 and spring of 1936.

Q. What months did you include? A. March, April, May and June.

Q. Did you break down the price lines? A. I did.

Q. What price lines have you shown here? A. 12.95 and 13.95 in one price list, and 14 and $15 in one price list, 17.95, 19.95 and 22.95.

Q. What was the source of information used by you in 8990
the preparation of this exhibit? A. Records which we keep in my office of sales by units.

Q. Is this a correct statement of those records or taken from those records? A. It is as correct as records can be, yet there might be an occasional error of one, possibly, perhaps. They are our ordinary records that we use for our information right along.

Mr. Haycraft: I offer this exhibit in evidence.

Examiner Bennett: Let me see——

Mr. Albert: Objected to, if it please the Court, on the ground no proper foundation has been laid.

Examiner Bennett: Let us see the document, please.

(Thereupon paper writing was handed to the 8991
Examiner.)

Examiner Bennett: Is this compilation from records which are kept in the ordinary course of your business and relied upon as correct in your business?

The Witness: Yes, sir, they are.

Examiner Bennett: Overruled. The document is received as Commission's Exhibit 713.

(Thereupon the document referred to, heretofo marked Commission's Exhibit 713 for Iden fication, was received in evidence.)

By Mr. Haycraft.

Q. Have you made any such comparison of any oth department beside this? A. No, I have not.

Q. Have you made any study of any departments that you can testify as to the comparison of the sales the spring season of 1935 as compared to 1936? A. Y I have made a study.

Q. What departments have you made such a study 8993 A. In the women's budget dresses.

Mr. Albert: What number is that?

The Witness: Number 338. Department 3 women's better dresses.

By Mr. Haycraft.

Q. What was the result of that study? What did y find? A. I found that we had lost sales in volume due the imposition of the red card boycott.

Q. To what extent did those losses go? A. I don't collect precisely at the moment. They run to——

Mr. Albert: Now, if it please the Court, if doesn't recollect precisely, I don't think the Co 8994 mission wants any guess.

Examiner Bennett: If you don't recall it proximately, don't try to guess at it.

The Witness: Did you ask me if I could?

Examiner Bennett: I say, if you don't recall approximately do not try to give the figures.

The Witness: I recall it approximately.

Examiner Bennett: All right. You may g an approximate figure.

The Witness: 338, lost approximately 15 per cent.; 352 lost more than 25 per cent.

By Mr. Haycraft.

Q. That is, the whole price range? A. The department as a whole.

Q. The department as a whole? A. The department as a whole.

Q. Now, in your opinion, which departments were affected most from the volume standpoint?

Mr. Albert: That is objected to as calling for a conclusion of the witness and no foundation laid. 8996

Examiner Bennett: What is the question?

(The question was read.)

Examiner Bennett: I will let you answer, if you know.

The Witness: I know.

Examiner Bennett: All right.

The Witness: Departments 333, 338, 353, 354, 371, 380.

By Mr Haycraft.

Q. I believe you said that due to your inability to replace the Guild resources you suffered losses. I will ask you whether or not you can testify as to the resources, the Guild resources of Department 333, that you were unable to replace? A. I can testify as to that. 8997

Q. Will you please do so? A. May I refer to a list of resources that I gave you before, or may I not?

Q. You may. A. I think I have such a list in my pocket. Department 333, we found it impossible to replace A. Traina and Mathew Kadetsky, Edgar Garick and Herman Beispiel. Those four were among the most difficult to replace and there were certain characteristics in other manufacturers that we had missed and would have liked to have had.

Q. Which are those? A. Gardner-Schwartz, for instance, Joseph Greenberg. We just couldn't get anybody to replace A. Traina, Kadetsky, Beisl.

Q. How about Department 334? Were there any resources in Department 334 that you were unable to replace? A. Yes. Dolces Dresses.

Mr. Albert: Now, if it please the Court, I haven't objected very strenuously to Mr. Haycraft leading the witness. Now, the witness has read six departments which he claims were most affected by the Guild program, and his inability, alleged inability to obtain merchandise. Now, in an obvious
8999 attempt to lead the witness, Mr. Haycraft has now inserted another department which the witness has not testified to, and I will ask the Commission to admonish Mr. Haycraft not to lead the witness.

Examiner Bennett: All right. Is there a pending question?

(The record was read.)

Examiner Bennett: Overruled. You may finish your answer.

Mr. Albert: Exception.

The Witness: I have finished, your Honor. Dolces Dresses.

Examiner Bennett: All right.

9000 *By Mr. Haycraft.*

Q. Dolces Dresses was the only one in that department, in your judgment? A. I say, it is the most important, the one most difficult to replace. I think I have testified earlier that most of the Guild lines we buy because we think they are the best there is, and obviously some are hard to replace, but these were particularly a vital point in our assortment structure where we needed merchandise.

Q. All right. What is the situation in Department 338? A. The line we missed most of all there was Rosen Brothers, and we could not replace Rosen Brothers, Barnett-Ginsberg-Adelson was very difficult to replace also. The others in lesser degree.

Q. Department 353? A. The most difficult ones to replace there, and the ones we could not replace were Maurice Rentner, Strauss-Miller, William Bass, Herman Beispiel, Isenberg, Mary Lee, and I believe I would add Rudolph.

Q. What about Department 354? A. The resources that was--merchandise—the lack of whose merchandise hurt us the most was Milton Altmark, but close in line 9002
with him was Capri, Mary Lee, Stan. Friedlander and William Bass.

Q. How about Joseph Halpert? A. Halpert.

Q. Did you replace his merchandise? A. Well, I am not so clear on that point. I do not think that he was totally replaced, but I think we came closer to getting replacements on Halpert than one or two others. Dolces was extremely hard to replace.

Q. Who was the buyer for that department? A. Buyer for the department?

Q. Yes. A. 354?

Q. Yes. A. Mrs. Johnstone, Nellie D. Johnstone.

Q. All right. What is the situation in Department 371? A. The resource there which we could not replace, re- 9003
sources which we could not replace were Mulligan, which was probably the most severe loss on the whole floor; Ben Ginsberg, who made an extremely saleable line of suits, junior suits and coats; Will Steinman; David Westheim; Junior Guild. I might add, if there is no objection that this department had an extremely hard time replacing many of its resources and suffered severely in sales because practically everybody we used was a Guild manufacturer.

Mr. Albert: What department was that?

The Witness: 371.

By Mr. Haycraft.

Q. That is, in the dress end of it; is that what you mean? A. I should say in the dresses and primarily dresses costing $10.75 or better. There was practically no resource left to us after the Guild had been closed to us.

Q. What is the situation in Department 380? A. We could not replace Star-Maid dresses, and so far as comparing with 1935 is concerned, that is the only resources which I would say we had extreme difficulty in replacing,
9005 although we had developed in the fall of '35 business with Sam Steinberg and one or two others that we could not carry along with.

Q. Was Grace Ashley in that department? A. She is.

Q. Were you able to replace her? A. Positively not. I wish we could.

Q. Will you explain how the inability to get Guild merchandise after February, 1936, as a result of the red carding of Dayton's by the Guild affected adversely the prestige and reputation of Dayton's in Minneapolis? A. Many customers came to us requiring merchandise of the quality and type which they had before, which we were unable to supply, and as any retailer will tell you, if you are not able to care for women's departments along certain
9006 items of dress you lose business, probably maybe permanently from her, and you lose it in the allied departments as well as in the actual department in which she is interested. Also failure to have what we consider to be the best merchandise rather lowered I would say the morale in the better dresses. They discovered pretty soon that we were not using the kind of business we had before, and I feel that hurt our reputation and prestige. We were compelled to drop certain national lines that we had

built up very heavily, and I believe that the dropping of these lines, the failure to continue through on them, hurt our reputation and prestige in the city.

Q. What lines do you have in mind? A. Well, I mean discontinuing the advertising on Mulligan, Star-Maid, I should say Wragge dresses, excuse me. And one or two other lines which we had been promoting. I should imagine it would damage our prestige. Customers ask why, and they will ask for the garments and you haven't got them.

Q. Have you actually received such a request from a customer? A. We are receiving requests for Mulligan dresses every single day. We have received requests for 9008
all of the others at times, some of them almost continuously.

Q. In what way has this inability to get the dresses that you described affected your competitor situation. Has it made it less competitive? What do you mean by that?

Mr. Albert: I object to it, if it please the Court, no foundation having been laid.

Examiner Bennett: What is that question?

(The question was read.)

Examiner Bennett: Do you understand the question?

The Witness: Yes, sir.

Examiner Bennett: All right. You may answer. Overruled. 9009

The Witness: Well, I believe that Dayton's was doing its fair proportion of the better dress business in Minneapolis up to the time we were shut off, and naturally you can't abandon certain manufacturers who are admittedly among the best, perhaps the best in the industry and not sacrifice something in the way of competitive standing in the city. Our competitors naturally are buying these resources. I have seen a statement to the

effect that the Guild manufacturers had replaced all the business they had lost with red carded accounts. Hence, I presume they are selling more of this merchandise to our competitors in the city. I feel that we have—or it has become known to the public that our dresses are not of the grade that they used to be, that our competitors are perhaps selling more of these other types of dresses, and hence our competitive standing has gone down.

Q. Now, you mentioned among the effects of the red carding, disappointed customers on particular items. Do you have any concrete illustrations of that? A. Following the red card boycott a number of special orders were refused and those special customers were of course disappointed. It has been furthermore, a habit for customers to come into our model shop—that is the better dress shop, the highest priced end—with a copy of "Vogue," "Harper's," and say, "Can you get me this garment," or "Can you get that one?" and we could always or nearly always get it for them. Now, when they come in with those magazines we try to get their minds on something else knowing that we can't get those garments in all probability. Customers have asked if we carry certain dresses by name. A few customers are familiar with Maurice Rentner's line, ask for it, and we tell her that we no longer have it. Some have inquired about his "Quality Street" dresses this fall and we have been compelled to say that so far we have bought none. As I mentioned before, the effect of Mulligan's, they have inquired for them. Many women to whom we sold the Wragge dresses made by Star-Maid last spring desired other dresses by the same maker or a duplicate of what they had last spring, and we were unable to furnish them.

9011

9012

Mr. Haycraft: Mark this the next exhibit.

(The paper referred to was marked Commission's Exhibit 714 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 714 and ask you if you can identify that? A. I can.

Q. What is it? A. It is a record of our estimated loss and travel expense and time, exclusive of buyers' salaries, made necessary by the red card boycott last spring.

Q. Who prepared it? A. I furnished the material for it from my records.

Q. Who compiled it? Was it compiled under your supervision? A. It was compiled under my direct super- 9014
vision.

Q. Was it compiled in the ordinary course of your business? A. It was.

Q. Are you satisfied that it is approximately correct? A. I am satisfied that, if anything, it is an under-statement of the facts.

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Albert: I suppose I should object, your Honor, on the ground that no proper foundation has been laid, but the exhibit is so amusing that I don't think I will object to it.

Examiner Bennett: May I see it?

(The paper writing referred to was handed to the Examiner.) 9015

Examiner Bennett: Overruled. I will receive it.

Mr. Albert: Exception.

(The paper referred to, heretofore marked for identification Commission's Exhibit 714, was received in evidence.)

9016 *Dayne Donovan—For Commission—Direct.*

By Mr. Haycraft.

Q. What did you have in mind when you testified with respect to the loss of investments in confined, branded lines?

Mr. Albert: That is objected to, if it please the Court, on the ground that Mr. Haycraft is now on his redirect examination before we have started cross-examination. The witness has testified to it.

Examiner Bennett: I will sustain the objection, to the question in that form.

9017 *By Mr. Haycraft.*

Q. Can you give me an illustration of loss of investment in confined branded lines, referred to in your previous testimony?

Mr. Albert: Objected to upon the same ground, and upon the additional ground that no foundation has been laid.

Examiner Bennett: What is the question?

(The question was read.)

Examiner Bennett: You may do that. You may answer that. Overruled.

The Witness: I can answer it. We happen to have checked a while ago and we had invested in publicity of various kinds and types over a thou-

9018 sand dollars in Louise Mulligan, and we now consider that that investment is probably a loss to us, and not only that, but seems to be invested for the benefit of our competitors who now handle the line.

Q. In what way was that one thousand dollars expended? What type of advertising? A. Partly in Fashion Shows, in popularizing the personality of Miss Mulligan, showing her garments directly worn on girls to

people who came into the store to see them, and partly through our Datonian, which is a quarterly publication of the same company and perhaps most of all the newspapers in promoting that line.

Q. Over what period of time? A. The figure I mendioned refers to the time elapsing between August 1st, 1935 and February 1st, 1936, a period of at least roughly of six months.

Q. Can you give any other illustration? A. We have in the promotion of Wragge dresses invested some money in the same manner, although I have no actual figures to quote. And in the promotion of Grace Ashley dresses we have also spent some money in the same way. 9020

Mr. Albert: Is that the corpus delicti, Mr. Haycraft (referring to large box)?

Mr. Haycraft: Is there something on the record that I didn't hear?

The Reporter: "Is that the corpus delicti, Mr. Haycraft?"

Mr. Haycraft: I think that is on the other side of the table. Mark this for identification.

(The document referred to was marked Commission's Exhibit 715 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 715 for Identification and ask you if you can identify that? A. That is the booklet which Maurice Rentner made up for us to send out to our select customers, in the fall of '35. They are his dresses in the booklet. 9021

Q. How many of those did you send out? A. I can only estimate that. I don't know it precisely.

Q. What is your estimate? A. My estimate is 3,000.

Q. To whom were they sent? A. Presumably customers on our list who buy high grade garments.

Q. And at what expense? A. I cannot testify.

Q. I notice in pencil figures on this exhibit, heavy black figures, "$285.00." To what does that refer? A. I believe that refers to the cost of booklets to us plus the mailing. It is a swell book.

Mr. Haycraft: Mark this.

Mr. Albert: No objection, Mr. Haycraft.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 715, was received in evidence.)

9023 (Thereupon a document was marked Commission's Exhibt 716 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 716 for Identification and ask you if you can identify that? A. That is a Dayton ad run in the "Journal," January 16th, 1936. Do you want me to give the contents, too?

Q. No, just what it refers to? A. Referring to a Fashion Show of Louise Mulligan dresses.

Q. There is a heavy pencil notation on it. What are those figures? A. The cost of the ad.

Q. Was that made under your supervision? A. No, sir.

Q. Did you have anything to do with it at all? Do you
9024 know whether or not the ad was issued? A. Do I know whether or not the—what?

Q. This ad was actually issued? A. Yes, it was run.

Mr. Haycraft: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked Commission's Exhibit 716 for Identification was received.)

By Mr. Haycraft.

Q. Now I will show you——

Mr. Haycraft: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 717 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 717 for Identification——

Mr. Albert: Maybe there will be no objection, Mr. Haycraft, and we can save time——

9026

By Mr. Haycraft.

Q. (Continuing). —and ask you if you can identify that? A. I can.

Q. What is it? A. An ad on Louise Mulligan dresses run in "The Minneapolis Journal," August 21, 1935.

Mr. Haycraft: Offer it in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 717, was received in evidence.)

By Mr. Haycraft. 9027

Q. The pencil notations are the cost of the ad, also? A. They are.

(Thereupon a discussion ensued off the record.)

Examiner Bennett: They are received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 718, 719, 720, 724, 725, 726, 727, 728, 729, 730, 731, 732 and 733, were received in evidence.)

Q. Now, Mr. Donovan, you referred to a situation in the fall buying season which began, I believe, the first of August, is that correct? A. That is correct.

Q. Have you been able to replace Guild merchandise which you had formerly purchased from Guild manufacturers?

Mr. Albert: Up to the present time, do you mean?

Mr. Haycraft: Up to the present time.

Mr. Albert: Yes.

The Witness: In a great many cases we have been unable to replace it at all, some places where

9029 we have partly replaced it.

Q. Now, referring to your memoranda again, I will ask you to testify as to the instances where you have been unable to replace Guild merchandise for your fall requirements? A. We have——

Mr. Albert: Without conceding the truth, I will concede that the witness will testify substantially to the same effect.

Examiner Bennett: Did the other testimony apply only to spring purchases?

Mr. Albert: Yes, your Honor.

By Mr. Haycraft.

9030 Q. Well, I can ask this question: Have you been any more successful in replacing your Guild resources in your fall merchandise than you were in your spring? A. We have not been any more successful. In fact, since our fall season is more important, it is a larger season, I think I might say we have been a little less successful, certainly no more.

Examiner Bennett: When was——

By Mr. Haycraft.

Q. Could you list the outstanding resources of Guild merchandise which you have been unable to replace for your fall requirements? A. Yes.

Q. Please do so. A. Grossman-Spiegel, coats, Mangone, coats and suits, Friedman—maybe I better give them by departments. Would you rather have that?

Q. You better; it would be easier to follow. A. Department 300, suits.

Q. Just a moment, let me catch it. All right, go ahead. A. Suits, Mangone, in Department 300; Departments 310 and 320, Mangone, Grossman-Spiegel and Carmel Bros.; Department 332, J. L. Friedman Bros., or J. L. Friedman 9032
Company; Department 333, A. Trainor Company, Matthews Kadetsky, Ed Gerrick, Herman Beispiel; Department 353, which is the top of our misses' better dresses, Maurice Rentner, William Bass, Eisenberg Sons & Company, J. J. Rothenberg, Herman Beispiel and Straus Miller; Department 334, Baran Dress Company, Dolces Dresses and Henry Gans; Department 354, Milton Altmark, William Bass, Charles Lang, Casino Dresses; Department 338, Rosen Bros. and C. D. Robbins; Department 358, Witlin Schneider, Aywon and International Dresses; Department 371, Mulligan, Incorporated, Ben Ginsberg, Junior Guild, Junior League and Bon Ray; Department 380, Sam Steinberg and Star Maid.

Q. You were to get, at the noon recess, your percentage 9033
that Department 358 purchased from Guild resources. A. I have that.

Q. What are they? A. Spring of 1935.

Q. All right. A. 24.4 per cent. of all purchases.

Mr. Albert: What department was that?

The Witness: In the spring of '35, in Department 358.

Mr. Albert: What are the figures?

The Witness: 24.4 per cent. of all purchases were from Guild houses, and in the fall of 1935 we purchased 32.3 per cent. of our total purchases from Guild houses.

Mr. Albert: What are the figures?

The Witness: 358, 32.3 per cent. In Department 380, in the spring of 1935, we purchased 11.1 per cent. of our merchandise from Guild resources.

By Mr. Haycraft.

Q. Is that spring or fall? A. That is the spring. The fall figure I have given you.

9035 Q. Oh, I see. That is all.

By Examiner Bennett.

Q. You started buying fall merchandise about July 15th? A. No, we start early, your Honor. We start about June 20th.

Q. About June 20th? A. Coat and suit lines and dress lines start about July 5th.

Q. And you start selling at the same time, do you? A. Well, we will sell a very little bit of fall merchandise in the latter end of July and more early August, and then it increases until at this time of the year, September, our selling is 96 per cent. fall merchandise, probably.

Q. So the buying and selling have been going on from

9036 some time in June, about the 20th of June to the present time? A. Yes, sir.

Q. Under present conditions? A. Yes, sir.

Examiner Bennett: All right. Do you want to take a recess?

Mr. Albert: I think we might as well, your Honor, rather than starting and then interrupting the cross-examination.

Examiner Bennett: All right, we will take a recess of ten minutes.

(Thereupon a ten-minute recess was taken.)

Cross-examination by Mr. Albert.

Q. Now, Mr. Donovan, you have testified in various ways and in different language as to the necessity for the Dayton Store obtaining merchandise from Guild manufacturers. What, if you will, was it about that merchandise that was so necessary to the Dayton store? A. Well, on the whole, the merchandise from Guild houses contain more of the elements of saleability than merchandise from a similar number of non-Guild houses. 9038

Q. What are those elements? A. Well, I consider saleability in a garment first of all fit, whether or not it fits the woman in question; next, the composition of the dress in its various elements, in a manner that is pleasing to the customer, becoming to the average woman, and has eye appeal. Also, the ability to deliver, to manufacture and deliver promptly has something to do with its usefulness to us. Furthermore, Guild houses, as a rule, were among the first to have certain materials, certain trimmings, having the choice of the material in the trimming market, and these enter into the saleability of the dress. Their experience in manufacturing. Most of them have been in the manufacturing field for some time, experience in manufacturing, knowledge of the dress field, show up in the workmanship, in the details on the dress. I think that would be my answer, Mr. Albert. 9039

Q. Have you omitted any element? A. Would you read the answer back to me and I will see.

Q. (Answer read.) A. I think that is a complete answer, isn't it?

Q. I am not answering you. You are not trying to give the answers that will please me, are you, Mr. Donovan?

A. No. You asked if it was a complete answer. I do not know of anything more I can give you.

Q. That is all I wanted to know. In that answer, have you, by chance, in the description of one of the elements, used a word that is not commonly applied to that statement?

Mr. Haycraft: That is objected to, too indefinite and immaterial.

Examiner Bennett: Give me the question, please.

(Question read.)

Examiner Bennett: Do you understand that
9041 question?

The Witness: Yes, sir.

Examiner Bennett: All right, you may answer.

The Witness: But I cannot answer, I do not know.

By Mr. Albert.

Q. Well, now, don't you think; Mr. Donovan, it is rather unusual, with a divisional merchandise manager in the dress company for as long a time as you are, have been, in the description of the elements that you take into consideration in purchasing goods, which will sell to your customers, have not used the word "style" or "fashion"? A. I don't know whether it is unusual or not. It did not oc-
9042 cur to me.

Q. Well, would you say that you have used that word or the term "style" or "fashion" in any of the words that you have used in describing the elements? A. I think it comes——

Q. Under eye appeal? A. Possibly.

Q. Is that what you mean? A. Possibly.

Q. Possibly. Does it come in under anything else? A. I mentioned the matter of composing the materials of the dress to present a pleasant picture.

Q. In other words, you have used everything except the word "style" or "fashion."

Mr. Haycraft: I object to that question.

Examiner Bennett: Read the question.

(Previous question read by the reporter.)

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Do any of your customers, when they do not like the looks of a dress, say it has no eye appeal to them, or do they say it hasn't any style? A. Well, they usually say it is not a style that they want.

Q. Did you ever hear any of them use the word "eye appeal"? A. No; very few at least. 9044

Q. Well, then, would you say that style is synonymous with your expression, with the word "eye appeal"? And is one of the elements that are considered by you in purchasing dresses that you think will sell in your store?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer.

Mr. Haycraft: The witness has used language with which he is familiar and is accustomed to use.

Examiner Bennett: If he wants to add "style," if he thinks he has covered it, all right. I will let him answer. He is able to answer the questions.

Mr. Haycraft: Read the question.

(Question read.) 9045

The Witness: Well, I believe I covered the question fairly sincerely. I don't feel like changing my answer.

Q. Don't you think a dress can have eye appeal without having style? A. I believe it could.

Q. So that you have not covered style by the use of the word "eye appeal," if you can have eye appeal without

having style, have you? A. Would you mind repeating the question?

Q. (Question read.) A. Well, I presume you can have style without eye appeal.

By Mr. Albert.

Q. Well, then, you left out consideration of style as one of the elements that you consider? A. I believe I included the element of style such as I considered them in my original answer, Mr. Albert.

Q. Well— A. If you wish to know whether I intentionally left it out or not, I will answer.

9047 Q. Well, I think the record will reveal adequately whether you did or not. A. Very well.

Q. In consideration of the elements that you took into consideration, you mentioned first fit. Do you mean by that that that is the first one you happened to think of, or do you mean that that is the most important? A. According to my lights, Mr. Albert, I believe it is the most important.

Q. Fit? A. Fit. For this reason, if you wish me to explain, all right.

Q. Yes, go ahead. A. I believe when a customer, anyone comes into our store, the first thing we have to do is fit her. If we cannot fit her, we have lost a sale. We know it right to start with. We might have the most

9048 desirable fashions, styles, anything that you or I might care to put in, but if we cannot fit her, the sale is gone. Therefore, I put down the word "fit" as being the first requirement, and I believe the major requirement, and I believe the layout of the department stores, whereby they segregate the sizes and usually appoint buyers to buy certain sizes, and the character of the market, whereby manufacturers make certain sizes, and specialize on certain sizes, indicates that that is the first requirement of a dress.

Q. Mr. Donovan, you mean by the use of the word "fit," the ability to provide your customer with the proper size? A. I do.

Q. Is that all you mean by fit? A. No. In that connection with what I meant after——

Q. So that, insofar as your description of the elements that go into your purchase of dresses, what you mean by fit is the ability to get the proper size? A. Well, I mean the ability to get the proper size and have it made to that size correctly. In other words, so that a 38 fits a 38 woman.

Q. In other words, what you mean is that, insofar as the size is concerned, it is to be able to fit a woman with a 9050
dress once she has selected the dress, is that not so? A. I would say the opposite. I would say we have to show her a dress she can wear in the correct size and made to her correct proportions before we have any chance to interest her in anything else.

Q. Is it your contention, then, that your customers come in and ask for a size 12 dress and put it on, see how it fits; and then start to look at the style of the dress? A. No, my contention is that they come in and ask for a size 12 dress and, if we have not a size 12, we lose the sale. Therefore, that seems to me to be the first requirement, to have size ranges.

Q. In other words, if you haven't got a size 12, you cannot sell it? A. Well, you have a chance, of course, to 9051
sell size 14.

Q. Dayton's would not sell a woman a size 14 if she only wore a size 12, would it? A. Well, is that an inquiry into our methods?

Q. Well, I want to find out what elements you take into consideration in selling a dress. A. Well, I am trying to tell you as far as I have gone.

Q. Has Dayton's tried to sell a size 14 to a size 12 woman? A. If she looked easy, a trifle large for a 12, we

might. Some of the manufacturers, not Guild, I suppose, would make a size 14 a little scanty.

Q. What is your contention with respect to the elements that are taken into consideration by your customers when they attempt to purchase a dress? A. I can name four or five things that I believe almost every woman considers in the purchase of a dress. Would that answer the question?

Q. Well, I think we all will concede, Mr. Donovan, that nobody will purchase something that does not fit. A. That is right.

Q. That nobody will purchase a sack cloth to wear—

9053 A. That is right.

Q. —is that correct? A. That is correct.

Q. And that when a woman buys a $100 dress she wants the needle work to be good, is that correct? A. Mostly, they expect it. I have seen them buy it and not know whether they were getting good, bad or indifferent needle work.

Q. That is the next thing I was coming to. Does the average women know anything at all about the needle work on a dress? A. The average woman does, the average woman does.

Q. But many do not? A. There are some who do not.

Q. When a woman buys a better dress or an expensive dress she also likes to see that the workmanship is proper; isn't that so? A. Most of them do.

9054 Q. When a woman comes into your store, what is the first thing that she asks for with respect to a dress? A. "I wear a size 28, what can you show me in a dinner dress, an afternoon dress, a daytime dress."

Q. Is that all that she is interested in? A. At first.

Q. Well, naturally, she has got to tell you what her size is in order to get anything at all; isn't that so? A. Sure—well, no, not always. We can guess it the most of the time.

Q. Then you know the size without her telling it? A. What?

Q. Then you know it without her telling it? A. Frequently.

Q. How frequently can you tell it without her telling it to you? A. I don't know that. I haven't sold the dresses myself.

Q. Do you know it on the average? Do your buyers or your salesladies know it on the average? A. They can make a reasonably close guess, but the woman naturally will give her size.

Q. So that when a woman comes into your place to purchase a dress, does she by any strange circumstance or 9056
peculiar quirk of her own ask you anything about the style? A. After we show her the dresses and start showing them she will make inquiries as to whether she is interested in the one style more than another.

Q. When you show her the styles of the dresses, do you show her your left-overs from last year? A. Not unless we have reason to believe that she would be interested in buying them. We have to sell them to somebody.

Q. What are the elements that would lead you to believe that she was interested in last year's dresses? A. Well, she might indicate that she wanted a dress to wear around.

Q. After she first asked you for the size? A. No.

Q. Or before? A. It might be either one or the other. She might ask for the size first or say simply, "I need a 9057
dress to wear around. I wear a size forty. Have you got one like that?"

Q. You wouldn't show her last year's dress unless you first told her about it; would you? A. If she wanted to wear a dress around, we have several hundred we have got to sell to somebody.

Q. What happens when you show them last year's styles? A. What happens? Either they are bought or not bought; I don't know which always.

Q. Those last year's styles are purchased at a price, aren't they? A. Yes. You mean the manufacturer's price?

Q. When you show last year's styles to your customers, you sell them for less than you sold them last year; don't you? A. Why, at this time of year or any end of the season that we are showing last spring's merchandise, for the most part it is reduced, not always.

Q. When you sell last year's styles to a woman, it is generally because that woman has come in to purchase a dress at a price, isn't that so, rather than to purchase the prevailing style? That woman wants a cover; she doesn't
9059 want the latest fad, mode, does she? A. I don't suppose she expects it if she wants a dress at a price which is last season's garment.

Q. When your customers come in who are not looking for dresses at a price, but who are looking for dresses that adequately reflect the trend of the day and dresses that they wouldn't be self-conscious being seen it, what do they ask for?

Mr. Haycraft: I object to that, Mr. Examiner. There has been no showing that there is any such creature.

Examiner Bennett: Read the question.

(The question was read.)

Examiner Bennett: I think you had better not
9060 load your questions down with so many ifs and ands. If you will just ask him a direct question, I think that will be better.

Mr. Albert: Well, then, let's make it direct, Mr. Donovan.

By Mr. Albert.

Q. I think you have been following the hearings very closely and have been attending some of the hearings.

What is the most important thing to a woman in a dress? A. Didn't I answer that before?

Examiner Bennett: Yes.

By Mr. Albert.

Q. Isn't the style of the dress more important than the fit? A. I think I testified to the contrary. I don't think it is.

Q. Is it your contention that a woman—by that we mean the average of your clientele who purchases better dresses, will purchase a dress that fits her despite the fact that it wouldn't possibly be in style? We are not talking about exceptional cases, Mr. Donovan. I want your honest opinion from your years in the industry what the most part of your clientele of women seek when they come in for a dress. 9062

Mr. Haycraft: Now, I object to that question. It is a little complicated. No one in the world can understand it. He starts out with an average and winds up with the most.

Examiner Bennett: Read the question, please.

(The question was read.)

Mr. Haycraft: I think the question has already been answered.

Examiner Bennett: Do you understand the question?

The Witness: Why, I think I know what he is driving at. 9063

Examiner Bennett: All right. Go ahead and answer it.

The Witness: But I think I have answered it.

Examiner Bennett: What?

The Witness: I believe I have answered that. If I may interject at this moment, I think, Mr.

Albert, I can safely say and be perfectly frank to concede that style is a very important element in a dress, but I am willing to concede it is the most important element. I think that explains——

By Mr. Albert.

Q. Now, isn't it a fact that— A. —the position.

Q. Isn't it a fact, Mr. Donovan, that when a woman comes in for a dress, if she doesn't say so in so many words, "I want to see your latest styles," that your sales force will show her the latest style of a dress in the size that may fit her? A. Not necessarily.

9065 Q. Then you try to sell dresses that are not in the latest style? A. I don't believe I said that.

Q. What do you mean by "not necessarily"? A. Well, I mean that we have dresses running in style back anywhere from to-day's dress, received to-day, back three months, four months, and that we have those dresses for sale, and if they appear suitable to the woman who comes in and are her size, we show her those dresses regardless of whether they are to-day's styles or four months ago's styles. We make no distinction in our selling as to how old they are.

Q. With that answer in mind, upon what do you base the reputation of the Dayton store? A. That we have a large proportion of styles that have come in to-day and

9066 up-to-date fashions, but we make no pretense of stating that we have nothing that was last week's or last month's left in stock, and it does have to be sold. And it is true in all stores, and we try to have as much as possible, as most stores do, of the new established merchandise.

Q. Who is it that consistently in your opinion, provided that new established merchandise insofar as style is concerned? A. Why, there is a large group of good manufacturers who provide that.

Q. Would you say that they were the Guild manufacturers? A. I think the Guild, among others, provide new merchandise and I would say that insofar as the Guild comprising the market in certain types in that proportion the Guild has the most new merchandise.

Q. By new merchandise you mean new style? A. Yes.

Mr. Albert: Will you mark this for identification, please?

Examiner Bennett: What are you marking for identification?

Mr. Albert: Two pages in the "Good Housekeeping Magazine," December of 1935 issue. Pages 72 and 73. 9068

(The pages referred to were marked Respondents' Exhibits 61-A and B for Identification.)

By Mr. Albert.

Q. Now, Mr. Donovan, I show you Respondents' Exhibits Nos. 61-A and B, being two pages from "Good Housekeeping" for December, 1935, containing illustration of designs for various dresses, and ask you what it is in these dresses that is emphasized? A. Well, the color is emphasized, the details as to neck line, waist line, and so on, in many of the dresses. In short, it is the youthfulness, the salability of the dresses that is demonstrated, the desirability of the dresses.

Q. You still seem to have an adverse prejudice to using the word style; haven't you? Would you say that the style of those dresses are in any way emphasized? A. In a general sense, yes, the style is. 9069

Q. What is there that is attractive about the illustration there other than the style of the dress? A. The colors are very attractive, and it demonstrates in a very striking way the youthfulness of the fashions which I think——

Q. Isn't the youthfulness of the fashion a result of the style or design of the dress, or do you mean by that that the illustrator has merely painted or etched, or whatever it is that he did there, a very young girl with youthful looks? A. Well, the illustrator has done that. I also mean that the dresses are of styles and of colors and of general designs that are very youthful and appealing to a younger person.

Q. Will you tell me if there is anything in that advertisement which in any way asks the customer to please come in and feel the material and see how good the material is?

9071 Mr. Haycraft: I object to that as irrelevant.

Examiner Bennett: Give me the question.

(The question was read.)

Examiner Bennett: I will let him answer if he sees anything like that.

The Witness: I think every ad implies that the customer may do that if she is interested in so doing.

By Mr. Albert.

Q. In other words, it is taken for granted, isn't it? A. To a large degree, although I do notice here it refers to celanese taffetas and other materials which might make a customer want to come in and see what they look like and
9072 feel them.

Q. That is merely a description of the material of which the dress is made so that the customer can know exactly what it is; isn't it? A. Well, that is true.

Mr. Haycraft: I object to the use of the word "merely," Mr. Examiner, as argumentative.

The Witness: Well——

By Mr. Albert.

Q. Without the use of the word "merely," isn't that all it is?

Mr. Haycraft: I object to that "isn't that all it is." It is argumentative.

Examiner Bennett: I will let him answer if he can.

The Witness: Will you repeat the question without using the word "merely."

(The question was read as follows: "That is a description of the material of which the dress is made so that the customer can know exactly what it is; isn't it?") 9074

The Witness: Well, that is what most advertising is, a description so that they can——

By Mr. Albert.

Q. Of course. Of course. A. —so that they can be interested in it and come in and investigate further. We hope they will, and lots of times they don't.

Q. Is there anything in that advertisement that says that those who read it, "please come in and try on our dresses and see how beautifully they fit and enjoy yourselves." A. No.

Mr. Haycraft: That is objected to. 9075

By Mr. Albert.

Q. As a matter of fact, isn't the only thing that a woman can see in that advertisement to prompt her to come into your store to buy a dress is the style of the dress? A. Well, no. I think she can see from this advertisement that they are junior fashions and that we are asking the juniors who read this ad to come in and look at our merchandise.

Q. All right. Isn't the only thing in that advertisement that will attract the juniors who read that advertisement to come into your store, the design and the style of that dress? A. I don't honestly think I can answer for the juniors. It will seem like to me——

Q. After your years of experience you can't tell me what it is that you try to play up to in your customers? A. I can't say what they think about in reading that page.

Q. What purpose did you have in mind— A. We hoped——

Q. —in letting your name be used in connection with that advertisement? A. We have the hope that they will
9077 be interested enough to come in and ask about these garments.

Q. And the only thing that is in there that you hope they will come into your store, is a result of the design and the style of the dress; isn't that so? A. Well, that is a very important element.

Q. Well, now, what did you mean when you said that your customers came in with a copy of "Vogue" or "Harpers" and asked for those dresses? Do they know anything about the material in the dress, as to its quality or value, or do they know anything at all about the fit of those dresses from what is in those advertisements? A. Well, they—what I was referring to, Mr. Albert, was not this particular—I mean illustrated garments in "Vogue"
9078 or "Harper's" and don't know whether they know anything about the fit or not. I don't suppose they do.

Q. Is this type— A. It doesn't mean that we have sold the garment because they come in and ask for it. It does mean that they would be interested in seeing it and providing the fit is there and the material is suitable they might buy it.

Q. Isn't the only thing that attracted that type of customer who reads "Vogue" or "Harper's" or "Good Housekeeping" the style and design of the dress as illustrated in

those magazines? A. You are asking that the only thing that those customers are interested in is the style?

Q. I said, is the only thing that attracted those customers to your store, that impelled them to go to your store, as a result of seeing the advertisement in "Vogue" or "Harper's" or "Good Housekeeping," isn't that only thing the style or design of the dress, as reflected in those magazines? A. I would say it is an important element in it.

Q. Is there any other element that is contained in those advertisements to attract their attention? A. Why, I think there is descriptive matter there pertaining to materials that are in the pages directed to junior readers. I think any one of those that want to come in and see the 9080
new celanese taffeta, might not at all be interested in what the garment looked like. They want to see the taffeta and hope they get something else maybe.

Q. So in other words, you think the only thing that attracts your customers when they see an advertisement in "Good Housekeeping" is not the seven comely ladies in fashionable dresses, but rather the line or two of type in that advertisement that states that you have on sale a celanese dress? If that is so why don't you just put an ad in "Good Housekeeping," "Come in and see our celanese dresses"? A. I never said that that was so, Mr. Albert.

Q. What did you say was so?

Mr. Haycraft: I object to that. The record shows what he said.

9081

Examiner Bennett: Sustained. Too indefinite.

By Mr. Albert.

Q. You have a piece goods department, Mr. Donovan? A. Yes, sir, we have.

Q. Your customer can see celanese in your piece goods department; isn't that so? A. Certainly, that is open at all times within store hours.

Q. You mailed or distributed Commission's Exhibit No. 715 to your customers; did you not, Mr. Donovan? A. Yes, we did.

Q. And that went out as a publication of the Dayton Company; did it not? A. I believe it did. I don't know to what extent.

Q. The name of the Dayton Company stands behind everything that is stated in that; doesn't it? A. The Dayton Company is on there.

Q. The Dayton Company doesn't lend itself——

Mr. Haycraft: I object to that.

9263 The Witness: It is all right. I just wanted to be sure. I didn't remember all of this. But I understand what you mean. It is Dayton Company's publication to all intents and purposes.

By Mr. Albert.

Q. (Indicating) On Commission's Exhibit No. 715? A. That is true.

Q. The Dayton Company does not lend itself to any advertising or to any statements that are misleading; does it? I don't mean any wrong inference by that at all. I am merely trying to get information from you. A. We do not knowingly ever subscribe to statements or things which we think are misleading and false.

9264 Q. Naturally before you issue a document of this sort under the name of the Dayton Company and have the Dayton Company's name behind it, you examine the contents thereof in order to make sure that there is nothing in there that you wouldn't want to stand solidly behind; isn't that so? A. That is the normal course. I can't testify from my own knowledge.

Q. The Dayton Company is not subnormal, is it? A. No.

Q. It would not reach its position that it has reached in the industry to-day, if it were? A. Well, there are lots of subnormal things go a long ways.

Q. Now, will you tell me what the Dayton Company meant by this statement: "For a woman to feel that she has done justice to herself and her appearance, she will, out of sheer necessity, have to resort to better clothes." What did the Dayton Company mean by that?

Mr. Haycraft: That is objected to, Mr. Examiner, irrelevant and immaterial, improper cross-examination. I object to that, Mr. Examiner.

Examiner Bennett: I heard you. Let us see the document, please. 9086

(Document handed to Examiner Bennett.)

Mr. Albert: May it please the Court, may I point out that this witness has specifically testified on direct something which thus far has not been testified to by anybody else, that the Dayton Company is meticulous in the truthfulness of its advertisements.

Mr. Haycraft: Well, there is nothing about that statement to indicate otherwise.

Mr. Feldman: It is their advertisement.

Mr. Haycraft: What of it? I say it is immaterial and irrelevant. There is nothing about that statement read to the witness that can have any probative value or tends to contradict anything the witness has said. 9087

Examiner Bennett: As I understand it, you have read this first paragraph and asked what was meant by it.

Mr. Albert: I read this sentence here (indicating).

Examiner Bennett: This paragraph?

Mr. Albert: Beginning 401.

Mr. Haycraft: May I be heard on the objection, your Honor? Unless your Honor feels that you want to overrule it. I do not want to waste time.

Examiner Bennett: I will let him answer, if you give him the whole thing.

Mr. Albert: Yes, I am showing it to him.

Examiner Bennett: if you give him the whole context.

Mr. Haycraft: Will you read the question?

(Question read.)

The Witness: I do not think I can add anything to what this statement says by itself. I did not

9089 propose the booklet or pass on it. As a matter of fact I have not seen it to my knowledge ever before. Probably I read it at one time. It has no special meaning to me.

Examiner Bennett: We will adjourn until 10 o'clock to-morrow, and will meet at this place.

Mr. Albert: Very well, your Honor.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken.)

9090

Room 307, Federal Building,
Minneapolis, Minnesota,
September 3rd, 1936.

Met, pursuant to adjournment, 10 o'clock A. M. C. S. T.

Before: JOHN W. BENNETT, *Examiner.*

(SAME APPEARANCES)

PROCEEDINGS.

9092 Examiner Bennett: Be in order, please. You may proceed. All right, Mr. Donovan.

Mr. Donovan: Good morning.

DAYNE DONOVAN thereupon resumed the stand for the Commission and, having been previously sworn, testified further as follows:

Cross-examination by Mr. Albert (continued).

Q. Referring to Commission's Exhibit No. 715, Mr. Donovan, to the last page thereof, I read you the following language: "To achieve the smartest and the latest fashion in your costume, that is every woman's aim. If you depend on Dayton's timely, lovely selections you are 9093 assured of styling in the best of taste, the last minute touches and pleasant pricing." And ask you what is meant by that?

Mr. Haycraft: Objected to. There is nothing ambiguous about that. It speaks for itself.

Examiner Bennett: There isn't any question yet.

(The question was read.)

Mr. Haycraft: I have objected to the question, Mr. Examiner.

Examiner Bennett: Is that your language?

Mr. Haycraft: It has no probative value.

The Witness: It is not my language.

By Mr. Albert.

Q. Is not that the language of the Dayton Company?

Examiner Bennett: Well, I will overrule your objection, if you want to find out what his interpretation of that language is.

9095 Mr. Albert: Yes, your Honor. That is all I want.

The Witness: I believe the language is the language of Maurice Rentner or his concern; that is, the selection of words, and so on. I believe that this booklet presented to us—I think when we got it we looked at the illustrations and got through Mr. Rentner's nephew, I think, an idea of about what it contained, probably about some idea of the wording, and so on, but not any—not in any definite way. The booklet came, was approved, passed by our advertising office, or at least subscribed to, I presume, and sent in; but as to any other interpretation, I can't help you any on that. I presume it means about what it says, according to their

9096 light.

By Mr. Albert.

Q. Then, do you wish us to understand, Mr. Donovan, that insofar as Dayton's is concerned, they let a book go out containing certain descriptive matter and printed matter without being fully aware of the significance of what was said and what they were lending their name to?

Mr. Haycraft: That is objected to as irrelevant and immaterial, no probative value.

Examiner Bennett: I will let him answer.

The Witness: Well, I don't think that I can tell you what you may interpret from it. I say, there are the facts. You can draw any conclusion you wish from them. I don't know any more than is down there. Usually we do check our things pretty closely that go out.

By Mr. Albert.

Q. Didn't you read that before it went out? A. I don't recall having personally read it, no. 9098

Q. When is the first time that you read it? A. I don't remember. In fact, I don't know that I ever read it word for word. I looked at the illustrations.

Q. When is the first time that you got the idea that it was a swell book? A. When one of our competitors had it the previous year and did business on it.

Q. The same book? A. No, a book like it, or that—well, let me amend that. It is a book on that order and with the same name.

Q. Then you weren't referring to this book when in your direct testimony you said it was a swell book? A. No; I was referring to this book.

Q. When did you first think that this book was a swell book? A. This particular book, I presume? 9099

Q. Yes. A. When I saw how the dresses sold that were illustrated in the book.

Q. When were you able to compare the sale of the dresses with the illustrations in the book if prior to this time you hadn't read the book?

Mr. Haycraft: That is objected to. There is nothing in the testimony that he did make any such

comparison. I don't know whether he did or not. Why don't you ask him?

Mr. Albert: He just said he did.

Mr. Haycraft: No, he didn't.

The Witness: Not quite that, Mr. Albert.

Examiner Bennett: What is the question?

(The question was read.)

Examiner Bennett: I will let him answer. Overruled.

The Witness: I can only say this: I know that the dresses in the book sold, and that was the basis of my general statement that it was a good book.

9101 We liked it. I didn't refer to any feature of it particularly. We know the dresses sold.

By Mr. Albert.

Q. How did you first know what dresses were illustrated in that book that you had in stock? A. How did I first know what?

Q. Or when did you first know that, rather? A. Well, I don't suppose I know exactly what you mean. Our buyers bought the dresses in the book, and I knew that they had bought them.

Q. And aside from that, that is all you knew about that book? A. Well, I knew the general character of the book, the way it was printed. It is a very good-looking booklet,

9102 and very creditable, and I knew that one of our competitors had had a similar book the year before and that customers had praised it, and that I had liked that kind of a book.

Q. Did you not go through that book in order to make certain that there wasn't anything in that book that might be objectionable to the Dayton Company's standard or policy or series of advertising, of the truthfulness or anything of that nature; is that so? A. No, sir. There is a question that I can't answer. I did not. It is not my function.

I presume that the advertising office done that, and if a book has the general character of something that we think is of value to us, I let them do the checking of the words and check the policies. They are very good at it.

Q. You have to check up on your buyers, don't you, to see that they are doing their work properly; do you not?

Mr. Haycraft: Objected to, irrelevant and immaterial.

Mr. Albert: It is a foundation question, your Honor, in the light of the last answer.

The Witness: Why, I am perfectly——

Mr. Haycraft: It has no bearing upon the last answer, and I object to it. 9104

Examiner Bennett: Overruled. Go ahead.

The Witness: Why, certainly, I keep a reasonably close check on them as well as anybody can.

By Mr. Albert.

Q. Didn't you testify that so far as Mr. Dayton is concerned, Mr. Dayton said that there isn't anything that he knew of that the buyers weren't responsible for in the sale of their merchandise? A. I did so testify.

Q. Therefore, the buyers would be somewhat responsible for whatever is in that book; isn't that so?

Mr. Haycraft: That is objected to as absurd. He is carrying this examination to the point of absurdity. 9105

Mr. Albert: Quite right. I am trying to make Mr. Donovan look as absurd as possible.

Mr. Haycraft: You are not making Mr. Donovan absurd, you are making yourself absurd.

Examiner Bennett: Do not make these remarks across the table. You are making this record much longer than it ought to be. Read the question.

(The question was read.)

Examiner Bennett: Yes. Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Donovan, the Dayton Company writes the ads for the Minneapolis newspapers; don't they? A. Our advertising office does, yes.

Q. Do you see those ads at all? A. I see most of them, in part at least.

Q. You check up on them before they go out; don't you? A. Roughly, yes.

9107 Q. In order to make certain that your departments are getting the proper sort of promotion in the advertisements; isn't that so? A. Why, yes. I am a party to what goes in the advertising.

Q. That is right. A. Roughly. I don't assume full responsibility for the advertising or the ads.

Q. Now, Mr. Donovan, I show you Commission's Exhibit 725, being an advertisement in the "Minneapolis Journal" of November 8, 1935, by the Dayton Company, and ask you what the Dayton Company meant by the following: "Mary, Mary, quite contrary, out Mulligans Mulligan, if such a thing could be"?

Mr. Haycraft: Object to that, Mr. Examiner, no probative value.

9108 Examiner Bennett: I will let him answer, give his interpretation of it, if he has any.

The Witness: Well, my interpretation of it is that, among other things, Miss Mulligan does well, they have a knack of styling for younger girls, well liked, and that this ad refers to the fact that those particular touches and things which Mulligan put on her garments are even more pronounced than the ones which we are showing and illustrating here.

9109

By Mr. Albert.

Q. Do you mean by that that Mulligan had outshone itself in the designing of these dresses? A. No, I think my other statement tells it as completely as I can. Mulligan does many other things, certain things very well. She has very cute yarn embroidery on her things and different little wooden ornaments and for such characteristics Mulligan dresses are recognized as such. I suppose that it seems that it has some of these pronounced treatments of hers and that they are pronounced in the garments.

Q. Do you say that the design of the dress has nothing to do with the Mulligan popularity? A. I think there are many things which have to do with Mulligan popularity.

9110

Q. Is there anything in that advertisement, and is there anything in any of the advertisements that you have put into evidence here that in any way attempts to advertise or play up the fact that the dresses are good fits or that the material in the dresses is of particularly high order, and is it not a fact that the only thing that is played up in all of the advertisements that have been put into evidence is the design and the style of the dresses?

Mr. Haycraft: That is objected to. The advertisements speak for themselves.

Examiner Bennett: I will let him answer.

The Witness: Well, I am frank to say I have not read all of these advertisements for a long time. I do not know just what is in them.

9111

By Mr. Albert.

Q. I will let you have them and look them over, Mr. Donovan. A. An ad like this, which starts in talking about sub-debs, for which we pay money, right there is our intention to sell to a certain size range and to attempt to enter a certain size range first of all.

Q. Isn't the sub-debs a variegated size department? A. Yes.

Q. Does it not show in that department all sizes? A. Certainly not.

Q. Isn't there a variety of sizes in that department? A. Four sizes.

Q. Well, now, you take a look at these advertisements and you tell us what, in these advertisements, the Dayton Company believes that it is advertising in an attempt to attract customers, upon the basis, one, of the fit of its dresses; two, upon the basis of the quality of the material?

9113 Mr. Haycraft: That is objected to as irrelevant and immaterial, no probative value.

Examiner Bennett: Overruled.

The Witness: Well, I think that they bring forth a number of things, Mr. Albert. I do not deny the style is an important feature in this ad, in particular operations, which has a great deal to do with it.

By Mr. Albert.

Q. Let us see if we can get off this topic, Mr. Donovan. Is it not a matter of fact that in so far as women are concerned, when a woman comes in to buy a dress she assumes, and anybody that buys any clothing assumes, first, that they are going to buy something that will be

9114 a proper fit——

Mr. Haycraft: That is objected to.

Mr. Albert: And second—I have not finished my question, Mr. Haycraft.

Mr. Haycraft: What did you pause for?

Mr. Albert: That is just for effect, to get you excited.

Mr. Haycraft: Well, you failed.

By Mr. Albert.

Q. (Continued) —and second, that if it had confidence in the reputation of the store that it is doing business with, the customer will believe that the material will be worth the money paid for it, and what a customer goes into that store for—when she goes in for a dress—is to see something that is a good model and good design in fashion and trend?

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continued) Is that not substantially true? 9116

Mr. Haycraft: That is objected to as being——

Examiner Bennett: Overruled. He may answer.

Mr. Haycraft: Will you let me state my objection?

Examiner Bennett: Go ahead.

Mr. Haycraft: The objection is, Mr. Examiner, it is about quadruple in form. It is highly objectionable. It is argumentative. The witness has answered it to the contrary.

Examiner Bennett: I know he has answered it to the contrary. He is trying to break down the answer.

Mr. Haycraft: I would like to again ask that counsel refrain from standing between me and the 9117
witness.

Mr. Albert: I am sorry.

Mr. Haycraft: I would like to be considered a part of this court room scene.

Mr. Albert: Personally, I think it is a lot of off-stage noise, but if you want to join the cast——

Examiner Bennett: Make an objection and I will pass upon it. I think the shortest way is the best way.

The Witness: Am I to answer?

Examiner Bennett: Yes, you may answer.

The Witness: Would you mind reading the question, please? As I remember, it is a lengthy one.

By Mr. Albert.

Q. But you do remember it? A. I remember you asked the question, but I would like to know the details, which you included, so I do not make a wrong answer.

9119

(Question read.)

Examiner Bennett: You may answer, but confine yourself to women, and do not try to cover the whole universe as to anybody who buys any clothes anywhere.

The Witness: I do not know what I can say other than that when a customer comes into our store she first inquires what we can show her in the size that she requires and frequently we lose many sales because we have a desirable fashion or style in a size which she cannot wear. I cannot believe that all she thinks about is the fashion or the style of a dress. I think that is one of the things that she thinks about.

9120

By Mr. Albert.

Q. Well, isn't the first thing she wants to settle the style of it, and then she will see if the dress fits her? A. I would say very greatly—I have no knowledge of what the first thing they want to settle in their minds is, except in my opinion is, "What have you in my size that will look well on me?" That is the first thing she wants to settle, is if we have something in the size for her.

Q. Well, let me put it this way, Mr. Donovan: Would any woman buy a dress which fits her and which has good material if she is not satisfied and if she is not pleased with the design or the model of the dress?

Mr. Haycraft: That is objected to, Mr. Examiner. That assumes that the woman he is talking about wants the latest style and she wants a stylish dress, and she may be satisfied with something less than that. I don't think we are getting anywhere. We are running in circles.

The Witness: If I may make a comment, Mr. Albert, and you won't take it amiss——

Mr. Haycraft: I have an objection. 9122

Examiner Bennett: I will overrule the objection and let the witness answer.

The Witness: Will you read the question?

Q. (Previous question read by the reporter.) A. Well, it is one of the qualifications which she wants. I have known them to come into the store and say, "This is the only place in town I can get a 38½ dress, but I don't like it, but I have to buy a dress."

By Mr. Albert.

Q. That is the type of woman that comes in and all she wants is something to cover her? A. I don't know what percentage wants something to cover them or which 9123 percentage wants something else. I am not an expert on what every woman wants. I believe fashion is highly important, and the style of the garment.

Q. Is there any general type of dress in which style or the design of the dress is not important? A. The only kind I have discovered is a burial dress.

Q. What kind? A. Burial dress.

(Laughter.)

Q. That is a new one that you added since we left Chicago? A. That is not true.

Q. We did not hear of that in Chicago. A. I do not know what you heard in Chicago.

Q. You do not mean that? A. I was tossed out early in the second day, before I heard what you——

Q. Well, you read it, didn't you? A. Well, you would not want a witness dumb enough to say he did not read it or did not have any opinion about this case.

Q. All right, that is all I wanted you to say. Is it your opinion that, aside from a burial dress, there is no dress in which style is not important? A. I said that is one
9125 of the circumstances.

Q. Are there others? A. There may be other instances, but in general style is a very important factor of a dress no use denying that.

Q. The only one you can unequivocally state that style is not an important factor in is in a burial dress? A. Well, I believe that style in a burial dress is less important than it is in almost any other kind of dress. Although I have known burial dresses to be sold to Polish bridesmaids to wear at weddings. I presume they are assumed to have some style value or she would not buy it.

Q. Do you mean to say that Dayton's sell burial dresses to women for weddings? A. No. We show them dresses and explain what they are for, and the girls in this particular party wanted to buy them for use as bridesmaids
9126 at a wedding.

Q. Your burial dresses were of a particular style that your customers wanted to wear at a wedding? A. I would say lack of style. The fact that they appealed to these girls is evidence that they did not have the remotest idea of style. Did not care anything about it.

Q. How much of your clientele would you say had such an idea of style? A. An extremely small percentage.

Q. A small percentage? A. Such a small percentage as to be practically negligible.

Q. Mr. Donovan, you stated that most girls had no idea or conception of design or style? A. I assume their knowledge of style was pretty small.

Q. And, of course, were these burial dresses of very good material or very enchanting material? A. Well, they were in a very nice color which the girls liked.

Q. Color and nothing else? A, Mostly color.

Q. What was the needlework on these dresses? A. Very good in front and pretty bad in the rear.

Q. How about the workmanship? A. Well, I think that answers the question. The workmanship was good in 9128
spots and not very good in other spots.

Q. Yet despite that fact, in so far as these girls were concerned those dresses were the height of style and the height of design, sufficient for them to want to wear them at a wedding, despite the poor workmanship and poor needlework and your refusal to even testify as to the kind of material?

Mr. Haycraft: Object to that as being immaterial, contrary to the wtiness' testimony.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Well, now, Mr. Donovan, Dayton's uses display win- 9129
downs in its store, does it not? A. It does.

Q. Do you put dresses in those windows? A. Very frequently.

Q. You also put dresses on the floor of your department for display, do you not? A. Continuously.

Q. What is the purpose of that? A. We wish to show new features of the dresses or what we consider to be salable features of the character frequently of color, frequently in exemplification of problems of size and fit which

we think we can take care of, and frequently for new touches in designing.

Q. As a matter of fact, Mr. Donovan, isn't the only reason, or certainly the prime reason, why you put dresses in your show windows and display them on your floor is in order to allow your customers to see those dresses and to see the lines of them, the design of them, the model of them, the style of them, and thus be attracted to come in and attempt to purchase those dresses? A. With many other things, yes.

Q. You think that a woman can see very much of the fabric of the dress aside from its connotation from outside
9131 your store, looking into your show window? A. I do.

Q. She could tell the quality of the material aside from being able to distinguish the kind of material it is? A. Very well, very well. If we have a sign showing this is the new lustratone that we had in our window last week, and the new Parma Violet color, I think it will show it very well.

Q. Do you think your customers have to be told that is a certain color? A. If it is a new color, they do. If they have seen it somewhere else, probably it is not.

Q. I think your answer is that signs regarding the color assist the shopper in being able to determine from the sign, looking into the show window, the quality of the material? A. I do not think I said that, Mr. Albert.

Q. That is what I was talking about. A. I did not mean
9132 to state that a sign indicating a particular color will give any indication of quality of material.

Q. Let us start all over. Do you think that your women shoppers can tell from the outside, looking into your show room window, the quality of a dress in your window aside from being able to distinguish that the dress is either of silk or some other material?

Mr. Haycraft: Objected to. It has already been answered by the witness.

Examiner Bennett: All right. I will sustain the objection. I don't think it means anything.

Mr. Albert: Exception.

Q. Well, Mr. Donovan, will you tell me what it is about a copy of a better dress that makes that copy sell?

Mr. Haycraft: That is objected to as not being proper cross-examination. It refers to nothing in the direct examination.

Examiner Bennett: Overruled. You may answer.

Mr. Haycraft: There is nothing established to 9134
show what a copy is. How is he going to tell?

The Witness: Do you want me to answer?

Examiner Bennett: Yes, if it does sell. I don't know anything about it.

The Witness: Well, I think it is the same thing that makes any dress sell, Mr. Albert.

By Mr. Albert.

Q. What is that? A. Well, that it is probably—assuming that the dress does sell——

Q. Yes. A. It must be well sized, it must fit, it must have attractive styling to it, it must have pretty good workmanship for the kind of a garment that it is at the price. It must be of an interesting fabric, pleasing, har- 9135
monious and nice color, and be reasonably priced with what it appears to be.

Q. Is it your contention, Mr. Donovan, that in so far as the sale of a copy of a better dress is concerned, that the dress sells because of the fact, first, that it has up-to-date design in the style trend as copied from better dresses; second, that it has good workmanship; and, third, that it has good fit?

Mr. Haycraft: Objected to. The witness has already answered that question.

Examiner Bennett: Sustained. That is not the statement of the witness.

The Witness: No.

Examiner Bennett: It is almost directly opposite.

Mr. Albert: May I have the witness' answer read back to me?

(The answer was read.)

By Mr. Albert.

Q. Do copies of better dresses have those elements? A.
9137 Very frequently.

Q. When they sell? A. Well, all dresses, I believe, have those, including copies, yes.

Q. Is it your contention that all dresses of good workmanship—is it your contention that all dresses have good workmanship and are good fits? A. No, not all dresses.

Q. Well, then, what is it that you can get in the better dress from the Guild manufacturers that you can't get in a copy dress? A. I think I covered practically that same ground yesterday, but I will do so again if you wish.

Q. Let me put the question this way then, Mr. Donovan: What is it that you can—withdraw it. Do the dresses that are copies of the better dresses and that compete, according to your testimony, with the better dresses that you sell
9138 have equally as good workmanship and equally as good fit as the Guild merchandise?

Mr. Haycraft: Objected to. I don't understand that to be the witness' testimony.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Haycraft: I didn't understand that copies competed with the better dresses. There is no such testimony.

Examiner Bennett: I don't recall his testimony to that effect.

Mr. Haycraft: I don't either.

The Witness: I didn't so testify.

Examiner Bennett: If you will cut out that part of it, why, and make it a question, a plain and simple question as to those two classes of dresses, I will let him answer.

Mr. Haycraft: There is no foundation laid yet for it. He hasn't established knowledge yet.

Examiner Bennett: I will sustain the objection to that question in that form.

Mr. Albert: Exception. 9140

By Mr. Albert.

Q. Since February of 1936, Mr. Donovan, has the Dayton Store been purchasing copies of Guild merchandise?

Mr. Haycraft: Objected to as not proper cross-examination, your Honor, irrelevant and immaterial to the issues in this case.

Examiner Bennett: I will let him answer. Overruled.

Mr. Haycraft: I object to it further unless the question is confined to his own department, so he knows what he is talking about.

Examiner Bennett: Well, of course, I think it is understood that he is confined to his own de- 9141
partments.

The Witness: For the first two or three months—I am giving you my honest convictions as to the length of time—it may vary a week or two, but the first two or three months following the red card boycott we did not change our policies in any respect. In other words, we had adhered to the Guild policies prior to that time as regards to purchasing

of so-called copies or purchasing so-called copies of manufacturers, and I would say there never was an exception; but we did not hold any meetings of buyers and say, "This is over. Now go ahead and buy all the copies that you can," or anything of that kind. We stuck to virtually what we had been doing before. Within the last two or three months the question has come up whether or not we should knowingly buy copies, and in every case the ruling has been that we would not buy a dress under any conditions because it was a copy or because it wasn't. If it looked to be—you understand that
9143 since not having access to Guild houses we have no idea of what is or what is not a copy unless the manufacturer tells us, and they may or may not tell us—but we have not at any time bought a dress because it was a copy of a Guild dress that we didn't think it was a good dress or because one of our competitors had it and we knew he was selling it. We bought it strictly on its merits as a dress. If it looked right to us, looked as if it would sell, for the last three months we have—would be buying it, otherwise we have been passing it. And I might add that not over ten days ago I passed a line. He said it was a copy line of one of the best known Guild houses and I said we are not interested in it. We just don't care about the dresses. We are pass-
9144 ing it. If they had been good dresses and looked as if they had been salable, perhaps we would have bought them if we needed them.

Q. Then since February of 1936 you have been substantially conducting your business in substantial conformity with the Guild policy with respect to the protection of style? Remember I am only saying "substantially," Mr. Donovan. A. Yes, I understand, and I am endeavoring

to give you the picture as we see it. As I say, we haven't —copying, in the first place, has never been to us——

Q. No. Will you answer the question, please? A. Well, all right.

Q. Mr. Donovan? A. Excuse me.

Mr. Haycraft: I object to the witness being interrupted, Mr. Examiner.

Mr. Albert: The witness obviously realized he wasn't answering the question and he desisted himself.

Mr. Haycraft: Well, he did not desist until you interrupted him.

The Witness: I was going to back up to it again. 9146

Mr. Haycraft: The witness is entitled to make an explanation. This question is a broad question. I think he is entitled to make a full explanation. I object to his being interrupted.

Examiner Bennett: I will permit a full explanation. Go ahead.

The Witness: I will leave out that objectionable part.

Examiner Bennett: Give the best answer you can. Do you want the question?

The Witness: We made no ruling whatever on whether we would or would not buy copies for several months following the red carding, and we did practically the same as we did before. I don't say 9147 that the buyers didn't buy copies; maybe they did. I don't know whether they were copies or not. We didn't see the Guild lines. We didn't get any notices from the Guild that this was a copy, and I presume we did buy copies. But we didn't make a policy of buying copies of Guild lines or copies of our competitors' merchandise.

9148

Q. So that substantially— A. I am not quite through.

Q. I am sorry. A. Within the last two or three months, as I mentioned before, the question has come up and our store has expressly forbidden or requested the department managers, including myself and others, again not to make a policy of buying copies because it is a copy, but to relax our former policy to the extent that if we see a good dress which we think will sell, to buy it on its merits as a dress without reference to its being a copy or where the manufacturer got the design, because that is his problem.

Q. Would you care to answer this question, Mr. Donovan: Where you purchased the dress solely upon its merits

9149 and subsequently learned, within a reasonable time after delivery, that the dress was a copy, is it your policy today to return them because it is a copy?

Mr. Haycraft: That is objected to. The witness has no way of learning that, he has already said.

Mr. Albert: If it please the Court, I believe the witness is perfectly qualified to state what his policy would be if they learned that it was a copy.

Examiner Bennett: I will overrule the objection. You may answer. Do you want the question again?

The Witness: No, I don't need the question. Why, if we were told that a dress was a copy of another dress, I do not think we would have any warranty for returning it.

9150

By Mr. Albert.

Q. You don't think what? A. That we would have any warranty for returning it. I don't believe that we have been stamping orders the last two or three—or I don't believe that we would attempt to return it because we don't think the manufacturer would take it, and further I believe——

Q. Now——

Mr. Haycraft: Let him finish his answer. Let him complete his answer.

By Mr. Albert.

Q. Are you finished with your answer? A. And further, I don't feel any longer under any obligations to return it.

Q. In so far as the agreement with the Guild is concerned? A. In so far as the agreement with the Guild is concerned, correct.

Q. Now, granted that perhaps you might have no legal justification for returning the garment because you didn't have the protection of the warranty stamp, would you, after learning that the dress was a copy, reorder? 9152

Mr. Cant: If the Examiner please, on behalf of the Dayton Company, I object to the question on the ground that the Examiner nor the respondent is interested in what the policy of the Dayton Company has been since it was red carded on February 17th, 1936. It is a matter of confidential information and has no relevancy, no bearing here.

Mr. Albert: May I point out to your Honor, off the record, the relevancy and the pertinency of the question, or does your Honor think it unnecessary?

Examiner Bennett: If you wish.

Mr. Cant: I ask that the witness be protected for that purpose, for that reason. 9153

Examiner Bennett: Does the representative of Dayton Company want to hear what this gentleman has to say?

(A discussion is had off the record.)

Examiner Bennett: I shall sustain the objection of the Dayton Company to further going into the policies subsequent to the red carding.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you recall, Mr. Donovan, when the Dayton Company started using the warranty stamp?

Mr. Haycraft: Objected to as not being proper cross-examination.

Examiner Bennett: Overruled. If you did use it. Did you use that stamp?

The Witness: We did.

Examiner Bennett: Yes.

By Mr. Albert.

9155 Q. When did you start; do you recall? A. I believe it was in June or July of 1935.

Q. That is the first time that you used that stamp? A. Well, it is the first time that I remember it being invariably and universally used, and meetings held to see that it was used, and letters written by New York that it must be used.

Q. Had you used it at all prior to that? A. I am not clear whether we have or not. I have been asking myself that same question and not been able to decide. We had discussed the matter. It is my impression that we used it part of the time and did not generally use it.

Q. I show you Commission's Exhibit No. 701 and ask you if this will refresh your recollection as to whether or not you used the warranty stamp prior to June or July of

9156 1935? A. You asked if this refreshes my memory as to whether we did or did not use the warranty stamp?

Q. Yes. A. No; I can't say that I can add any more than I have. I am not sure whether we used it. Of course, you didn't require it on all orders, as I remember it, and I believe possibly we used it on some orders, and did not on some others.

Q. Is there any exception in that Commission's Exhibit No. 701?

Mr. Haycraft: I object to that. The witness didn't write that exhibit.

Examiner Bennett: Well, this is cross-examination. Go ahead. You may answer.

The Witness: May I have the question again?

(The question was read.)

Mr. Haycraft: I wish to point out further, your Honor, that this witness was not interrogated about the use of the stamp at all.

Examiner Bennett: About what?

Mr. Haycraft: No question was asked of him about the use of that stamp.

Examiner Bennett: Well, it seems to me there 9158
was. At any rate——

Mr. Albert: Certainly, your Honor.

Examiner Bennett: At any rate, this part of it——

The Witness: What is the question that I am to answer?

(The question was read again.)

The Witness: Why, the only exception can be in the phrase "we would be glad to co-operate so long as this proves possible, and that we would not knowingly buy"——

Q. That is the only exception? A. There is no exception on the warranty stamp. It says: "This order is 9159
placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Incorporated. The purchaser reserves the right"—and so on. It says that we will stamp our apparel with that stamp.

Q. As a matter of fact, do you know that Mr. Larson testified that that stamp was agreed to be placed upon all orders?

Mr. Haycraft: That is objected to. The witness was not present when Mr. Larson testified, and I don't recall that he did so testify.

Examiner Bennett: I will sustain an objection to what Mr. Larson testified to.

By Mr. Albert.

Q. Now, Mr. Donovan, I show you Commission's Exhibit No. 706, which is your letter to Mr. Post, dated May 8th, 1935, and ask you what you mean by the following: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement
9161 dress departments, all of which compete closely with the chain stores and mail order houses, which by the nature of their business have no need of the F.O.G.A. and no contracts with them"? Now, what do you mean by this sentence which follows: "It is possible that this fact really need not concern us, but at least it has been one reason for our hesitation"? What do you mean by "It is possible that this fact really need not concern us"? If you want to follow me there (indicating). Well, it seems to me that statement is pretty clear. The only way that I could explain it any further is that I believe that the Guild expected to get into their organization all of the stores selling dresses, or at least many of these chain shops, and it is possible that I referred to that; that in
9162 the course of time you would have that problem, if there was any, eliminated by taking in such shops as were competing with us and not with—not members of your organization.

Q. Do you mean, then, that if the Guild succeeded in signing up to the declaration of co-operation all or substantially all of the chain stores, that then there would be no problem at all as far as the Dayton Company was concerned with the competition of chain stores? A. No,

I don't—it wouldn't eliminate all problems immediately but it would answer a part.

Q. Substantially most of them; isn't that so? A. Not even most of them, but it would take care of one rather vital point, we think.

Q. It would take care of that chain store competition point; wouldn't it? A. Well, I don't think we would have much argument left as far as maintaining our competition position with regard to certain price lines of the business. I think it would help us answer that argument, yes.

Q. In so far as style piracy is concerned? A. Well, in so far as your objectives were concerned. 9164

Q. Do you or do you not know, Mr. Donovan, that as the lower-price lines were embraced within the Guild program more and more chain stores have signed the declaration of co-operation with the Guild? A. I know nothing at all about that. I haven't followed it at all; I have followed it still less since February 17th.

By Mr. Albert.

Q. Is Sears-Roebuck chain store competition of the——

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. (Continuing) —of the Dayton Store? A. Is Sears-Roebuck competition to ourselves? 9165

Q. Yes. A. Yes, they compete with us.

Q. Do you not know that they have signed the declaration of co-operation with the Guild? A. I do not know whether they have or not.

Q. Is J. C. Penny chain store competition with you? A. Well, it is, I think, in some of our departments.

Q. Do you not know that they have signed the declaration of co-operation? A. I do not know whether they have or not.

Q. Do you know that the Darling Shops is a chain store competition of the Dayton Company? A. The Darling Shops?

Q. Yes. A. I don't know those shops.

Q. Do you know that the Darling chain has signed the declaration of co-operation with the Guild? A. I don't know.

Mr. Haycraft: That is objected to, Mr. Examiner. The witness said he didn't know. As a matter of fact, I don't believe it has.

Examiner Bennett: There is no testimony or proof on that point.

9167

By Mr. Albert.

Q. Now, Mr. Donovan, coming back to Commission's Exhibit No. 706, the first sentence which I read to you is the following——

Examiner Bennett: Just a moment.

Q. Now, Mr. Donovan, I read you the third sentence in the second paragraph of Commission's Exhibit 707, which reads as follows: "You know, of course, that we have two inexpensive dress departments on our second floor and several basement dress departments, all of which compete closely with the chain stores and mail order houses, which, by the nature of their business, have no
9168 need of the F.O.G.A. and no contracts with them." Now, am I correct in saying that that sentence reveals the fact that the Dayton Store in following programs and performing policies of the Guild were of the opinion that there might be some injury to them as a result of the fact that chain stores, who did not sign the declaration of co-operation, might compete with them; is that not a fair interpretation of that sentence? A. I think it is fair, Mr. Albert, with the exception that you should say at the end

there that we felt there might be some injury due to our lower dress department, due to the fact that we could not carry the same kind of merchandise and compete with these chain stores. I think that is what you meant.

Q. I read you the following sentence and ask you, does not the following sentence refer specifically and precisely to the previous question which we have just discussed: "It is possible that this fact really need not concern us, but at least it has been one reason for our hesitation"? Now, what, in your opinion, at that time was there about that fact that need not have concerned you?

Mr. Haycraft: The witness has already answered that question, Mr. Examiner. It is objected 9170
to.

Mr. Albert: I think it is far from answered.

Mr. Haycraft: Same question propounded him, and he answered it.

Examiner Bennett: Well, I will let him repeat his answer.

The Witness: I referred to the fact that according to my understanding of the Guild's projected program over the six months that perhaps they were going to sign up all these chain stores and so on eliminated the difficulty that we anticipated due to their being allowed to carry copied styles and sell them in large quantities, while we were deprived of these styles. That is as close as 9171
I can get to it, Mr. Albert.

By Mr. Albert.

Q. And you do not know to what extent the Guild has been successful in obtaining declarations of co-operation from chain stores?

Mr. Haycraft: Objected to as immaterial and irrelevant and already gone over.

Examiner Bennett: We will take a recess of ten minutes.

(Recess.)

Examiner Bennett: Come to order, gentlemen.

By Mr. Albert.

Q. I read you the following question of Mr. Haycraft on page 5112 of the record: "Q. Was any attempt made to re-order from the manufacturers you have named? A. Yes, there were one or two attempts made. Q. With what success? A. The re-orders were not filled." Did you mean by that that the re-orders were not accepted and that the
9173 manufacturers refused to accept orders? A. Yes, I think what happened, I remember one order came back, which was not accepted at all, and I believe the other case it was simply returned to us or was not—I think it was returned to us. The manufacturers were fair in the matter. They said they could not ship.

Q. I just wanted to make sure of what you meant by that. I think there was a confusion of terms there. A. Maybe.

Mr. Albert: May I have Commission's Exhibit 707 for Identification?

Mr. Haycraft: It is not offered. Do you think you are entitled to it?

Mr. Albert: It is up to you, Mr. Haycraft.

9174 Mr. Haycraft: It is up to the Examiner.

Mr. Albert: Counsel for the respondent has asked counsel for the Commission to produce Commission's Exhibit 707, with which the witness refreshed his recollection. No request was made to look at the paper at that time, at the time the witness was interrogated. Now I am asking whether or not the Examiner believes that, under the rules followed by the Commission, it is now encumbent

upon counsel for the Commission to turn this exhibit over to counsel for the respondent.

Examiner Bennett: I think any paper used by the witness on examination is subject to inspection.

Mr. Haycraft: I would have given it to him at that time.

Examiner Bennett: Yes.

Mr. Haycraft: Mr. Examiner, I think also I should make the point, in fairness to the witness, that when I showed this telegram to the witness he said it did not refresh his recollection.

Examiner Bennett: Well, if it develops that he knows nothing about that telegram——. 9176

Mr. Haycraft: He knows about the telegram all right, but the telegram did not refresh his recollection as to the question I asked.

Mr. Albert: I offer in evidence, if it please the Court, Commission's Exhibit 707, which is a telegram signed by Mr. Donovan, addressed to Mr. Larson of the Dayton Company.

Mr. Haycraft: There is no objection.

Examiner Bennett: Let me see the telegram. Is that objected to? If there is no objection on the part of the Commission, we can let it go in as Commission's Exhibit 707.

(Thereupon the document referred to, heretofore marked for identification Commission's Exhibit 707, 9177
was received in evidence.)

By Mr. Albert.

Q. Now, Mr. Donovan, did you have any conferences with Mr. Bergdahl or any representative of the A.M.C. stores on or about the time that telegram, Commission's Exhibit 707, was sent? A. Yes, I am very sure I had discussed various phases of the Guild proposals and of the

Guild operations and all our rules with Mr. Bergdahl in an informal way. It was not a definite meeting to arrive at conclusions. We just talked about it.

Q. What did Mr. Bergdahl tell you with respect to the inclusion in the Guild program of the $10.75 dress houses? A. I do not remember any specific discussion of $10.75 dress houses.

Mr. Albert: My question is: "Is it, as a matter of fact, true that the request for the inclusion of the 10.75 dress line in the program was at the instigation of the A.M.C.?" This witness can answer the question.

9179 Examiner Bennett: I will ask him: Do you know anything about that situation?

The Witness: I do not know who started this talk about 10.75. I cannot state as to that.

By Mr. Albert.

Q. You do not know who instigated it? A. Certainly, as far as your question is concerned, 10.75 dresses, I don't know who broached the proposal first. I know you claim the A.M.C. did. I do not know that they did. I do not know the opposite, then.

Q. Do you wish to amend your testimony that the proposal was made by the Guild to conform to your statement just now that a proposal was discussed but you do not
9180 know who it was that suggested the inclusion?

Mr. Haycraft: Objected to. As to that point, the witness has not said anything now at all in contradiction to what he said before. He was testifying as to the Dayton Company and now the question refers to the A.M.C. stores outside of the Dayton Company, Bergdahl and somebody else.

Examiner Bennett: I will sustain the objection to the form of the question.

Mr. Albert: Exception.

By Mr. Albert.

Q. As divisional merchandise manager of the Dayton store, is it fair to say that in order to keep up with the daily trends in the industry, what takes place therein, you make it a practice of reading "Women's Wear"? A. I read "Women's Wear" on every occasion on which I get an opportunity. I regret that I occasionally miss issues when I am on the train or when I am in New York and do not happen to get hold of a copy.

Q. But aside from those peculiar circumstances, you attempt to follow "Women's Wear"? A. Religiously. I make a practice of reading "Women's Wear" when I can.

Q. Was the first time that you heard of the inclusion 9182
of the 10.75 dress line in the Guild program on or about May, 1935? A. Well, it was in the spring of 1935. I cannot tell you about that.

Q. I show you Respondent's Exhibit 45 for Identification, being an advertisement of "Women's Wear Daily" of Wednesday, August 9, 1933, and ask you if you saw that advertisement?

Mr. Haycraft: That is objected to. The exhibit is not in evidence.

Mr. Albert: So, I suppose I cannot ask the witness any questions in an attempt to offer it in evidence.

Mr. Haycraft: No foundation laid, nothing to 9183
show that this witness has anything to do with "Women's Wear," was a writer or an official of that organization.

Mr Albert: The question is a very simple one: Did you see that?

Examiner Bennett: I overrule the objection at this point. I want to see what is going to develop.

Mr. Haycraft: Exception.

Examiner Bennett: Do you expect to connect it up with anything, Mr. Albert?

Mr. Albert: Yes, your Honor, it is very pertinent with the particular inquiry I am on now.

Mr. Haycraft: What inquiry are you on now I don't know.

Examiner Bennett: All right.

The Witness: I do not remember having seen it.

By Mr. Albert.

Q. Do you remember Dress Creators League, constituting the 10.50 and 10.75 manufacturers, becoming part of the Guild on or about that time, August, 1933? A. No, I do not.

9185 Q. Did you have any knowledge of it at that time whatsoever? A. I can't remember now that I had any knowledge of it.

Q. That is, you may have had knowledge of it at the time and were cognizant of it then, but you have forgotten? A. It is possible.

Mr. Haycraft: Move that be stricken, Mr. Examiner.

Examiner Bennett: Beg pardon?

Mr. Haycraft: I move those questions and answers, to which I have objected, be stricken now.

Examiner Bennett: I will grant the motion. It seems as though it was surplusage.

Mr. Albert: Exception.

9186

By Mr. Albert.

Q. Now, you have testified as to the inability to obtain merchandise from certain Guild manufacturers. Among those Guild manufacturers that you have testified you were unable to obtain merchandise from, you include the International Dress, is that not so? A. Yes.

Q. Was the fact that the Dayton Company bought no merchandise or ordered no merchandise from the Inter-

national Dress Company due solely to the fact that the International Dress Company refused to sell the Dayton Company as a result of the red carding? A. Will you read the question, please?

(Question read.)

Mr. Haycraft: That is objected to, Mr. Examiner, as calling for a knowledge from this witness which is beyond his possibility.

Mr. Albert: We will soon show whether it is beyond his possibility, your Honor.

Examiner Bennett: I will overrule the objection. You may answer.

The Witness: I do not see how I can answer. 9188
It depends on the line. Their line is usually good. I believe we had bought merchandise from them in many years. I do not know that we bought from them. There are many Guild houses, many good Guild houses, that we cannot buy from.

By Mr. Albert.

Q. Now, as a matter of fact, Mr. Donovan, is it not a fact that the Dayton Company ceased, stopped, or refused, whichever word you choose, to purchase goods from the International because of the fact that the International sold to many retailers in Minneapolis and that it was the contention or the belief of the Dayton Company that that affected the value of the International Company's dresses 9189
to the Dayton Company?

Mr. Haycraft: Too many questions there, Mr. Examiner. I object to two of them, anyway.

Examiner Bennett: I will overrule the objection and let him answer.

The Witness: I do not think the Dayton Company as an organization ever permanently refused or definitely refused to buy International dresses

for any reason: I do know that the buyer there at that time, Mrs. Chase, had some time prior to December, 1935, had some rather lengthy discussions with—I can't remember the salesman's name who represents us—represents International in this territory, the man with the carnation, good looking boy—had discussed with him the matter of his selling so many accounts, and I believe once or twice she did not buy from him on one of his trips. Whether or not that was the sole reason I don't know. I know that she felt that he sold too many people and didn't confine his line.

9191

By Mr. Albert.

Q. As a matter of fact, Mr. Donovan, wasn't that question of selling too many retailers in Minneapolis of such importance to the Dayton Company that the Dayton Company made it the subject of complaint and inquiry to the Minneapolis Guild and also made it the subject of complaint and inquiry to the Fashion Originators Guild?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Overruled.

The Witness: We have discussed the matter of selling to a large number of accounts in the city, at the Minneapolis Fashion Guild. I don't know

9192

whether we could be considered the prime movers in such discussion or not. We did discuss it and once or twice I have written letters, part of which letters were along some such line.

Mr. Albert: Will you mark this for identification, please?

(The paper referred to was marked Respondents' Exhibit 62 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 62 for Identification and ask you if that is your signature on that letter, on the letterhead of the Dayton Company? A. That is mine.

Q. Is that a letter that you sent to Mr. Golby? A. It is.

Mr. Albert: I offer this in evidence.

Mr. Haycraft: No objection. It just tends to support the Commission's complaint.

Mr. Albert: May I ask the latter remark of Mr. Haycraft be stricken? It is a sad commentary of the Commission if it is dependent on side remarks by Mr. Haycraft to support it or give it any added strength. 9194

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Respondents' Exhibit 63, was received in evidence.)

By Mr. Albert.

Q. Now, Mr. Donovan, did you on or about July of 1935 have any correspondence with Mr. Bergdahl with respect to your signing the declaration of co-operation with the Fashion Originators Guild?

Mr. Haycraft: That is objected to as irrelevant and immaterial. 9195

Mr. Albert: Laying a foundation, your Honor.

Examiner Bennett: Well, I will see what is coming. Overruled.

The Witness: On or about July, 1935, have we had any correspondence with Mr. Bergdahl in reference to signing the agreement with the Guild?

By Mr. Albert.

Q. Yes, sir. A. Well, we are in pretty close correspondence with Mr. Guild, or Mr.—pardon—Mr. Bergdahl, Mr. Albert. I can't say whether I did or not. I presume it might have been discussed.

Mr. Albert: Mark this for identification, please.

(The paper referred to was marked Respondents' Exhibit 63 for Identification.)

By Mr. Albert.

9197 Q. I show you Respondents' Exhibit No. 63, and ask you if you recognize this as being a copy of a letter sent by you to Mr. Bergdahl? A. I recall a letter to that general effect, yes. I presume this is the letter. I think it is.

Q. Is that the letter that you sent to him on or about July 12th, 1935, over your signature on the letterhead of the Dayton Company? A. I believe that it is the letter.

Mr. Albert: I offer it in evidence.

Mr. Haycraft: No objection.

Examiner Bennett: Received.

Mr. Haycraft: It confirms the Commission's complaint.

Mr. Albert: You certainly must feel weak about it, Mr. Haycraft, if you have got to reiterate your own remarks with respect to it.

9198 Mr. Haycraft: I have all the more reason now for stating that.

(The paper referred to, heretofore marked for identification Respondents' Exhibit 63, was received in evidence.)

Mr. Albert: Have you any objection, Mr. Haycraft, if we substitute a photostat for Respondents' Exhibit No. 63?

Mr. Haycraft: No objection.

Mr. Albert: And 62?

Mr. Haycraft: Yes.

By Mr. Albert.

Q. Now, Mr. Donovan, you have given testimony with respect to the relationship of the Dayton Company with manufacturers as reflected in "Good Housekeeping," "Vogue," "Harper's" and similar magazines, and you have, I believe, referred to that relationship as co-operating in the advertising. What do you mean by that?

Mr. Haycraft: I object to that. The witness did not use that language. That was mine. 9200

Mr. Albert: He didn't correct you, did he, Mr. Haycraft?

Mr. Haycraft: That doesn't make any difference.

Mr. Albert: Well, it certainly is more objectionable if that language was used by Mr. Haycraft and the witness fell into error as a result of Mr. Haycraft's questions. I am attempting to clear it up, in justice to the witness.

Examiner Bennett: All right.

Mr. Haycraft: The witness didn't say that.

The Witness: What did I mean by——

By Mr. Albert.

Q. Let me try to shorten this, Mr. Donovan. Did you 9201
mean anything more in that than that the Dayton Company was invited to permit its name to be used in the advertisement as a retail store selling the merchandise named in the advertisement? A. Well, we have—we had a voice in the selection of the garments to be used.

Q. Well, of course, but you paid nothing for the advertisement, did you? A. I do not believe that we did. That would have to be settled definitely by the advertising department.

Q. Don't you know? A. No. It has been my impression that we paid nothing for it, but I might be wrong.

Q. Now, Mr. Donovan, you have testified that the redecarding of the Dayton store and the inability to obtain better merchandise lowered the morale of the sales persons in the store; is that correct? Am I right in that? A. Yes.

Q. Did you make any attempt whatsoever to improve the morale of your sales force?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Well, I think it is irrelevant and immaterial. I will sustain the objection.

9203 Mr. Albert: Exception. If it please the Court, I offer to prove that if the witness had been permitted to answer the question, he would have testified that no effort was made to improve the morale of the sales force. Upon the receipt of which answer, I believe that I would have been able to elicit from the witness that a lack of morale in a sales force is reflected in a decreased volume of sales.

Mr. Haycraft: I will ask the witness whether that is true or not, what he said.

Mr. Albert: That is objected to, if it please the Court, unless I am permitted to ask the witness the questions.

Mr. Haycraft: I can't allow counsel to put such

9204 a statement in the record which is contrary to what I am satisfied the witness will say.

Examiner Bennett: Yes. It is subject to a motion to strike.

Mr. Haycraft: I move to strike it.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

9205

By Mr. Albert.

Q. How often do you go into the markets, Mr. Donovan? A. I have testified that they go depending upon the department and the necessity, and a number of factors, anywhere from two times a season to possibly eight, maybe ten times in certain departments, depending upon the departments that you have in mind.

Q. Now, does the itemization of the number of trips made by buyers, as reflected in Commission's Exhibit No. 714, constitute the entire number of trips to the various markets made by the buyers? A. No, it does not.

Q. What does it reflect? A. I can tell you how this was—would that cover your question if I tell how this was?

9206

Q. I would rather you answered this question: Did the buyers make any trips to the markets in addition to those trips? A. Yes, they did.

Q. How many more? A. I don't know. I didn't count them.

Q. You didn't count the total number of trips that they made to the market? A. No; I have had no occasion to count them, so I haven't.

Examiner Bennett: We will adjourn until 2 o'clock for luncheon.

(Whereupon, at 12:30 o'clock P. M., the hearing in the above-entitled matter was adjourned until 2 o'clock P. M. of the same day, Thursday, September 3, 1936.)

9207

AFTERNOON SESSION—2 o'clock P. M.

By Mr. Albert.

Q. I show you Commission's Exhibit 703-A, and ask you if the Dayton Company still feels that the following proposal is still urged by them: "Fashion Originators Guild Incorporated, members will not sell their product to any one in the city of Minneapolis not a member in good standing of the Minneapolis Fashion Retailers Guild"?

Mr. Cant: If the Court please, the Dayton Company objects to that on the ground that it is a mat-

9209 ter of no concern what the policy or the feeling of the Dayton Company is since it was boycotted in February. It is entirely outside of the issues and is irrelevant and immaterial.

Mr. Albert: May I call to the attention of the Court that not only this witness but Mr. Larson has already testified on direct with respect to the matter that is now the subject of the questioning.

Mr. Haycraft: I beg your pardon, Mr. Examiner, I do not concur in that statement.

Examiner Bennett: Yes, I will sustain the objection to the question. I think it is immaterial and irrelevant.

By Mr. Albert.

9210 Q. Does that proposal, joined in by the Dayton Company, reflect the Dayton Company's feeling about the matter to-day?

Mr. Cant: Same objection.

Mr. Haycraft: Objection.

Mr. Albert: May I point out the direct testimony of the witness with respect thereto?

Question by Mr. Haycraft: "Does this agreement, 703-A and B, represent Dayton's position with respect to the Fashion Originators Guild program at that time? Answer: That document did represent the feelings of the Dayton Company at that time." Question by Mr. Albert interposed at this point: "Has there been any change in the position of the Dayton Company since that document has been prepared? Answer: I do not think there has been any subsequent change in their feelings."

Mr. Haycraft: It was not even my question.

Mr. Albert: It still is testimony on direct, and you did not move to have it stricken. 9212

Mr. Haycraft: How could that be testimony on direct if you asked the question?

Mr. Albert: It is in the record.

Mr. Haycraft: Certainly. It is just confirming what I said.

Examiner Bennett: Well, I am not changing my ruling.

Mr. Albert: Exception.

Mr. Haycraft: What page is that?

Mr. Albert: 5081.

By Mr. Albert.

Q. Does the Dayton Company still feel any doubt as to the practicability or advisability of allowing the retailers 9213 of the so-called Style Piracy Committee in New York to judge whether or not the dresses were copies?

Mr. Haycraft: Objection.

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: I do not see that the answer of the witness, whatever it may be, would change the situation.

Mr. Albert: I believe it goes, if your Honor please, to the question of fairness and reasonableness of the plan.

Examiner Bennett: I beg your pardon?

Mr. Albert: I believe it goes to the question of the fairness and reasonableness of the plan.

Mr. Haycraft: It is irrelevant and immaterial.

Examiner Bennett: Well, I think the plan is sufficiently plain from the evidence. Let the tribunal judge as to that.

Mr. Albert: Does your Honor then sustain the objection on the ground that it has been adequately brought out previously?

9215 Examiner Bennett: I think it is irrelevant. I do not see its relevancy. I do not see how it could change the situation nor is it a test of this witness' accuracy or truthfulness or knowledge.

Mr. Albert: Exception.

Examiner Bennett: All right.

By Mr. Albert.

Q. Have you done anything or has the Dayton store done anything at all, Mr. Donovan, with respect to building up resources? A. Well, we have attempted to find resources—you mean building up resources available, I presume?

9216 Q. Yes. A. Well, we have attempted to tell the things we like to have made in certain cases, and give them ideas which would help them to make garments to fill gaps in our stock. We have done that right along.

Q. Have you in any way made use of the dresses that have been imported by the A.M.C. for that purpose? A. The Dayton Company has made no direct use of those imports, but through our A.M.C. office the imports have been shown to such manufacturers as might be interested, and

I presume that our buyers in the market have patronized these manufacturers to some extent and have obtained a little or some use of these garments, imports.

By Mr. Albert.

Q. Had the manufacturers to whom these imports were made available been able to adequately for your purposes adapt these styles in the creation of designs of dresses suitable for your purposes? A. Well, they have certainly been unable to adapt them to give us all the requirements that were made necessary by the absence of Guild houses, but I think they may have made a start along those lines and have made some use and have been some help to us 9218
along those lines.

Q. Have they been able to interpret these imports as to create designs sufficient to meet the needs of the Dayton store?

Mr. Haycraft: I object to the use of the phrase "create designs," Mr. Examiner, as having no basis in fact in this record that there is such a thing.

Examiner Bennett: Just read the question.

Mr. Haycraft: I have no objection to the word "adaptation."

Examiner Bennett: Do you want to revise it? Are you willing to accept that?

Mr. Albert: I think the witness is perfectly ca- 9219
pable of answering the question as it is, your Honor.

Examiner Bennett: Well, read the question.

(The question was read.)

Mr. Haycraft: No foundation laid for that question, Mr. Examiner. I object to it.

Examiner Bennett: Well, I will sustain an objection to it. If you want to find out whether they have been able to supply goods to the Dayton store suitable to its needs, that is all right.

9220

By Mr. Albert.

Q. In your attempt, Mr. Donovan, to obtain or build u resources, has Dayton Company in any way attempted t subsidize any manufacturers?

Mr. Cant: Now, just a moment. That is objecte to, if your Honor please, on the ground it is irrel vant and immaterial and not proper cross-examin tion, and is a matter which should not be disclo by this witness on behalf of this company when h has no authority to do so.

Examiner Bennett: Well, I will sustain an o

9221 jection to that.

By Mr. Albert:

Q. Are you aware of the fact, Mr. Donovan, that variou members of the A.M.C. have contributed to a fund to b used in subsidizing manufacturers for the purpose of e abling these manufacturers to supply the members of th A.M.C. with the dresses which they need?

Mr. Cant: Same objection, if your Honor plea

Mr. Haycraft: Irrelevant and immaterial.

Examiner Bennett: I will sustain an objecti to that. It is along the same line and I am n going to hear anything indirectly that we wou not entertain directly.

9222

By Mr. Albert.

Q. Now, Mr. Donovan, you have testified to the hones and probity of the Dayton's relationship with its custo ers; what do you——

Mr. Haycraft: Object to that question, the fo to start with.

By Mr. Albert.

Q. (Continuing) What do you tell your customers when they come and ask for a Mulligan dress, an Ashley dress, a Quality street dress, and you haven't got it?

Mr. Haycraft: Object to it as irrelevant and immaterial.

Mr. Cant: Same objection on the part of the Dayton Company, and the further objection that the witness should not be compelled to testify at this time what happened since the boycott in February.

Mr. Albert: I believe, if it please the Court, that 9224
this goes to the credibility of the witness and the sincerity and the frankness of the testimony of the store in respect to the matter.

Mr. Cant: If your Honor please, we are not trying Dayton's policy here. We are trying merely the issues presented by the complaint.

Mr. Albert: We are trying the frankness of the testimony that has been given, and anything that will tend to show that testimony has not been frank is relevant.

Examiner Bennett: There is only one question as far as the Examiner is concerned, and that is, as he sees it, the question of the adequacy or inadequacy of the supply after the concern was red 9225
carded and boycotted by certain manufacturers. Now, I am willing to entertain the questions that bear more or less directly upon that matter. Read the question.

(Question read.)

Examiner Bennett: I will sustain the objection. I do not think we are going into the ethics of Dayton Company.

By Mr. Albert.

Q. Now, you have testified, I believe, that as a result of the red carding you have lost customers who have patronized your competitors in an endeavor to get the merchandise which you have been unable to get, is that correct, substantially? A. Substantially, yes.

Q. Do your customers, when they are unable to obtain the merchandise of you, in any way indicate their opinion or feeling that they will continue to patronize your competitors so long as you refuse to protect the styles of the manufacturers who are members of the Guild?

9227 Mr. Haycraft: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Albert: That goes directly to the public interest.

Mr. Haycraft: No foundation whatever.

Examiner Bennett: Well, I am going to let him answer, if he has an answer to that.

The Witness: I have an answer.

Examiner Bennett: All right.

The Witness: I have never heard a customer make a statement like that and I have not heard of, through the buyers and my sales people, of any people making such statements. Would you mind reading the question, so I am sure I get it correct?

9228 Examiner Bennett: You may read the question.

(Question read.)

The Witness: My answer is correct.

By Mr. Albert.

Q. Do your customers, in any way, make known the fact that they prefer to buy their dresses from those concerns as a result of whose policy they will not see copies of the dresses that they have bought after they have purchased

9229

them? A. I have no recollection of a customer taking that attitude with us.

Q. Have you, in any way, attempted to investigate the proposition in order to determine your customers' reaction to the store policy? A. I have made no special study of it. If that is what you mean. I am in contact with our department managers and sales people and to some extent with our customers, but there have been no evidences of the feelings you described, that have become known to me.

Q. And have you, in any way, had any conference through your buyers or your sales people to determine their reaction to the policy of the Dayton store with respect to the Guild program?

9230

Mr. Haycraft: Whose reaction?

Mr. Albert: Will you read the question to Mr. Haycraft?

(Question read.)

Mr. Haycraft: Objected to. It is too indefinite, irrelevant and immaterial.

Examiner Bennett: I will sustain the objection to that. I do not get it.

Mr. Albert: Exception.

By Mr. Albert.

Q. You have testified, Mr. Donovan, that prior to February of 1936, the styles of various manufacturers have been confined to the Dayton Company, is that so?

9231

Mr. Haycraft: Styles?

Mr. Albert: The dresses.

The Witness: Of some manufacturers, and it is also true that certain styles are common to most businesses.

By Mr. Albert.

Q. By that you mean that in the Minneapolis territory you have the exclusive right to the sale of those manufacturers' dresses? A. I mean that in the City of Minneapolis the sales of those dresses were usually confined to us.

Q. And, as a result of that contract, no other retailer in the City of Minneapolis had a right to sell those dresses, is that so? A. Well, usually we have no definite contract. We had an agreement and the manufacturer permitted us to use the name exclusively in connection with these dresses and, if somebody else had them, it was without our knowledge or permission, and it might have been under
9233 another name.

Q. You mean by that you had no written contract of confinement? A. I cannot recall a written contract in any case. It was an agreement.

Q. Was the reason why there was no written contract with respect to the confinement, the doubts of the Dayton Company as to the legality of such a contract?

Mr. Cant: I object on the ground it is absolutely irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Did your order blanks, on which you placed such
9234 orders, have anything on them with respect to confinement of the style?

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: Same ruling.

By Mr. Albert.

Q. In your opinion, does not this confinement of style restrain and restrict the competition in the City of Minneapolis?

Mr. Haycraft: Oh, object to that.

Mr. Cant: Just a moment. Objected to as absolutely incompetent, irrelevant and immaterial.

Examiner Bennett: The same.

Mr. Albert: Exception.

Examiner Bennett: I think the witness is not competent to testify on that subject as far as the developments have gone.

Mr. Albert: I offer to prove, if the Court please, that if the witness were permitted to answer, he would answer that the policy of the confinement of sales restricts and restrains the competition in the area in which the confinement is applicable. 9236

Mr. Cant: Objected to for the reasons given, if your Honor please.

Mr. Haycraft: I move it be stricken.

Examiner Bennett: It may be stricken, as irrelevant and immaterial.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Donovan, what is the total dollar value of sales in Department 371, in your price line 12.95 to 1395, for March of 1935?

Mr. Haycraft: Objected to, irrelevant and immaterial, not proper cross-examination.

Mr. Cant: Same objection and further objection, 9237
it calls for confidential information which this witness should not be required to divulge.

Examiner Bennett: What is the question?

(Question read.)

Examiner Bennett: The Examiner has not tried to compel the production of those figures, and he is going to continue that policy. He has some doubt as to the validity of those statements, without going

into the matter of supporting evidence, but it is going to be left to—that is a matter left with the attorneys to support or argue out.

Mr. Albert: In order to save time, may I ask whether or not the same objection will be sustained with respect to questions seeking to elicit the total dollar volume in the months and for the price lines as indicated in Commission's Exhibit 713?

Mr. Haycraft: I will say that will be objected to, Mr. Examiner. I wish to explain in connection with that——

Examiner Bennett: I beg your pardon.

9239 Mr. Haycraft: I wish to explain in connection with that, in light of the remarks you made a moment ago, the exhibit does not refer to dollars and cents.

Examiner Bennett: No, I know it does not, but dollars and cents is the basis.

Mr. Haycraft: Dollars and cents is not the basis of the document he is examining this witness on, that has a basis of units.

Examiner Bennett: That has a basis of units, has it?

Mr. Haycraft: Yes.

Examiner Bennett: All right. I think I was mistaken in my comment then. I will sustain that objection.

9240 Mr. Albert: Exception.

Examiner Bennett: Where you are dealing with units. My impression was you were dealing with dollar percentages.

By Mr. Albert.

Q. What is the relationship between your dollar volume in percentage for the month of March, 1935, in your 12.95

to 13.95 price line, as compared with your total dollar volume in your ready-to-wear dress departments in the departments covered?

Mr. Haycraft: The objection will be the same. In addition, the question, as now worded, assumes there is such a relationship.

Mr. Cant: Same objection on the part of the Dayton Company.

Examiner Bennett: Let me see the document, so that I can have the situation in mind.

(Document was handed to the Examiner.)

Examiner Bennett: These are all units, are they? 9242

The Witness: Yes, those are the number of garments sold at those prices.

Examiner Bennett: All right. I will sustain the objection.

Mr. Albert: Exception.

Examiner Bennett: That was not gone into in connection with that document at all.

By Mr. Albert.

Q. What percentage of your total dollar volume is the dollar volume of the total figure for the four months March, April, May and June, 1935, to the total dollar volume of your ready-to-wear department for the same period in 1935? 9243

Mr. Haycraft: Same objection, Mr. Examiner.

Mr. Cant: Same objection, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I offer to prove that if the witness had been permitted to answer, his answer would have revealed, with respect to the price lines and departments affected, regardless of

the percentage of Guild merchandise on hand in the department, the total dollar volume with respect to that department is an insignificant portion of the total dollar volume of ready-to-wear dress departments.

Mr. Haycraft: I move it be stricken.

Mr. Canf: Same objections to the offer, your Honor.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception. No further questions.

Examiner Bennett: All right. Is that all of this witness?

9245 Mr. Haycraft: No, I have some redirect.

Redirect examination by Mr. Haycraft.

Q. Mr. Donovan, when you were asked on cross-examination as to the elements of salability, did you intentionally leave out the style? A. I thought that in my description of what I considered to be salability of a garment I had fully covered style by getting back to what seems to me in the long run to be the component parts that make style. I had no intention deliberately of omitting the word "style." I believe I offered to reinsert it if they wished.

Q. What is your definition of style? A. Well, I regard style in a garment as being the selection of certain component parts such as neck lines, waist lines, trimming de-
9246 tails, details in the material, other things which go into a garment in such manner as to produce an article that is pleasing, if possible, to the customer, what the customer thinks is good looking and wearable.

Q. In your opinion, is the same style satisfactory to all women that come into your store? A. No, it is not.

Q. Why not?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid. I don't think this witness has demonstrated his knowledge of that.

Examiner Bennett: I will overrule the objection to that.

Mr. Haycraft: You thought he was pretty good. You asked him a lot of questions on it.

The Witness: Well, I shall answer?

Examiner Bennett: You may answer, yes.

The Witness: I believe that different women have different ideas as to what they consider a good looking garment. 9248

Mr. Albert: Including wearing a shroud to a wedding?

Mr. Haycraft: I object to that. I move that it be stricken, Mr. Examiner.

Examiner Bennett: Well, I will strike it because I don't think his interjection was proper.

By Mr. Haycraft.

Q. Will you continue your answer, Mr. Donovan? A. I believe that answer is complete enough.

Q. Can you give an illustration of that from your experience? A. Well, I can give you a rather recent one. A woman told me this morning just before I started down here to the court room that she was leaving our millinery department and that she didn't care what the style was, that she simply would not and could not wear one of those high crowned hats that the millinery department was trying to sell her. 9249

Mr. Albert: That is objected to, if it please the Court. I ask that the witness' answer be stricken as entirely immaterial. The vagaries of women with respect to their hats I think exceeds their vagaries with respect to clothes.

Examiner Bennett: Read the answer.

(The answer was read.)

Mr. Albert: I still say that we see women wearing hats that they don't really like but they are in style.

Examiner Bennett: It may be stricken.

Mr. Albert: Thank you, your Honor.

By Mr. Haycraft.

Q. I should like to have you confine your testimony, Mr. Donovan, to the divisions of the store under your supervision. Now, will you read the question?

9251

(The record was read.)

The Witness: Well, I can only say that it is a matter of daily occurrence to have two women come in and say, "I like that style," and the friend with her say, "I don't like that style."

Mr. Feldman: And they like some other style?

The Witness: What?

Mr. Feldman: And they like some other style.

By Mr. Haycraft.

Q. You were cross-examined, Mr. Donovan, with respect to a letter that you wrote to Mr. Post, May 8th, 1935, Commission's Exhibit No. 706. I will ask you to testify at this time as to what your understanding was as to the Guild

9252

program on or about May 8th, 1935, referred to in your testimony. A. Well, the information concerning the projected program of the Guild came to me through certain letters from the Guild, through contact with other people who were in closer touch with the Guild's program, and through some conferences with Mr. H. O. Bergdahl of our New York office who at that time was, I believe, in almost daily contact with Mr. Albert Post. Through those contacts I arrived at the idea that the Guild in attempting

to enforce the returns of all merchandise including the lower-price ranges which were alleged copies was going to be fairly lenient with the stores involved until such time as lower-priced manufacturers, who were acknowledged copyists at the time, would be able to produce garments of their own design, and also until such time as certain chain stores and other stores who were not at that time Guild signatories had been induced to sign up with the Guild. I shortly—or I recently wrote Mr. Bergdahl of the A.M.C. to ask if that confirmed our understanding, and the matters that we were talking of along that line at the time, and I would like to refer to that letter, if I may. 9254

Mr. Albert: That is objected to.

Examiner Bennett: Is that about that date?

The Witness: To see if my recollection is correct.

Examiner Bennett: Is that about that date?

The Witness: No, this letter is of recent date, your Honor, but it refers to those times, that time.

Mr. Albert: That is objected to, if it please the Court, as improper redirect. I ask that the answer of the witness and his testimony in response to the question be stricken as adding nothing new to the testimony heretofore elicited from the witness.

Examiner Bennett: Does that letter to which you are referring reflect your ideas at the time you were asked about it, that is, back in 1935, or does it reflect your present attitude? 9255

The Witness: It reflects——

Examiner Bennett: That is what you asked about, the ideas relating back to 1935; in the early part of 1935.

The Witness: Well, this letter does refer, your Honor, to——

Examiner Bennett: And it is on that that you are refreshing your recollection; is it?

The Witness: Yes, sir, directly.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Have you refreshed your recollection; have you anything to add to what you have said? I mean to what you have testified to? A. Why, the letter adds nothing substantial to that testimony, Mr. Haycraft, except that our stores, or, at least, Mr. Bergdahl feels that the policies or those two exceptions that we took for granted and we
9257 understood to have received, were not granted.

Q. What exceptions do you mean? A. I quote, if I may, the words here;

"The F.O.G.A. has always attempted to enforce returns at all price lines with the exception of the fact that the writer along with several managers of New York Resident Buying Offices, had an understanding with the Guild that the F.O.G.A. would not enforce returns in our stores, because of our basement and budget shop departments. The Guild rescinded this understanding when they took in the $10.75 manufacturers in July of 1935, but agreed to a definite policy of leniency at that time, which was to extend until the inexpensive manufacturers would have organized themselves sufficiently on the new basis of creating their own styles. This took for granted that it
9258 would require some considerable time for the inexpensive manufacturers to find designers, since it was agreed that there was not a sufficient number of good designers available to enforce such an all inclusive policy without considerable damage to the manufacturers as well as to the retailers who purchased low priced merchandise.

"Also, until such times as the large retail dress distributors, chain stores, and so on, of inexpensive dresses

would have signed pledges agreeing to co-operate with the Guild."

Those were the two provisions, and that was in accordance with my recollection.

(The paper writing referred to was handed to the Examiner.)

By Mr. Haycraft.

Q. Now, Mr. Donovan, you were questioned with respect to Commission's Exhibit No. 714 on cross-examination. I will ask you if you will explain for the Examiner what factors you took into consideration in preparing this exhibit with respect to the expenses of the individuals named therein? 9260

Mr. Albert: That is objected to.

By Mr. Haycraft.

Q. (Continuing) On the dates indicated?

Mr. Albert: That is objected to, if it please the Court, as improper redirect. The witness was asked exactly one or two questions with respect to that exhibit. It was originally put in evidence without any explanation whatsoever, and there is nothing in the cross-examination that warrants any further direct examination by Mr. Haycraft with respect to a sheet of paper containing figures that he put into evidence without explaining it at all. 9261

Examiner Bennett: Read the question.

(The question was read.)

Examiner Bennett: Yes. I will sustain the objection.

Mr. Albert: Thank you, your Honor.

9082 *Dayne Donovan—For Commission—Redirect—Recross.*

By Mr. Haycraft.

Q. You were asked, Mr. Donovan, on cross-examination as to whether or not the individuals named here had made other trips to Chicago than those—other trips to the places indicated in the exhibit than set forth in the exhibit. Do you recall that? A. Yes.

Q. And if I recall your testimony correctly you said that they had? A. (Witness nods head affirmatively.)

Q. I will ask you whether or not you have included in this exhibit any transportation expenses other than to Los Angeles?

9083 Mr. Albert: That is objected to, if it please the Court. The exhibit speaks for itself.

Mr. Haycraft: Well, then, why do you ask the questions on cross-examination? It spoke for itself just as well then as it does now.

Examiner Bennett: Read that question.

(The question was read.)

Examiner Bennett: I think that appears on the face of the document. I will sustain the objection to it.

Mr. Albert: Thank you.

Mr. Haycraft: That is all on redirect examination.

Recross-examination by Mr. Albert.

9084 Q. Mr. Donovan, in response to Mr. Haycraft's questions with respect to your understanding of the Guild program, on or about May of 1935, or the summer of 1935, you refreshed your recollection from a letter and read certain portions thereof into the record. May I see that letter?

Examiner Bennett: Yes; he has a right to see it.

Mr. Albert: Will you mark that for identification, please?

9265

(The paper referred to was marked Respondents' Exhibits 64-A and B for Identification.)

By Mr. Albert.

Q. I notice in this letter, Mr. Donovan, that you refer to a letter that you sent to Mr. Bergdahl of August 22nd. Have you that letter? A. No, I haven't.

Q. Is it available? A. Why, I might be able to get a carbon of it. I didn't expect that it would come into question so I didn't provide myself with a carbon copy. I might even insert the original.

Q. Have you any objections to providing us with a carbon copy of it? A. Not at all, if I can secure one.

9266

Q. Will you communicate to us as to whether or not there is one in existence? A. I will have to look, and I will look.

Q. And if there is one in existence will you furnish me with a copy of it? A. I will guarantee that.

Mr. Albert: I offer into evidence Respondents' Exhibits 64-A and B for Identification, being a letter dated August 28th, 1936, from Mr. Bergdahl to Mr. Donovan.

Examiner Bennett: It seems to be settled that if you put part of a document into the record the rest of it should go in.

Mr. Haycraft: Then I withdraw my objection.

Examiner Bennett: All right; proceed.

9267

By Mr. Albert.

Q. Mr. Donovan, don't you know, as a matter of fact, that if the Dayton Store agrees to protect the styles of members of the Fashion Originators Guild and abide by the policy of the Fashion Originators Guild, that the members of the Fashion Originators Guild will be happy to sell the Dayton Store?

Mr. Cant: Just a moment.

Mr. Haycraft: In other words, if you will agree to the boycott, it is O.K., is that it? Is that the purport of that question, Mr. Examiner?

Examiner Bennett: I will sustain the objection.

Mr. Haycraft: I will object to the question.

Mr. Albert: How many objections do you want, Mr. Haycraft?

Mr. Cant: It is sustained.

Mr. Haycraft: One.

By Mr. Albert.

9269 Q. Are you aware of the fact, Mr. Donovan, that the voluntary act of the Dayton Store in refusing to protect the styles of members of the Fashion Originators Guild resulted in the refusal of the members of the Guild to sell their merchandise to the Dayton Store?

Mr. Cant: That is objected to as irrelevant and immaterial, not proper examination at this time.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception. I offer to prove, that if the witness had been permitted to answer the question, he would have answered that if the Dayton Store agree to protect the styles of the Fashion Originators Guild, the members of the Fashion Originators Guild will sell the Dayton Store merchandise.

9270

VIRGINIA COLLINS MCDONALD was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name, please? A. Virginia Collins McDonald.

Q. Where do you live? A. 906 West 42nd Street, Minneapolis.

Q. What is your occupation? A. I am a shopper for the Fashion Originators Guild.

Q. In what city, Mrs. McDonald? A. Minneapolis. 9272

Q. How long have you had that position? A. Since a year ago last March 1st.

Q. Who employed you? A. Fashion Originators Guild.

Q. Incorporated? A. Incorporated.

Q. Of America? A. Of America, Incorporated.

Q. And have they continued to employ you since that time? A. Yes, sir.

Q. What are your duties?

Mr. Albert: That is objected to, if the Court please. I think it has been thoroughly gone into. It has been explained by everybody as to what the duties of a shopper are and I believe that Mr. Donovan has volunteered some testimony with respect to it, and, at this stage of the game, I believe that in order to save the record and to save time this cumulative evidence should not be permitted: 9273

Examiner Bennett: I will overrule the objection. She may answer.

The Witness: Shall I answer?

Examiner Bennett: Yes, what are your duties?

The Witness: I shop for copies of original designs.

By Mr. Haycraft.

Q. Where? A. Minneapolis, in the stores.

Q. What stores? A. The stores that belong to the Guild.

Q. You mean retail stores? A. Retail stores.

Q. Can you give a list of them at the present time?

Mr. Albert: May I ask Mr. Haycraft to remove his hand from his mouth? I cannot hear him.

The Witness: Well, there is Powers Mercantile——

Mr. Albert: I ask the question be read. I have not heard it.

9275

Examiner Bennett: It may be read.

(Previous question read.)

The Witness: Powers Mercantile, Maurice Rothschild, J. C. Penney, L. S. Donaldson, John W. Thomas, Bjorkman, Harolds, Jackson Graves, Raleighs, Sallys, two Marna Lee shops.

By Mr. Haycraft.

Q. How do you spell that? A. Capital M-a-r-n-a. There are numerous small shops.

Q. What is that? A. There are quite a few of the smaller shops, Buttrey Stores, Incorporated, Featherstone, Jennie Lee, Strem Fashion Studio.

9276

Q. How do you spell that? A. Capital S-t-r e m Fashion Studio, Marion Stricker. Did I say J. C.—yes, I said Penney; I believe that is a good part of the list, anyway.

Q. Young Quinlan? A. Young Quinian, yes.

Q. Benton? A. Benton, yes.

Q. How about Calla Dubois? A. Yes.

Q. Donaldsons? A. Yes, I have that.

Q. Daytons? A. No.

Q. You did shop Daytons? A. Yes, I did.

Q. When did you stop shopping Daytons? A. About February 16th or 17th last.

Q. Gerners? A. Gerners, yes, Fields.

Q. Field? A. F-i-e-l-d.

Q. Mary Jones? A. Yes, Mary Jones.

Q. Lind Gowns? A. Not any more, they are out of business.

Q. Did you intend to indicate there were two stores in Buttrey Stores and Featherstone? A. Well, Buttrey Stores is the same, main office. They have a chain of stores throughout Montana, Wyoming and Minnesota. The Featherstone store which opened up about three months ago is of that group. 9278

Q. Is there more than one store in Minneapolis? A. No, not more than one, no retail store.

Q. How long have you been shopping Sallys? A. Sallys?

Q. Yes. A. Well, I believe I got word of their joining about six months after March 1st when I started working.

Q. It was some time last fall? A. I believe so.

Q. How about Marna Lee; how long have you been shopping that store? A. Since the beginning.

Q. How long have you been shopping J. C. Penney? A. Well, I got word about nine months ago that they had joined. However, the store was not completed until just about three months ago, it was opened here.

Q. So you have just been shopping it about three months? A. Yes. 9279

Q. How about C. L. Johnson? A. On Central Avenue? Yes, they belong.

Q. I say, how long have you been shopping Johnson? A. I think just a short time, around six months.

Q. Do you shop Sears Roebuck? A. No, they belong, but I do not shop them.

Q. You do not shop them? A. No.

Q. Why do you not shop them?

Mr. Albert: That is objected to, if the Court please, as immaterial.

Examiner Bennett: Overruled, you may answer.

Mr. Albert: Exception.

The Witness: What was the question?

By Mr. Haycraft.

Q. Why do you not shop Sears Roebuck? A. Well, as I understand it, Sears Roebuck have signed a declaration of co-operation but that it is not necessary for me to shop them because they do not carry the same type of merchandise that the other retail stores do here.

9281 Q. Was that your instruction? A. Yes, sir.

Q. Who gave it to you? A. Well, I was just told that.

Q. By whom? A. By Mr. Post.

Q. When? A. I don't remember

Q. Recently? A. No, it is not recently. It was when I first started this work.

Q. First started? A. Yes.

Q. Was there any other store that came in that same category? A. No, sir.

Q. How often do you shop the various stores? A. Well, I try to shop the big stores, by that I mean L. S. Donaldson and Powers, practically every day. The other ones I pick up as I go along, or as I think is necessary.

Q. What is your method of procedure? A. I go through

9282 the stocks.

Q. And what price lines? A. Well, I look at them through almost every price line.

Q. Do you go through the basements, too? A. Not now, no. I did.

Q. When did you stop going through the basements? A. The beginning of this summer, last spring.

Q. May? A. About, I should say.

Q. What was the reason for not going through the basements, then?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: Overruled.

Mr. Albert: No knowledge shown or foundation laid on the part of this witness that she knows the reason.

Mr. Haycraft: She knows why she did not; that is what I want.

The Witness: Well, I know why I didn't was that I was asked not to for a while.

Q. Who told you not to for a while? A. I got it from the New York office. 9284

Q. From Mr. Post? A. Mr. Goldstein.

Q. Do you have that letter in your files? A. Yes.

Q. Do you think you could find it? A. Yes.

Q. I would like to have it. A. All right.

Q. When you go through the stocks looking for copies, what do you have in mind? How do you know a copy when you see it? A. Well, the procedure is, I am sent sketches from New York with the original dress, with the style number and the name of the manufacturer of the original, also the manufacturer, if possible, of the copies and their style number, and usually I go and look at the original dress, if I find it, and then I go through the stock. Of course, I know the copies by style numbers and also by how they look.

Q. You look then for copies of garments described to you in this information that you get from New York? A. Yes. 9285

Q. Do you ever try to ascertain the name of the manufacturer when they do not know in New York what the name of the manufacturer is, can you find out for them sometimes? A. Well, there are two ways. I mean, sometimes they know definitely who the manufacturer is of the copy. If they do, it is put on my slip. If they have—I do

not know how this is worked back there, but anyway, I get a little notation which says "Alleged copyist," we will say, "Claudette Frocks. If you find this copy by Claudette, hold a Piracy Committee meeting here, and forward their decision."

Q. Then you would have a meeting here of the local Guild? A. Yes, sir, they would.

Q. Suppose you find that there is a copy in a Guild store, what do you do then when you find a copy? A. I ask to have them returned to the copyist.

Q. Do you give the buyer any paper or anything of that kind? A. Naturally, yes.

9287 Q. Description of it? A. Yes.

Q. What is the usual procedure after you do that? A. Well, the slip is made out signifying how many copies are going to be returned, that is, three or four of one style number of such and such a manufacturer; I sign it and the buyer or the head merchandise man; also I send that slip to New York attached on to a report which I make out every day.

Q. Do you go back to see whether or not the garment has been returned? A. Yes, I do.

Q. You check up on that? A. Yes, sir, I do.

Q. You say you make daily reports to New York. Do you make weekly or monthly reports? A. No.

Q. A number of copies? A. No.

Q. You don't make any tabulation of the number? A.

9288 No, I don't.

Q. You just fill out your daily report? A. That is right.

Q. So you wouldn't have any idea as to the number of copies found? A. No.

Q. Over a period of time? A. No.

Q. You followed this same method as you have described now all of the time since you have been employed, or was there a time that you had a different method? A. Well, there have been changes, naturally.

Q. How long have you been using this slip that you talk about which you furnished the buyer? A. Since last fall.

Q. Let's see. That would be November, October? A. I think around October.

Q. Prior to that what did you do? A. I just made out my report sheet and indicated there how many copies I had found.

Q. You didn't get any receipt or— A. No, I didn't.

Q. Or get anything from the buyer himself? A. No.

Q. When you go into a store, do you always go to the buyers and tell them that you are in there looking for something? A. They almost always see me.

Q. They know you? A. They know me, knew me from 9290 the beginning.

Q. And they know what you are after? A. Yes.

Q. That is, they know that you are looking for copies? A. Yes, absolutely.

Q. Do you make it a rule to advise the buyer as soon as you go in the store what copies you are looking for? A. No. No; I just look through the dresses. If I find anything then I talk to her, otherwise I don't bother her.

Q. Otherwise you don't? A. No.

Mr. Haycraft: Mark this the next exhibit number.

(The paper referred to was marked Commission's Exhibit 734 for Identification.)

9291

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 734 for Identification, I show you an article beginning on page 6 and continuing through page 11 entitled "Fashions for fashionables" by Virginia McDonald, and ask you if you are the author of that article? A. Yes, I am.

Q. How did you come to write that article, Miss McDonald?

Mr. Albert: That is objected to, if it please the Court, as immaterial.

Examiner Bennett: What do you expect to show, Mr. Haycraft? I would like to have you indicate what it has to do with the matter in hand?

(The exhibit referred to was handed to the Examiner.)

Mr. Haycraft: Perhaps I can ask her a couple of questions, your Honor. I thought that question would probably do it.

Mr. Albert: I will withdraw the objection, your Honor.

9293 Mr. Haycraft: I would like the indulgence of the Examiner for that question and a couple of more as foundation questions.

Mr. Albert: I will withdraw the objection.

By Mr. Haycraft.

Q. Go ahead. A. I was a contributor toward that article—I mean, toward the magazine.

Q. How long have you had that position, have you been doing that contributing to this magazine? A. Since last January.

Q. January of this year? A. Yes, of this year.

Q. Up to the present time? A. Yes.

Q. What was the arrangement that you had with re-

9294 spect to—what is the purpose of the articles that you write? A. Well, it is a fashion article giving fashion hints.

Q. Did you consult the Fashion Originators Guild, Incorporated, before you made this arrangement to publish this article? A. No, sir, I did not.

Q. Did they know anything about it? A. They didn't know a thing.

Q. You mentioned the Guild in it; did you not? A. Yes, I did.

Q. Did you mention the names of prominent members of the Guild in that article? A. Not directly, no.

Q. How about Hattie Carnegie? Do you recall that? A. Yes.

Q. It names some of the Guild manufacturers? A. Yes. I never happened to think of that, though.

Q. Did you mention the names of some of the retailers at Minneapolis that were Guild members, where Guild merchandise may be bought? A. Yes. Not in a direct way.

Q. Refresh your recollection (indicating)? A. Yes, I know. I see what you mean. I didn't understand.

Q. Then you have mentioned, for instance, Hattie 9296
Carnegie's dresses can be bought at Young and Quinlands and Harold's, Incorporated? A. Yes.

Mr. Haycraft: I offer the article in evidence.

Mr. Albert: No objection.

Examiner Bennett: All right, it is received. I wish you would excerpt the article.

Mr. Haycraft: I beg your pardon?

Examiner Bennett: I wish you would excerpt the article and relieve the record of some of it.

Mr. Haycraft: You mean to cut it out as a separate exhibit? I will be glad to have the reporter do that, just cut the article out and give the exhibit the number.

Examiner Bennett: I wish you would do that 9297
with that other trade magazine.

Mr. Haycraft: Mr. Examiner, that is all I have of this witness at the present time, but I should like to make the request of Mr. Albert, I don't want to turn the witness over to you just yet. I should like to request the witness to produce the correspondence that she had with Mr. Goldston with respect to Sears Roebuck—no, with respect to not shopping

basements, some time in the spring of 1935, and also a sample report that she makes to the Guild and any written instructions that she may have at the present time; and also a sample report that she leaves with the buyer.

Mr. Albert: I believe, if it please the Court, the sample reports are already in evidence and that written instruction are in evidence. If Mr. Haycraft wants them again we will only be too glad to furnish them. As regards the letter that Miss McDonald has referred to, I have no doubt that we will look for it. If she still has it you can have it.

9299

Cross-examination by Mr. Albert.

Q. You got paid for this article; didn't you? A. Yes.

Q. You were on the staff of— A. I am not on the staff.

Q. Golfer and Sportsman? A. I am just a contributor.

Q. But you have been called upon to write articles at various times that were accepted and were paid for? A. Yes.

Q. As a result of this article appearing in Golfer and Sportsman what happened, if you know, with respect to your relationship with that magazine? A. Well, I was asked not to write any more fashion articles.

Q. Do you know whether that was at the instigation of anybody?

9300

HELEN COFIELD was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Helen Cofield.

Direct examination by Mr. Haycraft.

Q. Where do you live, Miss Cofield? A. 4924 South Emerson.

Q. What city? A. Minneapolis.

Q. What is your occupation? A. Department manager for the Dayton Company. 9302

Q. What department do you manage? A. The Sub-Deb Department.

Q. The Sub-Deb Department? A. Yes.

Q. What type of garments? A. Junior sizes and many types of garments.

Q. Do you have dresses, suits, coats, or what? A. We have dresses, coats, suits, wraps, sweaters, skirts, and knit wear.

Q. How long have you occupied that position? A. Four years, the 1st of August last.

Q. Does that department have a number? A. Yes, it does.

Q. What is it? A. 371.

Q. You say four years? A. Four years. 9303

Q. What? A. Four years, August 1st next.

Q. That would be 1932? A. (The witness nodded her head affirmatively.)

Q. Are you familiar with Fashion Originators Guild of America, Incorporated? A. Yes, sir.

Q. When did you first learn of that organization, approximately? I do not care for an exact date. A. Well, I do not know exactly the date. When I first knew of

them as an organization, or when I first knew we were red carded?

Q. When you first knew of them as an organization. A. About two years, isn't it?

Q. About two years? A. Yes.

Q. How did it come to your attention? A. Many manufacturers we were purchasing from were members of the Fashion Originators Guild, Incorporated.

Q. And they told you that, did they? A. Yes.

Q. Did they call at your place of business? A. No, but it was common knowledge.

Q. What are your duties as department manager of De-
9305 partment 371? A. To buy and sell goods.

Q. Well, where did you buy them? A. New York, mostly; some in Chicago, some in Cleveland, some in Los Angeles, and a small amount in San Francisco; occasionally St. Louis, but the very biggest bulk of it is in New York.

Q. And you sold them at Dayton's in Minneapolis? A. That is right.

Q. What is the price range of the garments that you sell in your department? A. Price?

Q. Yes. A. On the average from 9.75 to 39.75, with some higher, but the bulk of it is——

Q. How about suits, how do they run? A. 17.95 usually, up to about $100.

9306 Q. These are all retail prices? A. Retail prices.

Q. You say you have coats also? A. Yes, sir.

Q. What price range are they? A. 17.95 to $135.

Q. Do you ever go to the market yourself to buy these garments? A. Yes, sir.

Q. How often would you say you went in the fall of 1935? A. Fall, starting from August or starting from our first fall purchase?

Q. Take your first fall purchase. A. I would say sixty-seven times, maybe sixty-eight.

Q. Sixty-seven? A. Sixty-seven.

Q. Do you go to more than one place? Do you go to ll these markets you speak of? A. You mean the out of own markets?

Q. Yes. A. You mean last fall?

Q. Last fall, where did you go, a year ago? A. Mostly New York, outside of Chicago for some dresses, one shop n Cleveland in the month of November for one manufacurer only, and Chicago was made en route for a half a iay between trains.

Q. Now, can you testify from memory as to the prinipal resources for your department, dresses and suits, in he fall of 1935? 9308

Mr. Albert: That is objected to, if it please the Court, having been fully testified to by Mr. Donovan, purely cumulative. I think we are wasting a lot of time at this late stage of the game in Minneapolis. I ask your Honor to foreclose this line of testimony. It has been fully testified to by Mr. Donovan and I do not believe he was cross-examined about it.

Mr. Haycraft: I do not know why counsel does not want to listen to a buyer.

Mr. Albert: I do not want to listen to the fact that a buyer went to New York.

Mr. Haycraft: If you just give me time, I will bring out all the facts. 9309

Mr. Albert: That is just the point. I do not want my time wasted at this stage of the game.

Mr. Martin: You did not mind wasting our time at your first stage of the game.

Mr. Albert: Then you concede you are wasting time?

Examiner Bennett: Leave this off the record.

(Discussion had off the record.)

9310 *Helen Cofield—For Commission—Direct.*

Examiner Bennett: Proceed.

Mr. Haycraft: I am waiting for a ruling.

Examiner Bennett: I am waiting for you to get through talking across the table. Are you through?

Mr. Martin: I am through, for the time being.

Examiner Bennett: Now read the question.

(Previous question read.)

Examiner Bennett: Overruled. You may answer, if you can.

By Mr. Haycraft,

Q. Can you do it or can't you? A. I can, yes.

9311 Q. Now will you do so, and indicate in your answer the resources, the type of merchandise, that is whether it is a dress or suit and the wholesale price range? A. Do you want all of the important dress resources and their price ranges and their types?

Q. Yes.

Mr. Albert: That is objected to, may it please the Court, as having been given in evidence with Mr. Donovan with Mr. Haycraft's assistance, and not having been cross-examined on, purely cumulative. It is in the record completely.

Examiner Bennett: Overruled. You may answer.

By Mr. Haycraft.

9312 Q. Go ahead. A. In the higher priced dresses, Junior League, who make ordinarily 12.75 up, depending upon the costume, it may be as high as 69.50 wholesale, but their average prices are 16 to 25 and 29. They make day times and evenings.

Mr. Feldman: Is that average cost or just average price? Do you mean average retail price?

The Witness: Cost. They are asking cost. Ira Rentner Miller, who make daytime things in about the same price ranges as Junior League and about the same type. Will Steinman, who make 10.75 and 12.75 evening clothes. Bon Ray, who make 10 and 12.75 evening clothes. Joann, Junior, Sing Bros., which is synonymous, it may be known by one or the other, make 10.75 and 12.75 daytime clothes, some costumes occasionally higher, but they are a 10.75 house. Val Roy——

Mr. Feldman: Who?

By Mr. Haycraft. 9314

Q. How do you spell that? A. V-a-l, capital R-o-y, make 10.75 daytime things. International, the junior division, who make 10 and 12.75 daytime things, a few evening things. Louise Mulligan, who is our outstanding resource, making 10.75, 12.75, 16.75, and a few above, making daytime and dinner and evening, at 7.75. Ros Anna or Rosenthal Kollman, making 7.75 street things; Debutante, who make 7.75 street things; Security, who make 4.75 street things; Neufeld Fuerst, who make 4.75 street things.

Mr. Feldman: Where are they located?

The Witness: They just moved to 1400. They were 147 West 37th Street.

Mr. Feldman: What do they make? 9315

The Witness: 4.75 street things. Accurate, who make 4.75 street things. Ernest Janowitz, who make 8.75 evening things; Cartwright, who make 10.75 and 12.75, some 16.75 street and evening. Now, there are more, but that is the bulk of the prominent ones.

9316 *Helen Cofield—For Commission—Direct.*

By Mr. Haycraft.

Q. Those were the principal resources last fall, a year ago now? A. Yes.

Examiner Bennett: We will adjourn until 10 o'clock in the morning at this place.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken.)

9317 Room 307 Federal Building,
Minneapolis, Minnesota,
September 4, 1936.

Met pursuant to adjournment, 10 o'clock A. M. C.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed.

HELEN COFIELD was thereupon recalled and, having been
9318 previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Haycraft.

Q. Miss or Mrs.? A. Mrs.

Q. At the last session you were giving a list of resources in your department in the fall of 1935? A. That is right.

Q. Have you completed that? A. No, sir; we adjourned before it was completed.

Q. All right. You may continue. A. David Westheim.

Q. Which? A. David Westheim, $10 and $12.75 street things. Junior Guild Frocks in Chicago, $10, $12, and up to $16.75, street things.

Q. A little bit louder. I can't hear you. A. Did you get the last?

Q. What was that, street something? A. Street clothes, daytime clothes. Silver Dress, $10.75 and $12.75 street things. Allan Kay Frocks, which is Lang Kohn.

Q. Was Lang what? A. Lang Kohn, L-a-n-g K-o-h-n of St. Louis, daytime clothes at $10.75 and $12.75. Corde, C-o-r-d-e, $6, $10.75 street clothes. Rae-Mar Dress in Cleveland, $6 to $10.75, R-a-e M-a-r. I think that about completes the list as nearly as my memory recalls it. 9320

Q. Now, of these, were there some of them non-Guild houses or were they all Guild houses? A. No, they are not all Guild houses. The majority of the $10.75 up cost houses are Guild members.

Q. How about the $4.75 ones that you mentioned? A. Not to my knowledge.

Q. Were any of the $6.75, $7.75 resources Guild houses last fall? A. Only one, and that was Rosenthal Kalman.

Q. Were there any outstanding Guild resources that you depend upon more than any other? A. Yes, Louise Mulligan, Zium Brothers, Steinman — Will Steinman, Junior League, Junior Guild Frocks. Those were the most important resources at $10.75.

Q. Do you recall when it was that the Dayton store 9321
was red carded by the Guild? A. I believe it was February 17th.

Q. This year? A. (Witness nods head affirmatively.)

Q. How did that come to your notice? A. I don't recall exactly. I believe that I was in New York at the time and we were told, and "Women's Wear" carried it.

Q. What was the occasion for your being in New York at that time? A. Buying merchandise.

Q. Did you make any calls on Guild resources after you were red carded on that trip to New York? A. I made a few calls on Guild houses in a friendly way, not to buy merchandise, because, of course, we were not permitted to see their lines. We called on them to find out about our past orders that had been placed with them and what the situation was going to be as to getting delivery on things that were on order at that time.

Q. Were you successful in getting delivery on pending orders? A. Not until a decision was handed down that they could—manufacturers could ship anything that was on order prior to the date of the red carding.

9323 Q. When did you eventually get it? A. March, I believe.

Q. You said they would not show you their lines? A. Yes.

Q. What does that mean? A. It means that we were not permitted to see their lines of—lines of merchandise because they had been requested—it was part of the agreement with the Guild that red carded stores were not permitted to see their lines.

Q. Did you ever discuss this matter of red carding with any of the representatives of your resources since February? A. Many times.

Q. Do you find the Guild representatives of the Guild houses friendly or unfriendly? A. Decidedly——

9324 Mr. Albert: That is objected to, if it please the Court. It is entirely immaterial. Who knows what friendly or unfriendly means? What this witness' conception of friendly means——

Examiner Bennett: Overruled. I will let her answer. You may answer.

The Witness: Decidedly friendly.

9325

By Mr. Haycraft.

Q. Was any explanation given as to why they did not allow you to see their lines? A. None other than that was the agreement and they were to be penalized by a fine if they showed their lines to red carded stores.

Q. Well, now, what did you do as buyer for Dayton Company when you found you couldn't buy Guild merchandise? A. We tried to replace it, but last spring it was not possible because the market is so limited in the Junior Division that practically every one at $10.75 up was Guild. There were very few exceptions, which meant we had almost no one to fall back on.

9326

Q. Did that have any effect upon your department? A. A decided effect of loss of business this spring.

Q. What was the situation—what is the situation this fall? A. It is somewhat better this fall. For one reason there have been several resignations in the Junior Division of manufacturers who were formerly Guild members.

Q. Do you recall some of those? A. Yes. The first resignation was Zim Brothers. I think it was about May when they resigned. Will Steinman and Bon Ray, who have just resigned within the past month. Delroy, who has also just resigned within the past month. That combined with developing some out of town resources which we have not used to a great extent before, and going to the California market, has help to take care of that situation much better this fall than this spring.

9327

Q. What did you do about Louise Mulligan that you handled? A. We didn't—we are not able to replace it at all. It is a distinctly different line which is not replaceable by the regular run of manufacturers' merchandise. It is a marked line.

Mr. Albert: What kind of a line is it?

The Witness: I would call it a marked line. It is a line that you can recognize, anyone who is

accustomed—customers come in and say "This is Louise Mulligan," when we had them, without ever seeing a ticket because they recognize the type of garment that they put out.

By Mr. Haycraft.

Q. Do you have any calls for Louise Mulligan now? A. Every day, have had all spring and we are still having this fall.

Q. What did you do about the Junior Guild Frocks you mentioned? A. That is another line that was very difficult to replace because it is a flashy line that is not similar to
9329 most other lines at the same price that are available. Louise Mulligan was more difficult to replace, and second, Junior Guild.

Q. What was the situation—what is the situation at the present time with respect to the replacement of Guild lines in your department? You say you have not been able to replace the Louise Mulligan and more difficult to replace Junior Guild frocks. You say Will Steinman you can get now? A. Yes.

Q. And Joan Junior and Zim Brothers? A. That is right. It is very much better because of the resignations and because of some replacements, but we have not been able to replace our loss of Louise Mulligan and Junior Guild, and there are still a few resources that we miss
9330 greatly, particularly above $10.75, where there is only two junior—to my knowledge, only two junior recognized resources that make better merchandise above $12.75. That is Rentner, Miller, and Junior League.

Q. Have you had occasion to check your volume of sales August, 1936, against August, 1935, with the better lines, better dresses? A. Yes, I have.

Q. What do you find?

Mr. Albert: That is objected to, if it please the Court; the exhibit in evidence speaks for itself.

Mr. Haycraft: It is not in evidence. It may speak for itself, but it has nothing to do with this question.

Examiner Bennett: I will let her answer, if you have any.

The Witness: About $20 we have lost considerable volume, $20 and above, against August, 1935, against August of last year.

Q. When you say considerable, can you be more definite than that? A. Not in actual dollars, because our depart- 9332
ment——

Q. Can you give me a percentage? A. Yes, I would say——

Mr. Albert: That is objected to——

The Witness (continuing): Twenty to 25 per cent.

Mr. Albert: Miss Cofield, would you mind not answering while I am objecting?

Examiner Bennett: Read the question and statements of counsel.

(The record was read.)

Examiner Bennett: The objection may be taken as having come before the answer, in due time, and overruled. I will let the answer stand. 9333

By Mr. Haycraft.

Q. How many trips did you make to California to replace that merchandise? A. Two.

Q. Did you make any other trips to replace your merchandise? A. Not separate trips. We stopped off in Chicago and looked for things that might be available there, but we go through Chicago, so it was not a separate trip. It was en route to New York.

Q. You mean you spent extra time? A. Yes.

Q. Did you make any effort in the New York market, to obtain other markets? A. We individually made an effort and we as a store made an effort to persuade manufacturers to make 10.75 and to persuade some other manufacturers, who were not Guild manufacturers, to make junior sizes.

Q. Did you succeed? A. We got no misses' house to make junior sizes.

Q. How about your volume of business of your lower priced lines, 4.75? A. You mean has it been affected?

Q. Has that been affected? A. No.

9335 Q. Have you made a comparison of August, 1936, with August, 1935? A. Yes.

Q. What does it show? A. It shows that we have held our lower-priced business.

Q. You have held it? A. Yes.

Q. How about this price range, 6.75, 7.75? A. We haven't been affected there at all, because Rosenthal Kollman was the only manufacturer who was Guild at the time of the red carding, and they resigned because they were the only one in the price line that was Guild, and they thought that was not fair, being the only one in the price to be a Guild member.

Q. What about your volume of sales of August, 1936, compared with August, 1935? A. We haven't gotten a completely monthly sales yet for August.

9336 Q. You don't know about it? A. No, the month has just closed. It is not——

Q. Well, do you have an opinion as to what the effect will be on your department if you are not able to get Guild merchandise during the coming seasons, the balance of the fall season? A. I feel very definitely that it will hurt our better business.

Mr. Haycraft: That is all.

Examiner Bennett: Just a moment.

The Witness: No, I was just——

Mr. Albert: Just a moment.

The Witness: I was just shifting.

Cross-examination by Mr. Albert.

Q. I believe you testified, Miss Cofield, that the Junior League was and is a Guild house? A. That is right.

Q. How about Ira Rentner Miller? A. It is.

Q. Are they Guild houses? A. Yes, sir.

Q. Still are? A. To my knowledge.

Q. Will Steinman? A. Not now.

Q. Bon Ray? A. Not now. 9338

Q. Joan, Junior? A. Not now.

Q. Sing Brothers? A. That is the same thing.

Q. Val Ray? A. Not now.

Q. Rosenthal Kalman? A. Not now.

Q. Debutante? A. Not now.

Q. Security? A. Never has been.

Q. Neufeld Fuerst? A. Never has been.

Q. Ernest Janovits? A. Never has been to my knowledge.

Q. Cartwright? A. No.

Q. What is it that Rosenthal Kalman told you, and who, on the part of Rosenthal Kalman, said anything to you? A. If my memory serves me correct, Mr. Kalman.

Q. Well, you are not going to testify to anything which you do not remember, are you? You have already told us 9339 that Rosenthal Kalman told you something.

Examiner Bennett: Let the witness answer the question and then make your comment, please. Go ahead.

The Witness: My understanding was that Rosenthal Kalman resigned because he was the only 7.75 Guild member in the junior market.

By Mr. Albert.

Q. Who told you that? A. Mr. Kalman.

Q. Mr. Kalman personally? A. Yes.

Q. Where? A. In the showroom.

Q. In New York? A. In New York.

Q. In his showroom? A. In his showroom.

Q. About what time of the year did he tell you that? A. I would say about the latter part of February.

Q. Did he give you any reason for having resigned from the Guild? A. No, sir.

Q. Did you ask him for the reason, as to whether or not there was any other reason? A. No, sir.

9341 Q. Had he filled any orders at that time with Guild merchandise, do you know? A. I don't believe there was ever any stoppage of merchandise from——

Q. Rosenthal Kalman? A. —Rosenthal Kalman.

Q. During this whole period, Rosenthal Kalman has been continuing to deliver merchandise at least to the Dayton store? A. Yes.

Q. Do you know whether or not he has continued delivering merchandise to other stores?

Mr. Haycraft: Objected to as immaterial.

The Witness: I don't know.

Examiner Bennett: Yes, sustained.

By Mr. Albert.

9342 Q. Did you have any discussion with Mr. Kalman about it?

Mr. Haycraft: Same objection.

Examiner Bennett: I shall sustain the objection as to other stores.

By Mr. Albert.

Q. Now, when your customers call for Louise Mulligan dresses, what are they told?

Mr. Cant: That is objected to, Mr. Examiner, on the ground that it is irrelevant and immaterial.

Mr. Albert: Then I ask the witness' testimony with respect to the fact that customers have called for those goods since the time of February 17th be stricken.

Examiner Bennett: Will you read the question, please?

(Previous question read by the reporter.)

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception. Has the Dayton Company given any instruction to its sales force as to the manner in which they are to handle the proposition that they haven't Louise Mulligan dresses? 9344

Mr. Haycraft: Objection, irrelevant and immaterial.

Mr. Cant: Same objection, if the Court please.

Examiner Bennett: The same.

Mr. Albert: Exception.

By Mr. Albert.

Q. What is there, Miss Cofield, that is so distinctly different about the Louise Mulligan dresses? A. One thing is pattern. They do not use a standard Bauman figure of a pattern or a standard junior pattern that other manufacturers use. They use their own measurements, which is a smaller waist line and differently cut dress. It fits different than any other dress that we carry in our stock from any other recognized manufacturer. 9345

Mr. Haycraft: What is that Bauman, capital P -u——

Mr. Albert: Capital B-a-u-m-a-n. Anything else?

The witness: They are very young clothes, I would say, what we call "tricky" clothes.

By Mr. Albert:

Q. Can you give us any more common name for it than "tricky," something that the layman would understand? A. Well, they are different looking.

Q. Well, to you they are different looking? A. They are different looking to the customers.

Q. What would the ordinary person looking at them think? A. They are different looking because they are not —they do not look like any other New York merchandise.

Q. To the eye? A. That is right.

Q. Would you say that to the untrained eye the design of those dresses was obviously different than the other
9347 dresses? A. I would say the make-up of the dresses was obviously different.

Q. That the model was different from the other dresses? A. (No response.)

Q. Is it your contention, Miss Cofield, that of a group, let us say of a dozen dresses, that might be hung up in a showroom, the average woman could walk in and take a look at the dresses and say that one is a Louise Mulligan dress? A. Not unless they were familiar with Louise Mulligan dresses.

Q. But, having once seen a Louise Mulligan dress, they could pick it out on a rack of dresses? A. I could not say everyone could. I would say some people could.

Q. Would you say more than the average or less than
9348 the average? A. More than the average.

Q. The average woman could? A. Yes.

Q. Merely from looking at a rack of twelve dresses? A. That is right.

Q. What is it that the Guild manufacturers told you at the time you had this very friendly conversation with them? A. Well, they were regretting not being able to sell the Dayton Company because they felt we had done nothing except use the best tactics and had never done anything to them.

9349

Q. Well, the Dayton Company hasn't done anything—

Mr. Haycraft: Let her finish her answer.

Mr. Albert: I knew what I was going to get, Mr. Haycraft.

The Witness: They were sorry, and that they regretted they could not sell us, as we regretted that we could not buy from them.

Mr. Albert: May I have the answer?

(Answer read.)

By Mr. Albert.

9350

Q. Of course, they have lost the ability to sell you dresses, haven't they? A. They have lost what?

Q. They have lost the ability to sell you dresses, when they do not sell them to you? A. They have lost the ability because they belong to an organization which has prohibited selling our store.

Q. Do you not mean that they have agreed not to sell your store? A. I would not say so.

Q. When they are unable to sell your store, they lose a profit, do they not? A. That is right.

Q. Did it ever occur to you to examine into the reasons why a manufacturer should abandon the possible profit on a sale of dresses to you in order to determine the relative gains that he might receive?

9351

Mr. Cant: Objected to as argumentative, and irrelevant and immaterial.

Mr. Albert: If it please the Court, Mr. Cant has no standing in this hearing with respect to the materiality and relevancy of any question. He is only here to protect the witness in regard to this highly elusive trade secrets that we have heard so much about since we have left the Atlantic seaboard.

Examiner Bennett: I think that is true. He has no standing. Read the question.

(Question read.)

Mr. Haycraft: I think it is irrelevant and immaterial, objected to.

Examiner Bennett: Well, I think probably the witness is not competent to answer that question, not being a manufacturer, and not knowing.

Mr. Albert: If your Honor please, I think, with the background that has been laid in this case, this witness has been testifying to the effect and everything else, and if she wants to find out why her department is being injured, if she does not know, which I seriously question, because I think the witness knows exactly what the question is aimed at, should find out what it is necessary for her to do in order to get this merchandise.

9353

Examiner Bennett: If you want that question—

Mr. Haycraft: She is tell you what she was told.

Mr. Albert: That is all I am asking her about.

Mr. Haycraft: That is all she knows about.

Examiner Bennett: I will let her answer, if she knows what it is.

Mr. Albert: May I ask counsel for the Dayton Company be requested not to prompt Mr. Haycraft in the objections he should make.

Examiner Bennett: I have nothing to do with that, if Mr. Haycraft wants to be prompted, that is up to him.

9354

Mr. Albert: May I call your attention that Mr. Haycraft did not object until after Mr. Dayton objected.

Examiner Bennett: Well, go ahead. You may have your answer if there is any answer. Read the question.

(Question read.)

The Witness: My first answer would be, I don't believe he abandoned voluntarily selling us. He

belonged to an organization that, at the time they were selling us clothes, a controversy came up, he belonged to that organization and must abide by its rules. I don't believe any manufacturer voluntarily just did not sell the Dayton Company.

Q. Other manufacturers have resigned from the Guild, haven't they? A. What do you mean, other manufacturers besides the one I said?

Q. You testified to the fact that certain manufacturers have resigned from the Guild? A. That is right.

Q. And after their resignation from the Guild have sold you merchandise, that is right, isn't it? A. Yes. 9356

Q. Certain other manufacturers have not resigned from the Guild? A. That is right.

Q. Isn't that so? A. That is right.

Q. And refused to sell you merchandise, isn't that so? A. I cannot say that they have refused, because we haven't asked them to sell us since the red carding, but it amounts to the same thing.

Q. So far as you know as regards the individual manufacturers is it your belief that they may sell you if you go to them and attempt to place an order? A. I could not answer what they might do.

Q. Well, as a matter of fact, as a result of your experience you know, in so far as the Guild manufacturers are concerned, they will not sell you until you sign the declaration of co-operation, isn't that so? A. Not completely, be- 9357
cause we got a small amount of merchandise after the red carding from Guild houses.

Q. You mean that unfilled orders were delivered to you? A. No, sir.

Q. Who were the Guild houses that sold you the merchandise?

Mr. Haycraft: That is objected to.

9358

Mr. Cant: That is objected to, if the Court please.

Mr. Albert: Then I ask it all be stricken out.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will ask the witness if there were any substantial sales of Guild merchandise after the red carding.

The Witness: I beg your pardon?

Examiner Bennett: I will ask the witness if there were any substantial sales to her department of Guild merchandise after the red carding, I mean

9359 where the orders were given after the red carding.

The Witness: No great amount of merchandise; a small amount of merchandise.

Examiner Bennett: Oh, I think I will let the decision stand. It is a venomous proposition and I am not going into that.

By Mr. Albert.

Q. Did any of these manufacturers tell you under what circumstances they would sell you merchandise? A. Are you talking about all Guild manufacturers?

Q. Yes. A. No.

Q. Did you ask them when they might sell you merchandise? A. I didn't need to ask them. I knew that they—

9360 most of them would not do anything until the red card had been removed.

Q. Did you make any inquiry to determine under what circumstances the red card would be removed? A. No, but I knew that we had to sign another agreement before the thing could be settled. At least, that was my impression.

Q. Didn't you know, as a matter of fact, that it was even unnecessary to sign a new agreement, that all that it was necessary for the Dayton Company to do was to signify its intention to protect styles?

Mr. Haycraft: Objected to as irrelevant, actually contrary to the evidence in this case up to this time, also irrelevant and immaterial.

Examiner Bennett: I will sustain the objection.

By Mr. Albert.

Q. Have you ever been to the California market before, Mrs. Cofield? A. I testified twice.

Q. Had you ever been there before that? A. No, sir.

Q. Have any of your buyers been to the California market?

Mr. Haycraft: Objected to. 9362

By Mr. Albert.

Q. (Continuing) If you know?

Mr. Haycraft: Nothing to show—that is objected to unless the question is confined to her department.

Mr. Albert: If you know.

Examiner Bennett: You may answer if you know.

The Witness: Will you repeat the question, please?

(The question was read.)

The Witness: Yes.

9363

By Mr. Albert.

Q. As a matter of fact, you have a Los Angeles office, haven't you? A. Yes, sir.

Q. Well, now, how far ahead in the lower priced part of your department, how far has it gone ahead over last year? A. I don't know.

Q. It went ahead, though, definitely, didn't it? A. I don't believe so.

Q. Did it fall behind? A. No, I think it was about the same.

Q. Just about the same? A. You are talking about lower priced retails?

Q. Yes. A. That is right. I think I testified earlier to that, that we hadn't lost any business.

Q. Yes. A. On lower priced—I don't believe we have gained much business. I think it is just about the same.

Q. So that your ability to obtain a complete market in the lower priced dresses did not help your lower priced department?

Mr. Haycraft: Objected to.

9365 Examiner Bennett: Well, I will let her answer.

The Witness: Oh, at least we maintained our business.

By Mr. Albert.

Q. You maintained it? A. That is right.

Q. So that in so far as your lower priced dresses in the department were concerned, carrying a complete line of merchandise from anybody that you wanted to purchase from, the department did no better after the red carding than it had done before the red carding; is that your testimony? A. Right.

Q. Now, Mrs. Cofield, the Louise Mulligan line is confined to the Dayton Company—was it not? A. Yes.

9366 Q. For how long a period of time was it to be confined? was there any written agreement with respect thereto? A. No.

Q. So that you had no legal right to insist upon a continuance of the confinement, had you?

Mr. Haycraft: That is objected to. The witness is not a lawyer.

Examiner Bennett: Read the question, please.

(The question was read.)

Examiner Bennett: Well, I will sustain the objection.

By Mr. Albert.

Q. Is there anything, in so far as you know, in the relationship between the Dayton Company and Louise Mulligan, that would have prevented or that does prevent Louise Mulligan Company from confining that style to any other retailer in Minneapolis aside from the Dayton Company for the coming season?

Mr. Haycraft: That is objected to.

Mr. Cant: The Dayton Company objects to that. 9368

By Mr. Albert.

Q. Were there any store conferences with respect to Dayton's policy in connection with the Guild program?

Mr. Haycraft: What is that question?

By Mr. Albert.

Q. (Continuing) Up to the date of red carding, Mrs. Cofield?

Mr. Haycraft: What is that question?

(The question was read.)

Mr. Haycraft: That is objected to as immaterial, improper cross-examination.

Mr. Albert: Foundation question, your Honor. 9369

Examiner Bennett: You may answer if you participated.

The Witness: Yes. We were instructed to observe all the agreements of the Guild situations.

By Mr. Albert.

Q. Were there any conferences in the Dayton Company store— A. Mr. Donovan——

Q. (Continuing) —prior to the red card? A. Mr. Donovan had meetings in his office with the buyers on the floor, instructing us to observe all the Guild——.

Q. When? A. About a year ago last June or July.

Q. Is that the last time you had any conference with Mr. Donovan with respect to the observance or non-observance of Guild policy? A. I am sure we discussed it further than that, but that particular time it was over stamping our orders and being sure to observe the rules of the Guild agreement.

Q. Was there any general conference of any kind prior to the red carding, let us say in the months of November
9371 or December or January of 1936? A. No.

Q. None whatsoever that you know of? A. Not that I know of?

Q. Is the first that you knew of the fact that the Dayton Company had been red carded your inability to obtain merchandise from Guild manufacturers? A. No, I don't believe so. I believe my first knowledge was through our office or through "Women's Wear."

Q. When? A. About February 17th.

Q. Prior to the time that you had learned of the red carding, had you been in any way informed by the Dayton Company, through its executives or your superiors, that the Dayton Company was no longer going to co-operate with the Fashion Originators Guild? A. No, sir.

Q. So that the first inkling that you had of any red card
9372 is when you were told of the accomplished fact of the red carding; is that so? A. To my knowledge, it is.

Q. Do you know whether or not any other buyers had been in any way forewarned with respect to the market or any other matter? A. That I can't answer.

Q. Beg your pardon? A. That I can't answer because I don't know.

Q. Mrs. Cofield, with respect to these manufacturers who resigned from the Guild—withdrawn. Mrs. Cofield,

will you please tell us what Guild manufacturers you had conversation with that you were referring to when you said that they were decidedly friendly? A. I didn't—there was a conference with the manufacturers that I saw that were friendly and that were regretting the inability to sell us, were practically all on the list that were Guild.

Q. All on the list of the Guild? A. Were all the Guild members, Junior Guild members.

Q. Was that Louise Mulligan? A. Included, yes.

Q. Who in Louise Mulligan did you speak with? A. Mr. Gisnet.

Q. Didn't he as a matter of fact tell you that as a result of his being released from the necessity of confining his 9374
business to the Dayton Company he has sold more goods in Minneapolis than what he has ever sold before? A. He did not.

Q. Don't you know from your examination of the market and from your investigations that as a matter of fact Louise Mulligan has sold more goods in Minneapolis as a result of being released from his confinement than they ever did before? A. Mr. Albert, if you will let me answer that question in my own way, I can tell you exactly what happened.

Q. Well— A. In the first place, Mr. Gisnet, the Louise Mulligan line was kept out of Minneapolis all spring in the hopes of a settlement of this thing so that they could sell us.

Q. Quite right. A. They didn't want to ally themselves 9375
with any other store in the hopes—they would rather sacrifice their spring business in Minneapolis rather than to sell another store and get tied up so that they couldn't come back and be confined to the Dayton Company.

Q. And wasn't that——

Mr. Haycraft: Just a moment.

The Witness: I am not finished, Mr. Albert.

By Mr. Albert.

Q. I am sorry. Go ahead. A. Where was I?

(The record was read.)

A. (Continued) To the Dayton Company at the termination of this Guild controversy. Anything Mr. Gisnet said to me all spring was a decided indication that he wanted to come back and be confined, his merchandise be confined to the Dayton Company, and that he was decidedly disturbed at his loss of selling us.

Q. And Mr.— A. They have not sold——

Q. And Louise Mulligan are still members of the Guild, 9377 aren't they? A. Yes, sir.

Q. And they are taking this loss that you speak of? And this being unable to sell the Dayton Company, aren't they? A. They haven't sold in Minneapolis until just now. I don't know what their fall experience is but they took a spring loss, yes.

Q. As a matter of fact, don't you know that they did make some sales in the spring? A. To my knowledge not. There was no advertisements on Louise Mulligan in Minneapolis at all this spring.

Q. In other words, what you want to say is that Louise Mulligan in the ethical conduct of its business waited as long as possible to see whether or not Dayton's would protect the Louise Mulligan style which the Dayton Com- 9378 pany wanted so much? A. My understanding is that they waited that long so as to be sure of the amount of business that they would get from Minneapolis because they knew from their experience with the Dayton Company that it had been a very profitable operation on both sides. We don't protect their styles, we sell their merchandise.

Q. What do you mean you don't protect their styles? A. Well, how can we protect the manufacturer's style? We buy merchandise to sell.

9379

Q. Yes. And in all your experience with the Dayton Company during its co-operation with the Guild program you don't know how to protect style? A. That was not the question.

Q. You volunteered that you don't protect the style, Mrs. Cofield.

Mr. Haycraft: She did not. She was answering your question.

The Witness: I was answering your question. You asked me about protected style of Louise Mulligan.

By Mr. Albert.

9380

Q. Yes, and you said, "We don't protect the style." A. I don't see how their confining the line to us, when they are confining the line to us, it comes to protection of style.

Q. Quite true. But no matter how you sell the dress, whether it is by reason of confinement or merely by reason of the fact that you sold the dress with other retailers, isn't the objection that Louise Mulligan has to selling you at all, whether confined or not, the fact that you refused to protect the style? A. Ha, ha, ha! Well, your question said that they refused or objected to selling us, and my answer is that they haven't objected to selling us. They still want to sell us.

By Mr. Albert.

9381

Q. In other words, you say that because they are abiding by the Guild program in their agreement with the Guild, that that is the only reason that they won't sell you? A. It is the only reason, I am sure.

NEILLIE D. JOHNSTONE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?
The Witness: Mrs. Johnstone.
Mr. Albert: Is that with a "t"?
The Witness: Yes.

Direct examination by Mr. Haycraft.

Q. Will you tell your full name for the record? A. Mrs. Nellie D. Johnstone.

9383 Q. That last name is spelled, J-o-h-n-s-t-o-n-e? A. Right.

Q. Where do you live? A. 2517 Humboldt.

Q. Minneapolis? A. Minneapolis.

Q. What is your occupation? A. Department manager and buyer for the Dayton Company.

Q. What department are you manager of? A. I have two departments, the Model Shop and the Barbara Lee shop.

Q. Do they have numbers? A. 353 and 333 in the Model Shop.

Q. 333 and 353 in the Model Shop? A. Right. 354 and 334 in the Barbara Lee shop.

Q. What is the difference between those two shops? A. Price.

9384 Q. All right. Give us the price range of your Model Shop department. A. The Model Shop comprises women's and misses', and the price range is from 39.50 and up.

Q. How far up would you say? A. Well, we sold things in the fall seasons up to $295.

Q. Well, that would be dresses or suits or coats? A. Costumes.

Q. Costumes? A. Yes, usually dresses up to 150.

Q. Now, the Barbara Lee. What is the price range of those two departments? A. From 19.75 to 39.50.

Q. Now, how are those departments arranged at Dayton's? Just describe how they are arranged. A. They are classified under two heads, misses' and women's, under the same price classification.

Q. How are they displayed to the public? A. By our sales people.

Q. Are the dresses out so they can be inspected? A. No. In the Model Shop, none of our stock is displayed to the public, except on sale days, and that only in the Barbara Lee shop. Never in the Model Shop. Private selling.

Q. To what type of clientele would you say these four departments cater? A. I think they cater to the well- 9386
dressed, sophisticated woman, regardless of price, both departments.

Q. How long have you been in charge of those departments? A. It will be three years the 15th of November, I think.

Q. That would be since November, 1933? A. Yes. No, that would be in 1932, wouldn't it?

Q. You say three years? A. No, that is right.

Q. Was it 1932? A. No, it was 1933.

Mr. Albert: As long as you start February 6, 1936, we are satisfied.

By Mr. Haycraft.

Q. What did you do before that, Mrs. Johnstone? A. 9387
I have always been in this business in Minneapolis for the last eighteen years.

Q. Were you in business for yourself? A. Yes, previous to coming to the Dayton Company I was associated for a number of years with E. E. Atkinson, Young Quinlan, and I was a partner in the Jennie Lee, Incorporated.

Q. Before you came to Dayton's? A. Yes.

Q. So that all of your business experience has been in this type of merchandise? A. Yes, it has been.

Q. How well acquainted did you become with the manufacturers of this type of merchandise? A. Very well acquainted with all of the better manufacturers.

Q. Are you familiar with the Fashion Originators Guild, Incorporated? A. Yes.

Q. When did you first learn of that organization? A. I don't remember.

Q. When you went to Dayton's did you know about it, had you heard of it then? A. I don't think so.

Q. Well, since you have been with Dayton's, what has been your contact, if any, with the Guild or its activities? A. Well, of course, it is represented in most of the better

9389 houses.

Mr. Albert: May I ask that the answer be stricken, your Honor, as not responsive.

Examiner Bennett: The question and answer, please.

(Previous question and answer read.)

A. I have had constant contact with them. Is that better?

Mr. Albert: It is a little better, Mrs. Johnstone.

The Witness: Thank you.

By Mr. Haycraft.

9390 Q. Well, in your department, since you have been with Dayton's, what percentage of the garments that you sell there would you say you bought from Guild manufacturers? A. Well, it varies in the two departments.

Q. Well, give us first the Model Shop, 353 and 333, say 1935, the fall of 1935. A. Well, I would say 90 per cent. of the Model Shop.

Q. What would you say about Barbara Lee? A. Well, 65, 60 or 65.

9391

Mr. Albert: 50 or 55?

The Witness: 60 or 65.

Mr. Albert: What is that number of this department, is that 353 or 333?

Mr. Haycraft: 334 and 354.

The Witness: 354 and 334.

Mr. Albert: Would you mind straightening out the numbers of the departments? Which is the Barbara Lee?

The Witness: 354 and 334.

Mr. Albert: 334?

The Witness: Yes.

9392

By Mr. Haycraft.

Q. Would you testify now to the best of your ability as to the principal resources of your Department 353, pick out 333 first. What were the principal Guild resources, say in the fall of 1935, in Department 333? A. That is of the women's departments. Some of the most outstanding were A. Trainor, Matthew Kadetsky, which is, by the way, the only half-size better dress house in New York City, I mean better price, Ed Gerrick, there was Louise Barns Gallagher, and Herman Beispiel, those are outstanding, the bulk of our business, the better ones.

Q. Now, will you give the same information for Department 353? A. If I could look at my list, I would be a little better for you.

9393

Q. All right. A. I would not need to take so long. Put my glasses on. Well, M. Rentner is the most outstanding.

Q. Which? A. Maurice Rentner.

Q. All right. A. Louise Barns Gallagher, Milton Altmark, William Bass, J. B. Barnett, Henry Gans, Virginia Hume and Mary Lee, Ben Reid, Rothenberg, J. Rothenberg, and Rudolph Gowns, Straus Miller and Suttre Frocks.

Q. Did you mention Eisenberg? A. I——

Q. Are they a resource of your department? A. Yes, very important, too.

Q. What is the cost price range of dresses sold in those two departments, 333 and 353? A. They are from 22.95 to 28.95, 29.95.

Q. Will you give us the same information for Department 334, the same information? A. The prices are from 19.75 to 39.50 in the women's department; one of our most outstanding resources, which we have lost, are Dolces Dresses in the women's department.

Q. Dolces? A. Yes.

9395 Q. Do you recall any others? A. Gans, Henry Gans.

Q. How about Joseph Greenberg? A. Joseph Greenberg is out of business.

Q. He was in business in 1935? A. Yes. I beg your pardon. He was important at that time.

Q. Will you give us the same information as to Department 354? A. Milton Altmark, Mary Lee, Charles Lang, Bender Hamburger, Capri, Casino, Fiegenbaum Adelson, A. Goodman, William Bass, did I mention him?

Q. No. How about Joseph Halpert? A. Very important but not perhaps as strong in our department.

Q. What was the cost price range, the same in this as in 354? A. No, 12.75 to 22.75.

Mr. Albert: That is 354?

9396 The Witness: Yes.

Mr. Albert: That is 354?

The Witness: Yes.

By Mr. Haycraft.

Q. Now, Mrs. Johnstone, do you recall when the Dayton store was red carded by the Guild? A. When?

Q. Yes. A. It was in February.

Q. Do you recall how that came to your attention? A. Yes. I was in California at the time and William Bass——

Mr. Albert: Wasn't there anybody at the Dayton store, Mr. Haycraft, when they were red carded?

Mr. Haycraft: I move that be stricken from the record and the witness be allowed to answer without the facetious remarks from the other side of the table.

Mr. Albert: There is nothing facetious about it; it is serious.

Mr. Haycraft: It has nothing to do with the 9398
issues in this case whether they were there. I suppose people have to buy goods as well as sell them.

By Mr. Haycraft.

Q. Will you go ahead with your answer? A. William Bass' representative, young Mr. Hawkus, was the first one to tell me that the Dayton Company was red carded.

Q. Was any explanation given at the time? A. No. I was taking a taxi, and he just stuck his head in the door, no explanation, ha, ha.

Q. Did you try to confirm it in any way? A. No.

Mr. Albert: Would you mind speaking a little louder, Mrs. Johnstone?

9399

The Witness: No.

By Mr. Haycraft.

Q. You say you were in California at the time? A. Yes.

Q. Upon your return to Minneapolis did you make any attempt to obtain merchandise from the Guild manufacturers?. A. Certainly.

Q. What did you do in that respect? A. We made a trip to New York and interviewed most of them personally.

Q. Whom did you call on? A. We called on Milton Altmark, for one.

Q. Whom did you call on there? A. Mr. Altmark.

Mr. Albert: Who?

The Witness: Mr. Altmark.

By Mr. Haycraft.

Q. What did he tell you? A. Nothing he could do.

9401 Q. What did he explain? A. His kindly feeling and all that sort of thing, and he regretted, the clothes were ready for us, but it was inpossible for him to ship them.

Q. Did he tell you why? A. Well, we knew the reason why. It was because of the——

Q. Because of what? A. Well, it was because he was a member of the organization that had red carded the various stores.

Q. Well, did you call on anybody else? A. What?

Q. Who else did you call on? A. Talked to Mr. Rentner.

Q. What did he tell you? A. Well, he regretted, too, the circumstances.

Q. Did he give you the same explanation or a different one? A. What?

9402 Q. What explanation did he give you? A. Well, he talked as to the merits, of course, of the organization, how he hoped that things would adjust themselves that we would stay with the org—with the F.O.G.A.

Q. Did you call on anybody else? A. Mary Lee.

Q. Whom did you talk with there? A. I think Miss Morris.

Q. What did she tell you? A. I remember going in the back and looking over the clothes that were still being

filled for the Dayton Company subject to settlement of the question.

Q. What did she say about it? A. Well, she, too, had the same feeling. She regretted that they weren't allowed, wouldn't ship, but possibly something could happen so that this thing could be adjusted and things would straighten themselves out.

Q. Who else did you call on? A. Dolces.

Q. Who did you talk with there? A. I think Mr. Aitman.

Q. What did he tell you? A. Well, the same thing, couldn't ship anything, couldn't even accept re-orders. We had things on re-order there at that place and special 9404
orders coming through that they couldn't ship us.

Q. What did you do then after you made the rounds of the Guild manufacturers? A. Well, we went searching for merchandise. We spent days trying to get it, what we had already bought shipped to us.

Q. Did you finally succeed? A. Yes; that boycott was finally lifted, that is, they allowed the manufacturers that had the merchandise made up to ship it.

Q. Did they allow you to place any more re-orders? A. No.

Q. Or special orders? A. No.

Q. Well, then, what did you do? A. We have been working ever since.

Q. Have you had any success? A. Ha, ha, it has been 9405
most difficult in the Model Shop, the better clothes, the better priced clothes.

Q. Have you been able to replace any of the merchandise of any manufacturers that were buying from the Guild? A. That were buying from the Guild, manufacturers in the Model Shop, no.

Q. Have you made strenuous efforts to do so? A. To the best of my ability.

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness, and leading as to whether or not she made strenuous efforts.

Examiner Bennett: Overruled.

Mr. Albert: Exception. The question was answered.

By Mr. Haycraft.

Q. As to the Barbara Lee shop, what success have you met with? A. We have had more success in the Barbara Lee shop.

9407 Q. Are there any manufacturers of garments of any manufacturers in that shop which you have not been able to replace? A. Yes.

Q. Which ones? A. Dolces, for one.

Q. Any others? A. Capri.

Q. Can you think of any more? A. Casino, Fleigenbaum-Edelson, Henry Ganz.

Q. Now you said that you did get the orders that had been placed but you were unable to get re-orders? Special orders? A. Yes, after—well.

Q. After you—I want you to direct your testimony now to the spring of 1936 and testify as to the effect that the inability to get goods from the Guild manufacturers had upon the department under your supervision.

9408

Mr. Albert: That is objected to, no proper foundation has been laid.

By Mr. Haycraft.

Q. Do you have an opinion, Mrs. Johnstone, as to the effect of your inability to get Guild merchandise, the effect it had upon your departments in the spring of 1936?

Mr. Albert: That is objected to, immaterial, no foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer.

The Witness: Well, always in the spring of the year it is less difficult to suit the public with less expensive merchandise. I mean, in the spring of the year people don't pay the price for clothes. They are not as interested in high-priced merchandise. Therefore, we have been able to—we haven't missed them as much in the spring season as we would in the fall, which is more important. 9410

By Mr. Haycraft.

Q. What is the situation with respect to the fall? A. Well, it is discouraging.

Mr. Albert: To whom, Mrs. Johnstone?

The Witness: Well, I am afraid for the Dayton Company, ha, ha.

By Mr. Haycraft.

Q. Discouraging in what way? A. Well, we have been unable to round out our stocks. We have not been able to please our customers for the type and kind of price that they want to pay. There is such a big gap in our resources that—in our stocks—it certainly reflects itself 9411 in just that manner and our customers are quick to realize it both in types and in price.

Q. Have you observed anything along with respect to that situation in your contact— A. With the public?

Q. Yes. A. Indeed.

Q. Can you give me some illustrations of that? A. Well, it seems to be generally known that the Dayton Company have been—their better resources are limited,

see, and customers notice. That is one thing. Even though they come to our shop and don't find just—we had a customer in this morning, a very important customer from St. Paul whom we clothed, likes our clothes. She met me before I went to New York. She said, "Mrs. Johnstone, if you will go to that manufacturer that made those gorgeous clothes for me last fall, that is the kind I want." She came back this morning and she sent word to me, asking me if I bought clothes of A. Traina. She didn't know A. Traina, but that is who it was.

Q. What did you have to tell her? A. Why, I told her I had bought some very nice things—but——

9413 Q. Have you any other instance of that kind or is that an isolated case? A. Well, there might—our clothes last fall were very wonderfully accepted both from Rentner, Louise Barnes Gallagher, costumes, and we have not been able to replace them. Last week there were three customers walked out of the Dayton Company and bought suits on the avenue from $135 to $175, our customers, personal customers.

Q. Has this shown any effect upon the volume of your sales? A. Why, naturally.

Q. What effect has it had? A. Well, in figures?

Q. If you have any way of giving it.

Mr. Albert: Just say very bad, Mrs. Johnstone.

The Witness: Very bad.

9414 Mr. Haycraft: Mr. Examiner, may I be allowed to conduct the examination without being interrupted?

Examiner Bennett: All right, go ahead.

By Mr. Haycraft.

Q. Have you made any study or comparison with your volume of sales last year and this year in your department? A. I just came home this morning. I haven't checked them.

Q. Will you do it— A. We were behind when we left.

Q. Mrs. Johnstone, do you have an opinion as to what the effect would be on your departments if you are still unable to get Guild merchandise in the future? A. Well, it would change our clientele.

Q. What do you mean by that? A. Well, we would not be able to satisfy them unless the resources, new resources spring up that we have no reason for feeling they will.

Q. Have you just recently been engaged in looking for new resources? A. I certainly have.

Q. Where did you go? A. Well, everywhere.

Q. Yes. A. Everywhere in New York that I could be directed to, to find merchandise that might substitute the Guild houses. 9416

Q. Did you find any? A. No, not a great many.

Q. Mrs. Johnstone, has the inability to get good merchandise had any effect upon the morale of the personnel of your department? A. Serious.

Q. Will you explain how, in what way? A. Well, each of the sales people in these two departments have a direct following of customers. They have their own clientele. They are girls that work into that. It means the success of our department, and my very best sales person this week, or since I came home, has told me her failures to sell so and so, so and so, customers that she always has been successful with, and, you see, they can't help but realize that they are key merchants, see the difference in the grouping of merchandise, or the selection, rather, I mean. 9417

Q. Does the limited selection that you refer to have any effect upon your ability to sell garments in your department? A. Yes.

Q. Why is that true? A. Well, as I said before, the public is educated to— . There is a high class something about a well made garment that is just the difference be-

tween an amateur production and a finished product, like men's tailored suits, for instance. It is the same thing. There is a something that goes into tailoring and workmanship and quality of materials, an expression of style that round out a garment, that a fastidious customer appreciates. It is just something that sometimes is indescribable, but it marks that smart suit or dress.

Mr. Haycraft: That is all, Mrs. Johnstone.

Cross-examination by Mr. Albert.

Q. Mrs. Johnstone, would you mind telling me again,
9419 please, the percentage of Guild merchandise which you had in Department 333? A. Well, I couldn't tell you exactly.

Q. Approximately? A. The two departments are considered together.

Q. 333 and 353? A. Yes.

Q. What is the percentage there? A. About 90 per cent.

Q. 90? A. Yes.

Q. How about 334 and 354? A. I would say the same, about 60 per cent.

Q. What is the price line in 333 and 353? A. $39.50 to $295.

Q. What is the low price? A. $39.75.

Q. Do you want to amend your statement, then, to Mr.
9420 Haycraft, that it was $22.95 up?

Mr. Haycraft: She didn't say $22.95 for that department.

The Witness: That is cost in that department.

By Mr. Albert.

Q. Then $39.50 is the retail price and $22— A. That is right.

Q. $22.95 is the cost price? A. $22.75.

Q. Yes. A. Yes.

Q. And in Department 354 what is the cost price? A. The same price ranges.

Q. You mean from— A. Oh, no. In 354? I beg your pardon. They are from $12.75.

Q. Is that cost price? A. Cost price, $12.75 to $22.75.

Q. And what is the retail price? A. $19.75 to $39.75.

Q. So that your $12.75 dresses sell for $19.75? A. Some of them.

Q. Approximately? I mean on the average? A. $22 that would be. They are usually marked $22, some for specials that runs in at $19.75.

9422

Q. Of course, there is a discount on your $12.75 cost price? A. Yes.

Q. Is there not? A. Uh huh.

Q. When you called upon Milton Altmark what did he tell you about not selling you dresses? A. He said, "We have every one of them back there waiting to be shipped to you but we can't ship them."

Q. Did he tell you why he couldn't ship them? A. Well, because of his organization wouldn't permit, I think was his reason.

Q. Did he tell you why the organization wouldn't permit it? A. No.

Q. Didn't you ask him why it is that the organization wouldn't permit him? A. I don't remember.

9423

Q. Well, you had been in California, hadn't you, when this red carding took place? A. Uh huh.

Q. Naturally, you don't know the events leading up to it? You didn't know the events leading up to it at that time? A. Only that the papers were filled with it.

Q. The papers were filled with it? A. Yes.

Q. What did you learn from the papers? A. The women's—ready—women's wear. We learned that the

F.O.G.A. were not allowed to ship merchandise to the following red carded stores.

Q. Did you learn why they were not? A. Well, it had to do with copying for one thing, I suppose.

Q. What do you mean when you say it had to do with copying? A. Copying models.

Q. What do you mean when you say it had to do with copying models? A. Well, I do not understand what you are trying to find out.

Q. Red carding is a result, is it not? A. Yes.

Q. Now, do you know what caused that result? A. No.

Q. You do not know? A. Well, I don't know all the

9425 ins and outs of the F.O.G.A.

Q. What did you learn as to it as far as— What is your opinion of it?

Mr. Haycraft: Objected to.

By Mr. Albert.

Q. What did you learn as buyer in the Dayton store as to the reason for the red carding? A. Well, there were many reasons, I don't know.

Q. Let me have half a dozen of the many reasons.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Albert: May it please the Court, the testi-

9426 mony has been given here that these buyers are responsible for almost everything that can be imagined in any way in their department. One witness has testified that there is nothing that he knows of that a buyer is not responsible for, and those were the recorded remarks of Mr. Dayton, who was here today. I am asking this department buyer if she knows what she is supposed to know about her department.

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Give me the question.

(Previous question read.)

Examiner Bennett: I will let her answer. Overruled.

The Witness: I don't know.

By Mr. Albert.

Q. Then, Mrs. Johnstone, your testimony that after being in charge of these departments, 333, 353, 334 and 354 for the past three or four years, which departments you are completely responsible for, and which you say 9428
have been injured by a certain action of somebody, that you do not know what caused that action? A. I do not know all the reasons that caused this action.

Q. Well, give me one reason that you know.

Mr. Haycraft: That is objected to. She has not shown that she knows any.

Examiner Bennett: I will let her answer, if she knows. I do not know that she knows any.

Mr. Albert: Quite contrary, your Honor.

The Witness: I have really never discussed it.

By Mr. Albert.

Q. Now, Mrs. Johnstone, you have said that you know some of the reasons, you do not know them all; now, will 9429
you please give me one reason that you know as to the existence of the state of affairs with respect to the Dayton Company and the F.O.G.A. and the Guild members?

Mr. Haycraft: Object to that question as not proper cross-examination, immaterial, irrelevant, no foundation has been laid.

Examiner Bennett: Objection overruled. You may answer if you know any.

Mr. Haycraft: That is, if she knows. She ha not said she knows.

The Witness: I really do not know.

By Mr. Albert.

Q. Then, you do not know of any reason why the Day ton Company was red carded? A. No, I don't. I don' think the Dayton Company deserved to be red carded.

Q. Why didn't the Dayton Company deserve to be re carded? A. I don't know.

Q. Well, now, Mrs. Johnstone, you predicate your opin ion upon knowledge of some kind, don't you, or is th
9431 fact that you do not think the Dayton Company deserve to be red carded, due solely to your loyalty to the com pany? A. No, it is not that.

Q. All right. Now, upon what do you predicate you opinion that the Dayton Company did not deserve to b red carded? A. Well, that is between the Dayton Com pany and the F.O.G.A. I do not really know.

Q. Then, when you say that the Dayton Company did not deserve to be red carded, you do not know why they did not deserve to be red carded? A. Well, I think it is a surprise.

Q. What is a surprise? A. It was a surprise to me, I have said.

Q. Haven't you made any inquiry since the red carding
9432 to determine why the Dayton Company was red carded? A. I only knew it to be a fact.

Q. And aside from the fact that you know that the Day ton Company was red carded, you, in your position as a buyer, for these four departments, in complete supervision thereof and with complete responsibility for the success or failure of those departments, do not know to-day why the Dayton Company was red carded? A. No.

Q. And you have made no attempt to inquire? A. That is——

Q. Will you answer the question, please? A. (Short pause) I do not know.

Q. And I ask you if you have made no attempt to inquire in order to alleviate the condition of the department for which you are responsible, as to the reason why the Dayton Company was red carded?

Mr. Haycraft: I object to that question.

The Witness: No.

Mr. Haycraft: There is nothing to show that there is any responsibility on the part of this witness as to the reason they were red carded. I do not think there is any foundation laid.

Mr. Albert: Mr. Dayton is here and will he deny the testimony of the witnesses that he did not know anything that a buyer was not responsible for in his departmen.? 9434

Mr. Haycraft: Are you trying to stage a show around here?

Examiner Bennett: This witness does not seem to now, and I guess that is hardly worth while to try to get that information from a witness who does not know.

By Mr. Albert.

Q. Is it your testimony, then, that you did not ask Milton Altmark as to why the Dayton Company had been red carded? 9435

Mr. Haycraft: She didn't say that.

Mr. Albert: I am asking her if she did.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let her answer. Overruled.

Mr. Haycraft: She answered it once.

Examiner Bennett: I think the witness answered it already.

Mr. Albert: Very well.

By Mr. Albert.

Q. As a matter of fact, Mrs. Johnstone, didn't Mr. Altmark tell you that the red carding of the Dayton Company was wholly the Dayton Company's fault? A. No.

Q. Didn't he tell you that the red carding of the Dayton Company was the result of the Dayton Company's own actions? A. (The witness shook her head negatively.) I do not remember that.

9437 Q. Do you know who Maurice Rentner is? A. Yes.

Q. Who is he? A. He is one of the leading manufacturers in New York City.

Q. What is his connection with the Fashion Originators Guild? A. He is president.

Q. Was he such at the time that you spoke with him? A. He must have been.

Q. And he still is, to-day, is he not? A. I think so.

Q. Did you ask Mr. Rentner, the president of the Fashion Originators Guild, why it is that the Dayton Company was red carded at that time? A. No.

Q. Did he tell you? A. I don't remember that he did.

Q. Do you mean by that that you do not remember whether he did or not, or that he did not tell you? A. I

9438 don't remember.

Q. Well, will you bear with me for just a moment, Mrs. Johnstone? A. Yes.

Q. I would like to understand your testimony. Is it your testimony that Mr. Rentner may have told you why and you have forgotten, or is it your testimony that he did not tell you at all? A. I do not remember relative to it at all.

Q. That is, he may have told you but you have forgotten, is that what you mean? A. We talked with him.

9439

Q. Do you not recall whether Mr. Rentner mentioned in any respect the reason why the Dayton Company was red carded? A. No, we were just one of the group of stores.

Q. He told you nothing as to the reasons why you were red carded? A. He regretted it.

Q. Every manufacturer regrets his inability to sell a customer, doesn't he? A. I think so.

Mr. Haycraft: That is objected to.

By Mr. Albert.

Q. Did he tell you why he regretted it? A. I do not remember.

9440

Q. Didn't he tell you that he regretted the policy of the Dayton Company in not protecting his styles? A. He would have no reason for making that remark.

Q. Why would he have no reason? A. He just stopped working for the Dayton Company.

Q. Up to when? A. As long as we had them.

Q. When was that? A. At this time. We have never had any since.

Q. Or consultations had with you? A. What?

Q. Did you know of the telegram which was sent by the Fashion Originators Guild asking whether or not the Dayton Company subscribed to a certain letter submitted by Mr. Riley? A. I never saw it.

Q. Then you know nothing as to why the red carding was imposed on the Dayton Company?

9441

Mr. Haycraft: The witness has already said so.

The Witness: No.

Mr. Haycraft: I object to it. It has already been answered.

Examiner Bennett: I will sustain the objection to anything further in this line. You are not developing anything.

By Mr. Albert.

Q. What is it that a well-dressed sophisticated woman wants in a dress when she comes into your department? A. She wants quality, wearable clothes, an expression of the style which is becoming to her particular need, her particular type, rather; I think that covers it.

Q. Can you say which of those three is the most important to your customer?

Mr. Haycraft: That is objected to, assuming need of the three.

Mr. Albert: Now, with the assistance of Mr. Haycraft, can you answer?

9443

Mr. Haycraft: No foundation laid for the question. If counsel will place a proper question, it will not be necessary to object to it.

Examiner Bennett: I will let her answer. Overruled.

The Witness: Will you state the question?

Examiner Bennett: Read the question.

(Question read.)

By Mr. Albert.

Q. You have mentioned quality, wearability and expression of style as the three points that your well-dressed sophisticated woman looks for when she purchases a dress in your department. A. Wearability.

9444

Q. And wearability is the first thing that she looks for? A. Yes.

Q. She does not look for the dress to fit her? A. Certainly; it would not be wearable if it did not fit her.

Q. And if wearability depends solely upon its ability to fit her? A. Not altogether.

Q. Well, is there anything in addition to the fit that you put in in wearability? A. Well, all the qualifications

that go into a well-made garment. There are many that you might describe.

Q. Wouldn't you say that wearability and quality are almost synonymous? A. No.

Q. Why not? A. Well, many things that haven't a great deal of quality are wearable.

Q. Are not wearable? A. They are wearable, but you said the sophisticated, well-dressed woman.

Q. How many dresses a year would you say the well-dressed, sophisticated woman buys in your department? A. That is limited.

Q. What? A. That is limited to her financial circumstances. She might be well-dressed and very sophisticated 9446
and get along on very few clothes.

Q. Well, didn't you testify with respect to these departments, most of your customers, who purchased these dresses therefrom, were not particularly interested in the price? A. I didn't mean to infer that altogether.

Q. What did you mean to infer? A. Well, clothes under $100 are not expensive, terribly expensive.

Q. No? Well, now, as a matter of fact, Mrs. Johnstone, is it not true, in your experience, that the woman who purchases dresses in that price line, by reason of her experience in having purchased dresses in that price line, takes it for granted and knows, first, that the dresses in that price line will be wearable, second, that they will be of a very high quality, and that the only thing she has to 9447
look for when she goes into that department, aside from the incidental of getting a dress of the proper size, is something that is a sufficient expression of the style which she can wear?

Mr. Haycraft: I object to the question, Mr. Examiner.

Examiner Bennett: I will let her answer, if she can. Do you want the question read again, or do you understand it?

The Witness: Well, each customer, of course, demands a different type of clothes. Some look for style, some for quality. I mean, quality may happen to govern one person; price may govern another, who is not the judge so much of the merchandise as the fact she is willing to pay. There is a difference.

Q. Tell me this, Mrs. Johnstone, in your department in this class of well-dressed, sophisticated women, are there any women, aside from a negligible number, who will purchase a dress, the quality of which satisfies them and the
9449 wearability of which satisfies them, but which does not reflect the expression of style suitable to their particular, shall I say, personality, physique, or anything else that you want to take into consideration in the question?

Mr. Haycraft: That is objected to as too indefinite and complicated. He says, "Anyone aside from a very few."

Examiner Bennett: Will you read the question? (Question read.)

Examiner Bennett: I will let you answer the question, if you can. Overruled.

The Witness: Yes, I think they do, sometimes.

By Mr. Albert.

9450 Q. Sometimes? A. Yes.

Q. Would you say that it is very often? A. No.

Q. Let me put it this way: Is it not a fact that before you can make a sale in those departments as the ultimate thing, that you must place in your customers, you must be able to give them the expression of style in the dress that will suit them? A. Certainly, that is our aim.

Q. Now, you stated that these dresses were not displayed, did you not? A. Well, they are kept in cases, and

perhaps a few outstanding dresses on the floor, new things, usually, but the stock is not displayed to customers except in sitting rooms.

Q. After a woman comes in and tells you the size dress she wears, so that you can bring out something you can fit her with, what is it that a woman asks for when he comes into your department for a dress? A. She usually states her needs, what she is looking for, type of dress, perhaps give you some inkling of what she would like to find.

Q. How did she describe it? Did she describe it by— A. Well, she may say she wants something to wear to a luncheon, or she might say she wants a black dress, or 9452
she might say she is looking for a dinner type or evening. She makes some——

Q. And then, when your sales people get the dresses, and I believe you have described them as keen merchants, do they bring out dresses which they believe are the expression of style of this particular customer? A. They bring what they feel is suitable and as near the customer's demand as possible, especially first showings.

Q. In other words, they want to impress the customer immediately that Dayton Company carries dresses which express the style of this customer, is that not so? A. Yes, suitability.

AFTERNOON SESSION—2 P. M. 9453

Examiner Bennett: Come to order, please.

Mr. Albert: If your Honor please, this morning I believe I made a remark—I don't know whether the reporter got it or not, there was a lot of discussion—about wishing to put Mrs. McDonald on the stand in New York.

Examiner Bennett: Yes.

Mr. Albert: The reason for that was that we understood last night that she had certain records out at Lake Minnetonka, about thirty miles out, which she had not been able to get. I was afraid if Mr. Haycraft insisted we would have to remain in Minneapolis while she went out, but Mrs. McDonald tells me this morning that she discovered that she brought those records in with her when she moved and she was able to look at them.

Cross-examination by Mr. Albert (continued).

9455 Q. Now, Mrs. McDonald, you were requested by Mr. Haycraft to bring in certain papers. Will you examine your files for them? A. Yes, I did.

Q. I think you were asked to bring in blank forms that you used as a shopper? A. Yes.

Q. Did you bring those with you? A. Yes.

Q. Have you them with you? A. They are in the brief case.

Q. You have the forms that you used? A. Yes, I do have them. Do you want to see them all?

Q. Well, if they are different.

(Paper writings referred to were handed to Mr. Albert.)

9456 (The papers referred to were marked Respondents' Exhibits 65, 66, 67-A, B and C, and 68-A, B and C for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibits 68-A, B and C and ask you what these sheets are. A. These are from my daily reports on my shopping.

Q. What do you report on those sheets? A. I report how many copies I have found.

Q. You filled in the blanks on these sheets, is that it? A. Yes. I send these two, the pink and white, to New York.

Q. You mean Respondents' Exhibit 68-A and 68-B, you send to New York? A. Yes.

Q. The yellow one you keep? A. Yes.

Mr. Albert: I offer these in evidence.

Examiner Bennett: Received.

(The reports referred to, heretofore marked for identification Respondents' Exhibits 68-A, B and C were received in evidence.)

9458

By Mr. Albert.

Q. I show you Respondents' Exhibit 65 and ask you what that paper represents. A. This is a Piracy Committee report.

Q. And what information is contained or put into that report? A. Well, if I hold a Piracy Committee report, it is put on here.

Q. You mean a Piracy Committee meeting? A. Meeting, I mean.

Q. And the results of that meeting are set forth in this report? A. Yes, sir.

Q. And sent to New York? A. Yes.

Examiner Bennett: That is 65?

9459

Mr. Albert: Yes, your Honor. I offer in evidence Respondents' Exhibit 65, if the Commission wants it.

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Respondents' Exhibit 65, was received in evidence.)

9460

By Mr. Albert.

Q. I show you Respondents' Exhibit 66 and ask you what that represents. A. That is the report of the refusal or the failure to co-operate.

Q. You mean by that, where a retailer has refused to return copies? A. (Witness nods head affirmatively.)

Q. Or has refused to acknowledge that he will protect copies, then you make out a report on this sheet and sent it to New York? A. Yes.

Mr. Albert: I offer Respondents' Exhibit 66.

Examiner Bennett: Received.

9461

(The document referred to, heretofore marked for identification Respondents' Exhibit 66, was received in evidence.)

Q. I show you Respondents' Exhibit 67-A and ask you what that represents. A. Well, this I use when I find reports. I make out this slip and I send the green——

Mr. Haycraft: You send copies, you mean? When you find copies?

The Witness: Yes, when I find them. I send the green to New York, give the white to the buyer or merchandise man or whoever man I have contacted, and I keep for myself this tissue, which is right in my little book there.

Mr. Haycraft: That stays in the book; does it not?

9462

The Witness: Yes, it does.

By Mr. Albert.

Q. Then, you send Respondents' Exhibit 67-A and 67-C? A. No; I send 67-C to New York; I give this to the buyer or merchandise man.

Q. By "this" you mean Respondents' Exhibit 67-A? A. Yes.

Q. And you yourself keep Respondents' Exhibit 67-B? A. Yes.

Mr. Albert: I offer in evidence Respondents' Exhibits 67-A, B and C.

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Respondents' Exhibits 67-A, B and C, were received in evidence.)

By Mr. Albert.

Q. Now, Mrs. McDonald, you were asked to bring in a certain letter which has been referred to by you as being received from Mr. Goldstein? A. Yes. 9464

Q. Were you able to find that letter in your files? A. I was not able to find the one you referred to.

Mr. Albert: Will you mark this?

(The document referred to was marked Respondents' Exhibit 69 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 69 and ask you what that is. A. This refers to the letter I mentioned yesterday. Should I explain it?

Q. You can't explain it yet. Now, I notice that in this letter, in Respondents' Exhibit 69, a certain letter of March 5th is referred to. A. Yes. 9465

Q. Is that the letter that you had reference to yesterday when you spoke of a letter from Mr. Goldstein? A. Yes.

Q. And does this——

Mr. Haycraft: May I ask how you know that, Mrs. McDonald?

Examiner Bennett: I didn't get that.

Mr. Haycraft: How do you know that that is the letter if you haven't seen it, haven't got it, couldn't find it?

The Witness: I couldn't find it, but I do believe that this is referring to that letter.

Mr. Haycraft: You believe it but you don't really know it?

The Witness: No, I am not certain.

By Mr. Albert.

Q. Between the time that the letter referred to here as
9467 March 5th and April 2nd, is that the time you were not shopping for basements?

Mr. Haycraft: I object to that, Mr. Examiner.

By Mr. Albert.

Q. Is that a letter received by you from Mr. Goldstein in the regular course of business of the F.O.G.A.? A. Yes.

Q. And it was received by you after April 2, 1936? A. Yes.

Q. It was mailed to you? A. Yes.

Mr. Albert: I offer this letter in evidence.

Mr. Haycraft: That is objected to.

Examiner Bennett: Let me see the letter;
9468 please.

(The letter referred to was handed to the Examiner.)

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Respondents' Exhibit 69, was received in evidence.)

By Mr. Albert.

Q. Is the letter of March 5th referred to in Respondents' Exhibit 69, the letter that you had reference to as being the letter from Mr. Goldstein?

Mr. Haycraft: She has already answered that.

The Witness: Yes.

Examiner Bennett: I will let her answer.

By Mr. Albert.

Q. And is it during that period, during the period of time covered by these letters that you had reference to yesterday, when you were not shopping the basement? A. 9470
Yes.

Q. After the receipt of this letter what did you do with respect to basement and cheaper merchandise? A. I shopped the basement in the cheaper merchandise.

Mr. Albert: That is all.

Redirect examination by Mr. Haycraft.

Q. For how long a period of time did you do that? A. Well, I shopped from until around June, and, understand, that when summer merchandise comes in the basement carries very low cost dresses, and that low cost copies that I might find are in these sports shops and other better floors during the summer. The merchandise is different priced. 9471

Q. Well, there were copies in the basement, weren't there, when you shopped? When you shopped did you find any copies the last time you shopped the basement? A. In the basement?

Q. Yes. A. Yes, I think I did.

Q. Well, who told you to stop shopping in June? A. Nobody told me to stop shopping in June.

Q. You did that of your own accord?. A. Well, I did it after looking through the basements and seeing dresses at 2.95 and a dollar and a half, I would not find any copies in that price.

Q. They are not copies? A. No, I don't think so.

Q. Did you stop shopping the basements last summer, too, in 1935?. A. Well, I cannot remember. No, I don't think I did.

Q. Well, what is the highest priced dress in the basement in Minneapolis? A. Well, they vary. They go from probably a dollar and a half to some place between ten and twelve dollars.

9473 Q. Don't you find copies among the ten and twelve dollar dresses? A. Yes, I do, when they are in stock.

Q. Are they not in stock now? A. Not during the summer season, they don't have them. They are beginning to come in now. During the fall season it comes in.

Q. When are you going to start shopping the basement? A. Well, right away.

Q. Did you shop them last week? A. No, I didn't. I think it is a personal matter, I think that is a question, that I decide by myself.

Q. You have discretion on that, do you? A. I think so.

Q. Do you have discretion in what stores you will shop, too? A. No. I shop all the stores.

Q. But you have discretion as to the price lines you shop? A. Well, you see, on my sketches, they usually

9474 give the price of the copy or what it might be, so I go through——

Q. And you did not get any sketches with price lines as low as the basements in the summer?

Mr. Albert: That is not the testimony. Your Honor, the testimony of the witness is that the higher-priced basement dresses go upstairs and that the basement carries the very cheapest merchandise in Minneapolis.

Mr. Haycraft: I did not hear you say that.
The Witness: That is what I meant to say.

By Mr. Haycraft.

Q. You have meant to say it, but counsel testifies a little better.

(Laughter.)

Q. Has there been any use of this form No. 65? A. Oh, yes.

Q. This summer? A. Oh, yes.

Q. How many times would you say that you had to hold a Piracy Committee meeting to determine whether or not 9476
a dress was a copy? A. You mean in all? I have no idea, really.

Q. Are they frequent or infrequent? A. Well, more or less infrequent.

Q. Did you have any last week? A. Yes, I did.

Q. What store was the dress in last week? A. You mean what store was the copy in question?

Q. Yes, what store was the copy in? A. May I look at my sketches? They would refresh me.

Q. Certainly, you may refresh your recollection in any way you want to. A. The copy was at Gerner's.

Q. Where was the original? A. The original was at Young Quinlan's.

Q. Who sat on the committee? A. I believe Mr. Bjork- 9477
man, of Bjorkman's, Mr. Shapiro of Jackson Graves, Mr. Bach of Raleigh's.

Q. Who selected the personnel of the committee? A. Well, I do that myself.

Q. You do? A. I do not always get the same people. It depends on whether they are in or not. It depends on what vicinity of the city I am in. I go to the closest because I have to carry the dresses around with me.

Q. When you hold this committee meeting where do you hold the committee meeting? A. Well, I just bring the dresses to each man. I see one after the other. I do not call them to a meeting.

Q. I see. You just go to these three men? A. Yes.

Q. And show them the two dresses? A. Yes.

Q. And ask them if it is a copy? A. Yes.

Q. If one is a copy of the other? A. Yes.

Q. And when you find out what their opinion is, do you send that report then directly to the Guild and then wait until you get a report back before you have the store that has a copy returned, or do you go back to that store and

9479 tell them right away? A. I go back and tell them to return it if it is judged a copy.

Q. That is what I mean. A. Yes.

Q. That is, if the committee finds it is a copy, then you go back to the store and tell them to return it right away? A. Yes. I send that report and the other reports right together.

Q. Do you ever find that the original is with more than one store? A. Yes, of course.

Q. Are you careful to select a committee so that no one who has the original will be on the committee? A. Yes, always.

Q. And also, you do not select the store that has got a copy? A. No, no.

Q. You haven't any way of telling how many commit-

9480 tee reports you have submitted? A. No, I really have not.

Q. Do you keep copies? A. No, I don't.

Q. Now, with respect to the Respondents' Exhibit 66, which is the report of refusal or failure to co-operate, have you had to use that? A. Yes.

Q. More than once? A. Yes.

Q. Did you ever report to Dayton's? A. I think once.

Q. Do you remember when it was? A. No, I could not tell you.

Q. Well, was it when you first came here or was it just before they were red carded? A. I think it was around that time, yes.

Q. Around that time? A. Well, I mean before——

Q. This time. Just before they were red carded or when you first came on this job? A. Well, we did not have those complaint sheets when I first started working.

Q. When did you get the complaint sheets? A. We got them—I could not be sure, I think last fall. I could not tell you the exact date, right around Christmas, I mean more towards——

Q. You are positive that you have reported Dayton's, though? A. No, I am not positive. 9482

Q. Well, can you recall anybody that you reported? A. I have very seldom used them. I have only just a scattering, not very often have used them.

Q. Would you say as many as ten? A. No, I am sure not as many as ten.

Q. Around five? A. Yes, around five.

Q. Were the stores that you reported red carded as a result of your report? A. No, sir.

Q. Has any other store in Minneapolis been red carded besides Dayton's? A. No, I don't know.

Q. Do you show anyone else this Piracy Committee report before you submit it to the Guild's office in New York? I am referring to Respondents' Exhibit 65, do you show that to anyone else? A. This is shown to the men who sign it. 9483

Q. Each one of them has to sign it? A. Yes, each one of them has to sign it.

Q. Do you fill out the rest of the blank? A. I fill out the rest.

Q. Besides their signatures? A. Yes.

Q. Do you know of any instance where the committee found it was not a copy? A. Yes.

Q. Would you say that was often or not? A. No, I would say it was not often.

Q. In other words you would not take a garment if you did not think it was a copy? A. No, sir, I would not.

Q. So if they found it was not a copy, they just disagreed with your recommendation? A. I have no recommendation. I just give them the two garments and ask them if one is a copy.

Q. Well, you would not give it to them if you did not think one was a copy? A. No, sir, I would not.

Q. Do you keep a copy of this report of refusal or failure to co-operate? A. I am sorry, I have not done so.

Q. So you do not have any idea of how many there have been? A. No, I really do not.

9485 Q. Now, referring to Respondents' Exhibit 68-A, B and C, these are your daily reports? A. Yes, they are.

Q. Do you find copies every day? A. No, I do not.

Q. When you do not find any, do you just simply report that you did not find any? A. No, I send in, I put up here, general shopping (indicating), on all copies, and I fill in where I have found a copy.

Q. And this general shopping means— A. It means I shop on all sketches I have on hand, that is, I go through all the stocks.

Q. And if you do not find any, you just indicate that? A. I just indicate that way, by sending in.

Q. Do you have some of the sketches there which you will let me see? A. (Producing sketches) Yes. Those are my recent ones.

9486 Q. The recent ones? A. Yes.

Q. They have changed their form from time to time, have they not, in the way they send them out to you? A. Well, let me see. What do you mean, form?

Q. As to the information contained on the form that you get. A. Has been changed?

Q. Yes. A. Yes, slightly.

Q. These are all current, are they? A. Yes, they are.

Q. You haven't any old ones? A. Yes. I have some old ones. I haven't any here.

Q. You haven't any old ones? A. However, there are a few in there that I do not need to have.

Q. Would you indicate those to me? A. Yes.

Q. I do not mean to interfere with your work. A. I think this is one (indicating). I believe that is all.

Q. I think we have one like this. A. This is another (indicating).

Q. Can you spare this one? A. Yes. What is the date?

Q. August 4. A. Yes.

Mr. Haycraft: Mark that as exhibit, unless you want to make that one of your exhibits.

Mr. Albert: Mark it my exhibit, then.

9488

By Mr. Haycraft.

Q. I show you Respondents' Exhibit 70 and ask you if you can tell me what use was made of that, Mrs. McDonald. A. Well, this was mailed to me from New York. It is the sketch of an original design.

Q. That is registered with the Guild? A. With the Fashion Originators Guild.

Q. With the number of the style? A. And the manufacturer.

Q. And a description of the garment. A. And the description of the garment.

Q. Name of the alleged copyist? A. Yes.

Q. Instructions as to what you are to do about it? A. Yes.

9489

Q. The pencil notations, are they yours? A. Well, that should not——

Q. Is that your own writing? A. It is. I put it down to remember something. It does not mean anything.

Q. I do not want that, just leave that off. A. Oh, that could be erased.

Q. Have you got a pencil? A. I don't think so, no, I haven't.

Mr. Albert: Here is an eraser here.

(Witness erases marks on document.)

The Witness: Would you want one that is not so messy?

By Mr. Haycraft.

Q. Is that the same as this one? A. No.

Q. This is one you do not have to have? A. Yes.

(Thereupon the documents referred to were marked Respondents' Exhibits 70 and 71 for Identification.)

9491 *By Mr. Haycraft.*

Q. Showing you Respondents' Exhibit 71, will you tell us what that is? A. That is also a sketch of an original that is registered with Fashion Originators Guild.

Q. What is the difference between these two sketches, as to what you are supposed to do with them? A. Well, in this one——

Q. Just a minute, that is 70 she is referring to. A. In this one, if I do find this alleged copy, I hold my Piracy Comminttee on it.

Q. Yes. Now, as to 71. A. In this one, it has already been decided that Worthmore dress is a copy.

Q. So all you have to do is locate it? A. That is right.

9492 Mr. Haycraft: That is all.

Recross-examination by Mr. Albert.

Q. Now, I show you Respondents' Exhibits 72 and 73 and ask you if it is your recollection as to whether or not you made out a report of refusal or failure to co-operate with respect to Dayton's on form 'Respondents' 66. A. Yes.

Q. And is that your signature? A. It is.

Q. On Respondents' Exhibit 73? A. Yes.

Q. Did you also make out this report, Respondents' Exhibit 72? A. Yes.

Mr. Albert: I offer these in evidence.

(Thereupon the documents heretofore marked Respondents' Exhibits 70, 71, 72 and 73 for Identification, were received in evidence.)

Mr. Haycraft: No objection.

Examiner Bennett: Received.

(Whereupon at 2.45 o'clock P. M. the proceedings were adjourned to 11 o'clock A. M. Eastern Standard Time, Tuesday, the 8th day of September, 1936, at the Commission's hearing room in the city of Chicago, Illinois.) 9494

9495

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Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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Room 1123, New Post Office Building,
Chicago, Illinois, September 8th, 1936.

Met, pursuant to adjournment, 11 A. M. E.S.T.

Before: JOHN W. BENNETT, *Examiner.*

APPEARANCES:

J. R. MARTIN, Esq., appearing for the Federal Trade Commission.

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

9500

ALEXANDER H. MARSHALL, of Marshall and Marshall Chicago, Illinois, appearing for the Michigan Avenue Guild of Chicago.

MRS. FRANCES MALSH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Mr. Martin: I think she was sworn the other day, your Honor.

Direct examination by Mr. Martin.

9501

Q. Now, Mrs. Malsh——

The Reporter: What is the witness' name, please?

Mr. Martin: Mrs. Malsh, M-a-l-s-h.

By Mr. Martin.

Q. Now, Mrs. Malsh, where do you live? A. 5120 Harper Avenue.

Q. Chicago? A. Chicago.

Q. Have you any occupation, Mrs. Malsh? A. Well, yes, I have. I am in the ladies' wearing apparel.

Q. Where do you conduct your business? A. At the same address, 5120 Harper Avenue.

Q. How long have you been engaged in the sale of ladies' wearing apparel? A. Almost fifteen years.

Q. At the same location? A. No. I originally had a very exclusive floor shop, ground floor shop.

Q. Where was that located? A. At East Seventy-first Street in Chicago.

Q. How long have you been in your present position?
9503 A. I have been there about four years, three and a half, four years, somewhere around there.

Q. Now, you say you are engaged in women's apparel. Just what lines do you handle? A. Right at the present time?

Q. Yes. I mean, do you handle dresses? A. Dresses, silk dresses and knit wear, high-grade knit wear.

Q. What price lines? A. Wholesale price lines?

Q. Yes. A. Well, mostly from $16.75 up to around $29.75, a few at $10.75.

Q. What markets do you purchase your stock in? A. Well, New York market.

Q. Do you use any other market? A. Not at the present time. I haven't the last two years. I used to use the
9504 Chicago market but for quite a few years I have used the New York market entirely.

Q. Have you ever heard of the Fashion Originators Guild of America? A. Yes, I have.

Q. When did you first hear of it? A. About two years ago.

Q. About two years ago? A. '34.

Q. Have you ever signed a declaration of co-operation with the Fashion Originators Guild? A. I did.

Mr. Albert: That is objected to, if it please the Court, as immaterial and irrelevant.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I did.

By Mr. Martin.

Q. Do you recall when you signed this declaration, Mrs. Malsh? A. Shortly after I came back from New York. I just don't know the exact date.

Q. Do you know the year? A. The Guild?

Q. I say the year in which— 9506

Examiner Bennett: Yes, she said she did.

The Witness: I didn't get that.

By Mr. Martin.

Q. What year was it? A. Guild? Michigan Avenue Guild?

Q. No, mam. Year, y-e-a-r. A. Oh, that was in 1934.

Q. Yes. A. Yes.

Mr. Albert: The spring or the fall?

By Mr. Martin.

Q. Was it in the spring or in the fall? A. It was in the fall because I was in New York in September—no, I was 9507 in New York in July. It was in the fall.

Mr. Martin: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 735 for Identification.)

By Mr. Martin.

Q. Do you recall whether or not you ever received any communication from the Guild, about this? A. Yes, I did.

9508

Q. I hand you Commission's Exhibit No. 735 for Identification and ask you if you can identify that? A. Yes, sir, I do.

Q. What is it? A. Well, when I was in New York——

Q. Just state what it is. Don't say what it says. What is that? A. It is a declaration of co-operation.

Q. No. This is a letter from whom to whom? A. Mr. Golby.

Q. To whom? A. To myself.

Q. Under what date? A. Under the date of August 20th.

Q. Was that letter received by you? A. Yes, it was.

9509

Mr. Martin: I offer that letter in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 735, was received in evidence.)

By Mr. Martin.

Q. Referring to the last paragraph of Commission's Exhibit No. 735, which says: "Will you therefore kindly get in touch with the secretary of this local organization, Mr. Edward A. Fletcher, Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, who will be pleased to go over this matter thoroughly with you?" Pursuant to

9510

that, did you get in touch with Mr. Fletcher? A. Yes, I did.

Q. Did you make any application to join the Michigan Avenue Guild? A. Well, we had quite a lengthy conversation, Mr. Fletcher and I, and he explained the whole thing to me, and said he would put it before the Guild.

Q. I hand you Commission's Exhibit No. 225 for Identification and ask you if you can identify that paper. A. Yes, I do.

Q. Now, what is it? A. Well, it is an application of the Michigan Avenue Guild.

Q. Signed by whom? A. By myself.

Q. What is the date? A. December 21, 1934.

Mr. Martin: I offer this in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 225, was received in evidence.)

By Mr. Martin.

9512

Q. Did you ever receive any reply to this? A. Yes, sir. I received a reply, saying that——

Mr. Albert: That is objected to, and may it please the Court, as to what the reply said. The best evidence of the reply is the letter.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 226 and ask you can you identify that? A. Yes, I do.

Q. Now, what is it? A. That is the reply to my application. They refused to admit me.

Q. Dated what? A. January 4, 1935.

Mr. Albert: I ask that that part of the witness' answer that characterizes the letter be stricken, as not responsive. 9513

By Mr. Martin.

Q. Is this the letter you refer to as your reply to your application? A. Yes, it is.

Mr. Martin: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The letter referred to was marked Commission's Exhibit 226 and received in evidence.)

By Mr. Martin.

Q. Now, in the fall of 1934, what markets were you using for the purchase of your goods? A. The New York market.

Q. Do you recall some of the manufacturers you dealt with at that time? A. I dealt with Feigenbaum & Adelson, David Crystal.

Q. Any others? A. I think L. C. Rosenblatt. I just don't recall anyone else. I don't know as there was any-
9515 one else, outside of Knitwear.

Mr. Martin: I will ask that these three documents be marked for identification Commission's Exhibits 736, 737 and 738 for Identification.

(The documents referred to were marked Commission's Exhibits 736, 737 and 738, respectively, for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 736 for Identification and ask you can you identify that? A. Yes, that is the duplicate of my copy.

Q. What is it? A. It is a duplicate of a copy of an
9516 order I gave.

Q. Who was the order placed with? A. With David Crystal.

Q. What was the date of it? A. December 12, 1934.

Mr. Martin: I offer that in evidence, if the Examiner please.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked for identification Commission's Exhibit 736, was received in evidence.)

By Mr. Martin:

Q. Now, Mrs. Malsh, were the goods which were ordered in that order, which is Commission's Exhibit 736, shipped to you? A. No, they were not.

Q. Did you ever receive any communication from David Crystal relative to those goods? A. Yes, I did.

Q. What did he advise you in his letter? A. He advised me——

9518

Mr. Albert: That is objected to, may it please the Court. The letter is the best evidence.

By Mr. Martin:

Q. Can you identify this? (Handing to the witness Commission's Exhibit 737 for Identification.) A. Yes, I do.

Q. What is it? A. It is a letter received from David Crystal in reference to my order.

Q. Of what date? A. December 19, 1934.

Mr. Martin: I offer it in evidence, if the Examiner please.

Mr. Albert: This is objected to, if the Court please, on behalf of the respondent F.O.G.A., as being irrelevant and immaterial to the issues presented by the Commission; upon the further ground that no proper foundation has been laid, no proof of the authority of anybody to send this particular letter, there is no proper signature affixed to the letter; and upon the further ground that the contents thereof are not binding upon the F.O.G.A.; and, further, upon the ground that it

9519

referred to a letter of the witness to Mr. Crystal, or David Crystal, Inc., dated December 14, which letter has not, as yet, been presented, and without which Commission's Exhibit No. 737 for Identification, I believe, is unclear.

Examiner Bennett: Overruled. It may be received.

Mr. Albert: Exception.

(The letter referred to, heretofore marked for identification Commission's Exhibit 737, was received in evidence.)

9521 *By Mr. Martin.*

Q. I hand you Commission's Exhibit No. 738 for Identification and ask you if you can identify that? A. Yes, I do.

Q. What is it? A. It is a letter from David Crystal, canceling my order.

Q. What is the date?

Mr. Albert: I object to the characterization by the witness of the letter. I think it is about time that Mr. Martin informed the witness not to tell us what the contents of a letter are until it is in evidence.

Mr. Martin: I would like to call your attention
9522 to the fact that that has already been done, as you know, Mr. Albert.

By Mr. Martin.

Q. That is a letter from whom to whom? A. That is from David Crystal to myself, canceling the——

Q. Do not say what it is, or what it says, rather. It is a letter from Crystal to you? A. A letter from Crystal to me.

Q. Under what date? A. Under date of December 27, 1934.

Mr. Martin: I offer it in evidence.

Mr. Albert: That is objected to, if the Court please, as not binding upon the respondent F.O.G.A., no proper foundation has been laid with respect to the authority of anybody to write this particular letter, inasmuch as no signature is affixed thereto, and there is no proper foundation laid as to the mailing thereof; further, upon the ground that the letter is immaterial to the issues set forth by the Commission with respect to the respondent F.O.G.A.; and, further, upon the ground 9524 that the contents thereof, insofar as they refer to the F.O.G.A., are made without authority and no proper foundation has been laid with respect thereto.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

(The letter referred to, heretofore marked for identification Commission's Exhibit 738, was received in evidence.)

Mr. Martin: I will ask that these two documents be marked, respectively, for identification, Commission's Exhibits 739 and 740.

(The documents referred to were marked Com- 9525 mission's Exhibits 739 and 740, respectively, for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 739 for Identification and ask you if you can identify that? A. That is a copy of an order I placed with Feigenbaum & Adelson on August 1, 1935.

Mr. Martin: I offer that in evidence, if the Examiner please.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked for identification Commission's Exhibit 739, was received in evidence.)

By Mr. Martin.

Q. Was this order filled, Mrs. Malsh? A. Beg pardon?

Q. Was this order filled? A. No, it was not.

9527 Q. Did you ever receive any communication from the manufacturer? A. Yes, I did.

Q. I hand you Commission's Exhibit No. 740 for Identification and ask you can you identify that? A. Yes.

Q. What is it? A. It is a letter received from Feigenbaum & Adelson, dated August 2nd.

Q. Was this received by you? A. Yes, it was.

Mr. Martin: I offer that in evidence, if your Honor please.

Mr. Albert: Objected to, may it please the Court, upon the ground that no proper foundation has been laid; and the further ground that Commission's Exhibit 740 is in no way binding upon the respondent F.O.G.A.

9528 Examiner Bennett: Overruled. It may be received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 740, was received in evidence.)

By Mr. Martin.

Q. Subsequent to the receipt of this letter from Feigenbaum & Adelson, what did you do, Mrs. Malsh? A. I

didn't do anything—well, I don't know what reference you mean.

Q. Did you get in touch with the Guild in any way? A. No, I did not, not at that time.

Mr. Martin: I will ask that this letter, consisting of two sheets, be marked for identification Commission's Exhibit 741-A and B.

(The letter referred to was marked Commission's Exhibit 741-A and B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 741-A and B and 9530
ask you can you identify that? A. Yes, I do.

Q. What is it? A. It is a letter written by me on August 7th, 1935, to the Guild, a copy of a letter.

(Letter referred to was handed to Mr. Albert.)

Mr. Albert: No objection, if it please the Court, subject to investigation as to the receipt thereof by the F.O.G.A.

Mr. Martin: I have an answer to that.

Examiner Bennett: Was that letter sent to the F.O.G.A.? Was the letter sent to the Guild?

By Mr. Martin.

Q. Was that letter sent to the Guild? A. Oh, yes, sir. That is a copy of a letter that was sent to the Guild. 9531

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 741-A and B, was received in evidence.)

Mr. Martin: Mark this for identification.

(The paper referred to was marked Commission's Exhibits 742-A and B for Identification.)

Mr. Albert: No objection to Commission's Exhibit No. 742-A and B.

(The letter referred to, heretofore marked for identification Commission's Exhibits 742-A and B, was received in evidence.)

Mr. Martin: I offer 741 in evidence.

Examiner Bennett: It is received.

By Mr. Martin.

9533 Q. Now, Mrs. Malsh, will you refer to Commission's Exhibit No. 741-A and B, for the purpose of refreshing your recollection.

(Witness reads Commission's Exhibits 741-A and B.)

By Mr. Martin.

Q. Now, after having refreshed your recollection from Commission's Exhibit No. 741-A and B, will you tell me whether or not after the receipt of this letter from Feigenbaum and Edelson, in which this language occurs, Commission's Exhibit No. 740: "However, we regret to advise you that in view of the fact that we have a red card for
9534 your account from the Fashion Originators Guild, and as we are Guild members we are not permitted to ship merchandise to you." Did you or not make any further attempt to sign a declaration of co-operation with the Fashion Originators Guild? A. Yes, I did.

Q. Did you receive any communication from them in reply to your letter? A. Yes, I did.

Q. Did they accept your membership? A. No, they did not.

Q. Now, Mrs. Malsh, since the date of that letter, Commission's Exhibit No. 742-A and B, which is dated August 12th, 1935, have you made any further effort to become affiliated with either the Fashion Originators Guild or the Michigan Avenue Guild? A. Well, yes. When I was in New York in July, I called on Mr. Golby.

Q. What took place? A. Why, you want me to tell what took place?

Q. Yes. A. Well, I went around and I found that they were all Guild members and I couldn't——

Q. Found—. A. Different manufacturers, and I couldn't get merchandise. And I called on one manufacturer that I had done business with last year, and as I 9536
was going I noticed the Originator Guild sign, or whatever you would call it, in the room, so I said to the young lady that waited on me, "Are you Guild members?" And she said, "Yes." Well, I said, "I am afraid you can't sell me that."

Q. Do you recall what manufacturer that was? A. That was Dolces.

Q. All right, go ahead. A. And she said, "Wait. I will go and see if there is a red card." So she went back and she came back and said, "Yes, there is a red card for you." So I continued, finally in a fit of desperation, I thought, well, I am just going to go back there and speak to them. So I spoke to Mr. Anthom, I think his name is, and I said, "Mr. Anthom, what am I going to do?". I said, "I have got to have merchandise. I came down for the purpose." 9537
And I said, "I see a number of things here I want, and you have me red carded." He said, "Tell me what it is all about. Why won't they admit you?" I said, "Simply because I have an upstair dress shop." I said, "I have been in the business a great many years." And I said, "I have never violated a rule." And he said, "Why don't you go over and see Mr. Golby?" And I said, "Oh, well, I don't think it will do any good. I have had it threshed

back and forth." So he said, "Well, I am going to call him up." I said, "All right, if you want to, you can do that."

Q. Did he call Mr. Golby then? A. Yes. He said maybe he can fix something up for you. "Maybe he can get together with you." And so I said "All right." So he called him up.

Q. Did you go over and see Mr. Golby? A. He came back and said, "Mr. Golby said he would be glad to talk to you." I should go over there.

Q. Well, now, what took place when you went to see Mr. Golby? A. Well, we had a very lengthy conversation
9539 and I explained everything in detail to him and told him everything, and of course he talked a long while, and he finally said he would call up his lawyer to find out. I said, "Mr. Golby, can't you do something for me? What can you do for me?" "Well," he said, "Let me call up my lawyer." Well, he went out of the room, called up his lawyer, and came back and said, "Well, I don't know. I don't think at this time we can do anything inasmuch as you are subpoenaed." He said, "I don't think we can do anything for you."

Q. What was it? Inasmuch as you were— A. As I was subpoenaed by the Federal Commission that they couldn't do anything for me.

Q. Since that time have you been able to get any merchandise? A. No.

9540 Q. From Guild manufacturers? A. No, I have not.

Q. Do you recall when was the last time you were able to get any merchandise from a Guild manufacturer? A. Well, I got a couple of things from non-Guild, but not what I want, and not what I should have.

Q. I mean, Guild manufacturers. Do you recall when was the last time you were able to get anything from Guild manufacturers? A. Last year. The first time I think it was in '34. It was in '34 when I was there; that

is, when I didn't know so much about the Guild and they weren't so many in the Guild association.

Q. Now, Mrs. Malsh, has your inability to purchase garments manufactured by members of the Guild had any effect on your business? A. Oh, it certainly has.

Q. What effect? A. Well——

Mr. Albert: That is objected to, if it please the Court.

The Witness: It is impossible for me to tell——

Mr. Albert: That is objected to.

Examiner Bennett: Just a moment.

Mr. Albert: As calling for a conclusion of the witness, no proper foundation has been laid. 9542

Examiner Bennett: Overruled.

By Mr. Martin.

Q. Go ahead and answer. A. My trade has been——

Mr. Albert: Exception.

The Witness (continuing): —has been mostly high-class trade, because they have been with me for years. I have had the same clientele practically ever since I have been in business with few exceptions. And they have been accustomed to buying very high-grade stuff from me and having the proper treatment. And naturally a great many just depend upon me to get their things for them. 9543

Well, I can't sell them a $22.75 or a $19.75 garment when they are accustomed to paying $55 and $65, $45. And I can't present it to them, and they won't buy it. They say, "Well, what is the matter with your stuff? It isn't like it used to be."

By Mr. Martin.

Q. Have you been able to replace the garments that you formerly bought from Guild manufacturers with garments from non-Guild manufacturers? A. Oh, no, I have not. I have not.

Q. You haven't been able to find any.

Mr. Martin: That is all.

Cross-examination by Mr. Marshall.

Q. Mrs. Malsh, you testified that you made an application for membership in the Michigan Avenue Guild of
9545 Chicago, December 21, 1934; is that correct? A. Yes, I believe so.

Q. And at that time where were you selling your merchandise from? A. From my home.

Q. At what address? A. 5120 Harper Avenue.

Q. In Chicago? A. Chicago.

Q. That is the address given on the application that you filed for membership as shown on Commission's Exhibit No. 225? A. Yes.

Q. How long have you been in the business of selling dresses and knitwear at retail prior to that date? A. Well, I have been in the business almost fifteen years selling dresses.

Q. In what capacity? For yourself? A. For myself.

9546 Q. Where were you in business prior to the time you were selling from 5120 Harper Avenue? A. Well, I originally was on East Seventy-first Street. I was one of the pioneer exclusive dress shops out there.

Q. Was that in an apartment or in a store? A. No; that was on the ground floor, a large shop.

Q. That was a retail store? A. Yes, sir.

Q. On the ground floor. What experience have you had in buying merchandise of this type? A. Well, I feel that I have had a great deal of experience.

Q. Have you been buying throughout this period of fifteen years? A. Oh, yes, sir.

Q. Now; directing your attention to the apartment at 5120 Harper Avenue, from which you were selling these dresses and knitwear at retail at the time that you filed your application for membership in the Michigan Avenue Guild. What floor of the building is that apartment on?

Mr. Martin: That is objected to as irrelevant.
The Witness: Second.
Mr. Martin: Irrelevant and immaterial.
Examiner Bennett: I will let her answer.
Mr. Martin: All right.
The Witness: Second floor. 9548

By Mr. Marshall.

Q. How many floors are there in the building?

Mr. Martin: Objected to. The same objection.
The Witness: Three with a— —
Examiner Bennett: I will let her answer.
The Witness: Four, I might say.

By Mr. Marshall.

Q. How many apartments are there in the building? A. I don't know how many. A great many. Fifty.

Q. It is a residential apartment building? A. Yes, sir.

Q. There are no stores in the building? A. No, none whatsoever. 9549

Q. You had a conversation with Mr. Fletcher at the time you gave him your application for membership? A. Yes, I did.

Q. And isn't it a fact that he called your attention at that time to a rule of the Michigan Avenue Guild which limited membership to persons conducting their business from retail shops and excluding persons selling from their living quarters? A. Yes.

Q. And residential apartments? A. Yes.

Q. He explained that to you? A. Oh, yes, he explained it.

Q. So that you realized at that time that the place from which you conducted your business did not make you eligible for membership in the Michigan Avenue Guild? A. Yes. May I add something? Mr. Fletcher, at the time, asked me if I could not readjust myself in some way to comply with the Guild rulings.

Q. With the Guild rules? A. Yes. I did try to do that, which I thought I was doing.

Q. He called your attention, did he not, to the fact
9551 that the rule confined membership to those who sold merchandise openly and in the regular retail manner, from regular retail premises, and did not conduct their business from a private residence or home, or from residential suites or quarters in any hotel or apartment building, whether used as or in connection with living quarters or not, did he not? A. He explained it all to me.

Q. And his suggestion was prompted by a desire to have you come into the Guild if you could qualify, is that correct?

Mr. Martin: That is objected to.

Examiner Bennett: I will sustain the objection to that. She could not know that.

9552 *By Mr. Marshall.*

Q. Mr. Fletcher did state that he would like you to readjust your arrangements, so that you would become eligible for membership? A. No, he didn't say that.

Q. No? A. He didn't say that.

Q. What did he say? A. He asked me if I couldn't figure out some way in which I could comply, if there was such a thing possible; but that was all that was said.

Q. Now, let me ask you, do you know that that district in which you were then residing was zoned under the city ordinance for residential purposes only?

Mr. Martin: Objected to, as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Sustained.

By Mr. Marshall.

Q. Are you familiar with the zoning ordinance of the City of Chicago in force at that time? A. No, I am not.

Q. And did you know that under the zoning ordinance at that time, the district in which you lived was zoned for apartments only? 9554

Mr. Martin: Objected to, your Honor. The witness has already testified that she was not familiar with the zoning ordinance.

Examiner Bennett: Yes. I will sustain the further objection to it. It would be an affirmative defense.

Mr. Marshall: Except I am asking her now whether she knew that that district was not zoned for apartments only. She can answer that "yes" or "no."

Examiner Bennett: She has already answered.

Mr. Martin: She has already answered.

Mr. Marshall: No. She answered that she did not know the provisions of the ordinance. Now, I am asking her whether she did not know that the district was zoned for apartments only. 9555

Examiner Bennett: She said she did not know the provisions of the ordinance. I will sustain the objection to it any further.

Mr. Marshall: Exception.

Examiner Bennett: That is an affirmative defense, which you may very well make, in case you

have it to make. I am not going to mess up the record with conjecture that there might be such an ordinance.

Mr. Marshall: We would like to make the offer of proof, if the Court please, to the effect that if the witness were permitted to answer that question, she would testify that she knew that district was zoned for apartments only.

Mr. Martin: I move that the offer of proof be stricken.

Examiner Bennett: It may be stricken, as not founded upon the statement of the witness, or as
9557 negative to the statement of the witness.

By Mr. Marshall.

Q. Did you at that time have a retailer's license to do business at that apartment?

Mr. Martin: I object to that, as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Marshall: Exception.

Mr. Albert: Exception on the part of the F.O.G.A.

By Mr. Marshall.

9558 Q. Were you making returns under the Illinois Retailers' Occupational Tax Act at that time, as a retailer?

Mr. Martin: Objected to, as irrelevant and immaterial.

Examiner Bennett: I will sustain the objections along that line.

Mr. Albert: Exception, by the F.O.G.A.

Mr. Marshall: Exception. I should like to submit the offer of proof, to the effect that if the wit-

ness had been permitted to answer, she would have testified she does not make returns and reports and payments under the Retailers' Occupational Tax Act.

Mr. Martin: I move it be stricken.

Examiner Bennett: It may be stricken, as irrelevant.

By Mr. Marshall.

Q. You made your application for membership in M.A.G., Michigan Avenue Guild, December 21, 1934, that was the time at which you had your conversation with Mr. Fletcher? A. Yes. 9560

Q. And he explained that, under the rules, you could not be eligible for membership while conducting business from your apartment? A. Yes.

Q. And you received a letter from Mr. Fletcher, under date of January 4, 1935, Commission's Exhibit 226, declining your application for membership? A. Yes.

Q. Did you ever have any conversation with Mr. Fletcher subsequent to that time? A. No, I did not.

Q. Did you ever make another application for membership in the Michigan Avenue Guild? A. Yes, I did.

Q. When? A. After I thought, or I felt I had readjusted myself, according to Mr. Fletcher's suggestion, that is, segregating my business from my living apartments.

Q. Was that a written application? A. What's that? 9561

Q. Was that a written application? A. Well, I believe I stated so in my letter to the Guild in New York.

Q. Are you sure that that was addressed? Is this the letter you refer to (Mr. Marshall showing document to the witness)? A. That is the letter I wrote to the New York Guild.

Q. That is Commission's Exhibit 741-A and B? A. That is a copy of the letter.

Q. And that is the letter you have just referred to? A. Yes.

Q. As being that subsequent application for membership? A. Yes.

Q. But that was directed to the Fashion Originators Guild of America in New York, was it not? A. Yes.

Q. Let me ask you again, then, did you ever, subsequent to January 4, 1935, renew your application for membership in the Michigan Avenue Guild? A. No, I did not.

Q. Now, in the letter addressed to the Fashion Originators Guild, under date of August 7th, 1935, being Commission's Exhibit 741-A, to which you have just referred,
9563 you made some reference to changes in conditions affecting your selling, did you not? A. Yes.

Q. And you referred to the fact that you had salesmen out in an automobile? A. I didn't say I had salesmen out, no.

Q. That you were selling from automobiles? A. Not from my automobile. I went to and fro for my appointments, in an automobile.

Q. That is, men solicited your customers— A. To my customers.

Q. (Continuing) —from door to door? A. No. I beg your pardon.

Q. You went to your customers? A. I had a special appointment with my customers before I ever went. I never went unless I had an appointment.

9564 Q. And you did no selling from your apartment? A. Absolutely none.

Q. How did you make those appointments? A. How is that?

Q. How did you make these appointments? A. Over the 'phone, and through the mail.

Q. Were these appointments over the 'phone made from your apartment? A. From my apartment, of course.

Q. And were these letters sent, making appointments, addressed from your apartment? A. Well, most naturally.

Q. And this was contemporaneously with the date of that letter, August 7, 1935? A. Yes.

Q. But you never filed another application for membership with the Michigan Avenue Guild, did you? A. Not with the Michigan Avenue Guild, no. I felt that I should take it up directly with the New York Guild.

Mr. Marshall: I will ask to strike the latter part of the answer as not responsive, if the Court please.

Examiner Bennett: It may be stricken.

9566

By Mr. Marshall.

Q. Did you have a peddler's license? A. I am not a peddler.

Mr. Martin: That is objected to as immaterial and irrelevant.

By Mr. Marshall.

Q. You testified you occupied the second apartment at that time? A. Yes, sir.

Mr. Martin: That is objected to as repetition. She has already answered that question.

Examiner Bennett: I will sustain the objection.

9567

Mr. Albert: Exception.

Mr. Marshall: Exception.

By Mr. Marshall.

Q. Who occupied the apartment above you at that time?

Mr. Martin: Objected to, as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Marshall: Exception.

By Mr. Marshall.

Q. How long after January 4, 1935, did you continue in business at 5120 Harper Avenue? A. Well, I just don't know. I am still living there, I am still living there.

Q. Are you still selling from there? A. No, I am not. Partially, if people want to come.

Q. You carried a stock? A. Since my rulings did not affect the Guild.

Q. Do you still carry a stock of merchandise in your apartment?

Mr. Martin: That is objected to, as irrelevant and immaterial.

9569

Examiner Bennett: I will let her answer.

Mr. Martin: You can answer.

A. Yes.

By Mr. Marshall.

Q. You carried your stock of merchandise in your apartment January 4, 1935, did you not, at the time your application for membership in the Michigan Avenue Guild was rejected? A. In the Michigan Avenue Guild, yes.

Q. In contacting your customers personally by carrying your cases in your automobile to your appointments, did you carry samples?

9570

Mr. Martin: That is objected to as irrelevant and immaterial, if your Honor please.

Examiner Bennett: Sustained.

By Mr. Marshall.

Q. Since the date, January 4, 1935, have any customers come to your apartment and selected garments in your apartment?

Mr. Martin: That is objected to. She has already answered that.

Examiner Bennett: I will let her answer.

Mr. Martin: You may answer.

A. No, not many. Maybe one, possibly, I may. They all prefer the way I was working.

By Mr. Marshall.

Q. Do any of them come? Have any of them since that date? A. No. Well, possibly one or two, but outside of that, not; and that is only by special appointment.

Q. You do not refuse to sell them if they come to your 9572
apartment? A. What's that?

Q. You do not refuse to sell them if they come to your apartment? A. Right now, no. I would if my application had gone through.

Mr. Marshall: That will be all.

Mr. Martin: That's all.

Mr. Albert: The respondent F.O.G.A. would like to ask some questions.

Mr. Martin: I beg your pardon.

Examiner Bennett: All right.

Mr. Marshall: Perhaps I should, for the record, make it clear that the cross-examination just completed was on behalf of the respondent Michigan Avenue Guild of Chicago. 9573

By Mr. Albert.

Q. You testified, Mrs. Malsh, that you purchased dresses at cost at $16.75? A. At what?

Mr. Martin: At cost, at $16.75.

The Witness: Yes, yes.

By Mr. Albert.

Q. What did you customarily sell those dresses for at retail?

Mr. Martin: That is objected to, as irrelevant and immaterial.

Examiner Bennett: What is the question?

(Question read by the reporter.)

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert.

9575 Q. Do you still do business at 5120 Harper Avenue?

Mr. Martin: Objected to. That question has already been asked.

Examiner Bennett: Sustained. It has already been gone into.

By Mr. Albert.

Q. Now, Mrs. Malsh, do I understand correctly from Commission's Exhibit No. 741, that after the time in that letter you took two apartments at 5120 Harper Avenue? A. No; I never said I took two apartments.

Q. What did you mean by the following statement in Commission's Exhibit No. 741: "I gave up my apparel studio in this fashionable building and took a small living apartment for myself and dependents"? A. Well, I took a second apartment, yes.

9576

Q. And gave up the previous one? A. Gave up the previous one and took this small apartment. The other one was a small apartment, too, but I lived more privately in a different location.

Q. In the building? A. In the same building.

Q. Where did you keep the stock which you had previously in the old apartment?

Mr. Martin: Objected to. She has already answered that question on cross-examination.

Mr. Albert: I don't think it was very clear, your Honor.

Examiner Bennett: That ground has all been gone over.

Mr. Albert: Very well, your Honor.

By Mr. Albert.

Q. Did you have a lease for the first apartment which you had in The Sadonia?

Mr. Martin: Objected to as irrelevant and immaterial. 9578

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Have you at present a lease on your apartment in The Sadonia?

Mr. Martin: The same objection.

Examiner Bennett: Sustained. It is irrelevant.

By Mr. Albert.

Q. Do you employ any salespeople of any kind in connection with your business?

Mr. Martin: Objected to. She has already testified as to that on cross-examination. 9579

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you employ any models in connection with your business?

9580 *Frances Malsh—For Commission—Cross.*

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you employ any help of any kind whatsoever in connection with your business?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I offer to prove that if
9581 the witness has been permitted to answer the question, the answer to the questions as to whether she employed any help in connection with her business would have been in the negative.

Mr. Martin: I move that the offer of proof be stricken as irrelevant and immaterial.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

Examiner Bennett: Do you have a considerable cross-examination?

Mr. Albert: I am afraid so, your Honor.

Examiner Bennett: Well, we will take a recess for lunch, then. I will ask you to come back after luncheon.

Mr. Martin: Be back at two o'clock.

9582

(Whereupon, at 12.30 o'clock P. M., the hearing in the above entitled matter was adjourned until 2.00 o'clock P. M., of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please.

Mr. Albert: No more questions of Mrs. Malsh.

Examiner Bennett: You have another witness; have you?

(Witness excused.)

Mr. Martin: Will you come around, please.

Examiner Bennett: You will be sworn, please.

FLORENCE W. HERTZ, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows: 9584

Direct examination by Mr. Martin.

Q. Miss Hertz, will you please state your name and address, please? A. You want my residence address?

Q. Yes, mam. A. Florence Hertz, H-e-r-t-z, 1111 Hyde Park Boulevard.

Examiner Bennett: What is the name, please?

The Witness: Hertz, H-e-r-t-z, Hertz.

Mr. Martin: Hertz.

By Mr. Martin.

Q. What is your occupation, Miss Hertz? A. Ready-to-wear. We have a ready-to-wear shop.

Q. What type of garments do you sell, Miss Hertz? A. 9585
The better type only.

Q. Dresses? A. Dresses principally, suits.

Q. Dresses and suits. How long have you been engaged in the retail sale of dresses and suits? A. Well, I should say off and on about fifteen years.

Q. How long have you been engaged in the sale at your present address? A. Since the first of January this year.

Examiner Bennett: Will you speak just a little louder, if you please, so that these gentlemen can hear you also?

By Mr. Martin.

Q. Now, Miss Hertz, where were you located prior to January the 1st? A. Well, I had been out of business, for a few years, and before that I was on Delaware Place, 105 East Delaware Place.

Q. When you were at Delaware Place, were you engaged in the sale of dresses and suits there? A. Yes, uh huh.

9587 Q. How long had you been there? A. About three and a half years.

Q. Now, at your present location, was that a ground floor store? A. That is an apartment, first apartment in the building, a large court building, a U-shaped court.

Q. Do you live and conduct business from the same apartment? A. No; we use this apartment solely for business.

Q. Do you do the buying for your business? A. Yes. Both Mrs. Lang and I do, but I do most of it.

Q. You and Mrs. Lang are in partnership? A. Yes.

Q. How long have been doing the buying? A. Well, ever since I have first been in business, almost fifteen years.

9588 Q. In what markets do you buy? A. New York market principally and the better class of merchandise.

Q. Do you use any other market? A. We use Chicago market to some extent.

Q. What price lines do you carry, cost price lines? A. $16.75 up.

Q. $16.75 up? A. In the summer it runs from $10.75 up.

Q. Will you name some of your sources of supply in New York? A. Well, Sportcraft. We depended on for the greatest amount of merchandise.

Q. Any others? A. Lenkowsky, Modes.

Mr. Albert: What was that third.

The Witness: Lenkowsky, Modes. And then the other people, Jerry Dress, and a few others were not Guild houses, Nathanson Company are not Guild.

By Mr. Martin.

Q. Who is that last one? A. Nathanson Dress. That is an evening dress house. Then we have been refused merchandise——

Q. No. Now, I will get to that later. Those are the ones that you have done business with? A. Yes, uh huh. 9590

Q. Now, Miss Hertz, have you ever heard of the Fashion Originators Guild of America? A. Yes, we have.

Q. When did you first hear of them? A. Well, I think I heard of them right after I went out of business, when they were first organized.

Q. Can you fix the time? A. I would say about 1932.

Q. When did you go back into business? A. In the past January, 1936.

Q. You have been out, you say, for three years? A. I have been out four, about four years.

Q. When you went back into business on January 3rd, of this year, who were your main sources of supply? A. Sportcraft, Lenkowsky and Jerry Dress Company, Nathanson. Sportcraft and Nathanson were our largest ac- 9591 counts.

Q. Have you ever signed a declaration of co-operation with the Fashion Originators Guild? A. We have, yes.

Q. Do you recall when you signed that, Miss Hertz? A. That was around the middle of December.

Q. Of last year? A. Last December.

Q. Have you ever heard of the Michigan Avenue Guild? A. I have. Since I have been in business, yes.

Q. Are you a member of that organization? A. No, we are not.

Q. Did you ever make application for membership? A. We did.

Q. Do you recall when you made application? A. That was about the last week in December.

Examiner Bennett: 1935?

The Witness: Yes.

By Mr. Martin.

Q. Was your application accepted? A. No, it was not.

9593 Q. Did they give you any reason for refusing your application? A. They apparently accepted the first and then told us that when the meeting was called for the third of January they would pass on it, and then Mr. Fletcher foretold before that time that we would not be admitted. I had taken him through this apartment when we made application and told him that we had not signed our lease there, and he made no comment except that it was a cute place. I showed him that it was not fitted up for living, and he made no comment except that it was a very nice place. And a week or two later he prophesized that we would not be admitted because of the restricted location.

Q. Were you ever formally notified by the Guild, by the Michigan Avenue Guild, that your membership—that

9594 your application was not accepted? A. No, we were not.

Q. Did you ever receive any notice from any source that you — A. Just from New York, various New York manufacturers.

Q. Since that time, Miss Hertz, since the first of the year have you made any effort to—strike that out. After you signed the declaration of co-operation with the Fashion Originators Guild, did you co-operate with them? A. In every way, yes.

Q. Did you place the Guild stamp on your orders? A. We did.

Q. Did they shop your store? A. Apparently not.

Q. Were you ever requested to return any garments as being copies? A. No, no.

Q. Now, Miss Hertz, do you recall when you first were refused garments by a Guild house? A. Well, the first that we knew of it, we were refused the last part of February, we were refused an order which had been placed and accepted.

Q. Who refused you? A. Sportcraft.

Q. Did they give you any reason for not? A. No. They just never answered a letter until their salesman 9596
came here.

Q. Did you ever have any correspondence with Sportcraft relative to shipping you any goods? A. No, they did not answer. I just delivered our ultimatum to them, but they never answered.

Mr. Martin: Mark this for identification Commission's Exhibit 743.

(The document referred to was marked Commission's Exhibit 743 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 743 for Identification and ask can you identify that paper? A. Yes. 9597

Q. What is it? A. This is when they——

Q. Don't say what it states, but just say what it is. It is a letter from who to who? A. It is a letter from Sportcraft to our firm, advising us——

Q. Don't say that. What date is it? A. January 15, 1936.

Q. Was this letter received by you in the mails? A. It was.

9598 *Florence W. Hertz—For Commission—Direct.*

Mr. Martin: I offer it in evidence, if the Examiner please.

Mr. Albert: Objected to, may it please the Court, as in no manner binding upon the Fashion Originators Guild of America, no proper foundation laid with respect to the authority of anyone to send such a letter, in regard to the substance thereof, and the condition thereto; upon the further ground that the letter is not signed.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

9599 (The document referred to, heretofore marked for Identification Commission's Exhibit 743, was received in evidence.)

By Mr. Martin.

Q. Since the date of this letter, which is Commission's Exhibit No. 743, dated January 15, 1936, have you ever had any orders filled by Sportcraft? A. We have, yes, many of them.

Q. Since the date of this letter? A. Since that date, yes.

Q. When were they filled? A. They were filled up unto February 28th.

Q. But no orders have been filled since? A. From that date on, February 28th, they refused.

9600 Q. Did they give you any reason for not filling them? A. Not in writing.

Q. Did they give you any oral reasons? A. Yes, sir; their representative.

Mr. Albert: That is objected to, may it please the Court. The answer is "yes" or "no."

By Mr. Martin.

Q. Who gave you any information? A. The local representative.

Mr. Albert: That is objected to, may it please the Court, as a conclusion of the witness. I think the question calls for the name of the party.

By Mr. Martin.

Q. Who is their local representative? A. Mr. Kornicker is their man, their salesman, who comes here, their traveling salesman.

Q. What did he tell you? 9602

Mr. Albert: That is objected to, if the Examiner please, as not binding upon the Fashion Originators Guild of America, and no proper foundation laid as to the authority of this man to make any statement whatsoever.

Examiner Bennett: Overruled.

By Mr. Martin.

Q. What did he tell you? A. He told us that the local Guild, the Michigan Avenue Guild, were actively engaged in preventing their selling to us. That he had got in touch with this Guild, and told them that we were playing the rules of the game in all respects, but that, on account of our location being in a residential neighborhood, they refused to allow the Guild people to sell us. 9603

Q. Since that time, have any other Guild manufacturers refused to sell you? A. Yes.

Q. Who? A. Lenkowski Modes.

Q. Any others? A. International Dress Company.

Q. Any others? A. Well, the others were really hardly refusals. We just wrote, making inquiries.

Q. Did you place any orders with Lenkowski? A. We did, yes.

Q. They were not shipped? A. Not shipped, no.

Q. Did they give you any reason for refusing to ship them? A. They merely wrote that, being members——

Mr. Albert: That is objected to, may it please the Court. The letter is the best evidence.

By Mr. Martin.

Q. Have you that letter? A. I haven't it with me. I have the letter, yes.

9605 Q. Can you bring it down to-morrow morning? A. Can I send it? It is very difficult for me to get down. I get up out of bed at noon, I have been very ill; but, if necessary, I could bring it in the afternoon.

Q. Did you place any orders with the International Dress Company? A. We tried to, yes.

Q. What did they tell you? A. Being Guild members——

Mr. Albert: That is objected to, in no way binding upon the Fashion Originators Guild of America and no proper foundation laid.

Examiner Bennett: Objection overruled; it is preliminary. She has not said they were not filled.

By Mr. Martin.

9606 Q. Did they accept the order? A. They accepted the order.

Q. Did they fill it? A. They did not.

Q. Did they give you any reason? A. That we are not members.

Q. Who did you talk to in the International Dress Company? A. Louis Cohen, their local representative.

Q. What did he tell you? A. He said we were not members of the Michigan Avenue Guild, they could not sell us.

Q. Did any others refuse? A. No. We tried no more Guild houses after that.

Q. Have you made any further efforts to join the Michigan Avenue Guild? A. No, I don't believe that we would join them.

Q. Did the Fashion Originators Guild ever return your declaration of co-operation? A. No. We received their stamp, we have their stamp and their letter admitting us.

Q. Now, Mrs. Hertz, have you been able to replace the Guild manufacturers with whom you formerly did business? 9608 A. We have not.

Mr. Albert: That is objected to as leading, and calling for the conclusion of the witness; also, no proper foundation has been laid.

Examiner Bennett: I will overrule the objection. You may answer.

By Mr. Martin.

Q. You may answer. A. No, we have not been able to replace such merchandise as we depended upon the Guild for.

Q. Have you formed any opinion as to the effect on your business of your inability to get Guild merchandise? A. We have learned very decisively that it has cost us, as far 9609 as we know, $1700 in being unable to fill our orders that were placed.

Q. Will you explain that more particularly, please? A. We had placed a large order with the Sportcraft, and also a large order—not a large order, but a substantial order, with Lenkowski, for the early spring merchandise. Naturally, we let our customers know that we had this merchandise coming in, and we did not receive it. Then, we

placed special orders on merchandise that we already had, which were not filled and, in consequence, we lost entire orders; in one instance we lost an entire trousseau from an old and wealthy customer. And we lost three orders from another customer who had bought Sportcraft merchandise, they wired us, thanking us, and told us they would make a special effort to give us the merchandise within one week. We did not receive the merchandise and no answer to any wires or letters after that.

Q. Have you done your fall buying yet? A. No, we have not been able to.

Q. Why? A. We have not been able to get the mer-
9611 chandise. If I were able to go to New York, and scout around for a week, I might be able to find some other houses to take their place; but, in the meantime, we have not been able to.

Mr. Martin: That's all.

Mr. Marshall: If the Court please, I will cross-examine this witness now on behalf of the Michigan Avenue Guild of Chicago.

Cross-examination by Mr. Marshall.

Q. Did you make the statement that you would not join the Michigan Avenue Guild now? A. I think that is correct, yes.

9612 Q. 1111 Hyde Park Boulevard, was that the place of your residence at the time you made your application for membership in Michigan Avenue Guild? A. Residence, yes.

Q. Is that the place from which you conducted your business? A. No.

Q. Where did you conduct your business from? A. 1113 Hyde Park Boulevard.

Q. 1113 Hyde Park? A. Yes.

Q. Is that the same building? A. Same building, yes.
Q. How many apartments in the building?

Mr. Martin: I object, as irrelevant and immaterial.

Mr. Marshall: This, if the Court please, presents the same issue as presented with respect to the preceding witness. We intend to bring out the same facts with respect to this witness.

Examiner Bennett: Do you want to try to prove that she did live in that apartment from which she did business?

Mr. Marshall: That she was selling from an apartment, and that the rules prohibited it. 9614

Examiner Bennett: That is in the record. What else do you want?

Mr. Marshall: Well, I want to show that it was an apartment building.

Mr. Martin: She has testified to that.

Examiner Bennett: I will let her answer. Objection overruled.

Mr. Martin: Read the question.

(Question read by the reporter.)

Mr. Martin: If you know.

A. I should say in the neighborhood of between thirty-six and forty.

By Mr. Marshall. 9615

Q. Are there any stores in the building? A. Not right now.

Q. At that time you filed your application, were there any, at the time you made your application? A. I am not certain whether the one that had been there had gone out or not. That also was in an apartment.

Q. Are there any stores in the building, that was my question. A. No. There never have been.

Q. At the time you signed your application for membership in the Michigan Avenue Guild, you had a conversation with Mr. Fletcher, did you not? A. Yes.

Q. Isn't it a fact that at that time Mr. Fletcher went over the rules of the Michigan Avenue Guild with you? A. Well, he read them off so rapidly that we could hardly pay attention to most of them.

Q. Did you understand, or did you not understand that there was a rule to the effect that no member could sell merchandise except from regular retail premises, and not sell from a private apartment? A. No, no. I took Mr. Fletcher through that apartment before we signed the
9617 lease.

Q. Did he tell you he would take your application, but that it would be subject to the action of the board of directors of the Michigan Avenue Guild? A. Not then, not at that time, no.

Q. He did not tell you that at the time he took your application? A. No. I had occasion to call him up a few days after, when he told me that.

Q. Did you ask him why he wanted to see the apartment? A. No; I wanted to show it to him.

Q. What was the purpose of showing him the apartment? A. Well, Mrs. Lang's brother was one of the originators of the Fashion Guild in New York.

Q. Yes. A. And he told us that we were within our rights to take an apartment provided no one lived there.
9618 He suggested that we do that, so before we signed the lease we thought that——

Q. What was his name? A. Stanley Brown.

Q. Stanley Brown? A. Stanley Brown was formerly of Brown Brothers.

Mr. Martin: Go ahead and finish your answer.

The Witness: We took Mr. Fletcher through on our own accord.

Mr. Martin: Go ahead.

The Witness: We wanted to prove to him—we wanted to prove to him that there were no living facilities, so I asked him if he would like to come through and see the apartment. He did not ask to see it. I offered to show it to him.

By Mr. Marshall.

Q. Was it fitted up like an ordinary apartment? Did it have a stove in it? A. In the kitchen, yes.

Q. Bathroom? A. Yes, naturally.

Q. Kitchen? A. Naturally, yes.

Q. Isn't it a fact that Mr. Fletcher told you your application would have to be passed upon by the board? A. 9620
When I called him up a few days later, yes.

Q. At the time isn't it a fact that you had not yet signed your lease, but merely had an option on your lease? A. When I took him through, yes.

Q. Yes. Did you understand that your application was accepted then and there? A. We really didn't think anything about it. We thought as long as we were members of the New York Guild, naturally we were automatically members of this Guild.

Q. Did you know that there were rules of the Michigan Avenue Guild? A. No, never had heard of the Michigan Avenue Guild.

Q. Well, you signed an application for membership in the Michigan Avenue Guild? A. At that time. Yes, up to this time I never had heard of the Michigan Avenue Guild. 9621

Q. When you signed your application, were you interested in knowing whether they had any rules? A. We presumed that they were the same rules as the Fashion.

Q. Fashion Originators Guild? A. Style piracy, price cutting, premature sales, such things.

Q. What did Mr. Lang tell you with respect to this apartment and membership when you talked to him? A. Mr. Brown?

Q. Mr. Brown . A. Well, he advised us to take an apartment.

Q. Did he suggest your calling Mr. Fletcher out there? A. I don't think Mr. Brown knew anything about the Michigan Avenue Guild either. That was not formed at the same time; was it, Fashion Originators?

Q. Do you know why he would suggest an apartment without any living quarters?

Mr. Martin: Objected to.

Examiner Bennett: I will let her answer.

Mr. Martin: All right. Go ahead.

The Witness: He didn't suggest that.

9623 Examiner Bennett: Read the question.

Q. (The question was read.) A. That wasn't Mr. Brown's suggestion. I knew that the Fashion Originators Guild would not permit anyone to do business from the same place that they lived.

Q. You knew that the Fashion Originators Guild would not permit that? A. In a dwelling, oh, yes.

Q. What did you base that information on, or that impression on? A. Why, it wasn't an impression; it was a fact that we obtained from Mr. Cornicker when we came down to buy—do our first buying.

Q. Do you know as a fact that there is no such rule of the Fashion Originators Guild? A. No, I really don't.

9624 Q. Who gave you this information? A. Mr. Cornicker.

Q. Mr. Cornicker? A. Mr. Cornicker.

Q. Who is he? A. Mr. Cornicker is the salesman for the Sportcraft, Incorporated.

Q. Of New York? A. Yes.

Q. You relied on his information? A. Naturally.

Q. As to what the rules of the Michigan Avenue Guild were? A. Oh, Michigan Avenue Guild. We didn't know anything about the Michigan Avenue Guild until we got a letter from New York telling us to join them.

Q. When you filed your application for membership in the Michigan Avenue Guild and gave it to Mr. Fletcher— A. Yes.

Q. —you then knew that you were seeking membership in a Chicago organization; did you not? A. Yes, uh huh.

Q. You say you were not concerned about their rules? A. Well, not to the extent of the way he rattled them off, no. We were refused to copy, and naturally when refused to copy, we weren't especially interested in what the rules were. We thought it was automatically the same as the Fashion Originators Guild.

Q. There was some question in your mind as to whether or not it would be— A. Only from——

9626

Q. Satisfactory? A. Conducting business from a dwelling, yes.

Q. So it was furnished as a dwelling at the time; was it not? A. No; it wasn't furnished at all at the time.

Q. It was equipped as a dwelling? A. No. It was a dwelling but it was laid out as a dwelling, no furnishings in it at the time we showed it to him. It was just the bare apartment.

Q. Did you know at the time that that district was zoned for apartments only? A. No.

Mr. Martin: Don't answer. Objected to, your Honor, irrelevant.

Examiner Bennett: I will let her answer that one question.

9627

The Witness: No, we did not.

By Mr. Marshall.

Q. Did you ever make inquiry as to whether you had the right to conduct the sale of merchandise from that apartment under the Chicago zoning ordinance?

Mr. Martin: Just a second. Objected to.

Examiner Bennett: I will sustain an objection to that.

Mr. Marshall: We should like to make a proffer, if she were permitted to answer she would testify that she did know.

Examiner Bennett: All right.

Mr. Martin: Move that the offer be stricken.

Examiner Bennett: There is no basis for that offer of proof. I strike it, without probable basis of fact.

Mr. Marshall: The reason we present the question, if the Court please, is because we assume that one who engages in business in the city——

Examiner Bennett: Her answers would indi-
9629 cate that she had no such knowledge.

By Mr. Marshall.

Q. How long after your first meeting with Mr. Fletcher were you advised that your application could not be accepted by the Michigan Avenue Guild? A. I should say about a week later.

Q. A week later. That is the only application that you made for membership? A. Naturally.

Q. Are you selling merchandise from that apartment now? A. We are.

Q. Continuously since the time of your application? A. We have.

Mr. Marshall: That will be all for the Michigan
9630 Avenue Guild, if the Court please.

Mr. Albert: No questions.

Mr. Martin: That is all, Miss Hertz.

Mr. Marshall: If the Court please, I wonder if I could ask one more question?

Examiner Bennett: Yes, sure.

By Mr. Marshall.

Q. Did you have a retailer's license?

Mr. Martin: Objected to. Don't answer. Irrelevant and immaterial, your Honor.

Examiner Bennett: I will sustain the objection.

Mr. Marshall: Exception. I desire to make an offer of proof, if the Court please, if she were permitted to answer her testimony would be that she did not have.

Mr. Martin: Move that the offer be stricken.

Examiner Bennett: It may be stricken as irrelevant. Anything further? 9632

Mr. Marshall: That will be all, Judge.

Mr. Martin: That is all, Miss Hertz. Thanks very much for coming down.

(Witness excused.)

EDWARD A. FLETCHER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you please state your name, full name and residence, Mr. Fletcher? A. Edward A. Fletcher, F-l-e-t-c-h-e-r. 9633

Q. Where do you live? A. 529 Wellington Avenue, Chicago.

Q. What is your occupation, Mr. Fletcher? A. Secretary of the Michigan Avenue Guild.

Q. What is the Michigan Avenue Guild, Mr. Fletcher? A. A trade association.

Q. Composed of? A. In what respect?

Q. Well, who goes to make up the membership, not the names but the types of business? A. Retailers of the ready-to-wear industry in the city of Chicago.

Q. When was the Michigan Avenue Guild organized? A. Approximately 1932 or '33 some time.

Q. Can you recall it any more definitely as to months? A. Well, I was not connected with the Guild at its original inception.

Q. Would you say the last part of '32 or the— A. Some time in '32.

Q. How long have you been secretary of the Michigan Avenue Guild? A. About July or so, 1933.

9635 Q. Is the Michigan Avenue Guild a corporation? A. Yes, sir.

Q. Chartered under what laws? A. The laws of the state of Illinois.

Q. How is the Guild governed? A. It is governed by a board of directors.

Q. How is that board of directors chosen? A. From the membership.

Q. In what manner? A. By a vote.

Q. A vote of whom, the members? A. Vote of the members.

Q. Does the Michigan Avenue Guild have any other officers than you as secretary? A. We have an attorney, counsel.

9636 Q. Who is your counsel? A. Mr. Alexander H. Marshall.

Q. Do you have a president? A. Yes, sir.

Q. Who is the president? A. Mr. Guy Eiderheimer, Sr., E-i-d-e-r-h-e-i-m-e-r.

Q. Do you have any other officers, vice-president, treasurer? A. Vice-president is Mr. Frank L. Cole, C-o-l-e.

Q. How about your treasurer? A. Treasurer is Mr. Lawrence R. Pearson, P-e-a-r-s-o-n.

Q. Who composes the board of governors? A. The board of governors at the present is composed of Mr. Eiderheimer, Mr. Cole, Mr. Harry Blum, Mr. Leo Bramson, Mr. Greenbaum, Mr. Lindbergh, Mr. Leavitt, Miss Gossert.

Q. Miss who? A. Miss Gossert, G-o-s-s-e-r-t, and Mr. Rose.

Q. Rose? A. Rose, R-o-s-e. That is nine, is it?

Q. Yes, sir. What are the purposes of the Michigan Avenue Guild?

Mr. Albert: That is objected to, if it please the Court, as being irrelevant, immaterial, outside of the scope of the Federal Trade Commission's com- 9638
plaint, which can have jurisdiction solely over interstate matters, and the purposes of the Michigan Avenue Guild as a local organization are something which are beyond the scope entirely of the Commission's investigation, and on behalf of the Michigan Avenue Guild, in the absence of counsel for the Michigan Avenue Guild I wish to make an objection on his behalf.

Examiner Bennett: Have you a certificate of incorporation?

The Witness: Yes, sir.

Mr. Martin: Have you one with you, Mr. Fletcher?

The Witness: No, sir. I think it was delivered 9639
to Mr. Nevein. It is incorporated in the State of Illinois not for profit.

Examiner Bennett: It is not in evidence?

Mr. Martin: No, sir, I don't think it is in evidence.

By Mr. Martin.

Q. You say you have not a copy of it with you? A. No, sir.

9640 *Edward A. Fletcher—For Commission—Direct.*

Q. Have you a copy which you can produce to-morrow? A. I presume our attorney has.

Q. I ask you at this time, if you will, if it is available, produce that to-morrow. A. Yes, sir. The certificate of incorporation?

Q. Yes, as to the purposes.

Examiner Bennett: Well, if there is no question raised as to the best evidence, you may go ahead.

Mr. Albert: I am afraid I must raise the objection, your Honor, that the best evidence is the certificate of incorporation.

Examiner Bennett: Yes, I know it is. I say, if
9641 that question is not raised, I will let him go ahead. If it is, I don't see how he can.

Mr. Albert: May we be off the record for a moment, your Honor?

Examiner Bennett: Yes.

(There was a discussion off the record.)

By Mr. Martin.

Q. Has the Michigan Avenue Guild adopted any by-laws? A. Yes, sir.

Mr. Martin: Will you mark these for identification, please, Commission's Exhibits 744-A to K?

By Mr. Martin.

9642

Q. I hand you Commission's Exhibits 744-A to K for Identification and ask you can you identify that, Mr. Fletcher? A. Yes.

Q. What is it? A. It is the by-laws of the Michigan Avenue Guild of Chicago.

By Mr. Albert.

Q. Up to what date? A. The by-laws were amended and brought up to date, I think shortly before the first of this year.

By Mr. Martin.

Q. Does Commission's Exhibit 744-A to K contain the amendments? In other words, are they the by-laws which are in effect at this time? A. May I consult some references that I have in my brief case, for comparison?

Mr. Martin: Yes. Off the record.

(There was a discussion off the record.)

By Mr. Martin.

Q. Have you a complete set, up to date, with you? A. Yes.

Mr. Martin: Suppose we just mark those, in 9644
place of the ones that have been marked Commission's Exhibits 744-A to K, suppose we mark these, in their stead, Commission's Exhibits 744-A to H for Identification?

Examiner Bennett: Very well.

(The documents referred to were marked Commission's Exhibits 744-A to H, respectively, for Identification.)

Mr. Martin: I offer this in evidence as Commission's Exhibits 744-A to H, being the by-laws of the Michigan Avenue Guild of Chicago, as adopted March 2nd, 1933, and amended November 7th, 1933, October 24th, 1934 and December 17th, 1935 and as being the by-laws now in effect. 9645

Mr. Albert: That is objected to, may it please the Court, upon the part of the Michigan Avenue Guild as being immaterial and irrelevant; as being incompetent to the issues of the complaint of the Federal Trade Commission, it concerning purely a local organization, intrastate in character. The same objection on the part of the Fashion Originators Guild.

Examiner Bennett: Yes. Overruled, and the document is received.

(The document referred to, heretofore marked for identification Commission's Exhibits 744-A to H, respectively, was received in evidence.)

Mr. Martin: I will ask this be marked for identification Commission's Exhibit No. 745.

Examiner Bennett: One sheet?

Mr. Martin: Yes.

(The document referred to was marked Commission's Exhibit 745 for Identification.)

9647

Mr. Martin: I will ask that this document be marked Commission's Exhibit 746-A and B for identification.

(The document referred to was marked Commission's Exhibits 746-A and B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 745 for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. It is a list of the officers, board of directors, advisory board, executive committee, publicity and advertising, arbitration committee, wholesalers' relationship committee, State Street contact committee, of

9648 the Michigan Avenue Guild.

Q. For what year? A. For the year 1936.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit No. 745.

Mr. Albert: Objected to, on the part of the Michigan Avenue Guild and the Fashion Originators Guild, as being immaterial and irrelevant.

Examiner Bennett: Overruled. Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 745, was received in evidence.)

By Mr. Martin:

Q. I hand you Commission's Exhibit No. 746-A and B and ask you can you identify that? A. Yes, sir.

Q. What is it? A. A list of the rules and regulations of the Michigan Avenue Guild.

Q. In effect as of what date? A. In effect as of the present date.

Mr. Martin: I offer this in evidence as Commission's Exhibit 746-A and B. 9650

Mr. Albert: Objected to, may it please the Court, on the part of the Michigan Ayenue Guild and the Fashion Originators Guild, as being immaterial and irrelevant, and as being incompetent, in that it concerns matters not within the scope of the Commission's complaint, nor within the jurisdiction of the Federal Trade Commission, being confined to matters solely intrastate in character, and of local origin and inception and, in addition, that it is in no manner binding upon the Fashion Originators Guild.

Examiner Bennett: Overruled. It is received as Commission's Exhibit No. 746-A and B.

Mr. Albert: Exception. 9651

(The document referred to, heretofore marked for identification Commission's Exhibits 746-A and B, was received in evidence.)

By Mr. Martin:

Q. Now, Mr. Fletcher, are any meetings of the Michigan Avenue Guild ever held and, if so, when? A. Meetings are held from time to time upon executive call, of the president, or any ten members of the organization.

Q. Are written records of these meetings kept? A. Yes.

Mr. Martin: I will ask that this be marked Commission's Exhibit 747-A to E, inclusive, for Identification.

(The document referred to was marked Commission's Exhibits 747-A to E, inclusive, for Identification.)

Mr. Martin: And I ask that these also be marked for identification Commission's Exhibit 748-A and B.

9653

(The document referred to was marked Commission's Exhibits 748-A and B for Identification.)

Mr. Martin: I ask that these documents be marked for identification, with the proper subletterings where necessary, Commission's Exhibits Nos. 749 to 815.

(The documents referred to were marked Commission's Exhibits Nos. 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, X-786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806,

9654 807, 808, 809, 810, 811, 812, 813, 814 and 815, inclusive, for Identification.)

By Mr. Martin.

Q. Now, Mr. Fletcher, I hand you Commission's Exhibits Nos. 747-A to E, to 815-A and B for Identification, which exhibits purport to be minutes of the meetings of the Michigan Avenue Guild of Chicago held on December 17th, 1932, down to October 4th, 1935. There are also

included in these minutes various minutes of meetings of the board of directors and also of the executive committee of the Michigan Avenue Guild and various annual reports of the officers of the Michigan Avenue Guild rendered to the membership at certain meetings and ask you if you can identify those as being what they purport to be. A. Does it make any difference if I separate these? That will disrupt the chronological order, but it will be all right.

Mr. Martin: No.

(Short interruption.)

By Examiner Bennett.

9656

Q. Do you know the question? A. I would like to have the question read, if you please.

Mr. Martin: Read the question to him.

Q. (Question read by the reporter.) A. I can identify minutes of meetings from February 20th, 1934 to October 4th, 1935.

By Mr. Martin.

Q. What is that first date? A. February 20, 1934, to and including October 4, 1935.

Q. With respect to the other exhibits, can you identify them? A. No, sir, because I was not secretary at the time those minutes were recorded.

9657

Mr. Martin: Off the record.

(There was a discussion off the record.)

By Mr. Martin.

Q. Can you identify these exhibits which purport to be minutes of meetings, at a time when you were not secretary of the company, as being true copies of the records of the Michigan Avenue Guild, as furnished to the Federal

Trade Commission by Mr. Marshall? A. Are we going to be technical? I cannot identify these meetings. It is not my composition, it is Mr. Marshall's.

Q. Can you identify these as the papers that were furnished— A. From the minute book.

Q. (Continuing) —from the minute book of the Michigan Avenue Guild, to the Commission? A. Yes, sir.

Mr. Martin: If your Honor please, I offer these exhibits in evidence.

Mr. Albert: May it please the Court, I object particularly to the introduction into evidence of any minutes or reports of meetings of officers or

9659 committees which occurred prior to the time covered by the complaint of the Federal Trade Commission, as being irrelevant and immaterial to the proceedings.

I also object to the introduction into evidence of these reports of the proceedings of various committees of the Michigan Avenue Guild, and of the Michigan Avenue Guild itself, as being immaterial and irrelevant, and as being incompetent, in dealing with matters purely intrastate in character, which matters are outside the jurisdiction of the Federal Trade Commission, and form no part of the complaint. And I further object to the same upon the ground that no proper foundation has

9660 been laid as to connection with the Fashion Originators Guild; and, further, upon the ground that the same are not binding upon the Fashion Originators Guild.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: They will be received as Commission's Exhibits 747-A to E, to 815-A and B, inclusive.

(The documents referred to, heretofore marked for identification Commission's Exhibits 747-A to E, to 815-A and B, inclusive, were received in evidence.)

Mr. Albert: May we be off the record, your Honor?

(There was a discussion off the record.)

Examiner Bennett: In view of the representations of counsel that the attorney for the Michigan Avenue Guild, who is absent, would have an especial interest in certain documents still to be presented, the Examiner will adjourn the hearing until 10.00 o'clock to-morrow morning, at this place. 9662

(Thereupon, at 4.00 o'clock P. M., the hearing in the above entitled matter was adjourned until 10 o'clock A. M., Wednesday, September 9th, 1936.)

Room 1123, New Post Office Building, Chicago, Illinois, September 9th, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: JOHN W. BENNETT, *Examiner.*

(SAME APPEARANCES.)

9663

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Mr. Martin: If your Honor please, at this time I am going to ask that Mr. Fletcher step down. I have another witness with whom I had arranged to be here the first thing this morning, and we put Mr. Fletcher on yesterday for the purpose of identifying some exhibits.

Mr. Albert: No objections, your Honor.

(Witness excused.)

9664 *A. E. Levitt—For Commission—Direct.*

A. E. LEVITT was thereupon called as a witness for the Commission and, having been previously sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name? A. A. E. Levitt.

By Examiner Bennett.

Q. How do you spell the last name? A. L-e-v-i-t-t.

By Mr. Martin.

9665 Q. Where do you live, Mr. Levitt? A. My home, you mean?

Q. Yes, sir. A. Belmont Hotel.

Q. Chicago? A. Yes.

Q. What is your occupation? A. I manage the Betty Wales Shop at 172 North Michigan Avenue.

Q. What business is the Betty Wales Shop engaged in? A. Ladies' ready to wear.

Q. How long have you been with Betty Wales? A. About ten years.

Q. How long have you been manager over there? A. Approximately seven years.

Q. What type of ladies' ready-to-wear does Betty Wales sell? By that I mean dresses, suits, coats or what lines?

9666 A. Well, we cater to the medium and better-class of trade.

Q. In what garments? A. Dresses, coats, suits and furs.

Q. Medium to better class? A. Yes.

Q. What price lines? A. Well, we start cost $10.75.

Q. And run to what? A. Well, we run to coats, $400. Or, not cost. I would say $275 cost.

Q. How about dresses? A. Well, we run $10.75 to, oh, $79.50, cost, in some instances a little higher.

Q. Do you do the buying over there, Mr. Levitt? A. I do part of it, and we have another buyer, we have a dress buyer.

Q. Does your dress buyer report to you? A. Yes.

Q. Under your supervision? A. Yes.

Q. What markets do you buy? A. New York market.

Q. Any others? A. We do some buying here.

Q. Have you ever heard of the Fashion Originators Guild of America? A. Yes, sir.

Q. When did you first hear of that organization? A. When it was organized.

Q. Do you recall when that was? A. It was back around three or four years. 9668

Q. Have you ever heard of the Michigan Avenue Guild? A. Yes, sir.

Q. When did you first hear of that? A. Some three years ago.

Q. Did you ever sign a declaration of co-operation with the Fashion Originators Guild? A. Yes.

Q. Do you recall when you signed that? A. Well, I believe at its inception.

Q. Can you make that any more specific? Can you give me whether it was in 1933, '34, '35, or when? A. I don't recall the dates. I would say it goes back nearly four years ago.

Q. Have you ever been red carded? A. No, sir.

Q. Your declaration of co-operation is still in effect? A. Yes, sir. 9669

Q. Since you have signed the declaration of co-operation with F.O.G.A., have you co-operated with them? A. Yes, we have.

Q. In what way? A. The natural ways of conducting the business. We have bought our merchandise, and sold it. We haven't had much dealings with F.O.G.A., because we have bought from our firms and sold our merchandise.

Q. Are you familiar with the Guild warranty stamp? A. As regards copying, you mean?

9670

Q. Yes. Do you place that stamp on your orders? A. Yes, we do, sir.

Q. Since you signed the declaration has the Guild shopper ever shopped your store? A. They have come in to make inquiries regarding copies.

Q. Has the F.O.G.A. ever requested you to return any garments on the ground that they were copies? A. The shopper has.

Q. Did you return them? A. I believe we did.

Q. What was the reason you signed the declaration of co-operation?

9671

Mr. Albert: That is objected to, if it please the Court, as immaterial, outside of the scope of the Federal Trade Commission complaint.

Examiner Bennett: Overruled.

Mr. Martin: You may answer.

Mr. Albert: Exception.

The Witness: What was the question again?

By Mr. Martin.

Q. What was the reason that you signed the declaration of co-operation with the Guild? A. We believed that it would be for the good of our business.

Q. Is that the only reason? A. That is right.

Q. No other reason?

9672

Mr. Albert: If it please the Court, does Mr. Martin insist upon the witness giving him some other reason when the witness says he has none?

Examiner Bennett: I don't suppose he will give any if he has none.

By Mr. Martin.

Q. Did you ever receive any correspondence from the Guild requesting you to sign a declaration of co-operation?

Mr. Albert: That is objected to, if it please the Court. The witness has stated that the store has signed the declaration of co-operation, and surely any correspondence received beforehand is merged in the signature of the declaration.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

Mr. Martin: Read the question.

Q. (The question was read.) A. I don't believe so.

By Mr. Martin: 9674

Q. Did the F.O.G.A. ever advise you that unless you signed the declaration you would not be shown Guild merchandise?

Mr. Albert: That is objected to, if it please the Court, as to form.

Examiner Bennett: Overruled. You may answer.

The Witness: What was the question again?

Mr. Martin: Read that question back.

(The question was read.)

Mr. Albert: Now, if it please the Court——

The Witness: No.

Mr. Albert: Mr. Martin, I believe, is referring to the letter which has been in evidence all of this time. 9675 The only purpose of this question is to see if the witness remembers the letter, and then he is going to show him the letter and ask him if he received it. I ask that if Mr. Martin has such a letter he show it to him immediately and ask him if he received such a letter.

Mr. Martin: I would suggest that Mr. Albert seems to be a mind reader this morning.

9676

Mr. Albert: I say, "If you have such a letter." We can save some time at this stage of the game. I think we are all interested in completing the hearings as soon as possible.

By Mr. Martin.

Q. Have any Guild manufacturers ever refused to sell you any garments? A. No.

Q. Did you ever buy anything from Ben Gershel? A. Ben Gershel?

Q. Yes. A. Yes, occasionally.

9677 Q. Did Ben Gershel ever refuse to sell you any merchandise? A. Not that I remember of.

Q. Do you remember a Commission attorney, Mr. Evans, interviewing you?

Mr. Albert: That is objected to, if it please the Court, as immaterial and irrelevant.

The Witness: Yes.

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

Mr. Martin: Will you resume the stand, please, Mr. Fletcher?

9678

EDWARD A. FLETCHER thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

Direct examination by Mr. Martin (continued).

Q. Now, Mr. Fletcher, what are the purposes or objects of the Michigan Avenue Guild?

Mr. Albert: As contained in the charter, you mean, Mr. Martin?

Mr. Martin: Yes.

The Witness: As contained in the charter?

By Mr. Martin.

Q. Yes. A. A corporation, incorporated not for profit, of the State of Illinois, to advance the trade interests of its members. It is to maintain merchandising, advertising policies and standards in the retail wearing apparel trade, from its customs and usages to advance trade and commercial interests of its members.

9680

Q. How many members are there of the Michigan Avenue Guild? A. Approximately eighty.

Q. Have you a list of those members? A. Not available, at the present time. I have a list.

Q. Can you procure such information and bring it in this afternoon? A. I doubt whether I could get that this afternoon or not, because my office girl is away.

Q. Could you produce a list of the members to-morrow? A. Yes, sir.

Q. Will you do so? A. Yes, sir.

Q. As Secretary of the Michigan Avenue Guild, Mr. Fletcher, do you communicate with the members of the Michigan Avenue Guild relative to the affairs of the Guild? A. Yes, sir.

9681

Mr. Martin: I will ask that these documents be marked for identification Commission's Exhibits 816, 817, 818, 819, 820-A and B, 821, 822, 823, 824, 825 and 826.

(The documents referred to were marked Commission's Exhibits 816, 817, 818, 819, 820-A and B, 821, 822, 823, 824, 825 and 826 for Identification.)

9682 *Edward A. Fletcher—For Commission—Direct.*

By Mr. Martin.

Q. Now, Mr. Fletcher, I hand you Commission's Exhibits No. 816 to 825, inclusive, for Identification and ask can you identify those papers?

(A short pause.)

The Witness: The question, please?

Q. (The question was read.) A. I can.

By Mr. Martin.

Q. What are they? A. Separate identifications for
9683 each one?

Q. No, they are all practically the same. A. Correspondence, letters of general information to the members of the Michigan Avenue Guild.

Mr. Albert: Those are mimeographed forms?

The Witness: Mimeographed forms, form letters.

Examiner Bennett: Sent by whom?

By Mr. Martin.

Q. Were those letters sent by the Michigan Avenue Guild to its members? A. Yes, sir.

Mr. Martin: I offer these in evidence."

9684 Mr. Albert: Objected to, if it please the Court, upon the ground that they concern matters, transactions and policies which are purely local in character as between the Michigan Avenue Guild and its members, and in no manner binding upon the Fashion Originators Guild, nor the possible subjects of investigation or complaint by the Federal Trade Commission, as not being within the jurisdiction of the Federal Trade Commission, concern-

ing, as they do, solely matters which are intrastate in character.

Mr. Marshall: The Michigan Avenue Guild joins in the objection, if the Court please, on the same ground.

Examiner Bennett: I want to see them.

(The paper writings referred to were handed to the Examiner.)

Examiner Bennett: The objections are overruled and the——

Mr. Albert: Exception.

Examiner Bennett: —documents are received in evidence. 9686

Mr. Marshall: Exception on behalf of the Michigan Avenue Guild.

(The papers referred to, heretofore marked for identification Commission's Exhibits 816 through 825, inclusive, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, referring to Commission's Exhibit No.—no, I will withdraw that question at the present time. Are you familiar with an organization known as the State Street council? A. I know of its existence.

Q. Have you ever had any correspondence with the State Street council relative to co-operation? A. Along what lines? 9687

Q. Co-operation in considering local problems.

Mr. Albert: That is objected to as entirely irrelevant and immaterial, as to what local problems anybody may be engaged in, in the State of Illinois.

Mr. Marshall: Same objection.

Examiner Bennett: I will overrule the objection at this time and let him answer.

Mr. Martin: Read the question.

9688 *Edward A. Fletcher—For Commission—Direct.*

Q. (Question read by the reporter.) A. Yes.

By Mr. Martin.

Q. I hand you Commission's Exhibit for Identification No. 826 and ask you can you identify that letter? A. Yes.

Q. What is it? A. It is a letter from me to the secretary of the State Street Council, dated September 10, 1935.

Mr. Martin: I offer it in evidence as Commission's Exhibit No. 826.

Mr. Albert: The same objection as previously, your Honor.

9689

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild.

Examiner Bennett: You said it was a foundation offer. It seems to be purely, as the face of it indicates, a local problem. They speak of local manufacturers and no others.

Mr. Martin: If your Honor please, it refers to the practice also of the local guild regulations with regard to apartment houses.

Examiner Bennett: Yes. That is local, so far as that indicates.

Mr. Martin: If your Honor please, I respectfully ask that while apartment houses are local propositions, this Michigan Avenue Guild has a

9790

contract, which is in evidence, with the Fashion Originators Guild, by the terms of which contract the Fashion Originators Guild will not sell merchants who are not members of the Michigan Avenue Guild.

Mr. Albert: Now, if your Honor pleases, may we have an indication of the particular paragraph in the agreement to which Mr. Martin refers, and which he is paraphrasing?

Examiner Bennett: If you want to confine your offer to that particular thing, co-operation as to apartment house sales, in interstate commerce——

Mr. Martin: That is what it is offered for.

Examiner Bennett: If that is the purpose, all right. I do think that it is generally inadmissible.

Mr. Martin (indicating): Paragraph One.

Mr. Albert: If it please the Court, may I ask that Mr. Martin not sum up with respect to the meaning of various agreements, and I think that we can both best interpret or attempt to interpret that agreement at the proper time. I don't think that this is the proper time to attempt to do it. 9692

Mr. Martin: That is the purpose of it.

Mr. Albert: Suffice it to say, your Honor, that we heartily disagree with Mr. Martin's attempted paraphrasing of these agreements.

Mr. Martin: You disagree with your own handiwork?

Mr. Albert: Your interpretation isn't our handiwork. That is the hand of Jacob but the voice of Esau.

Examiner Bennett: Well, that is my offer, if you want to submit it for that particular purpose——

Mr. Martin: That is perfectly satisfactory to me, sir. 9693

Examiner Bennett: All right.

Mr. Albert: Exception.

Mr. Marshall: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibit 826, was received in evidence.)

9694 *Edward A. Fletcher—For Commission—Direct.*

By Mr. Martin.

Q. Now, referring, Mr. Fletcher, to Commission's Exhibit No. 826, the last paragraph, which reads: "Guild has appointed a committee to consider these problems and invites the co-operation of a similar committee from your organization." Did these committees ever have a meeting?

Mr. Albert: Objected to, if it please the Court, as immaterial and not binding upon the respondent F.O.G.A. concerning, as it does, solely local matters of intrastate character, outside of the

9695 jurisdiction of the Federal Trade Commission and not within the complaint.

Mr. Marshall: The same objection. May I add, if the Court please, that there is no foundation laid as to show the State Street Council is in any wise a party to the understanding or arrangement of any kind with F.O.G.A.

Examiner Bennett: I will let him answer. Overruled.

Mr. Albert: Exception.

Mr. Marshall: Exception.

The Witness: The question, please?

(The question was read.)

The Witness: The committee was appointed.

Mr. Martin: Mark that for identification.

9696

(The paper referred to was marked Commission's Exhibit 827 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 827 for Identification and ask, can you identify that? A. Yes.

Q. What is it? A. It is a letter from me to Mr. Leo Bramson, dated October 7th, 1935.

Q. That letter referred to the committee which you just testified was— A. Referred to the Guild committee, yes, sir.

(The paper referred to, as Commission's Exhibit 827 for Identification, was handed to Mr. Albert Post.)

Mr. Martin: I offer it in evidence.

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 827, upon all the grounds previously urged with respect to this type of communication; and, further, upon the ground that Commission's Exhibit 826 was admitted upon the limited ground, I believe, as attempting to 9698
show a tie-up on the question of apartment house selling.

Examiner Bennett: Well, I will sustain the objection to that. You need not finish your statement.

Mr. Albert: Thank you, your Honor.

Mr. Martin: Mark this for identification Commission's Exhibit 828.

(The document referred to was marked Commission's Exhibit 828 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 828 for Identification and ask you, can you identify that? A. Yes, sir. 9699

Q. What is it? A. It is a list of manufacturers of dresses, coats, juniors' and knitwear.

Q. Was that letter sent to the members of the Michigan Avenue Guild? A. Frankly, it is not my style of composition, I cannot say, "yes" or "no."

(There was a discussion off the record.)

Mr. Martin: If your Honor please I am advised by counsel for the respondent, that Commission's

9700 *Edward A. Fletcher--For Commission—Direct.*

Exhibit No. 828 for Identification, which I just offered in evidence, is already in evidence as Commission's Exhibit No. 88.

Mr. Albert: Here it is.

Mr. Martin: Yes. I, therefore, withdraw the offer of Commission's Exhibit No. 828.

By Mr. Martin.

Q. Now, Mr. Fletcher, has the Michigan Avenue Guild of Chicago ever entered into an agreement of any kind with the Fashion Originators Guild of America?

9701 Mr. Albert: That is objected to, if it please the Court, as most indefinite, and calling for a conclusion. Whether or not something is in an agreement is a proposition and question of law, not a fact for the witness to determine.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 5 and ask you to refresh your recollection by reading that.

Mr. Albert: I do not quite understand it. I think Commission's Exhibit No. 5 is already in evidence.

Mr. Martin: I say, it is.

Mr. Albert: And I further object to the question on the ground the exhibit speaks for itself.

9702 Mr. Martin: He certainly has a right to refresh his recollection.

The Witness: What is the question?

(Last question read by the reporter.)

Mr. Martin: The question before that.

(Question read as follows: "Q. Now, Mr. Fletcher, has the Michigan Avenue Guild of Chicago ever entered into an agreement of any kind with the Fashion Originators Guild of America?")

By Mr. Martin.

Q. Is that agreement in effect at this time? A. The agreement specifies the term of the agreement.

Q. I did not ask you that. I asked, is it in effect at this time? A. I believe the agreement expires in 1940, subject to cancellation by either party on specified notice.

Q. Has it ever been canceled by either party? A. No, sir.

Q. And, to the best of your knowledge, it is in effect at this time? A. Yes, sir.

Q. Is this the first agreement that was entered into on behalf of the Michigan Avenue Guild with the Fashion Originators Guild? A. I have knowledge of a previous 9704 agreement, but I cannot say that it is in my custody.

Q. In whose custody is it in? A. I presume in the custody of our attorney.

Q. Do you know the date of that document? A. No, sir.

Q. Can you give me the approximate date of it, the year? A. The date of the contract?

Q. Yes. A. Not specifically, no.

Q. Was it in 1934? A. I cannot say.

Q. Was it in 1933? A. I could not say.

Mr. Martin: If your Honor please——

Examiner Bennett: Did you turn that document over to the attorneys of the Guild?

The Witness: Our attorney was in charge of handling all documents of such a nature. The 9705 secretary is not the executive secretary, merely takes the orders of the board of directors.

Examiner Bennett: Yes. He had original custody of the documents?

The Witness: Sir? The secretary?

Examiner Bennett: No, the attorney.

The Witness: Yes. Yes, your Honor.

Examiner Bennett: I see. All right.

9706 *Edward A. Fletcher—For Commission—Direct.*

By Mr. Martin.

Q. Never been in your custody? A. No.

Examiner Bennett: We will take a recess for ten minutes.

Mr. Martin: All right, sir.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Martin.

Q. Did the Michigan Avenue Guild ever have any correspondence with the F.O.G.A., relative to Frances Malsh,
9707 the witness who testified yesterday? A. Yes.

Q. I hand you Commission's Exhibits Nos. 224, 227, 228, 229, 230, 231 and 232 for Identification and ask, can you identify those pages? A. Yes.

Q. What are they? A. They are communications from me to Mr. Golby of the Fashion Originators Guild.

Q. Are there any communications from Golby to you? A. And communications from Mr. Golby addressed to me.

Q. The letters addressed by you to Mr. Golby were mailed to him? A. Yes, sir.

Q. And the letters from Mr. Golby were received by you? A. Yes, sir.

By Examiner Bennett.

9708 Q. Were you writing in your capacity as secretary of the Guild? A. Yes, sir.

Mr. Martin: I offer in evidence, your Honor, as Commission's Exhibits Nos. 224, 227, 228, 229, 230, 231 and 232 the documents just identified by the witness.

Mr. Albert: No objection, your Honor.

Examiner Bennett: They are received, there being no objection.

(The documents referred to, heretofore marked for identification Commission's Exhibits 224, 227, 228, 229, 230, 231 and 232, respectively, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, at the time of the agreement dated May 10th, 1935, that was entered into between the Michigan Avenue Guild and the F.O.G.A., was there any other agreement in effect between the two parties?

Mr. Albert: We will try to find out for you during lunch, Mr. Martin.

The Witness: No, sir. 9710

By Mr. Martin.

Q. Had the previous agreement expired; do you recall? A. I believe it did.

Q. Do you know when it expired? A. No, sir.

Q. Do you know for how long a period there was no agreement between the two organizations, Michigan Avenue and Fashion Originators Guild? A. Approximately four or five months, possibly less.

Q. So that on the basis of four or five months the previous agreement would have expired in December of 1934? A. Approximately.

Q. How long had that prior agreement been in effect? A. I could not say. 9711

Q. Do you know why a new agreement was not entered into between the two organizations, not entered into immediately between the two organizations when the original agreement expired in December?

Mr. Albert: That is objected, if it please the Court, as wholly immaterial.

Examiner Bennett: Overruled. I will let him answer. You may answer.

The Witness: Do I know why?

9712

By Mr. Martin.

Q. Yes. A. Negotiations were being conducted from the time the previous agreement expired during the—until the new agreement was signed.

Q. Were conferences held between the officers of the two organizations prior to the signing of this agreement? A. Yes, sir.

Q. They were held in New York or Chicago, or where? A. Chicago.

Q. Who attended these conferences on behalf of the Fashion Originators Guild? A. No one.

Q. With whom in the Fashion Originators Guild of

9713 America did the Michigan Avenue Guild negotiate preparatory to signing this agreement? A. Our attorney handled the matter of the execution of the agreement.

Q. Do you know whom he conferred with in the Fashion Originators Guild? A. I presume with the officials of the Fashion Originators Guild.

Q. Do you know whether he had any conferences with Mr. Post? A. Not definitely.

Q. Do you know whether he had any conferences with Mr. Golby? A. Not definitely.

Q. Did Mr. Post and Mr. Golby ever come to Chicago at the time of these negotiations, that these negotiations were in progress? A. I believe they were.

Q. Did you ever have any conferences with them? A.

9714 No, sir.

Q. So far as you know, did Mr. Marshall ever have any conferences with them on those occasions? A. I believe there was a meeting of the Board of Directors at which Mr. Marshall was present.

By Mr. Martin.

Q. Who prepared this agreement?

Mr. Albert: That is objected to, may it please the Court; entirely irrelevant and immaterial. I

do not see what difference it makes who prepared it. The agreement is there, it speaks for itself.

Examiner Bennett: I cannot see the relevancy of it.

By Mr. Martin.

Q. Was this agreement submitted to the Michigan Avenue Guild for its signature by the Fashion Originators Guild, or did the Michigan Avenue Guild submit the agreement to the Fashion Originators Guild for its acceptance?

Mr. Albert: That is objected to, may it please the Court, as being highly immaterial and irrelevant to the issues involved. 9716

Examiner Bennett: I will let him answer, if he knows. Overruled.

The Witness: The agreement was negotiated by our attorney.

Mr. Martin: I move that answer be stricken as not responsive to the question, your Honor.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Albert: And, if neither one is true, the answer is "no," I believe?

The Witness: The Michigan Avenue Guild and the Fashion Originators Guild collaborated in the compiling of the agreement.

9717

Q. Referring to the paragraph marked 1, on page 2, of Commission's Exhibit No. 5-A to F, I find the following language: "Fashion Guild members will not sell their merchandise within the City of Chicago to such retailers who are not members in good standing of the Michigan Avenue Guild and/or to those retailers who do not observe the code of fair competition in the industry, and whose practices do not conform to the standards and regulations

of the Michigan Avenue Guild. This provision not to apply to such stores as are named in the list hereto attached as Exhibit A, and hereby made a part hereof." Now, Exhibit A lists the names of Marshall Field & Company, Carson, Pirie, Scott & Company, Mandel Brothers, Charles A. Stevens, Maurice L. Rothschild, The Davis Store, Wieboldt's, Sears Roebuck & Company, The Hub, The Fair, The Boston Store and Madigan Brothers. Now I will ask you why were those stores, which I just named, excepted from the operation of paragraph 1? A. I could not say.

Q. Are those stores that I have just named members of the Michigan Avenue Guild? A. No, sir.

9719 Q. None of them? A. No, sir.

Q. Does the Michigan Avenue Guild forbid its members from purchasing from other than Guild manufacturers? A. No, sir.

Mr. Marshall: Objection.

By Mr. Martin.

Q. Do they request its members to confine their purchases to Guild members? A. No, sir.

Q. I will read from Commission's Exhibit No. 824, which is a letter from you to the members of the Michigan Avenue Guild, under date of November 4, 1935, and which states, in part: "This is to advise you that David Crystal, Inc., has resigned from membership in the Fashion Originators Guild of America, Inc., and his resignation has been duly accepted." What was the purpose of advising your members that David Crystal was no longer a member of the Guild?

9720

Mr. Albert: Isn't that contained in the letter, Mr. Martin?

Mr. Martin: I do not see it.

Mr. Albert: I am just asking you. May I see the letter?

Mr. Martin: Certainly.

(Handing document to Mr. Albert.)

Mr. Albert: May I read the second paragraph of Commission's Exhibit 824? (Reading:) "As a result of such resignation, David Crystal, Inc., will no longer be entitled to enjoy the benefits of membership in the Fashion Originators Guild, and more particularly the right to register his original creations and obtain the benefit of the style protection machinery of the Guild." The answer is obvious, it is contained in the letter.

By Mr. Martin. 9722

Q. Now, I renew my question, and ask why did you feel it necessary to notify the members of your Guild that Crystal was no longer a member of the F.O.G.A.?

Mr. Albert: That is objected to, if the Court please. The exhibit in evidence speaks for itself as to the reason. Paragraph 2 clearly shows the reason for sending the letter, to inform the members.

Examiner Bennett: I will let him answer.

The Witness: David Crystal's resignation from the Fashion Originators Guild would not entitle him to register his style creations with the Guild. The Guild could, therefore, not apply its style protective set-up to his merchandise.

9723

By Mr. Martin.

Q. Did you always notify Michigan Avenue Guild members when a manufacturer resigned from the F.O.G.A.? A. I won't say in every case. Occasionally.

Q. You did not purposely overlook any, did you? A. No.

Q. Why did you only notify them occasionally? A. No particular reason.

9724 Q. Are the merchants in Evanston members of the Michigan Avenue Guild? A. No, sir.

Q. Do they have a separate organization of their own?

Mr. Albert: That is objected to; no foundation laid.

By Mr. Martin.

Q. If you know.

Examiner Bennett: If he knows.

The Witness: I don't know.

9725 *By Mr. Martin.*

Q. Did you ever have any correspondence with the Fashion Guild relative to the situation in Evanston?

Mr. Albert: That is objected to as being wholly immaterial and irrelevant, not within the issues of the complaint.

Mr. Marshall: Same objection.

Examiner Bennett: Overruled. You may answer.

The Witness: I believe so.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 178 for Identification and ask can you identify that? A. Yes.

9726 Q. What is it? A. A letter from Mr. Golby to me, dated April 15th, 1935.

Q. Was that letter received by you? A. Yes, sir.

Mr. Martin: I offer it in evidence.

Mr. Albert: This is objected to, if it please the Court, as concerning matters purely local in character of an intra-state nature, in no way binding upon the Fashion Originators Guild, and in which the Fashion Originators Guild expressly disclaims any interest.

Mr. Marshall: The same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled. I will receive it.

(The paper referred to, heretofore marked for identification, Commission's Exhibit 178, was received in evidence.)

Mr. Albert: Exception.

Mr. Marshall: Exception.

By Mr. Martin.

Q. I hand you Commission's Exhibits 181, 182 and 183 for Identification and ask can you identify those papers? 9728
A. Yes.

Q. What are they? A. They are letters from me to Mr. Golby, a letter from me to Mrs. Emma Beattie, and a letter from Mrs. Emma Beattie to me.

Q. Were they letters from you mailed by you? A. The letters by me to Mr. Golby were mailed, yes.

Q. And the letter to Mrs. Beattie mailed? A. Yes.

Q. And the letter from Mrs. Beattie received? A. Yes.

Mr. Martin: I offer those in evidence.

Mr. Albert: If it please the Court, this is specifically objected to upon the grounds previously urged, being solely a question of local practice and local matters, outside of the scope of the Commission's complaint and outside of the jurisdiction of 9729
the Commission, in no way binding upon the Fashion Originators Guild; and further objected to unless the correspondence, if any, passing between the Michigan Avenue Guild, the so-called Evanston Guild, Mrs. Beattie, be likewise offered in evidence.

Mr. Marshall: The same objection.

Mr. Albert: The showing being incomplete without the full correspondence.

Mr. Martin: Very obviously the letters that counsel refers to are in his possession or in the possession of the F.O.G.A.

Mr. Post: They were in the possession of the Michigan Avenue Guild when the investigator went in there. Why didn't he ask for them?

Mr. Albert: Those letters addressed to the Michigan Avenue Guild were in their possession when the Commission went in there, and if the investigator for reasons best known to himself thought it unwise to bring in the answer of the Fashion Originators Guild to the Michigan Avenue Guild, I

9731 don't see why the hearing should be interrupted at this time in an attempt to get those letters. Everything was thrown open to the investigator.

Mr. Post: And they took everything.

Mr. Martin: Now, if your Honor please, I move that that statement by counsel be stricken from the record.

Examiner Bennett: It may be stricken. All right. Overruled. Received.

Mr. Albert: Exception.

Mr. Marshall: Exception.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 181, 182 and 183, were received in evidence.)

9732 *By Mr. Martin.*

Q. Referring again, Mr. Fletcher, to Commission's Exhibit No. 5-A to F, and the numbered paragraph 1 on page 2 thereof, we find the language: "And whose practices do not conform to the standards and regulations of the Michigan Avenue Guild." Now, I ask you, does that refer to the rules and regulations which were put in evidence yesterday as Commission's Exhibit—do you have that number, Mr. Keller?

Mr. Keller: The rules and regulations are Commission's Exhibit No. 746-A and B.

By Mr. Martin.

Q. Does the language in Commission's Exhibit No. 5, which I have just quoted, refer to Commission's Exhibit No. 746-A and B?

Mr. Albert: That is objected to, if it please the Court. The instrument speaks for itself.

Examiner Bennett: I will let him answer.

Mr. Albert: Exception.

The Witness: The question, please?

(The question was read.) 9734

The Witness: Yes.

By Mr. Martin.

Q. Are there any other rules and regulations, other than those set out in Exhibit 746-A and B? A. No.

Q. Referring again to the language of Commission's Exhibit 5-A to F: "And whose practices do not conform to the standards and regulations of the Michigan Avenue Guild." Now, what are the standards of the Michigan Avenue Guild? A. The standards of the Michigan Avenue Guild are those advocated by its by-laws, rules and regulations.

Q. Since the Michigan Avenue Guild entered into this agreement, under date of May 10, 1935, have they lived 9735
up to the agreement? A. Well, just a minute. That is a big question. Substantially, yes.

Q. In what way have they deviated from it? A. There have been differences of opinion.

Q. Such as what?

Mr. Albert: That is objected to, may it please the Court, as being entirely irrelevant and imma-

terial, unless made certainly more definite as to what is meant.

Mr. Martin: I don't know. I cannot be any more definite.

By Mr. Martin.

Q. What instances do you refer to?

Mr. Albert: I think we have progressed sufficiently in this investigation, and I believe the Commission has presented sufficient facts, as to make it unnecessary for them now to go on a fishing expedition to determine what they would like

9737 to continue to question about.

Mr. Martin: Now, if your Honor please, I believe we have progressed sufficiently in this case for Mr. Albert to have learned by this time that the Commission's attorneys will handle the case as they see fit, and not as Mr. Albert sees fit. He can conduct his own case to suit himself, but I respectfully submit that in the conduct of my case, I will be governed by my judgment, and not by Mr. Albert.

Examiner Bennett: What is the question?

(Question read by the reporter.)

The Witness: Policies.

By Mr. Martin.

9738 Q. What particular policies? A. I do not recall any, specifically.

Q. Well, you must have had something in mind when you said "policies." A. One shop may be—one member may be in favor of this particular ruling, and another member may be in favor of that particular ruling, in preference to some other ruling; or a member may think that a ruling may be a little stronger.

Q. Do you mean by that, that there have been deviations from this agreement by individual members of the Michigan Avenue Guild, rather than deviations by the Guild as a whole?

Mr. Albert: That is objected to, if it please the Court, as to form, assuming a state of facts not in the evidence, attempting to place an answer in the witness' mouth; and, further, upon the ground it is an obvious attempt to cross-examine the witness, rather than to present facts on the direct question.

Mr. Marshall: Same objection for the Michigan Avenue Guild, if the Court please.

Mr. Albert: Further, upon the ground that the 9740
matter is obviously purely local in character, in no way binding upon the Fashion Originators Guild, and is directed toward eliciting facts which concern themselves solely with local matters.

Examiner Bennett: Overruled. You may answer.

The Witness: Question, please.

(The question was read by the reporter.)

The Witness: Deviations from our rules and regulations by individual members.

By Mr. Martin.

Q. Was that done with the consent or approval of the Michigan Avenue Guild? A. No, sir. 9741

Mr. Albert: If your Honor please, can't we shorten this, and have it appear that some of the members of the Michigan Avenue Guild disobeyed the rulings, and steps were taken to see that they were obeyed? I think that is all we are getting at. We are going to waste an hour here on a matter of that kind.

Examiner Bennett: All right.

9742 *Edward A. Fletcher—For Commission—Direct.*

Mr. Martin: Have you finished now, Mr. Albert?

Examiner Bennett: We will adjourn until 2 o'clock.

(Whereupon, at 12.30 o'clock, Eastern Standard Time, a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

Hearing resumed at 2 o'clock P. M., E.S.T.

9743

Examiner Bennett: Be in order, please. You may proceed. You may resume the stand.

Mr. Marshall: Just one moment.

Mr. Albert: In the meantime, your Honor, I would like to point out with respect to Commission's Exhibits 178, 181, 182 and 183, you may recall that I objected to 181, 182, 183 going into evidence unless the reply or the correspondence from the Fashion Originators Guild with respect to those letters was also in evidence.

After checking during the luncheon period, it appears that Commission's Exhibit No. 178 now in evidence is the Guild correspondence which replies to the series of com-

9744 munications known as Commission's Exhibits 181, 182, 183.

The reason why this was not apparent immediately was because Commission's Exhibit 181 is erroneously dated May 12th and should be dated April 12th.

Examiner Bennett: I see.

Mr. Albert: The date which appears in typewriting on the letter was not corrected. However, the pencil notation above it shows that the letter was actually written on April 12th and not on May 12th.

Examiner Bennett: I see. All right. I am glad you called our attention to it.

Mr. Albert: See it up here?

Mr. Martin: I see.

Mr. Albert: This Exhibit No. 178 is April 15th.

EDWARD A. FLETCHER was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Martin.

Q. Is the firm of John T. Shayne & Company a member 9746
of the Michigan Avenue Guild? A. No, sir.

Q. Were they ever a member of the Michigan Avenue Guild? A. Yes, sir.

Q. When did they resign from the Michigan Avenue Guild? A. Sometime in 1935, I believe.

Q. Take a look at these. A. This top letter, Mr. Martin?

Q. All of them. They all deal with the Shayne Company. I just wanted to see—hand them to me a minute. I had better refer to them for the record. I hand you Commission's Exhibits Nos. 235 to 242 for Identification, and ask you can you identify those papers? A. I can.

Q. What are they? A. They are letters—some letters from me to Mr. Post, and letters from me—from me to Mr. 9747
Post in regards to John T. Shayne & Company.

Mr. Albert: These are objected to.

Examiner Bennett: All right. Receive the exhibits.

Mr. Albert: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibits 235, 236, 237, 238, 239, 241 and 242, were received in evidence.)

9748 *Edward A. Fletcher—For Commission—Direct.*

By Mr. Martin.

Q. Referring to Commission's Exhibit No. 237, which is a letter from Mr. Post to Mr. Considine of the John T. Shayne Company.

Mr. Albert: What is the date?
Mr. Martin: It has no date on it.

By Mr. Martin.

Q. (Continuing) —I find the following language: "I am informed that the by-laws of the Michigan Avenue Guild have been adjusted to meet the objection that you
9749 had to them." Do you recall what objection Mr. Considine had to the by-laws of the Michigan Avenue Guild?

Mr. Albert: "Yes" or "no," Mr. Fletcher.
The Witness: No.

By Mr. Martin.

Q. Do you recall which particular regulation he objected to?

Mr. Albert: "Yes" or "no," Mr. Fletcher.
The Witness: Yes.

By Mr. Martin.

Q. Which one was it?

9750

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, concerning a matter of local purview entirely, in no manner binding upon the Fashion Originators Guild, not within the complaint of the Federal Trade Commission, nor within the jurisdiction of the Commission.

Mr. Marshall: Same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled.

By Mr. Martin.

Q. You may answer. A. Mr. Post's reference to by-laws, I think, refers to the rules and regulations of the Guild. The by-laws were not changed, as I recall. The rules, in regard to clearance sales, to which Mr. Considine took some exception, were modified. That is, the rules and regulations of the Michigan Avenue Guild.

Q. As I understand it, there was a regulation dealing with sales, is that correct? A. Yes, sir.

Q. And that Mr. Considine objected to that particular regulation, and it was changed, is that correct? A. As it existed at that time, yes, sir.

Q. What changes were made? 9752

Mr. Albert: That is objected to, may it please the Court, as entirely immaterial and irrelevant, and for all of the additional reasons previously stated with respect to the matter being local in character.

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild.

Examiner Bennett: Overruled.

The Witness: It was modified to permit a greater latitude of promotional activity.

By Mr. Martin.

Q. Now, Mr. Fletcher, when an application for membership is received by the Michigan Avenue Guild, do you notify the Fashion Guild that you have received the application? A. If, after the application is presented to the Board of Directors, the application is accepted or approved, the Fashion Originators Guild is notified. 9753

Q. Are they ever advised before action of the local Guild in either refusing or accepting the application? A. In rare instances, the Fashion Originators Guild may be advised before the formal approval.

Q. Did you ever receive an application from Emily Mazer? A. Yes, sir.

Q. Was her application accepted? A. It was not accepted by the Board of Directors.

Q. She is not a member of the Michigan Avenue Guild? A. No, sir.

Q. I hand you Commission's Exhibit No. 233 for Identification and ask can you identify that? A. Yes, sir.

Q. What is it? A. It is an application executed by Emily Mazer for membership in the Michigan Avenue Guild.

9755 Mr. Martin: I offer it in evidence.

Mr. Albert: No objection, your Honor, subject to connection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 233, was received in evidence.)

By Mr. Martin:

Q. What does the notation "advised New York 12-21-34," on the bottom of that refer to? A. It means I communicated with New York in some respect in connection with that application on that date.

9756 Q. Will you refer to Commission's Exhibit No. 233, for the purpose of refreshing your memory; and tell me what was the date of the first contract between the Fashion Originators Guild and the Michigan Avenue Guild?

Mr. Albert: I believe Mr. Marshall has brought that contract in, Mr. Martin?

The Witness: I do not understand the question, Mr. Martin.

By Mr. Martin.

Q. I say, just use that to refresh your recollection. Now, can you tell me what was the date of the contract between the Michigan Avenue Guild and the Fashion Guild, which was prior to the one that is in evidence? A. That contract was May 10, 1935.

Q. Yes. Now, what was the date of the one prior to that? A. As to that, I cannot say.

Q. Does this exhibit refresh your recollection any? A. No.

Q. Did you read that last part there, the last part of the third line? A. Oh, pardon me. As to the date of that agreement. 9758

Q. What was that date? A. The agreement was dated December 17, 1932.

Examiner Bennett: All right.

By Mr. Martin.

Q. Now, Mr. Fletcher, did the Fashion Originators Guild ever request the Michigan Avenue Guild to ask its members, that is, members of the Michigan Avenue Guild, not to purchase from manufacturers who are not members of F.O.G.A.?

Mr. Albert: Objected to, if it please the Court, as having been previously answered.

Mr. Martin: I don't think so. I asked him the question as to whether the Michigan Avenue Guild had ever done it. I have not asked him whether it was requested by the Fashion Originators Guild. 9759

The Witness: The question, please.

Examiner Bennett: I will let him answer.

(The question was read.)

The Witness: Not to my knowledge.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 234 for Identification and ask can you identify that? A. Yes.

Q. What is it? A. It is a letter from Mr. Golby to me dated November 10th, 1934.

Q. Relative to what? I mean, don't say what the letter states, but just what it is about. A. Relative to Emily Mazer.

Mr. Martin: I offer this in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

9761 (The paper referred to, heretofore marked for identification Commission's Exhibit 234, was received in evidence.)

By Mr. Martin.

Q. What co-operation between M.A.G. and F.O.G.A. is referred to in that letter?

Mr. Albert: That is objected to, if it please the Court. The letter speaks for itself.

Examiner Bennett: I will overrule the objection and let him answer, if he knows.

(There was a short pause.)

Examiner Bennett: I have already passed upon it. He may answer.

9762 Mr. Feldman: Read the question back.

(The question was read.)

The Witness: The interpretation of that paragraph has never been——

Mr. Albert: May I also object, if it please the Court, upon the ground that the time in question, the matter therein referred to at the time in question was legal and particularly sanctioned by the National Industrial Recovery Act, whatever may be the position with respect thereto to-day.

Examiner Bennett: Yes. Well, of course, that is one of the things that is in issue.

Mr. Martin: Go ahead with your answer.

Examiner Bennett: I will overrule the objection.

The Witness: The interpretation of that paragraph to my mind has never been quite clear.

By Mr. Martin.

Q. What is your interpretation of it?

Mr. Albert: That is objected to, if it please the Court, as being immaterial and irrelevant. The witness has testified that it was not clear to him what was meant. The only man who can therefore adequately explain it is the man who wrote the letter. 9764

Examiner Bennett: I will sustain the objection unless it is shown that some action was taken with reference to it.

By Mr. Martin.

Q. As a result of this letter, was any action taken by the Michigan Avenue Guild?

Mr. Albert: That is objected to, if it please the Court, unless the testimony is connected in such a manner so as to show that the action is continued and is still continuing after the expiration of the N.R.A. down to and including the present period, within the period included in the Federal Trade Commission's complaint. 9765

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

Q. Go ahead, sir. A. In what respect?

Mr. Albert: Exception.

By Mr. Martin.

Q. With respect to that last paragraph? A. None whatsoever.

Q. Emily Mazer, I believe, you testified has never been a member of the Michigan Avenue Guild? A. Yes, sir.

Mr. Albert: "Yes, sir," she has never been a member, or "Yes, sir" you so testified?

The Witness: He believes that I testified that Emily Mazer was never a member of the Michigan Avenue Guild. I did.

9767 *By Mr. Martin.*

Q. Do you know whether she had signed a declaration with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid. It is incompetent for this witness to testify as to what Mrs. Mazer may or may not have done with the Fashion Originators Guild.

Examiner Bennett: Overruled. I will let him answer, if he knows.

The Witness: I do not know.

Examiner Bennett: All right.

By Mr. Martin.

9768 Q. Did the Fashion Originators Guild ask you to shop Mrs. Mazer's store? A. As I recall——

Mr. Albert: If it please the Court, I believe the letter in evidence covers that fully. We seem to be going on the principle to-day, your Honor, of asking the witness questions and then confronting him with letters which either support or tend not to support his testimony. May I ask that in order

that in order to save time the witness be shown the letters in the first place, that they go in evidence, and that that is the end of it. I don't quite see the point of attempting to contradict his own witness and then support his own witness by putting in letters which are the best evidence after the witness has testified orally.

Mr. Feldman: That has been the practice in other hearings.

Examiner Bennett: I don't know that that has been the procedure. I think there is no serious conflict between the evidence and the letters.

9770

By Mr. Martin.

Q. Will you refer to the exhibit and answer my question? A. The question is, Mr. Martin?

Mr. Martin: Read it back.

(The question was read.)

The Witness: Yes.

By Mr. Martin.

Q. Did you shop the store? A. She had no store.

Q. Did you shop her place of business? A. She had no place of business.

Q. Where did she conduct business?

Mr. Albert: That is objected to, if it please the Court. The witness testified that she had no place of business. 9771

By Mr. Martin.

Q. Where did she make her sales from? A. As explained to me by Mrs. Mazer, she made her sales from hotels, various summer resorts, traveling on the road.

Q. Did you in any way attempt to shop her stock of dresses wherever located? A. No.

9772 *Edward A. Fletcher—For Commission—Direct.*

Q. Was the firm of Fred A. Block a member of the Michigan Avenue Guild? A. No, sir.

Q. Have they ever been members? A. No, sir.

Q. Have they ever made application for membership? A. No, sir.

Q. Do you know whether or not the firm of Fred A. Block were ever members of the Fashion Originators Guild of America? A. Yes, sir.

Q. Did you ever have any correspondence with the Fashion Originators Guild of America relative to Fred A. Block? A. Yes, sir.

9773 *By Mr. Martin.*

Q. I hand you Commission's Exhibits Nos. 210 to 222, inclusive, for Identification, and ask can you identify those papers?

Mr. Albert: Let's have them as you finish them, will you, please?

(Short interruption.)

By Mr. Martin.

Q. Can you identify those papers? A. Yes, sir.

Q. What are they? A. Communications from me to the Fashion Originators Guild, in regard to Fred A. Block, and communications from the Fashion Originators Guild to me regarding Fred A. Block.

9774 Q. And they were duly received and mailed by you? A. Yes, sir.

Mr. Martin: I offer those in evidence.

Mr. Albert: I object to the admission in evidence, if the Court please, of Commission's Exhibits 210 to 222, inclusive, upon the ground that they concern matters which are purely of local origin, matters which concern the members of the Michigan Avenue Guild, who are Chicago retailers, and

Fred A. Block & Company, which is a Chicago manufacturer, with respect to the problems that exist between that manufacturer and those retailers, with which the Fashion Originators Guild has no concern, the actions of the Guild with respect to which are not binding upon the Fashion Originators Guild, and the subject matter of which is not within the Federal Trade Commission complaint, nor within the jurisdiction of the Federal Trade Commission.

Mr. Albert: Exception, your Honor.

(The documents referred to, heretofore marked for identification Commission's Exhibits 210 to 222, both inclusive, were received in evidence.) 9776

Mr. Albert: Your Honor, I notice that Mr. Martin has quite a good deal of correspondence there yet, and I believe that the philosophy of the Commission in offering them is that it is correspondence that passed in the regular course of business between the parties thereto. Now, as regards to that fact, perhaps if Mr. Martin will let me see all of the correspondence we may be able to save a great deal of time and at least be able to concede that it was received or was sent, because these seem to be the only questions that Mr. Martin is asking with respect to them.

Mr. Martin: This is all—off the record. 9777

(A discussion was had off the record.)

Mr. Albert: Now, if it please the Court——

Mr. Martin: I haven't offered them yet.

Mr. Albert: I am sorry.

Mr. Martin: I merely let you look at them. I had better handle it this way, your Honor. These are all mixed up exhibit numbers.

By Mr. Martin.

Q. I hand you Commission's Exhibits for identification, Nos. 179, 180, 192, 193, 194, 195, 196, 197.

Mr. Albert: It is conceded that they have been sent by the parties who sent them and who appear to have sent them in the letters and to have been received by the parties to whom they were sent as appear in the letters.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 179, 180, 192, 193, 194, 195, 196, 197, and received in evidence.)

9779

Examiner Bennett: Objection overruled. Received in evidence.

Mr. Albert: Exception.

Examiner Bennett: As to the numbers indicated.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 184, 185, 186, 187, 188, 189, 190, 191, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208 and 209, were received in evidence.)

Examiner Bennett: We will take a recess of ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

9780

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 223 for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. It is a letter from me to Mr. George M. Gleason, dated April 22nd, 1935.

Mr. Martin: I offer this in evidence.

Mr. Albert: This is objected to, may it please the Court, upon the ground it is purely an inter-office

communication between Mr. Fletcher and Mr. Gleason, the subject matter of which is not binding upon the respondent, Fashion Originators Guild of America; further, upon the ground that it concerns purely local matters, intrastate in character, not within the Federal Trade Commission complaint, nor within the jurisdiction of the Federal Trade Commission.

Mr. Marshall: Same objection for Michigan Avenue Guild, Mr. Gleason at that time having been president of the Michigan Avenue Guild.

Examiner Bennett: Overruled, and received.

(The document referred to, heretofore marked 9782
for identification Commission's Exhibit 223, was received in evidence.)

Mr. Martin: I will ask that this be marked for identification as Commission's Exhibit 828.

(The document referred to was marked Commission's Exhibit 828 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 828 for Identification and ask you can you identify that? A. Yes.

Q. What is it? A. It is a letter from me to Mr. Marshall.

Q. Under what date? A. Under date of May 17, 1934. 9783

Mr. Martin: I offer it in evidence as Commission's Exhibit No. 828.

Mr. Albert: This is objected to, may it please the Court, upon the ground it is purely an interoffice communication between Mr. Fletcher and the attorney for the Michigan Avenue Guild; on the further ground that it concerns matters purely local

in character, of an intrastate nature, not within the Federal Trade Commission complaint, nor within the jurisdiction of the Commission; and, upon the further ground that it concerns matters long antedating the period which is the subject of the Federal Trade Commission's complaint, and that the subject matter of this particular letter has long been superseded by the agreement between the F.O.G.A. and the Michigan Avenue Guild now in evidence as Commission's Exhibit 5, now in force; by reason of all of which this particular exhibit becomes entirely immaterial and irrelevant.

9785 Mr. Marshall: Same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 828, was received in evidence.)

Mr. Martin: Mark this for identification.

(The papers referred to were marked Commission's Exhibits Nos. 829-A to J, inclusive, for Identification.)

By Mr. Martin.

9786 Q. I hand you Commission's Exhibit No. 829-A to J, and ask, can you identify it.

Mr. Albert: That is conceded to be the previous contract entered into between the Michigan Avenue Guild and the F.O.G.A, prior to the one now in evidence.

The Witness: Yes.

Mr. Albert: Commission's Exhibit No. 5.

Mr. Martin: I offer it in evidence.

Mr. Marshall: Dated December 17th, 1932.

Mr. Martin: I now offer in evidence Commission's Exhibit No. 829-A to J, and agreement entered into between the Michigan Avenue Guild and the Fashion Originators Guild of America, Inc., under date of December 17, 1932.

Mr. Albert: That is objected to, if it please the Court, as being only irrelevant and immaterial to the proceedings now pending before the Commission, as being an agreement long antedating the period covered by the Federal Trade Commission's complaint, and an agreement which is long since in expiration. 9788

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild. We ask leave to withdraw the original and substitute a photostatic copy.

Examiner Bennett: Yes; that may be done.

(The papers referred to, heretofore marked for identification Commission's Exhibits Nos. 829-A to J, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, were there any other contracts or agreements between the Michigan Avenue Guild and the Fashion Originators Guild other than the one under date of December 17th and the one which is in effect now? A. No, sir. 9789

Q. Referring to Commission's Exhibits Nos. 208 and 209; 209 being a letter from Mr. Golby to you under date of January 11th, 1935, and requesting that you notify the retail members of the resignation of Arthur Weiss & Company from the Fashion Originators Guild; did you notify your Guild members? A. I am not positive.

Q. See if that will help you any. You told him you would (indicating Commission's Exhibit No. 208). A. I may have told him I would, but I am not positive.

Q. You don't know whether you did or not? A. No, sir.

Q. Is Harriet Stein a member of the Guild at this time? A. Yes, sir.

Q. Referring to a letter from Miss Stein to you under date of January 14th, 1935, Commission's Exhibit No. 204, I note the following language: "I wish to advise the Executive Board of the Michigan Avenue Guild that I have, effective January 14th, taken Suite 301 at the Belmont Hotel as my living quarters, and will retain Suite 263 for business purposes only." Does that comply with the regulations of the Michigan Avenue Guild?

9791 Mr. Albert: That is objected to, if it please the Court.

Mr. Marshall: Object.

Mr. Albert: Immaterial and irrelevant, concerning matters purely local in character, no connection with the F.Q.G.A. has been shown, and a matter long since passed and completely a dead issue.

Examiner Bennett: Overruled. You may answer.

The Witness: Yes, the second floor has a commercial aspect.

By Mr. Martin.

Q. You mean of that particular hotel? A. Yes, sir.

9792 There are other businesses on that floor.

Q. Yes. Was the application of Bessie I. Barnett for membership in the Michigan Avenue Guild ever accepted? A. Yes, sir.

Q. Did she change her place of business to conform to the rules and regulations of the Michigan Avenue Guild? A. She changed her place of business.

By Mr. Martin.

Q. Does the Michigan Avenue Guild employ a local shopper? A. No, sir.

Q. Does the Fashion Originators Guild have a shopper in Chicago? A. Yes, sir.

Q. Does the Michigan Avenue Guild pay any part of the expenses of that shopper? A. No, sir.

Q. Does this shopper shop stores which are members of the Michigan Avenue Guild? A. Yes, sir.

Q. Who is the shopper? A. Miss Helen Kindler.

Q. Does Miss Kindler make any report to you of her activities? A. No, sir.

9794

Q. Does the Fashion Originators Guild make any report to you of Miss Kindler's activities? A. No, sir.

Q. Do you report to the Fashion Originators Guild any violations by your members of the Michigan Avenue Guild rules and regulations? A. On recommendations of the Board of Directors, such reports are made.

By Mr. Martin.

Q. Do you request the Fashion Originators Guild to take any action relative to these violations?

Mr. Albert: Same objection.

Examiner Bennett: Same ruling.

A. That depends upon the recommendation of the Board.

9795

Q. Does the Fashion Originators Guild enforce your rules and regulations?

Mr. Albert: That is objected to, if the Court please, as calling for the conclusion of the witness with respect to what action the F.O.G.A. takes.

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

A. Such an occasion has never come to pass.

By Mr. Martin.

Q. Have any retail stores who are members of the Michigan Avenue Guild ever been red carded by the F.O.G.A. for violations of the rules and regulations of the Michigan Avenue Guild?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: He has answered.

Cross-examination by Mr. Albert.

Q. Is it not a fact, Mr. Fletcher, that the interpretation
9797 of Commission's Exhibit No. 5, as between the Michigan Avenue Guild and the Fashion Originators Guild, is that the members of the Fashion Originators Guild are privileged to sell merchandise to retailers who agree either by signing a declaration of co-operation or by declaring it to be their policy to abide by the standards of ethical conduct set up by the Michigan Avenue Guild and the F.O.G.A., even though such retail establishments may not be members of the Michigan Avenue Guild?

Mr. Martin: Objected to as calling for a conclusion of the witness.

Mr. Albert: If it please the Court, that is the interpretation of the specific parties to this agreement.

9798 Examiner Bennett: I am going to let him answer.

The Witness: That is a fact and practice.

By Mr. Albert.

Q. And is it not a fact, Mr. Fletcher, that in practice since the adoption of this agreement, the members of the F.O.G.A. have been selling their merchandise to retailers in the district embraced by the Michigan Avenue Guild who are not members of the Michigan Avenue Guild but

who have signified their willingness to abide by the standards of ethical conduct set up by the Michigan Avenue Guild and the F.O.G.A.?

Mr. Martin: And have signed a declaration?

By Mr. Albert.

Q. Have either signed a declaration or have signified their intention of abiding by the principles? A. That is a fact.

Mr. Albert: That is all.

By Examiner Bennett. 9800

Q. How do they signify their intention of complying? A. In the conduction of their business.

Q. Well, how? In what specific way do they signify their intention of complying? A. By signing a declaration of co-operation.

Q. There is only one class, then, the class who sign declarations of co-operation; is that true? A. Only one class of——

Q. Only one class of those gentlemen who are not considered as members of the Michigan Avenue Guild? A. Anyone who signs a declaration of co-operation can buy Guild merchandise from Guild manufacturers.

Q. And that is the way in which they indicate their co-operation? A. Yes, sir. 9801

(Whereupon, at 4.25 o'clock P. M., Eastern Standard Time, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock Eastern Standard Time the following day, being Thursday, September 10th, 1936.)

Room 1123, New Post Office Building,
433 West Van Buren Street,
Chicago, Illinois,
September 10, 1936.

Met, pursuant to adjournment, 10 o'clock A. M., E.S.T.

Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

9803 PROCEEDINGS.

Examiner Bennett: Be in order, please.

LOUIS E. KLEIN was thereupon called as a witness for the Commission, and, having first been duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Mr. Klein, will you please state your name? A. Louis E. Klein.

Q. And your residence? A. Peoria, Illinois.

Q. What is your occupation, Mr. Klein? A. Vice-president of D. W. Klein Company, Peoria, Illinois.

9804 Mr. Albert: May it please the Court, may I make a statement?

I wish to again enter a protest on behalf of the respondent F.O.G.A. to the actions of the Commission in bringing to Chicago a witness with respect to a store in Peoria, Illinois, without any notice whatsoever to the respondent Fashion Originators Guild except as I shall hereinafter note; as a result of which the respondent Fashion Originators Guild

has none of its correspondence or any of its records covering this particular store, and by reason of which it will be most difficult for the respondent to cross-examine.

I believe that Mr. Martin informed me yesterday, off the record, that he intends to put one more witness on the stand from Peoria. We wired to New York in an attempt to get information with respect to the store, and have as yet received no reply.

As a result thereof, your Honor, I respectfully request that, in the event this witness should, in my opinion, testify to anything that requires cross-examination, that we have a right to reserve our 9806
cross-examination and subpoena this witness to appear in New York to give his testimony.

Mr. Martin: I would like to state, if your Honor please, that Mr. Albert asked me on Tuesday what witnesses I had, and I told him, as early as Tuesday, that I would have a witness here from Peoria, Illinois.

Mr. Albert: But you were not sure you were going to put him on. Yesterday you first told me definitely you were going to put him on, and that is when I wired.

Mr. Martin: I don't think it is the duty of the Commission's attorneys to inform the respondent as to what witnesses they are going to use. However, 9807
I did put him on notice as early as Tuesday that I was contemplating calling a witness from Peoria, Illinois.

Mr. Albert: The record is clear on that, I believe, your Honor.

Examiner Bennett: You may proceed.

Mr. Martin: Will you read the last question and answer?

(Last question and answer read.)

By Mr. Martin.

Q. What business is D. W. Klein Company engaged in? A. Ready-to-wear merchandising.

Q. How long have you been vice-president? A. I have been an official of the company for the past five years.

Q. How long have you been with the company? A. Twenty years. I have been an official for twenty years, but it was reorganized.

Q. Does the store handle women's dresses and suits? A. Yes, sir.

Q. Misses' also? A. All kinds.

Q. In what price lines, at wholesale, cost price? A.
9809 In the upstairs departments, from $4.75 to $29.75.

Q. Do you have a basement store? A. A basement store, yes, sir.

Q. What price lines there? A. $6.75 down, on dresses.

Q. Do you have anything to do with the buying end of the business? A. I buy all the dresses, ensembles and knit goods.

Q. Now, Mr. Klein, did you ever hear of the Fashion Originators Guild of America? A. Yes, sir.

Q. When did you first hear of it? A. When it was first organized.

Q. Did you ever sign any declaration of co-operation with the Fashion Guild? A. Yes, sir.

Q. Do you recall when you signed that? A. I would
9810 not recall the exact date.

Q. Could you give me the approximate date? A. I couldn't tell. I think you have got it down there. I cannot remember the exact date. I know it was shortly after the Guild was organized.

Q. Would you say, then, it was some time in 1933? A. If that is when the Guild was organized, I believe it was in the following season after it was organized.

Q. Why did you sign this declaration of co-operation?

Mr. Albert: That is objected to, as immaterial and irrelevant. There is no testimony or foundation laid to the effect that the witness signed the declaration, or that he knows who, on the part of the store, signed it.

We have a general statement here by the witness, which I presume, without explanation, refers to the fact that the store signed the declaration. The witness has, I believe, in passing, made reference to the fact that Mr. Martin has the declaration there, and I think that certainly would have been much simpler, and saved time, if that declaration had been put in. I certainly would not have ob- 9812
jected to it.

Mr. Martin: You are very kind.

Examiner Bennett: He may answer.

Mr. Albert: Exception.

Mr. Martin: Read the question, please.

(Question read by the reporter.)

The Witness: To secure merchandise from houses that were organized under the F.O.G.A.

By Mr. Martin.

Q. Had you been advised that it was necessary for you to sign this declaration in order to be able to purchase from Guild houses?

Mr. Albert: That is objected to, if the Court 9813
please, and I ask the Court to admonish Mr. Martin not to lead the witness. It is his witness. It is the second leading question that has been put, and, I think, at this stage of the game, such type of questions are known by Mr. Martin to be objected to by the respondent, and I respectfully ask that the objection be sustained as to the form of the question. We want testimony from the witness, not from Mr. Martin.

9814 *Louis E. Klein—For Commission—Direct.*

Examiner Bennett: He may answer.
Mr. Martin: Read the question.
(Question read by the reporter.)
The Witness: Naturally.

By Mr. Martin.

Q. Now, after signing this declaration, Mr. Klein, did you co-operate with the Fashion Originators Guild? A. Yes, sir.

Q. Did you return garments when requested by the Guild to return the same? A. There was only one cause for return; and at the time, the garment was sold, so it was
9815 impossible to return it.

Q. Have you ever been red carded by the Fashion Originators Guild? A. Yes, sir.

Q. Do you recall when it was? A. You mean the exact date?

Q. The approximate date? A. I think it was in about April, 1935.

Q. Why were you red carded, if you know? A. We received a letter regarding a certain copy of a dress, and, in the interim, the dress was sold. However, we re-ordered the dress, or, rather, the dress was on order, I will change that statement, the dress was on order, and it was received, and before we had an opportunity of returning it, it was again sold.

9816 Q. And, as a result of that incident, you were red carded? A. Yes, sir.

Mr. Martin: Mark these for identification Commission's Exhibits 830-A and B, 831, 832-A and B, and 833.

(The documents referred to were marked Commission's Exhibits 830-A and B, 831, 832-A and B, and 833 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 830-A and B for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. It is a reply, it is a letter from the Fashion Originators Guild to L. E. Klein of Peoria, regarding a dress.

Q. Do not say what it is about. What date is it on? A. April 25, 1935.

Q. I hand you Commission's Exhibit 831 and ask you can you identify that? A. Yes, sir.

Q. What is it? A. April 27th, 1935.

Q. A letter from whom to whom? A. A copy of a letter 9818
to the Fashion Originators Guild, signed by our controller.

Q. Was this letter, of which Commission's Exhibit No. 830-A is a copy, received by your firm? A. Yes, sir.

Q. Is this letter, Commission's Exhibit No. 831, a copy of a letter which your store wrote in reply to this letter? A. Yes, sir.

Q. Was this letter mailed, sent out from your store? A. I presume so.

Q. I hand you Commission's Exhibit No. 832-A and B for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. April 29th.

Q. Is it a letter? A. A letter from the Fashion Origi- 9819
nators Guild to Klein, Peoria.

Q. I hand you Commission's Exhibit 833 and ask you can you identify that? A. I do.

Q. What is it? A. Declaration of co-operation, Fashion Originators Guild and our store.

Q. And is that the declaration which is referred to in Commission's Exhibit No. 832-A? A. Yes, sir.

9820

Q. Was this letter, No. 832-A, and Exhibit 833 received by your firm from the Fashion Originators Guild? A. Yes, sir.

Mr. Martin: I offer in evidence Commission's Exhibits 830, 831, 832 and 833.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 830, 831, 832 and 833, were received in evidence.)

By Mr. Martin.

9821

Q. Now, Mr. Klein, when the letter, which is Commission's Exhibit No. 832-A and B, was received, which letter advised you that the declaration of co-operation was being returned, what did you do? A. We requested a reinstatement.

Q. Do you have a New York office? A. Yes, sir.

Q. Who at that time was your— A. Affiliated Buying Service.

Q. Did you take the matter up with F.O.G.A. direct, or how did you take it up? A. Well, as far as my recollection is concerned, we took it up with the F.O.G.A. direct originally.

Q. And— A. However, later we—after some discussion we had, we took it up with our New York office.

9822

Mr. Martin: Give those exhibit numbers, will you?

(The papers referred to were marked Commission's Exhibits 834, 835, 836, 837, 838 and 839 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 834 for Identification and ask can you identify that? A. I do.

Q. What is it? A. It is a letter from the New York office to Klein's, Peoria, Illinois, dated May 6th, 1935.

Q. Now, pursuant to that letter, did you take any steps towards rejoining the Guild?

Mr. Albert: Resigning the declaration, Mr. Martin.

Mr. Martin; O.K.

By Mr. Martin:

Q. Signing up a new declaration? A. I will have to look at that letter again.

Q. I hand you Commission's Exhibit No. 835 for Identification. See if you can identify that. A. Dated May 8th, to the Fashion Originators Guild from Klein's of Peoria, Illinois. 9824

Q. I hand you Commission's Exhibit No. 836 for Identification and ask can you identify that? A. I do.

Q. What is it? A. It is a letter to Klein's from the Fashion Originators Guild returning our——

Q. Under what date? A. June 27th, 1935.

Q. I hand you Commission's Exhibit No. 837 and ask can you identify that? A. I do. July 9th, from the Affiliated Buying Office to Klein's, Peoria, Illinois.

Q. Commission's Exhibit No. 838. Can you identify that, and if so, what is it? A. I do. A letter from the Affiliated Buying Company to Klein's, Peoria, Illinois, dated July 29th, 1935. 9825

Q. And Commission's Exhibit No. 839. A. A letter from the Fashion Originators Guild of America to Klein's, Peoria, Illinois, dated July 30th, 1935.

Q. Now, referring to Commission's Exhibit No. 834, were any steps taken towards signing up a new declaration with the Guild pursuant to that letter?

Mr. Albert: That is objected to, if it please the Court. Obviously the letter is something that re-

9826 *Louis E. Klein—For Commission—Direct.*

fers to his steps, and is the best evidence of the substance matter thereof, and I believe we can save some time if it is offered in evidence rather than have this procedure of having a witness testifying orally and then putting in the best evidence to substantiate the oral testimony.

Mr. Martin: I don't think that happens to be true in this case, Mr. Albert.

Mr. Albert. Then it certainly can't refresh his recollection if it isn't true.

By Mr. Martin.

9827 Q. Did you take any steps pursuant to that letter? A. Not that I know of.

Mr. Martin: I offer in evidence Commission's Exhibit No. 834.

Mr. Albert: This is objected to, if it please the Court. It is in no way binding upon the Fashion Originators Guild, being the substance of a communication between his store and some third party as yet, I believe, not even appearing in the record. I am not certain of that.

Mr. Martin: Oh, no.

Mr. Albert: But certainly a third party.

Mr. Martin: It tells who the third party was and what relation they bore to this store.

9828 Mr. Albert: But certainly a third party, if it please the Court, and their remarks are in no way binding upon the Fashion Originators Guild. No proper foundation has been laid with respect to the mailing of this letter. It is impossible for the respondent to cross-examine the party who wrote this letter.

Mr. Martin: If your Honor please, this witness has testified that the writer of that letter was the

New York office, who had been negotiating with the F.O.G.A. on behalf of this store's—for reinstatement.

Mr. Albert: If it please the Court, it is purely an inter-office communication, even if it is his New York office. We are not bound by the hare-brained, scattered remarks of their office boys in letters to one another. The writer of the letter doesn't even know whom he spoke to at the Fashion Originators Guild.

Examiner Bennett: Overruled. Received.

(The papers referred to, heretofore marked for identification Commission's Exhibit 834, was re- 9830
ceived in evidence.)

By Mr. Martin.

Q. Did you, subsequent to that date, make application, your store, for reinstatement? A. We did.

Mr. Martin: I offer that as Commission's Exhibit No. 835.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 835, was received in evidence.)

9831

By Mr. Martin.

Q. Now, as a result of your request for reinstatement, what action was taken by the Guild? A. I think the letters explain that.

Q. Were you reinstated? A. Yes, sir.

Q. Were any restrictions placed upon you before you were reinstated? A. Not that I know of, except as explained in the letters.

Mr. Albert: Mr. Martin does not like the letters.

Mr. Martin: Well, I offer all of those in evidence, your Honor. See if you like them.

Mr. Feldman: We like them.

Mr. Albert: Commission's Exhibits Nos. 837 and 838 are objected to, if it please the Court, as being in no manner binding upon the respondent F.O.G.A., being merely inter-office communications, being most indefinite in statements, being entirely irrelevant, immaterial and incompetent to these proceedings.

9833 I further object to the admission of Commission's Exhibit No. 837 and 838 by reason of the fact that they refer to letters from Mr. Klein to the Affiliated Buying Corporation; that they refer to enclosures, none of which have been offered by the Commission in explanation of the specific exhibits that have been offered into evidence.

(The exhibits referred to were handed to the Examiner.)

Mr. Albert: I call your Honor's attention to the fact that not one of those exhibits specifically refer to an enclosure being returned.

Mr. Martin: I think his Honor is capable of reading it as well as you are, Mr. Albert.

Examiner Bennett: Overruled. I will receive all of them.

9834 Mr. Albert: Exception.

Examiner Bennett: All of these documents from Commission's Exhibit No. 836, 837, 838 and 839.

(The papers referred to, heretofore marked for identification Commission's Exhibits 836, 837, 838 and 839, were received in evidence.)

By Mr. Martin.

Q. Why did you re-sign a declaration with the Guild?

Mr. Albert: That is objected to as immaterial and irrelevant.

Examiner Bennett: Overruled. You may answer.

The Witness: For the same reason that we signed it in the first place.

By Mr. Martin.

Q. Which was? A. To secure that class of merchandise.

Q. Have you co-operated with them since that date? A. Yes, sir. 9836

Q. You have not been red carded at any time? A. Not since that time.

Q. —since that time? Since that date have they ever requested you to return garments as being copies? A. No, sir.

Mr. Martin: That is all.

Cross-examination by Mr. Albert.

Q. Did you turn over your files in this case to the Federal Trade Commission?

Mr. Martin: I object to that; same objection.

Mr. Albert: If your Honor please, I want to find out where these letters are that are missing here, 9837 that have not been presented.

Mr. Feldman: They are highly germane to the issues of the case.

Mr. Albert: We have six or seven letters here that have been placed in evidence, that refer to other letters, letters that have gone into evidence without the enclosure of these letters. I think I have a right to find out where they are.

Examiner Bennett: If that is the purpose, go ahead. Overruled.

Mr. Albert: Will you read the question, please?

(Question read by the reporter.)

The Witness: According to some correspondence there, I believe that such is the case.

By Mr. Albert.

Q. Did you turn over any correspondence, in addition to these letters that have been shown to you this morning? A. All correspondence, we have no correspondence left at home.

9839 Q. Then you turned over everything you had with the Fashion Originators Guild to the Federal Trade Commission, is that correct? A. Not exactly, I couldn't answer that statement, because they are only in possession of those letters there, as far as I know.

Q. Did you get a receipt from the Federal Trade Commission as to what you turned over to them? A. No.

Q. Have you asked for one? A. No.

Q. Have you a letter dated April 25 from the Fashion Originators Guild to Klein's? A. You are asking me the question?

Q. Yes. A. I answered you before by stating the fact that we had no correspondence whatsoever in our files at the present time.

9840 Mr. Albert: I ask the Federal Trade Commission to produce a letter dated March 21 from Fashion Originators Guild to Klein's, Peoria, Illinois.

Mr. Martin: The Federal Trade Commission replies that it has not the letter, and it has never been in its possession, and therefore it cannot produce it.

I will further, for the benefit of counsel, read from a letter to Klein, or, rather, a letter from Klein

to the Federal Trade Commission investigator under date of December 16th.

Mr. Albert: Not unless you are going to put it in evidence, or offer it.

Mr. Martin: All right. Read it, then, for your own information.

(Handing document to Mr. Albert.)

Mr. Martin: I have no objection to putting it in evidence. If you want it, I will put it in.

Mr. Albert: I offer the letter in evidence.

Mr. Martin: All right.

Examiner Bennett: All right. It may be received. 9842

(The letter referred to was marked Respondents' Exhibit 74 and received in evidence.)

Mr. Albert: I call upon the Commission to produce letter dated March 23rd from Klein's to the Fashion Originators Guild as referred to in Commission's Exhibit 830-A.

Mr. Martin: If your Honor please, I reiterate my statement, that those letters are not and never have been in the Commission's possession, as is shown by Respondents' Exhibit No. 74 in evidence, all correspondence which has been in the hands of the Commission relative to this store is now in evidence. 9843

By Mr. Albert.

Q. Mr. Klein, if we may interrupt your reading of the newspaper, have you got such a letter? A. No, sir. As I said before, we have no correspondence whatsoever.

Q. In other words, you destroyed the correspondence, or threw it out, or it is missing?

Mr. Martin: Objected to as irrelevant and immaterial.

Mr. Albert: Since when is the destruction of any evidence immaterial?

Examiner Bennett: I will let him answer.

By Mr. Albert.

Q. What happened to the letter, do you know? A. What letter are you talking about?

Q. Letter of July 7th, from your firm to the Affiliated Buying Corporation. A. All letters that were in the file at the time were turned over to the Federal Trade Commission.

Q. Was that letter in the file at that time? A. You will
9845 have to search me. I wasn't there.

Q. So you haven't the slightest idea of what you turned over to the Federal Trade Commission, have you? A. That's right.

Q. One way or the other? A. All letters at the time, referring to the mail that was in our possession at the time, were turned over to the Federal Trade Commission.

Q. Has anybody in Klein's got a record of the letters that you turned over to the Federal Trade Commission? A. I doubt it.

Mr. Martin: That is objected to, your Honor. This witness has testified three times in a row, under constant repetition by Mr. Albert, that all correspondence that they had was turned over to the
9846 Federal Trade Commission.

Now, I submit that is a full and complete answer.

Mr. Albert: Very full and very complete, and very enlightening.

I call upon the Commission to produce letter dated July 26, from the Klein store to the Affiliated Buying Corporation.

Mr. Martin: I have no further statement to make, your Honor. I have made all the statements on this line of questioning I propose to make.

Mr. Albert: Am I to presume——

By Mr. Albert.

Q. What is your name? A. Klein.

Q. Am I to presume, Mr. Klein, that you know nothing about the whereabouts of the letter of July 26th from the Klein store to the Affiliated Buying Corporation?

Mr. Martin: Objected to as irrelevant and immaterial, and already having been answered.

Examiner Bennett: Sustained. 9848

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Klein, the Klein store subscribes to an ethical practice in the conduct of its business, does it not? A. It does.

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: I will let him answer.

Mr. Martin: You may answer.

The Witness: I did answer.

By Mr. Albert.

Q. And you subscribe to the policy of honest dealing with your customers and with your manufacturers, that is, on both ends? 9849

Mr. Martin: Same objection.

Examiner Bennett: I will let him answer.

Mr. Martin: Go ahead.

The Witness: Shall I answer?

Examiner Bennett: Yes, please.

The Witness: Yes.

By Mr. Albert.

Q. Klein's store does not affix its signature, nor permit its name to be used in connection with any written representation of it unless it sincerely believes what it subscribes to, does it? A. It does not.

Q. That is, you do not sign anything that becomes a representation of yours unless you mean what you say, isn't that so? A. It is.

Q. And you want the public to know that you stand behind your signature whenever you put it on anything, is that so? A. We do.

9851 Q. I show you Commission's Exhibit No. 833 and ask you what prompted you to sign the declaration of co-operation?

Mr. Martin: Objected to as irrelevant and immaterial, already having been answered.

Examiner Bennett: I will let him answer.

The Witness: You say I can answer?

Examiner Bennett: Yes, answer.

The Witness: That was answered before.

By Mr. Albert.

Q. Is that the only reason that prompted you to sign the declaration of co-operation? A. What reason?

Q. Don't you know the reason you gave? A. You said, "What is the reason?"

9852 Q. What is the reason that you say you answered it before? What is the reason that you gave before as to the reason that you joined the Guild? A. It is in the record.

Q. Don't you remember? Can't you repeat it? A. Certainly, but it is in the record right there.

Q. Now I ask you to indulge me for a moment and tell me what prompted you to sign the declaration of co-operation. A. In order to get merchandise sold by the Fashion Originators Guild.

Q. Is that the only reason that prompted you to sign that declaration of co-operation?

Mr. Martin: Objected to. He has already answered the question.

Examiner Bennett: He may answer.

The Witness: That covers a multitude of thought.

By Mr. Albert.

Q. Would you mind enlightening us a bit on that as to your thought? Be a little more specific. A. In order to secure this merchandise that we could make a profit on, in order to secure that certain type of merchandise that we handled in the store, or had handled; otherwise we would not have been able to secure that type of merchandise. 9854

Q. Is there anything else, aside from the desire to achieve the ultimate result of obtaining merchandise from Guild manufacturers, that prompted you to sign that declaration of co-operation?

Mr. Martin: That is objected to as having been answered. He has answered that same question now three times, if your Honor please.

Examiner Bennett: Read the last question.

(Question read by the reporter.)

Examiner Bennett: You may answer that. Overruled. 9855

The Witness: To secure models that we would not have been able to secure elsewhere, original designs and workmanship of the character that these type of manufacturers manufacture, these type of factories manufacture.

By Mr. Albert.

Q. Is there anything else? A. Well, we believe that in purchasing our merchandise from these type of manufac-

turers, that we were giving our customers the best in design and modeling and value, with other such qualifications.

Q. Is there anything else? A. I think that covers a lot.

Q. Is there a possibility that you also signed the declaration in order to protect your customers when they purchased these best designs and models and everything else that you have spoken about?

Mr. Martin: Objected to. He has already testified, and in his last answer, for the fourth time, he said that covered a lot of reasons.

9857 Mr. Albert: This is cross-examination.

Examiner Bennett: It is cross-examination. Go ahead. He may answer.

The Witness: Read that question again.

(Question read by the reporter.)

The Witness: Naturally, we thought we were giving our customers the best value by buying from these particular manufacturers.

By Mr. Albert.

Q. Mr. Klein, who told you to say that you signed the declaration of co-operation in order to obtain merchandise from Guil manufacturers?

Examiner Bennett: Do not answer that.

9858 Mr. Martin: That is objected to.

Examiner Bennett: Do not answer that. You have not established, nor does the record indicate, nor is there anything in the record indicating, that anybody told him to say that.

Mr. Albert: I will change the question.

By Mr. Albert.

Q. Did anyone tell you what to say——

Mr. Martin: That is objected to as immaterial.

By Mr. Albert.

Q. —as to the reasons why you signed the declaration of co-operation?

Examiner Bennett: He may answer that question.

Mr. Albert: Will you read the question to him?

(Question read as follows: "Q. Did anyone tell you what to say as to the reasons why you signed the declaration of co-operation?")

By Mr. Albert.

Q. You seem to hesitate. Aren't you certain as to your 9860
testimony? A. I don't get the question.

Mr. Martin: I suggest you allow him time to answer.

The Witness: You mean at this time, or at the time I signed this declaration, or in the interim, or when?

By Examiner Bennett.

Q. We are trying to find out whether anybody instructed you how to testify in this case to-day. A. No.

Mr. Albert: That is all I wanted to know, Mr. Klein.

The Witness: You didn't mention the time, so 9861
consequently I couldn't state the correct answer.

Examiner Bennett: That is what he seemed to have in mind.

By Mr. Albert.

Q. I show you Commission's Exhibit 833 and ask you what was meant by you when you signed the following: "Believing the principles declared by your members and

your affiliates to be proper for the protection of the retailers and the manufacturers, we wish to go on record as to our own fixed business policy"? A. So what?

Q. So what? A. Yes.

Q. So this: You have signed a document, have you not? A. Yes.

Q. That is the document that you signed? A. Yes, sir.

Q. There is a statement in the document? A. Yes, sir.

Q. Did you know what you were signing when you signed it? A. Yes.

Q. What did you know about what you signed when you signed it? A. What would you like to know?

9863 Q. Your conception of what is in that document. You don't sign things without knowing what you are signing, do you? A. Absolutely not.

Q. All right. What do you know about the meaning of that statement when you signed it? A. Exactly as stated here within the copy. That is very explicable, isn't it?

Q. That is very explicable. In what way were you protecting the public when you signed this document?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: I will let him answer.

The Witness: Answer?

Mr. Martin: Yes, sir. You may answer, if you

9864 know.

The Witness: I will ask the——

By Mr. Albert.

Q. No. I am asking the questions, Mr. Klein. You answer that. A. Well, I want you to explain it. Sometimes it is difficult to answer a question when you ask one to take some encyclopedia to answer it. After all——

Q. If you think you are capable of writing or speaking as an encyclopedia, do so. A. That is true, but then your statement, you say how we protect our customers.

Q. Yes. A. That was the statement?

Q. That is right. How do you protect your customers when you signed that declaration? A. Why, selling them original styles that we hope that no one else will have a copy of.

Q. And was that what prompted you in any way to sign that declaration of co-operation?

Mr. Martin: Objected to. He has already answered that question, not once, but a dozen times.

Examiner Bennett: I will let him answer. 9866

Mr. Albert: For the thirteenth time. He has been caught in a position now where he has to change his answer, your Honor. I submit that that is the object of cross-examination. I am not bound by what the witness tells me on cross-examination.

Mr. Martin: I move that that latter remark be stricken. There is no evidence here that he has been caught in a position where he has got to change his testimony.

Examiner Bennett: Overruled. He may answer.

The Witness: Let me have the question again.

Mr. Albert: Would you mind reading the last answer and then the question which followed?

(The record was read.) 9867

The Witness: That is one of the reasons.

By Mr. Albert.

Q. Exactly. That is all I wanted, Mr. Klein. So that is an additional reason to the one that you previously stated, is that so? A. Exactly.

Q. Would you mind explaining what was your conception of the necessity of protecting your customers from

having the original designs of dresses which they purchased in your store copied by others?

Mr. Martin: Objected to as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will let him answer, if he can answer it.

The Witness: Repeat that question again.

(The question was read.)

The Witness: We found that many women expected in higher-priced garments to have styles that would not be able to be purchased elsewhere for less. Is that the question—is that the answer?

9869

By Mr. Albert.

Q. Yes. And those dresses that were purchased elsewhere, was it your conception were copies of the original designs that you had at a higher price?

Mr. Martin: Objected to, not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

The Witness: Yes, sir.

By Mr. Albert.

Q. Would you say that this copying of dresses that you had at a higher price was an evil of the industry at that

9870 time?

Mr. Martin: Objected to as irrelevant and immaterial to the issues in this case.

Examiner Bennett: I will let him answer.

The Witness: Yes.

By Mr. Albert.

Q. And was not that evil at that time injuring your business? A. Yes.

Mr. Albert: No further questions.

Mr. Martin: That is all. Oh, just one or two questions.

Redirect examination by Mr. Martin.

Q. Where did you get this paper from originally, Mr. Klein (indicating Commission's Exhibit 833)? Was that document prepared in your office in your store? A. As far as I know, this is a copy of the declaration that I signed in New York City.

Q. Who gave you the declaration?

9872

Mr. Albert: Objected to as immaterial and improper redirect.

Examiner Bennett: Overruled.

Mr. Martin: You may answer.

Examiner Bennett: You may answer.

The Witness: The girl in the office of the Fashion Originators Guild.

Mr. Martin: That is all.

Mr. Albert: That is all.

(Witness excused.)

ALEXANDER H. MARSHALL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows: 9873

Direct examination by Mr. Martin.

Q. Will you state your name, residence and occupation? A. Alexander H. Marshall; reside at 120 Beach Road, Glencoe, Illinois. I am a lawyer, practicing in Chicago.

Q. Are you the attorney for the Michigan Avenue Guild? A. I am.

Q. How long have you held that position? A. Approximately four years, since its inception.

Q. Did you prepare the charter and by-laws at the time of its incorporation? A. I did.

Q. There was introduced in evidence yesterday, Mr. Marshall, a contract between the Michigan Avenue Guild and the Fashion Originators Guild, which bore the date of December 17th, 1932. I haven't the exhibit here available. It is being photostated. But you are familiar with the exhibit which I refer to? A. I am.

Q. Was that contract prepared by you? A. I collaborated in the preparation of the agreement.

9875 Q. Who did you collaborate with?

Mr. Albert: The same objection.

Examiner Bennett: Overruled. You may answer.

The Witness: With the then officers of the Guild, of the Michigan Avenue Guild.

By Mr. Martin.

Q. Was the contract finally drawn dated December 17th, 1932, the results of your collaboration with the officers of the Michigan Avenue Guild? A. Yes, sir.

Q. Was that contract then submitted by the Michigan Avenue Guild? A. Yes, sir.

Q. Was that contract then submitted by the Michigan Avenue Guild to the Fashion Originators Guild for their

9876 approval?

Mr. Albert: That is objected to as immaterial, if it please the Court. We are now speaking about a document that is no longer in force or effect.

Examiner Bennett: Overruled.

The Witness: I don't know. I prepared the document at the request of those interested in the Michigan Avenue Guild at that time as officers and I do not know when or how it was executed.

By Mr. Martin.

Q. Did you ever have any conferences with any of the officers of the F.O.G.A. prior to the signing of this agreement? A. No, I did not.

Q. Do you recall when that agreement expired?

Mr. Albert: The document speaks for itself, your Honor. It is in evidence.

Mr. Martin: The document is not available, as counsel for the respondent has withdrawn it to have it photostated.

By Mr. Martin. 9878

Q. Do you recall when the contract expired, Mr. Marshall? A. I think it had a life of two years, which would make it expire in December, 1934, I think.

Q. Upon the expiration of that contract was a new contract entered into immediately with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, as having been fully testified to by the previous witness, and the contract now referred to is now in evidence. The dates are something that is very easily comparable.

Examiner Bennett: I will let him answer.

Mr. Martin: You may answer.

The Witness: No, a new contract was not im- 9879
mediately executed.

By Mr. Martin.

Q. What happened when the original contract expired?

Mr. Albert: Now, if it please the Court, that is objected to as entirely immaterial. The witness for the Michigan Avenue Guild has fully testified with

respect thereto. Both contracts are in evidence and I strenuously object to the Commission wasting our time at this stage of the proceedings by putting in such cumulative evidence.

Examiner Bennett: I will overrule the objection.

By Mr. Martin.

Q. Go ahead, sir.

The Witness: May I have the question?

(The question was read.)

The Witness: Negotiations were carried on for a new contract.

9881

By Mr. Martin.

Q. By whom? A. Between myself and officers of the Michigan Avenue Guild and officers or agents of the Fashion Originators Guild.

Q. Where were those conferences held?

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Conferences were held in Chicago and there was one meeting in New York with persons representing the Fashion Originators Guild and their attorney.

By Mr. Martin.

9882 Q. Who represented the Fashion Originators Guild?

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Mr. Schiller was present at the meeting I refer to.

By Mr. Martin.

Q. What members of the Fashion Originators Guild were present? A. Mr. Post was present at the meeting.

Q. Anybody else? A. I think Mr. Golby was present, but I am not certain. He may have been present for a short time.

Q. Who appeared on behalf of the Michigan Avenue Guild? A. Mr. Gleason, who was then the president of the Michigan Avenue Guild, and I was there as counsel for the Michigan Avenue Guild.

Q. Do you recall when that meeting was had, Mr. Marshall? A. I couldn't place it definitely except to say that it was some time between December, 1934 and May, 1935.

Q. Well, was it in January? Do you recall, or can you place it as to the month? A. I don't think so. I don't recall. It was somewhere in that period of three or four months. 9884

Q. Well, had these conferences that you had in Chicago preceded the New York meeting?

Mr. Albert: Objected to as immaterial. What difference does it make?

Examiner Bennett: Overruled. You may answer.

The Witness: I believe they had.

By Mr. Martin.

Q. Now, after the expiration of the previous contract and prior to the adoption of the existing contract which is Commission's Exhibit No. 5, were any other contracts submitted by the Michigan Avenue Guild to the Fashion Originators Guild? 9885

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Not that I recall.

By Mr. Martin.

Q. This is the only one that was submitted to them (indicating)? A. Well, that I don't know. I don't know

that it was submitted. It represented the results of our meeting, discussion, and it was drafted. I don't recall whether my office drafted it or whether Mr. Keller's office drafted it, but it was not drafted—it was executed without any further changes. That represented the substance of the understanding.

Q. What took place? You say that this contract was either by your office or Mr. Keller's as a result of these conferences and negotiations. What took place at these conferences? What took place, we will say, at the New York conference?

9887 Mr. Albert: That is objected to, if it please the Court, as wholly immaterial and irrelevant, as to what was said at these conferences. What was said is contained in the contract.

Examiner Bennett: Well, I will let him answer, if he recalls.

The Witness: Well, frankly, I don't recall all that was said. There was a lot of conversation, discussion, of the provisions of the old contract, and discussion of the provisions, proposed provisions.

By Mr. Martin.

Q. Was there—excuse me. I didn't mean to interrupt you. A. I am through.

Q. Was a renewal of the old contract acceptable to the
9888 F.O.G.A.?

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, as irrelevant.

Examiner Bennett: I will let him answer.

The Witness: Well, I don't know that I can answer that. My recollection is that it was felt on both sides that the old contract was inadequate for the conditions as they existed at this time,

namely, in 1935, due to the fact that the law had changed and the N.R.A. was on the way out and the conditions were generally changed, and there was a feeling, I think, on both sides that the contract should be replaced by a different form of contract and——

By Mr. Martin.

Q. And this contract was the result of those negotiations (indicating Commission's Exhibit No. 5)? A. Yes.

Q. Referring to page 2 of Commission's Exhibit No. 5 and the numbered paragraph 1, which reads as follows: "Fashion Guild members will not sell their merchandise 9890
within the City of Chicago to such retailers as are not members in good standing of the Michigan Avenue Guild and/or to those retailers who do not observe the code of fair competition in the industry and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild," wasn't the N.R.A. still in effect when this contract was adopted? A. I think it was.

Q. Well, then, the conditions which you refer to were not changed by the status of the N.R.A. then, was it?

Mr. Albert: Objected to, if it please the Court, as being cross-examination of his own witness.

Examiner Bennett: I will sustain an objection to that question.

9891

By Mr. Martin.

Q. What other conditions had arisen which you referred to?

Mr. Albert: That is objected to, if it please the Court, as no proper foundation has been laid. The gentleman on the stand is a lawyer, not a manufacturer or a retailer.

Examiner Bennett: Overruled.

The Witness: Why, referring to trade conditions generally. For example, we had inquired of F.O.G. whether they felt they could properly confine the sales of their merchandise to M.A.G. members, and they advised us that they could not do so upon advice of their counsel. And consequently the paragraph you have referred to as paragraph 1 took the form that it did, so that there would be no confinement of merchandise, and it left the F.O.G. free to sell merchandise to many shops in Chicago who were not members of the M.A.G.

9893

By Mr. Martin.

Q. Were there any other conditions? A. I don't recall.

Q. Now, reading further, this paragraph I refer to goes on: "And/or to those retailers who do not observe the code of fair competition in the industry and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild. This provision is not to apply to such stores as are named in this hereto attached Exhibit A and hereby made a part hereof." Why were those stores listed in that exhibit?

Mr. Albert: That is objected to.

By Mr. Martin.

9894

Q. (Continuing) Excluded from the agreement?

Mr. Albert: That is objected to.

By Mr. Martin.

Q. (Continuing) From that provision?

Mr. Albert: That is objected to, if it please the Court. With all due respect to the witness, upon

the ground that he is incompetent to testify with respect thereto.

Examiner Bennett: Overruled.

Mr. Albert: The proper party to testify with respect to that were the members of the Michigan Avenue Guild and its executive secretary, who was here before on the stand; and, in addition, may I remark, Mr. Martin, that the witness on the stand is an attorney and has a right to plead his professional privilege if he so desires.

Mr. Martin: I would like to call to your Honor's attention that the executive secretary of the Fashion Originators—of the Michigan Avenue Guild was on 9896
the stand and was asked the same question which I am now asking Mr. Marshall, and he replied that he did not know.

Examiner Bennett: I will let him answer, if he knows.

The Witness: I don't know. It was understood between the——

By Mr. Martin.

Q. Go ahead, answer. A. It was understood between the officers of the two organizations that this list was to be set up in Exhibit A for the reasons best known to themselves and I followed their instructions in adopting that list. 9897

Q. Did Mr. Fletcher—was Mr. Fletcher present at any of these conferences? A. No, he was not.

Q. What officers of the Michigan Avenue Guild would know it? A. Well, the only officer who was then present was Mr. Gleason, who was then president of the Michigan Avenue Guild.

Q. He didn't communicate to you his reasons for making that exception? A. Well, I could only surmise. I don't recall any precise communications to that effect.

Q. What was your surmise? A. That the sources named in this exhibit were in an entirely different merchandising category and had problems that were entirely different from the problems of those shops which were members of the Michigan Avenue Guild, and that they did not desire the protection—that the shops which are members of the Michigan Avenue Guild—and that it was not necessary to have them in the agreement or subject to the agreement.

Q. Do you know whether or not those stores are shopped by the Guild shopper? A. I do not.

Q. Do you know whether or not those stores are required to return garments as being copies? A. I do not.

9899 of my own knowledge.

Q. None of the stores, I take it, are members of the Michigan Avenue Guild? A. No, they are not.

Q. Did the original contract between the two organizations include Evanston merchants, retailers? A. My recollection is that it did not do so expressly, but it was our impression—that is, it was the Michigan Avenue Guild's impression that it did include the Evanston shops, and there was some question later which developed as to whether it did or did not include the Evanston shops.

Q. What question arose later? A. The organization of a separate organization by the Evanston group.

Q. Have they a separate organization now? A. I don't know whether they have now, but they indicated—several of the Evanston shops indicated that they preferred not

9900 to be members of the Michigan Avenue Guild, but to have their own organization—retail organization of that type.

Q. And they are not now members of the Michigan Avenue Guild? A. I understand that there are one or two shops located in Evanston which have seen fit to continue their membership in the Michigan Avenue Guild.

Q. Now, during that period of time from December, 1934, up to the adoption of the present agreement, dated the 10th day of May, 1935, did the Michigan Avenue Guild

co-operate with the F.O.G.A.? A. In the sense that I understand your use of the word "co-operate," I would say that there was a measure of co-operation, because there was the expectation that the relationship would be continued in whatever new form it took in the new contract.

Q. What do you mean by the language of paragraph Four on page 3: "The Michigan Avenue Guild and its members agree that they will not purchase ready-to-wear merchandise from those manufacturers who shall not strictly observe the code of fair competition in the industry, and particularly those relating to working hours and minimum wage scales, and whose practices do not conform to the standards of ethics and regulations of Fashion 9902
Guild within the price and merchandise lines of Fashion Guild"?

Mr. Alber: That is objected to, may it please the Court. The agreement speaks for itself and the witness on the stand, in addition, is incompetent to testify with respect thereto, as to what is meant. The only proper parties who can interpret that agreement, as to what is meant, are the parties to the agreement, in so far as the present line of inquiry is concerned.

By Examiner Bennett.

Q. Have you any knowledge as to how that was interpreted? A. I have not. 9903

By Mr. Martin:

Q. Do you attend the meetings of the Michigan Avenue Guild, Mr. Marshall? A. Most of them.

Q. Are the minutes prepared by you, or under your instruction? A. In their final form, they are prepared from the minutes, under my instruction.

9904

Mr. Martin: That's all, Mr. Marshall.

Mr. Albert: Just two questions, Mr. Marshall.

Cross-examination by Mr. Albert.

Q. Isn't it a matter of fact, Mr. Marshall, that the reason why the State Street stores were excepted from the agreement, being Commission's Exhibit No. 5, was by reason of the fact that State Street stores did not demand the same protection that is included in that agreement? A. That was my understanding.

Q. Isn't it a matter of fact, to your knowledge, that the
9905 State Street stores have signed declarations of co-operation with the Fashin Originators Guild? A. I have been so informed. That is my understanding.

Mr. Albert: That's all.

Mr. Martin: That's all. No further questions. Thank you, Mr. Marshall.

(Witness excused.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Martin: Mr. Leighty, will you come around, please, sir?

9906

Examiner Bennett: Will you be sworn, please?

EDGAR LEIGHTY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you please state your name and residence? A. Edgar R. Leighty, Glenview, Illinois.

Q. What is your occupation, Mr. Leighty? A. I am one of the divisional merchandise men, Marshall Field & Company.

Q. Which departments? A. I have charge of the basement section.

Q. How long have you been in charge of the basement? A. About seven months.

Q. What did you do prior to that? A. I merchandised the women's apparel, wearing apparel.

Q. How long did you occupy that position? A. A matter of about four years.

Q. Are you familiar with the Fashion Originators Guild of America? A. Yes, sir. 9908

Q. Has Marshall Field & Company ever signed a declaration of co-operation with the Fashion Originators Guild? A. Yes, sir.

Q. Do you recall when they signed that? A. I can't recall the date.

Q. Can you recall approximately? A. Well, it was very shortly after the Guild came into existence. I would say a matter of three or four years ago.

Q. Is your declaration of co-operation with the Fashion Originators Guild still in effect at this date? A. It is.

Q. Since the date of your original signature to the declaration, have you co-operated with the Fashion Originators Guild? A. We have.

Q. Does the Fashion Originators Guild shopper shop Marshall Field's store? A. Undoubtedly. 9909

Q. Have you ever been requested by the Fashion Originators Guild to return any dresses as being copies? A. Yes, sir.

Q. Did you return them? A. Yes, sir.

Q. You have never been red carded? A. No, sir.

Mr. Martin: Mark these for identification Commission's Exhibits 840 and 841.

(The documents referred to were marked Commission's Exhibits 840 and 841, respectively, for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 840 for Identification and ask, can you identify that letter, or that exhibit? A. Will you repeat the question, please?

Q. Can you identify that paper? A. No, sir, I cannot as a matter of fact.

Q. Have you ever seen it before? A. I have seen a copy of it before. I was not present at the time.

9911 Q. Can you tell me what that paper is, what it purports to be? A. This happened February 17, 1936. I was not at the store at the time, I don't even know anything about it.

Q. Have you ever seen it? A. I saw a copy of it in the press.

Q. Where? A. I think in "Women's Wear."

Q. You have never seen a copy of it in Marshall Field's files? A. No, I have not.

Q. I hand you Commission's Exhibit No. 841 for Identification and ask, can you identify that? A. That, also, I have seen in the press. That is my only knowledge of it.

Q. Now, Mr. Leighty, if Commission's Exhibit No. 840 for Identification was sent by Marshall Field, with others,

9912 to the Fashion Originators Guild, can you tell me who in the Marshall Field organization would have been authorized to send this telegram? A. Either the manager or the general manager of the store.

Q. Who is the manager, or the general manager? A. At the present time, Mr. Corley. Are you interested in the set-up at that time, or at the present time?

Q. At that time, February 17, 1936. A. At that time, Mr. Corley.

Q. In other words, what I am trying to find out is who, in your organization, would know about this?

Mr. Albert: May I interrupt for a moment? Is that a document allegedly sent to the F.O.G.A.?

Mr. Martin: Yes.

Mr. Albert: By Marshall Field?

Mr. Martin: With others.

Mr. Albert: If you will let me see it, perhaps we can shorten it.

Mr. Martin: I have no objection to letting you see it. Obviously, this witness cannot identify it.

Mr. Post: I have no objection to your putting those in. 9914

Mr. Martin: All right. That is all right, then.

Mr. Albert: There is no objection to Commission's Exhibits 840 and 841 being offered in evidence, subject to comparison with whatever we have received. I don't think there will be any difficulty about it.

Mr. Martin: That is perfectly agreeable. They are not the originals. They purport to be copies.

Mr. Post: They appear to me, from my recollection, to be correct, but I want to check.

Mr. Martin: That is perfectly agreeable.

Examiner Bennett: All right. They are received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 840 and 841, were received in evidence.) 9915

By Mr. Martin.

Q. Now, Mr. Leighty, referring to Commission's Exhibits 840 and 841, are you in any way familiar with the subject matter of those two exhibits? A. Yes, sir.

Q. Will you state whether or not Commission's Exhibit 840 correctly expressed the policy of Marshall Field at that time? A. It did.

Q. And you were in accord with the sentiments expressed by Mr. Petree, in his letter to Mr. Post, dated February 17, which is Commission's Exhibit 841? A. Yes, sir.

Q. Does Marshall Field belong to the Michigan Avenue Guild? A. No, sir.

Q. Now, Mr. Leighty, referring to Commission's Exhibit No. 5, which is the agreement dated the tenth day of May, 1935, and which is now in effect between the Fashion
9917 Originators Guild of America and the Michigan Avenue Guild, paragraph number one, on page two, reads as follows: "Fashion Originators Guild members will not sell their merchandise within the city of Chicago to such retailers who are not members in good standing of the Michigan Avenue Guild, and/or to those retailers who do not observe the code of fair competition in the industry, and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild. This provision is not to apply such stores as are named in the list hereto attached as Exhibit 'A' and hereby made a part hereof." Exhibit A contains the name of Marshall Field & Company. Do you know why that exception was made? A. No, I do not know why they made it.

9918 Q. With reference to Commission's Exhibit No. 841, with which you have expressed yourself as being in sympathy with, and Commission's Exhibit No. 840— A. Yes.

Q. I note the following language: "It was the original understanding of these stores"—that was the New York stores—"that they would not knowingly buy copies of Guild merchandise"—meaning copies of dresses costing the retailer $16.75 and up—"these stores stand ready to cooperate with the manufacturer on a plan for the design and protection of better dresses, but they reserve the right to

continue to buy and sell all merchandise below the $10.75 cost price range in accordance with their own established policies." Have you continued to reserve that right? A. No, sir, we have co-operated with the Guild in the attempt to stop piracy, going below the $10.75 price line. The original agreement setting a price limit—that agreement was later changed, so that the field was extended down into a very much lower price field.

Q. Do they still shop your lower-priced lines? A. Yes, sir.

Q. Do you return copies in the lower price lines? A. We returned a number of copies in a very much lower-priced line.

9920

Q. When did you change your policy as expressed February 17th, 1936, in Commission's Exhibit No. 840?

Mr. Albert: If it please the Court, there is no such testimony in evidence. Commission's Exhibit No. 840 specifically reserves the right in Marshall Field & Company to take action as a result of the fact that the paragraph says: "Without knowing all of the details of the present controversy." And that is only a qualified expression of policy as regards the telegram.

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

9921

Q. Go ahead, Mr. Leighty. A. Pardon me.

Q. When did you change your policy as expressed in that letter? A. I don't—you will have to point out to me where there is any sign of changed policy.

Q. Here is what I am referring to, Mr. Leighty (indicating). This letter, which is Commission's Exhibit No. 840— A. Right.

Q. Says that without knowing all of the facts you find yourself in full sympathy with the position as outlined in

the letter, which is Commission's Exhibit No. 841. A. All right.

Q. And that letter stated that it reserved to itself—continued to buy and sell all merchandise below the $10.75 cost price ranges. Now, when did you change your opinion and start to co-operate with the Guild in all price lines? A. I couldn't give you the exact date when the matter came up. It wasn't done at any one time, or when we originally agreed to co-operate, there was a price, a bottom price established.

Q. I see. A. As we went along from month to month, why, the Guild manufacturers took in a lower-priced
9923 group of manufacturers, and our sympathy was entirely in accord with the Guild, covering the Guild just as far as they could organize it. And it was—I think our sympathy and our thought, even from the time that we first agreed to co-operate with the Guild was the same. I don't think we ever changed our viewpoint.

Q. Does this telegram change that in any way (indicating Commission's Exhibit No. 840)? A. This telegram I would say referred undoubtedly to the controversies that had arisen regarding other things than stopping style piracy, and there were things that were done by the Guild that we were not in accord with, but we were in accord with them entirely on the style piracy proposition.

Q. Well, now, what were some of those things that the Guild did other than style piracy that you were not in
9924 sympathy with?

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid.

Examiner Bennett: I will let him answer, if he knows. You may answer.

The Witness: Our objections were on the basis of the attempts of the Guild to stop retailers from accepting special advertising allowances that were being made to the retailers.

By Mr. Martin.

Q. Any others? A. Also we raised objections, or we were not in sympathy with their attempt to organize the manufacturers on the basis of universal terms.

Q. Any other objections? A. Those are the only two that occur to me at the moment.

Q. Again referring to Commission's Exhibit No. 5, paragraph one of page two, referring to the refusal of the Guild to sell to merchants whose practices do not conform to the standards and regulations of the Michigan Avenue Guild—do the practices of Marshall Field & Company conform to the standards and regulations of the Michigan Avenue Guild? 9926

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and irrelevant. Marshall Field & Company have testified that they have signed the declaration of co-operation, that they have been co-operating. Is it Mr. Martin's attempt by that question to contradict this?

Mr. Martin: No, I am not trying to contradict him.

Examiner Bennett: I think Marshall Field qualifies in the other class. I will sustain the objection.

Mr. Martin: If your Honor please, the reason I wanted to bring that out was because this witness testified that he did not know why they were made 9927 an exception of.

Examiner Bennett: They seem, in fact, to have signed the declaration, and they are living up to it rather meticulously, I think that is covered by the early part of that.

Mr. Martin: Very well, sir.

By Mr. Martin.

Q. Has the Guild shopper shopped your store recently, Mr. Leighty, if you know? A. Well, I have been out of the sixth floor, where most of that work was done, for the last seven months, so I am not in a position to know that.

Q. Has any shopping been done in the basement? A. Yes.

Q. Recently? A. I couldn't tell you how recently. There have been no cases of copies called to our attention recently.

Q. No returns have been made? A. That is correct.

9929 Mr. Martin: All right. That's all, thank you, sir.

Cross-examination by Mr. Albert.

Q. Mr. Leighty, you have mentioned the term "style piracy." Would you mind explaining what the conception of Marshall Field & Company is with respect to style piracy?

Mr. Martin: Objected to, as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will let him answer. Overruled.

The Witness: Why, for years manufacturers

9930 have been taking original creations, or creations that were made by some individual designer, and have been reproducing them, and, as a result of the reproduction, where they had no overhead, designing overhead, they were able to make these reproductions in many cases just as good, and sell them for less money, and in many cases make them very much poorer and ruin the value of the original creation.

By Mr. Albert.

Q. And would you say that what these manufacturers copied of the original creation was the style——

Mr. Martin: That is objected to.

By Mr. Albert.

Q. (Continuing) —the design of the dress?

Examiner Bennett: Overruled.

The Witness: Will you read it?

(Question read as follows: "Q. And would you say that what these manufacturers copied of the original creation was the style, the design of the dress?") 9932

The Witness: Yes, sir.

By Mr. Albert.

Q. And is it the belief of Marshall Field & Company that the original designs which they purchased from some manufacturers were lessened in value to Marshall Field & Company as a result of this copying thereof?

Mr. Martin: Objected to. There is no foundation laid that they ever had any original.

Examiner Bennett: I will overrule the objection.

The Witness: Very definitely, yes. 9933

By Mr. Albert.

Q. And from your experience in the dress industry, what is your definition of what is an original design?

Mr. Martin: Objected to.

By Mr. Albert.

Q. (Continuing) —As the term was used by you.

Mr. Martin: Objected to, as irrelevant and immaterial to the issues of this case.

Examiner Bennett: I will let him answer.

By Mr. Albert.

Q. That is, you have described these manufacturers as originating designs. What did you mean by that? A. An original design is one that has been created by an individual, usually a paid designer.

9935 Q. And it is his inspiration? A. Right.

Q. And do you mean by "copying," that manufacturers who copy these originals merely adopt the inspiration of the original manufacturer? A. Yes, sir.

Q. Instead of attempting to create their own inspiration? A. Right.

Q. Was this copying of original designs an evil at the time that you signed the declaration of co-operation?

Mr. Martin: That is objected to as irrelevant and immaterial, not properly a matter of cross-examination. That is a question more properly brought out in the respondents' defense.

Examiner Bennett: Will you read the question, please?

9936 (Question read by the reporter.)

Mr. Albert: The direct-examination, your Honor, brought forth the fact that they signed the declaration, and I believe, in the light of the facts we all know the contents of the declaration, it is proper cross-examination to have this witness testify as to the conditions that existed at the time the declaration was signed.

Examiner Bennett: He was not asked as to why he signed it, or the conditions. I will sustain the objection. You may have an exception.

Mr. Albert: Exception.

By Mr. Albert.

Q. Are you familiar with the declaration of co-operation, Mr. Leighty, have you seen it? A. Yes, sir.

Q. I show you Commission's Exhibit 833, which is a form of declaration of co-operation and ask you if you will explain what you meant when you signed the declaration containing this language?

Mr. Martin: I object. 9938

By Mr. Albert.

Q. (Continuing) (Reading): "And we will remove such copied garments from the market and, to discourage style piracy, and the predatory practice of copying." What was the predatory practice of copying to which you had reference when you signed the declaration?

Mr. Martin: Objected to, as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will sustain the objection to that line. It was not gone into on direct.

Mr. Albert: Exception, your Honor.

Examiner Bennett: We have been over that with several witnesses. 9939

Mr. Albert: May I ask the Court's indulgence for a moment?

Examiner Bennett: Certainly.

(Short interruption.)

9940 *By Mr. Albert.*

Q. I show you Commission's Exhibit 840, Mr. Leighty, and ask you if you were present at any conference that was held prior to the signing of that telegram?

Mr. Martin: Objected to. The witness has already testified that the first time that he ever saw that telegram was in "Women's Wear."

Examiner Bennett: Read the question, please.

(Question read by the reporter.)

Examiner Bennett: I will let him answer.

The Witness: No, sir.

9941 *By Mr. Albert.*

Q. Now, after the sending of that telegram, are you familiar with any of the communications or correspondence that passed between Marshall Field & Company and the F.O.G.A., with respect to the subject matter thereof?

A. Yes, sir.

Q. Mr. Leighty, do you not know that the stores listed on Commission's Exhibit 840, at the time the telegram was sent, and at the present time, in the same manner as Marshall Field is doing, have affixed the Guild warranty stamp upon all orders, and all price lines?

Mr. Martin: That is objected to, as irrelevant and immaterial. The witness has already testified

9942 he was not present at any conference, that he never saw that telegram, and knows nothing about it, except what he read in "Women's Wear." It is obviously not within his knowledge as to what other stores are doing.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: I will sustain the objection. That is very evidently outside of his knowledge.

9943

By Mr. Albert.

Q. Do you know, Mr. Leighty, that Commission's Exhibit 840 was sent as the result of a telephone call from Mr. Schweitzer, of the N.R.D.G.A.?

Mr. Martin: Objected to. The witness has stated he knew nothing about its being sent, he had never seen it before. That the first he saw of it was in "Women's Wear."

Examiner Bennett: I will let him answer if he wants to bring it out.

The Witness: Read the question, please.

(Question read by the reporter.)

9944

A. I do not.

By Mr. Albert.

Q. And do you not know, Mr. Leighty, that the telegram was sent in reliance upon the telephonic summary by Mr. Schweitzer of Mr. Petree's letter, and that the inclusion of the preliminary statement "without knowing all the details of the present controversy" was by reason of the fact that the letter specifically had not been seen by the signatories to the telegram?

Mr. Martin: That is objected to. The witness has already testified he did not know.

Examiner Bennett: I will sustain the objection. I think the facts can be brought out from some other source. I think the attorney had better not try to build up a record in that way, on the facts.

9945

By Mr. Albert.

Q. Since the sending of that telegram, Commission's Exhibit 840, have you not learned, in the ordinary course of your business, that many of the signatories thereto were

not and are not in sympathy with the letter therein referred to?

Mr. Martin: Objected to.

Examiner Bennett: I will sustain the objection to that. You may ask him as to Field's store.

Mr. Albert: Exception, your Honor.

Examiner Bennett: He has testified they were in sympathy with it.

By Mr. Albert.

Q. Have you, since the sending of that telegram, learned of the manner in which it was sent?

9947

Mr. Martin: That is objected to. He has already testified he did not know.

Mr. Albert: He did not know at the time, your Honor.

Mr. Martin: You asked him several questions after that relative to it, and he testified he did not know.

Mr. Albert: If the witness says he does not know, your Honor, it will certainly take less time than the objection of counsel.

Mr. Martin: I renew my objection.

Examiner Bennett: I will sustain the objection I think the sending of the telegram does not seem to have been questioned. The signatures do not seem to have been questioned. The document speaks for itself. The witness has told what he knows about the circumstances.

9948

Mr. Albert: Very well, your Honor. We will bring out all these circumstances with respect to it in direct, if we have to go into direct.

Examiner Bennett: I think you can get somebody who has a more direct connection with it.

Mr. Albert: Very well.

By Mr. Albert:

Q. You testified that for some time no copies have been found or reported to you by the Guild shopper in the Marshall Field store? A. Pardon me. I did not so testify.

Q. I am sorry. What was it that you testified to with respect to that? A. The question was asked me regarding the shopping at the present time, whether shoppers were coming into the store.

Q. And your testimony was what? A. And I said I had been in the basement for the last seven months, and my contact is entirely in the basement, and, as I answerd the question, it referred to the basement, or the lower 9950
price lines only.

Q. And that there had been not many copies returned from the basement, or found in the basement? A. The basement only.

Q. As a result of your experience in the dress industry, and with Marshall Field & Company, and with the Guild program, would you say that this improvement in the fact that there were no copies found in the basement was a result of the Guild program?

Mr. Martin: Objected to. Not proper cross-examination.

Examiner Bennett: I will let him answer.

The Witness: It very definitely is the result of the Guild's operation. 9951

By Mr. Albert.

Q. Would you say that that has been a benefit to Marshall Field & Company? A. Very much so.

Q. Would you say that that was a benefit to the public?

Mr. Martin: That is objected to.

By Mr. Albert.

Q. In your experience, in that they are protected from copies?

Examiner Bennett: I don't think he is qualified to answer that.

Mr. Albert: Exception, your Honor. That's all.

Redirect examination by Mr. Martin.

Q. Have you ever seen an original design? A. Yes, sir.

Q. How do you know it was an original design? A. Well, I have seen a design that was created by an individual, who in my mind didn't do anything else but create.

9953

Q. You are certain that it was original? A. I certainly would assume that it was original.

Q. Do you know where this particular designer might have gotten her ideas? A. Might have gotten them?

Q. Yes, sir. A. Well, I would say she got them out of the back of her head.

Q. Do you know as a matter of fact that she did not copy them from some other dress which you might not have seen? A. I couldn't prove it.

Q. You couldn't prove it either way; could you? A. (Witness shakes head negatively.)

Mr. Martin: That is all.

(Witness excused.)

9954

(Thereupon, at 3.00 o'clock P. M., the hearing in the above entitled matter was adjourned until further notice, time and place of the next hearing to be set by the Examiner or the Commission.)

Room 401, United States Appraisers Store Building, Baltimore, Maryland, November 9, 1936.

Met, pursuant to notice, 1 P. M.

Before: EDWARD M. AVERILL, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., M. A. ALBERT, Esq., and HERBERT S. KELLER, Esq. (1450 Broadway, New York City, N. Y.), appearing for the Fashion Originators Guild of America. 9956

FORREST BRAMBLE, Esq., of Barton, Wilmer, Addison & Semans, 806 Mercantile Trust Building, Baltimore, Md., appearing for Baltimore Ladies' Ready-to-Wear Guild of Baltimore, Inc.

CHARLES F. ROYCROFT was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Mr. Bramble: I would like to ask as a matter of information. 9957

Examiner Averill: On the record?

Mr. Bramble: No, off the record.

(There was a discussion off the record.)

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Charles F. Roycroft.

9958 Q. Where do you live, Mr. Roycroft? A. 3225 Ramona Avenue, Baltimore.

Q. What is your occupation? A. In this particular connection, secretary of the Ladies' Ready-to-Wear Guild of Baltimore.

Q. Do you have any other occupation? A. Assistant secretary of the Retail Merchants Association of Baltimore.

Q. Where do you have your office? A. 1200 Lexington Building.

Q. How long have you been secretary of the Ladies' Ready-to-Wear Guild of Baltimore? A. Since its organ-
9959 ization during September of 1933, I think.

Q. What, if anything, did you have to do with the organization of the Ladies' Ready-to-Wear Guild of Baltimore? A. I, so to speak, arranged the meetings as a result of which the Ladies' Ready-to-Wear Guild of Baltimore was organized.

Q. At that time, were you assistant secretary of the Credit—what was that? A. Retail Merchants Association.

Q. Retail Merchants Association? A. Yes, sir.

Q. Was the Ladies' Ready-to-Wear Guild of Baltimore, Inc., sponsored by the Retail Merchants Association? A. The meetings were arranged by the association. The association, I suppose you might say, sponsored the organization of the Guild.

9960 Q. What was the action—that is, what prompted you to form that organization, the Ladies' Ready-to-Wear Guild of Baltimore, Inc.? A. As I recall, a number of the members of the Retail Merchants Association received from the Fashion Originators Guild a communication outlining its activities in connection with the Anti-Piracy Act, I believe it is, as a result of which several of them contacted the office of the association, and we arranged for a meeting of all local retailers who had received such letters.

Q. And approximately when was that meeting held in relation to the organization meeting of the Guild? By "Guild," I mean Ladies' Ready-to-Wear Guild of Baltimore? A. A matter of several weeks, I would say, during the fall of 1933.

Q. Do you have any recollection of who the prominent members were that attended that meeting that you speak of, that first meeting? A. For the most part, I think it was the department store people and several of the specialty stores, women's specialty stores. Just who the individuals were I could not tell you, without reference to the minutes.

Q. What occurred at that preliminary meeting? A. A 9962
general discussion as to the policies, you might say, or aims of the Fashion Originators Guild, as we knew them. There was only a handful of people there and, subsequently, or, at least, it was decided at that time to arrange for a subsequent meeting.

Q. When you say "handful," could you give us a better estimate than that? A. I would say possibly somewhere around eight, possibly ten people.

Q. Was there anyone called upon to explain the purpose of the meeting? Did you do that yourself, or who? A. No, no, the members themselves, speaking now as members of the Retail Merchants Association, explained what they knew, and that was, as far as I know, all of the information we had, and we subsequently decided to have this
further meeting. 9963

Q. And when was the further meeting held? A. A matter of possibly a week or ten days later.

Q. And where? A. At the Lord Baltimore Hotel, as I recall it.

Q. Who attended that meeting? A. I cannot cite the names of the individuals, or the stores that were represented, but I do know that an invitation was sent to all

members of the Retail Merchants Association handling, as I recall, Guild merchandise.

Q. That would be members of the Guild, or— A. Up to that point, they were members of the Retail Merchants Association.

Q. I will put it this way: When you say that they handled Guild merchandise, are you familiar, yourself, with the circumstances under which they handled Guild merchandise, or anything of that character? A. No. I am not familiar with the circumstances under which they handled Guild merchandise or anything of that sort.

9965 Examiner Averill: I would like to know if by that answer you are referring to the time of which you are speaking; namely, some time in September.

The Witness: September, 1933.

Examiner Averill: September, 1933. I say that because at that time, as I understand it, they were not members of the Guild.

The Witness: That is true. At that time they were not members of the Guild.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. By that you mean members of the Guild here at Baltimore or New York, or either? A. The Baltimore Guild was not in existence at that time.

9966 Q. There was no Baltimore Guild then? A. No. There was no Baltimore Guild then.

Mr. Weisman: May I also make clear, and I believe Mr. Haycraft will concur in this, that at no time are any retail stores ever members of the Fashion Originators Guild.

Mr. Haycraft: No. Decidedly that is not admitted. That is a highly controversial point in this

case, Mr. Examiner. It is not admitted by counsel for the Commission that that is the fact.

By Mr. Haycraft:

Q. And did you determine then, whether the members that attended this meeting handled Guild merchandise?

Mr. Weisman: I object to the form of the question. He did not say at any time that he did determine that they were handling Guild merchandise or not.

Examiner Averill: He said that they were handling; that is, the invitation was addressed to those who were, at that time, handling Guild merchandise. 9968

Mr. Weisman: He did not say that he determined it.

Mr. Haycraft: He sent out the invitation.

The Witness: I might qualify my answer. What I did, as I now recall, was to send a letter of invitation to attend the particular meeting to all members of the Retail Merchants Association who were known by me to be handling Guild merchandise.

By Mr. Haycraft.

Q. How many attended that meeting? A. I do not recall, Mr. Haycraft. I think the minutes of the meeting will probably show. 9969

By Examiner Averill.

Q. You said, in your previous testimony as I have a record of it here, "Approximately 8 or 10." A. That was the first meeting, your Honor; this is the subsequent meeting that he is speaking of now.

9970 *Charles F. Roycroft—For Commission—Direct.*

By Mr. Haycraft.

Q. Did anyone besides or outside of members of the Retail Merchants Association and besides yourself, and you were an executive of the Retail Merchants Association, attend? A. Yes, Mr. Mehling, I think, the secretary of the association.

Q. Anyone else besides the secretary and the members of the Retail Merchants Association attend that meeting, the second meeting? A. No, sir.

Q. At that meeting what took place?

Mr. Haycraft: This is merely a preliminary
9971 question laying a foundation. It is of historical value, I think, if your Honor please, in developing the matter.

Examiner Averill: I will permit the witness to answer that briefly just what, generally, took place there, and we will see the import of it.

A. Merely a discussion as to the advisability of the formation of a local association and, as I recall, it was decided then to merely broaden the invitation which had gone out for that meeting. There were some preliminary discussions, I think, about the formation of a local Guild, the details of which I cannot recall just now.

Q. Did you have any communications with the Fashion Originators Guild of America at that meeting? A. No,
9972 sir.

Q. Had you had any communications with any official of the Fashion Originators Guild of America prior to that meeting? A. I had none.

Q. What occurred at that meeting with respect to any further meeting?

Mr. Weisman: Thank you.

Mr. Haycraft: I do not think the witness, Mr. Examiner, should be interrupted when he is testifying.

Examiner Averill: Oh, I think if you have an objection, it is proper. The witness had evidently not answered the question as asked.

Mr. Haycraft: Apparently we differ on that as to whether he was answering it or not.

Examiner Averill: I cannot see why.

By Mr. Haycraft.

Q. Go ahead and answer the question. A. Arrangements were made for a further meeting to which local 9974
retailers who had signed declarations of co-operation with the Fashion Originators Guild would be invited to attend.

Q. Was such a meeting held? A. Yes, sir.

Q. Who sent out the invitations for it? A. The Retail Merchants Association.

Q. How did you ascertain what retail dealers had agreements with the Guild—that is, the Fashion Originators Guild? A. I do not recall definitely.

Examiner Averill: Gentlemen, I think we should refer to those papers which were signed at the time that the witness has testified concerning, as "Declarations of Co-operation" until such time as it is, by proper authority, determined that they constitute agreements. In other words, you can 9975
get the same information by asking the witness a question which does not force him to use the word "agreement" to characterize the paper as an "agreement." In the first place, I do not think he is competent to characterize it as an "agreement," and if it is a written instrument, certainly not.

Mr. Bramble: I think what my friend objects to here, is Mr. Haycraft's characterizing it as an

agreement when he does not believe that it is an agreement. I think it would add to the confusion to call it an "agreement" when it does not seem necessary to do so in order to elicit the testimony.

Examiner Averill: That would be obviated by adopting my suggestion by asking him how many of them signed this "Declaration of Co-operation." That is what the witness called it when he testified. Objection sustained. Exception noted for Mr. Haycraft.

By Mr. Haycraft.

9977 Q. This question has been amended and, as amended, would that change your answer in any way? A. No, sir.

Q. By that you mean you do not recall how you found out the names of the people who had signed that invitation—the people to whom you had sent that invitation? A. I do not definitely know how I found out the names of the people to whom I sent the invitation, if that is the question.

Q. Did you have any contact with officials of the Fashion Originators Guild of America in connection with sending out invitations for the meeting that you have just referred to? A. To the best of my knowledge, no.

Q. Was such a meeting held? A. Yes.

Q. It was? A. Yes.

9978 Q. When was it held? A. A short time after the organization meeting, so to speak, was arranged, or had been held.

Examiner Averill: Can you give us a little better time than that? That seems to be a bit vague to me.

By Mr. Haycraft.

Q. Can you give us the date on that? A. The best that I can recall, it was during the latter part of 1933.

Q. Did you keep any minutes of that meeting? A. Yes, sir.

Q. Do you have them here with you? A. Yes, sir.

Q. Will you please produce them at this time? A. Yes.

Q. By referring to these minutes that you have just now produced, can you give us the dates of these respective meetings? A. The first meeting?

Q. Yes. A. September 5, 1933, is the date of the first meeting.

Q. Can you testify as to who attended that meeting? A. Yes, sir.

Q. Who were they? A. Mr. Charles G. Hutzler.

Q. What firm does he represent? A. Hutzler Brothers. 9980

Q. In giving the people who attended the meeting, from now on, will you give the firm that they represented? A. Allen S. Metzger, representing Maisonannette Company; Fred H. Alperstein, representing the Gaxton Company; S. J. Schleisner, representing the Schleisner Company; M. M. Schwart, representing O'Neill & Company; Henry Weil, representing Stuart & Company; J. E. Ellington of the May Company; J. W. Mehling and C. F. Roycroft, the secretary and assistant secretary, respectively, of the Retail Merchants Association, and Mr. William R. Semans, of what is now the firm of Barton, Wilmer, Addison & Semans.

Q. And I assume the latter are attorneys? A. Yes.

Examiner Averill: That is what I understood they were. 9981

The Witness: That is true.

By Mr. Haycraft.

Q. What is the date of the second meeting? A. September 11, 1933, and there were fifteen establishments represented there, but from my minutes I cannot tell the names of the individuals, or of the establishments because there was no record made of them.

Q. Do you have the minutes of the meetings here for that day before you? A. Yes, sir.

Q. Did you prepare those yourself? A. Yes, sir.

(The minutes referred to, heretofore marked for identification Commission's Exhibit 842, were marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I notice reference is made to an agreement between the Ladies' Ready-to-Wear Guild and the Fashion Originators Guild of America, on these minutes; do you have a copy of that agreement? A. That is the one.

9983 Q. You have a copy of it here?

Mr. Bramble: I think that is it, and I understand it is in our answer.

The Witness: No, that is a different one.

By Mr. Haycraft.

Q. Is this the one (indicating)? A. Is that mine, that you have already?

Mr. Weisman: I believe you left yours there, Mr. Roycroft; is that not it (indicating paper)?

The Witness: Yes.

Mr. Bramble: Off the record.

(There was a discussion off the record.)

9984 Examiner Averill: On the record.

By Mr. Haycraft.

Q. What is the paper that I am handing you now, Mr. Roycroft? A. This is a copy of the original agreement between the Fashion Originators Guild of America and the Ladies' Ready-to-Wear Guild of Baltimore.

Q. And who signed it? A. Signed by J. M. Golby, as executive secretary of the Fashion Originators Guild of

America and Mr. Charles G. Hutzler, as chairman of the Ladies' Ready-to-Wear Guild of Baltimore.

Q. The date of it, please? A. September 27, 1933.

Q. Is this the agreement referred to in the minutes that you identified a few moments ago, Commission's Exhibit 842? A. Yes, sir.

Q. Have the changes been made in this Commission's Exhibit 843 as referred to in Commission's Exhibit 842? A. Yes, because this is our copy.

(The papers heretofore marked for identification Commission's Exhibits 843-A, 843-B, 843-C, 843-D, 843-E, 843-F and 843-G, were marked as exhibits and received in evidence.) 9986

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Haycraft.

Q. When was the organization meeting of the Ladies' Ready-to-Wear Guild of Baltimore held? A. On September 18, 1933.

Q. Do you have a copy of the minutes of that meeting? A. Yes, sir.

Examiner Averill: Yes, it will only take a moment.

The Witness: The meeting was discussed at— 9987
the agreement, rather, was discussed at the meeting of September 18.

Examiner Averill: Yes.

The Witness: Signed by the individual retailers, on that date, and on subsequent dates; if you will notice from the minutes, Mr. Hutzler asked that that be signed by such individuals attending the meeting who had authority to sign it for this

firm, just such individuals sign on the 18th if they happened to be present at the meeting.

Examiner Averill: Yes.

The Witness: There were some, however, not represented at the meeting, or some firms represented at the meeting, the representative, however, not having authority to sign.

Examiner Averill: I see. And who later signed——

The Witness: They subsequently signed it. Then, there were two copies. We refer to the agreements in here (indicating paper), indicating

9989 that they were plural. Both copies were signed by the individuals at this particular meeting. Then both copies were taken by Mr. Hutzler, as chairman of the Guild, with him to New York on his next trip, and on September 27, 1933, Mr. Golby, as secretary of the Fashion Originators Guild, officially signed this agreement, and Mr. Hutzler, then, as chairman of the Guild, signed it on September 27, the signatures of the individual Baltimore retailers having been obtained on the 18th, and the dates being the 18th and 27th.

Examiner Averill: That makes it very clear, as to how it happened.

Mr. Bramble: It explains why the difference in the dates.

9990 Examiner Averill: Yes.

The Witness: Referring to Exhibit 844, this was subsequent to——

By Mr. Haycraft.

Q. I notice there is reference made in Commission's Exhibit 844 to articles of constitution, rules and regulations. Do you have in your possession the articles of con-

stitution, and rules and regulations, referred to in the exhibit? A. I cannot answer that definitely.

Mr. Bramble: I guess this is it, isn't it (producing paper)?

The Witness: No, that is the present.

Mr. Weisman: That is the present.

The Witness: But this is an original set of rules, regulations, and agreements. I do not have that in my possession. I may have that available somewhere in the office. I made no effort to hold onto that, after the present rules and regulations and agreements were adopted.

Mr. Haycraft: I see. All right. 9992

Mr. Hutzler: I think they are in the minutes.

The Witness: The present ones. Wait a moment, what is the date there, September 18 (referring to minutes)? It is just as likely that these may be the ones, but I would not want to say definitely without having an opportunity to peruse them.

Mr. Haycraft: Will you make a check on that so that you can testify later as to that? Will you make a note of that, Mr. Martin?

Mr. Martin: Yes.

Mr. Haycraft: Mr. Examiner, I think probably we can save some time if I could take about a ten-minute recess to go through these minutes. I see 9993
some of the minutes have nothing to do with this proceeding.

Examiner Averill: I have no objection.

Mr. Weisman: All right.

Examiner Averill: We will take a short recess.

(There was a short recess taken.)

9994 *Charles F. Roycroft—For Commission—Direct.*

By Mr. Haycraft.

Q. Do you have in your possession copies of the meeting of the Ladies' Ready-to-Wear Guild of Baltimore on November 17, 1933? A. Yes, sir.

Examiner Averill: What date is that?

The Witness: November 17, 1933.

Examiner Averill: Proceed. However, it just struck me that that would be the fourth instead of the third one. I do not think that is correct, is it?

Mr. Weisman: The third one is in evidence as Commission's Exhibit No. 844. He is now asking for the subsequent meeting on November 17.

9995

Examiner Averill: And not September 17th?

Mr. Weisman: No, that is November 17.

Mr. Haycraft: I asked to have this meeting of November 17th, the minutes thereof, marked with the Commission's next number for identification.

Examiner Averill: That may be done.

(Whereupon the minutes of the meeting of the Ladies' Ready-to-Wear on November 17, 1933, were marked Commission's Exhibits 845-A and B for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 845-A and 845-B

9996 and ask you if those are the original minutes of the Guild meeting; that is, the Ladies' Ready-to-Wear of Baltimore as held on that date. A. They are.

Examiner Averill: And what is the date of that?

The Witness: November 17, 1933.

Mr. Haycraft: That is offered in evidence, Mr. Examiner.

Examiner Averill: Gentlemen, objections as stated by counsel are overruled except, of course,

the privilege allowed if later the paper in question is not connected up, if that fact is not brought home to the charges named in the complaint, to move to strike the exhibit and any reference thereof on the record.

Of course, in moving to strike it from the testimony we would have to have a transcript of the testimony here and strike it line by line as it appears to have been immaterial or irrelevant, or whatever it may be.

With that reservation, the objection is overruled, gentlemen, to the papers heretofore marked Commission's Exhibit No. 845-A and the second 9998
sheet thereof which was marked Commission's Exhibit No. 845-B, the same being minutes of the board of control of the Ladies' Ready-to-Wear Guild of Baltimore for November 17, 1933, and the same will be received in evidence and be marked Commission's Exhibit 845-A and 845-B, respectively.

(The document heretofore marked Commission's Exhibits 845-A and 845-B for Identification, was received in evidence.)

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 845, I notice that it is the minutes of the board of control on 845-A. Just 9999
what does the board of control of the Ladies' Ready-to-Wear Guild of Baltimore represent? A. The board of control represent—the board of control of the Ladies' Ready-to-Wear Guild of Baltimore, prior to the incorporation of the organization, functioned as the board of directors.

Q. And the persons named in these minutes were part of that board of control at the time the meeting was held, that meeting? A. With the exception of the secretary.

Q. You were that secretary? A. Yes.

Q. How were the members of the board of control selected? A. A nominating committee was appointed, as I recollect, and submitted its report, which in turn was presented to a meeting of the general membership at which an election took place.

Q. In these minutes of Commission's Exhibits 845-A and B, the following appears on page 1 thereof: "Following the reading of the Committee's report, Chairman Hutzler read a letter received by him from Mr. J. M. Golby, executive secretary of the Fashion Originators Guild of America, in which Mr. Golby outlined the attitude of that or-
10001 ganization concerning violations of the rules and regulations of local guilds." Did you receive that letter from Mr. Golby and do you have that letter in your files? A. I do not have it in my possession now. You will notice that it is stated that Mr. Hutzler presented the letter.

Q. It is your testimony that this letter was returned to Mr. Hutzler, or that he retained possession of it? A. The letter was read by Mr. Hutzler at the meeting.

Q. It was not incorporated in the minutes? A. No, sir.

Examiner Averill: Gentlemen, I make the same ruling in connection with that. Gentlemen, the papers heretofore marked Commission's Exhibits 846-A, B and C, the same being minutes of the meeting of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore for January 25,
10002 1934, consisting of three sheets, will be received in evidence and marked Commission's Exhibits 846-A, 846-B and 846-C, and I will permit the substitution of copies thereof in the record.

(The minutes heretofore marked for identification Commission's Exhibits 846-A, 846-B and 846-C were marked as exhibits and received in evidence.)

Mr. Haycraft: I have one or two questions about that.

By Mr. Haycraft:

Q. I notice, Mr. Roycroft, that in the minutes you have just identified reference is made to a communication received by you as secretary from Mr. J. M. Golby, executive secretary of the Fashion Originators Guild of America, suggesting that the Fashion Originators Guild be permitted to sign local retailers with the Ladies' Ready-to-Wear Guild of Baltimore. Do you have in your files the original of that communication? A. I may have, Mr. Haycraft, but I could not say definitely without first checking 10004
the files.

Q. Will you make such a check and, provided you can find that, produce it, please; check the files to ascertain if you can find it? A. Yes. I will get the date of it now and do so.

Mr. Haycraft: I ask to have the following document, consisting of four pages, marked for identification. This is minutes of the Board of Control of the Ladies' Ready-to-Wear Guild for April 9, 1934.

(The document was marked for identification Commission's Exhibits 847-A, 847-B, 847-C and 847-D.)

10005

By Mr. Haycraft.

Q. I show you Commission's Exhibits 847-A, B, C and D and ask you whether or not you can identify that as minutes of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore dated April 9, 1934? A. Yes, sir.

Q. Does that not bear your signature? A. Oh, yes, it does bear my signature.

Q. Page 4 does not bear your signature? A. No.

Q. Is that part of the minutes? A. Yes. As a matter of fact, my signature appears on page 3, and page 3 definitely ties that in. That refers to the fact that subsequent to the meeting the president appointed certain committees, and those committees are therein set forth.

Mr. Haycraft: I offer these minutes in evidence with the same stipulation as was made to previous exhibits.

Examiner Averill: Gentlemen, the same ruling which was made in the cases of the minutes heretofore received in evidence as Commission's Exhibits
10007 845 and 846 will apply in this case, and the objection is overruled.

Mr. Bramble: And exception noted?

Examiner Averill: The objection is overruled and exception noted. The same exception noted. The papers in question, heretofore referred to as Commission's Exhibits 847-A, B, C and D, and which purport to be the minutes of the Board of Control, Ladies' Ready-to-Wear Guild of Baltimore, April 9, 1934, will be received in evidence and marked Commission's Exhibits 847-A, B, C and D, respectively.

(The documents heretofore marked for identification Commission's Exhibits 847-A, 847-B, 847-C
10008 and 847-D were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I notice on the first page of these exhibits that reference is made to a letter which Chairman Hutzler stated had been forwarded from the office of the Fashion Originators Guild of America regarding August coat sales and

asks for an expression of opinion from some of the members regarding the elimination of August coat sales. Do you have the original of that letter in the files of the Ladies' Ready-to-Wear Guild? A. I will have to check the file, Mr. Haycraft. What is the date of that?

Mr. Weisman: It will be prior to——

By Mr. Haycraft.

Q. Prior to April 9, 1934. A. No, it is not here.
Q. Will you make a search for it? A. Yes.

Examiner Averill: Off the record.
(There was a discussion off the record.) 10010
Examiner Averill: On the record.
Mr. Haycraft: Will you mark this for identification?

(The paper referred to was marked for identification Commission's Exhibits 848-A and 848-B.)

By Mr. Haycraft.

Q. Mr. Roycroft, I show you Commission's Exhibits 848-A and B and ask you if you can identify those two sheets as minutes of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore dated June 16, 1934 (handing paper to witness)? A. Yes, sir.

Mr. Weisman: May I see that? 10011
Mr. Haycraft: I offer in evidence Commission's Exhibits 848-A and B.
(The witness hands paper to Mr. Weisman.)
Examiner Averill: Gentlemen, under the same circumstances that the other rulings were given in connection with these exhibits from the minutes I shall receive in evidence the papers heretofore marked Commission's Exhibits 848-A and B, pur-

porting to be minutes of Board of Control of Ladies' Ready-to-Wear Guild of Baltimore, June 16, 1934, and they will be received in evidence as Commission's Exhibits 848-A and B, respectively.

(The documents heretofore marked for identification Commission's Exhibits 848-A and 848-B were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I will ask you whether or not you can testify as to whether any of the executives of the Fashion Originators Guild of America addressed a meeting of the Ladies' 10013 Ready-to-Wear Guild of Baltimore on January 21, 1935? A. Yes, sir.

Q. Who did so? A. Mr. Post and Mr. Golby.

Q. I show you Commission's Exhibits 849-A and B, purporting to be minutes of the Ladies' Ready-to-Wear Guild of Baltimore on February 25, 1935, and ask you to identify them as such. A. I can.

Mr. Haycraft: I offer in evidence Commission's Exhibits 849-A and B.

(There was a discussion off the record.)

(The documents heretofore marked for identification Commission's Exhibits 849-A and 849-B were marked as exhibits in evidence.)

10014

Examiner Averill: Gentlemen, the same ruling with reference to this exhibit as to the prior exhibits, that is, Commission's Exhibits 850-A, B, C, the objection is overruled for the time being, with the exceptions already noted to counsel, of course, and the paper will be received in evidence and marked Commission's Exhibits 850-A, B, C, the same being minutes purportedly of the Board of

Control of the Ladies' Ready-to-Wear Guild of Baltimore for August 5, 1935.

(The minutes heretofore marked for identification Commission's Exhibits 850-A, 850-B and 850-C were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibits 850-A, B and C and the reference there to a new agreement presented by Mr. Hutzler, which he indicated was acceptable to the Fashion Originators Guild. Do you have that new agreement? A. Yes, sir.

10016

Q. On the second page of this Commission's Exhibit 850-B reference is made to a communication from Mr. Post regarding the employment of a shopper for Baltimore. Do you have the original of that communication in your possession? A. Let us see. I cannot say definitely without first checking it.

Q. Will you please do so? In the second paragraph on this same page the statement is made that "Chairman Hutzler then presented the Fashion Originators Guild recommendations." Do you remember whether that was done in writing or orally? A. I am inclined to think it was orally or it would have been stated otherwise in the minutes.

Q. When was the present organization of the Ladies' Ready-to-Wear Guild of Baltimore, Inc., organized? A. During September of 1935.

10017

Q. Can you give the date? A. The first meeting of incorporation was held on Monday, September 30.

Q. 1935? A. 1935.

Mr. Bramble: September 30?

The Witness: Yes.

By Mr. Haycraft.

Q. Did they adopt by-laws at that time? A. Yes, sir.
Q. Do you have a copy of those by-laws? A. Yes, sir.

Mr. Haycraft: Where is that? I think we have a mimeographed copy.

Mr. Bramble: This is the copy here. I imagine that it is.

Mr. Haycraft: Mark this.

The Witness: Here are your by-laws (indicating). You have more by-laws there.

Mr. Weisman: You want them all, do you not, Everett?

10019 Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 851, which consists of fourteen pages, entitled, "By-laws, Rules, Regulations and Agreements of the Ladies' Ready-to-Wear Guild of Baltimore," and ask you if you can identify it? A. Yes, sir.

(The paper referred to was marked for identification Commission's Exhibits 851-A to N, both inclusive.)

By Mr. Haycraft.

10020 Q. What is it? A. It is my office copy of the by-laws, rules, regulations and agreements of the Baltimore Guild.
Q. Adopted when? A. Adopted on various dates.

Examiner Averill: As shown on the paper?

The Witness: In some instances, yes; others, no.

By Mr. Haycraft.

Q. Can you testify as to when they were adopted when they do not show? A. I will be given an opportunity to check the minutes?

Q. All right.

Examiner Averill: Gentlemen, the same ruling with respect to these papers as the ones heretofore marked as Commission's Exhibits 852-A to G, inclusive, and which purport to be minutes of Ladies' Ready-to-Wear Guild of Baltimore dated September 30, 1935, and some addenda thereto, will be received in evidence and marked Commission's Exhibits 852-A to G, inclusive. 10022

(The papers heretofore marked for identification Commission's Exhibits 852-A to G, inclusive, were marked as exhibits and received in evidence.)

Room 401,
United States Appraisers
Store Building,
Baltimore, Maryland,
November 10, 1936.

Met, pursuant to adjournment, at 10.30 A. M.

Before: EDWARD M. AVERILL, *Examiner.* 10023

(Same Appearances.)

CHARLES F. ROYCROFT resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. I will ask you whether or not you were able to locate any of the letters mentioned in your testimony of yesterday and for which you were requested to search? A. Yes.

Q. What success did you have? A. You asked for six letters; I have been able to find five of the six.

Q. Which ones did you find? A. Mr. Post's letter.

Examiner Averill: Off the record just a moment.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 853-A and B for Identification and ask you if you can identify that as an original letter from——

10025

Mr. Weisman: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. —from Charles G. Hutzler of Hutzler Brothers, Baltimore, Maryland, dated November 15, 1933, which you found in your files? A. I obtained this from Mr. Hutzler.

Q. From Mr. Hutzler.

(The letter was marked for identification Commission's Exhibits 853-A and 853-B.)

By Mr. Haycraft.

10026 Q. Is that the letter referred to in Commission's Exhibit 845-A? A. To the best of my knowledge, yes.

Mr. Haycraft: I offer it in evidence.

Mr. Weisman: No objection.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 854 for Identification and ask you if you can identify that as an original

letter from the Guild—that is, the Fashion Originators Guild—signed by J. M. Golby, addressed to yourself under date of January 20, 1934? A. Yes, sir.

Q. Is that the letter referred to in the minutes dated January 25, 1934, and which were marked Commission's Exhibit 846-A? A. Yes.

(There was a discussion off the record.)

(The paper heretofore marked for identification Commission's Exhibit 854 was marked as an exhibit and received in evidence.)

Mr. Haycraft: Before going any further on the identification of this correspondence I will ask the 10028
witness to clarify the context of Commission's Exhibits 853-A and B.

By Mr. Haycraft.

Q. At the time that this letter was written the Schleisner Company mentioned in the second paragraph was a member of your local guild—that is, the Ladies' Ready-to-Wear Guild of Baltimore? A. Yes.

Q. What business was it engaged in? A. Sale at retail of ladies' apparel and accessories.

Q. In the second paragraph of this letter it says, "We learn that the Schleisner, after having been informed of the privilege allowed one store in your organization, took 10029
advantage of this privilege by conducting a sale of merchandise contrary to the agreement amongst the members of our Guild." My first question is, what does that privilege allowed one store in the organization refer to there? A. As you will note from the date of that letter, when compared with the date—the organization date of the Ladies' Ready-to-Wear Guild, there was only a lapse of about sixty days, so that at this particular time, or shortly

prior thereto, the Baltimore Guild was more or less trying to determine what, in its opinion, was best for its members. The question of price lining had come up, and subsequently the question of permitting off prices, or the use of off prices, in connection with clearance sales had been discussed. Certain of the members held to the opinion that current sales would prove more effective if the merchandise was offered at off prices. Others felt to the contrary. So, in order to have something concrete to work on, we permitted one store to run a clearance sale at off prices, having notified the other members of the test, so to speak, that was going to take place.

10031 Q. That is what is meant in that?

Mr. Weisman: I submit that he be permitted to finish.

Examiner Averill: Do not——

Mr. Weisman: He is interrupting him. I want the whole story.

By Mr. Haycraft.

Q. Did I interrupt you? A. That was the agreement that was had among the stores at that particular time and had to do with the tests, so to speak, to ascertain the effect of off prices in connection with clearance.

Q. Have you completed? A. Yes, I have.

Q. Now, then, the phrase "the privilege allowed one
10032 store in your organization," I ask you about that—was the privilege of selling at off prices which one store had been allowed? A. They were accorded the privilege of using off prices in connection with the specific clearance sale for a test purpose.

Q. What is this price line agreement that is referred to, that you referred to in your testimony? Explain that. A. It was an agreement among the local stores as the result of which we had adopted certain retail prices, start-

ing at $10.95 and, as I recall it, at that time going up to $49.95. Simply provided for certain retail prices that should be used.

Q. And the word "agreement" used in this paragraph which I just read you a moment ago referred to such a price line agreement in effect at that time? A. Well, now, I did not write that letter; I cannot say what Mr. Golby had in mind.

Q. Had you reported to Mr. Golby such an agreement, line agreement, or line price agreement, I should say? A. I cannot answer that question, Mr. Haycraft.

Q. Had you reported to Mr. Golby that the Schleisner Company had been selling at off prices from a price line 10034
agreement? A. I had not.

Q. Do you know whether anyone had? A. I am trying to—pardon me for a moment. With this letter before me, I might be inclined to answer "Yes"; without the letter, why, I would have to say that I do not know, because Mr. Golby mentions in his letter that someone advised him. Now, who that somebody was I do not know, but I did not.

Q. Do you recall the discussion of this transaction at the meeting of November 17, 1933? A. By reference to the minutes I can.

Q. Yes. That is Commission's Exhibits 845-A and B; is that right (showing paper to witness)? A. Yes, sir.

Q. Will you refer to the minutes of November 25, 1934?

Mr. Haycraft: Off the record. 10035

(There was a discussion off the record.)

Mr. Haycraft: I will withdraw my last question.

By Mr. Haycraft.

Q. April 9, 1935, was the next one, was it not? A. Yes; that is the "Fifty Million Frenchmen" letter.

Mr. Weisman: Is that the "Fifty Million Frenchmen" letter?

The Witness: Yes.

Mr. Weisman: You have got that in evidence already. Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

(Thereupon a paper was marked for identification Commission's Exhibits 855-A and 855-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 855-A and B, purporting to be a form letter from the Coat and Suit Division of the Fashion Originators Guild of America, 10037 dated March 29, 1934. I will ask you if you can identify that as a letter referred to in Commission's Exhibit 847-A and the minutes of April 9, 1934? A. Yes, sir.

Q. Mr. Roycroft, I show you Commission's Exhibits 856-A and 856-B, respectively, for Identification, and ask you if you can identify it? A. Yes, sir, I can.

Q. What is it? A. It is a copy of a letter addressed to The Maison Annette Company in Baltimore, Maryland, by Mr. Golby of the Fashion Originators Guild.

Q. What is the date of it? A. Under date of February 15, 1935.

Examiner Averill: February 13, 1935?

Mr. Haycraft: No, February 15, 1935.

10038 Mr. Bramble: February 15?

Mr. Haycraft: Yes.

Mr. Weisman: It is this letter here.

By Mr. Haycraft.

Q. Who is The Maison Annette Company? What is that firm? A. This is a local retailer handling ladies' ready-to-wear and located in Baltimore, Maryland.

Q. On the date of that letter was it a member of the Ladies' Ready-to-Wear Guild of Baltimore, Maryland? A. Yes, sir.

Q. How did this copy come into your possession? A. I had my secretary make a copy of the original letter which had been addressed to The Maison Annette Company.

Q. Where did you get the original? A. As well as I can recall, Mr. Haycraft, the manager of The Maison Annette Company loaned it to me.

Q. Is this a letter—the letter, in fact—referred to in the minutes of the Ladies' Ready-to-Wear Guild of Baltimore, Maryland, for the meeting of February 25, 1935, 10040
being Commission's Exhibit 849-B and read by Mr. Hutzler at that time to the meeting? A. Yes, sir.

Mr. Haycraft: I offer the letter in evidence.

Q. I show you Commission's Exhibits 857-A and B and ask you—these are for identification—and ask you if you can identify those two papers? A. Yes, sir.

Q. Will you state what they are? A. It is a copy of a letter which I prepared and sent out to the general membership of the Baltimore Guild as a draft of a letter which I proposed to send to the Fashion Originators Guild of America, outlining the action taken by the board of directors—by our board of directors at its meeting on October 12 with regard to reaffirming our original deci- 10041
sion to support the style piracy activities of the Fashion Originators Guild.

Q. Is that referred to in the minutes that you identified yesterday? A. It is.

Mr. Weisman: When you state "style piracy activities," he means "anti-style piracy activities," I assume.

Mr. Haycraft: I think it would be well to let the witness state what he means in that regard.

The Witness: Yes, that is true. It is us "agin" them. We were, of course, definitely opposed to style piracy, and it was activities of ours designed against such activities—namely, style piracy.

By Mr. Haycraft.

Q. Was the original of that letter sent to the Guild? A. Yes, it was.

Q. I will ask you whether or not after reading the excerpt of the minutes which I have just referred to, whether or not Commission's Exhibit No. 857-B is the letter which you sent to the Fashion Originators Guild
10043 of America, Inc., in response to instructions you received at the meeting of October 12, 1935? A. Yes, sir.

Q. That accounts for all of the letters which you produced. Which is the letter that you are unable to locate that I asked you for? A. The letter from Mr. Post regarding the employment of a shopper for Baltimore, supposedly dated some time prior to August 5, 1935, as is referred to on Commission's Exhibit No. 858-B.

Mr. Weisman: Referred to on Commission's Exhibit 858-B?

The Witness: Yes.

By Mr. Haycraft.

10044 Q. Calling your attention to the minutes of October 5, 1935, Commission's Exhibits No. 850-A, B and C, wherein there was a discussion with respect to the employment of a shopper at Baltimore, I will ask you whether or not as a matter of fact subsequent to that date a shopper was employed by the Baltimore Guild? A. A shopper was employed, but whether it was prior to or subsequent to that date I cannot state; but it was approximately around that time.

Q. Will you state the circumstances under which the shopper was employed? A. No, I cannot, because I did not employ her.

Q. Did the Baltimore Guild defray any expenses of the shopper? A. No, sir.

Q. Has it ever defrayed any expenses of a shopper? A. Yes; we sent one check to the Fashion Originators Guild of America, Inc., to help defray the expenses of the shopper in Baltimore.

Q. Do you recall when that was? A. Some time during 1935, I think, or possibly the early part of 1936.

Q. Does the shopper report to you in any way? A. Not unless she happens to meet me in the offices. 10046

Q. What does she report to you on such occasions?

Mr. Albert: You mean report, or communicate with you?

A. I do not know as I would term it as a matter of "reporting to me," but she might acquaint me with what is going on or has gone on in the way of copies, so to speak, that have found their way into the Baltimore market. Probably more a matter of conversation than it is a matter of making a "report."

Q. Who is the shopper, by the way? A. A Mrs. Ellen Lapedus.

Q. Has she always been the shopper from the beginning? A. She was the first shopper employed by the Fashion Originators Guild of America, Inc., and she has continued in that capacity. 10047

Q. Does she have desk space in your office? A. Yes, in one of our offices.

Q. Which one? A. Just what do you mean by "which one"?

Q. You said in one of your offices; do you have more than one office?

Mr. Weisman: He means one of the rooms of their offices. They have several rooms in the office.

The Witness: We occupy the entire twelfth floor of the Lexington Building and it has been broken down into offices and we have given her permission to use a desk in one of our offices.

By Mr. Haycraft.

Q. I notice that in the minutes on the third page of Commission's Exhibit No. 850-C you make this statement: "It was felt that the Baltimore Guild should have some control over her (the shopper's) activities. It was ac-
10049 cordingly decided, upon motion which was duly seconded and carried, that the Guild agree to reimburse the Fashion Originators Guild for part of the expense incurred in employing a shopper for Baltimore; that she would be employed by the Fashion Originators Guild and receive her compensation from that organization, but that she report to the secretary of the Baltimore Guild and work under his supervision, it being understood that at least for the present the Baltimore Guild would furnish her with desk space." Would you say that that was never carried out? A. No. I would not say that that was never carried out, but that is not the set-up at the present time.

Q. Was there ever a time that the shopper worked under your supervision and reported to you? A. When she first
10050 came to Baltimore, yes.

Q. For how long did that last? A. I could not say exactly, but for such time as she had to have in order to have an opportunity to familiarize herself with the city and to meet and know the different people with whom she would work in the stores.

Q. Did you introduce her to the various stores? A. I arranged for her to meet the merchandise managers of the largest stores and then, at the first meeting of the

Guild following her coming to Baltimore, why, I arranged for her to be at that meeting so that she could meet all of the members who would attend.

Q. What instructions, if any, did you give her? A. As far as I can recall at this time, none. She had received her instructions from the New York office of the Fashion Originators Guild of America.

Q. What, if any, reports did she make to you at the beginning—that is, when she first came here? A. Reports merely as to how she would work and how she was coming along in her contacts. She would come in to see me and then she would go out to see them and then she would come back and tell me how she came out with her visits. 10052
It was just a friendly co-operation.

Q. Did she ever report to you when she found copies of any merchandise in stores—copies of Guild merchandise in stores that she was calling on, if she did so? A. She would comment about it to me. I do not know whether you would classify it or term it "reporting to me."

Q. Do you know whether or not any local meetings or meetings of local dealers were held to determine whether a garment, any garments found by the shopper in the stores, was in fact a copy of Guild merchandise? A. Yes, sir.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

10053

By Mr. Haycraft.

Q. Did you have anything to do with the selection of those committees of retailers? A. On one occasion Mrs. Lapedus asked for my advice as to whom to contact in connection with the meeting to be arranged for the purpose of determining whether or not certain garments were copies.

By Mr. Haycraft.

Q. Was that at the time that she first came to Baltimore, or recently? A. It was the first occasion, as I recall, that she had to arrange such a meeting, or had for arranging such a meeting.

Q. Did she report to you the results of that meeting? A. The meeting was held in my office, so there was no necessity for that.

Q. And you were present? A. Yes, sir.

Q. Was any written report made of the results of that meeting? A. I cannot answer that question.

Q. Was any report made by you? A. No, sir.

10055 Q. But you do not know whether she made a report or not? A. No, sir.

Mr. Albert: To whom?

By Mr. Haycraft

Q. Are you sufficiently familiar with her duties to know whether it is customary for her to make reports of such meetings to the Guild? A. No.

Q. Subsequent to that first occasion that you refer to, have there been other instances of meetings of local dealers for the same purpose? A. Which I attended?

Q. No, that came to your knowledge, and by "the same purpose," I refer to your determining whether or not, as a matter of fact, a garment which had been selected by the

10056 shopper as a copy was, in fact, a copy of Guild merchandise? A. Yes, sir.

Q. On those occasions, how did the matter come to your knowledge? A. In the course of conversation either with Mrs. Lapedus, or one of the retailers who may have served as a member of the particular committee.

Q. Subsequent to that first meeting which you attended, who made the selection of the members of such commit-

tees, local committees? A. I am not familiar enough with the procedure to state definitely. I have an idea but I would not want to state it as a fact.

Q. The only one you are sure about is the first one you had any part in yourself; is that right? A. As to——

Q. The selection? A. As to the selection, yes.

Mr. Haycraft: May I have those rules and regulations you have there?

Mr. Bramble: This (handing papers to Mr. Haycraft).

By Mr. Haycraft.

10058

Q. I show you Commission's Exhibit 859 and ask you if you can identify and tell us what that is? A. Yes.

Q. Will you describe each one for the record as to what they are, each page? A. 859 is——

Mr. Bramble: Are you going to offer that?

Mr. Haycraft: Just as soon as I get through identifying it.

Mr. Weisman: Then off the record.

(There was a discussion off the record.)

Examiner Averill: Gentlemen, the papers that the witness has just been testifying to constitute one subject, and deal with one subject, namely, the articles of constitution, rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore. 10059 These consist, with the cover page, of eight pages, the same being firmly fastened together as a book with fasteners, and will be identified as one exhibit and be marked Commission's Exhibit 859 for Identification. Now, Mr. Haycraft, go ahead with your identification.

By Mr. Haycraft.

Q. I want you to tell us what pages 2, 3 and 4 are in there, so as to make it clear.

Mr. Bramble: If your Honor please, I do not interpose an objection now, but is not that another way of getting the paper in before we have a chance to object? Why can we not have the paper offered and then have him explain?

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

10061 *By Mr. Haycraft.*

Q. I will ask you if this exhibit which the Examiner has just had bound together includes the agreements between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc.? A. No, sir.

Q. Is that agreement Commission's Exhibit 843-A to G, inclusive? A. Yes, sir.

Mr. Haycraft: At this time I offer in evidence Commission's Exhibit 859, as identified by the witness.

Examiner Averill: I overrule the objection, gentlemen, and note an exception to counsel.

Mr. Bramble: Exception.

10062 Examiner Averill: And the papers in question are pages to be numbered commencing with the outside title page, from one to eight, inclusive, and will be received in evidence as Commission's Exhibit No. 859.

Mr. Haycraft: Off the record.

(There was a discussion off the record.)

(The papers referred to, consisting of eight pages, heretofore marked for identification Commission's Exhibit 859, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 851 for Identification, Mr. Roycroft, and I will ask you if you will identify that exhibit as to just what it is. A. Yes.

Q. What is it? A. It is my office copy of the by-laws, rules and regulations, and agreement with the Ladies' Ready-to-Wear Guild of Baltimore.

Q. In effect at the present time? A. Except for the 10064
agreement, yes.

Q. Is the agreement attached to the exhibit?

(The witness examines the document for several minutes.)

A. No, not to my office copy.

Q. No? A. No. May I qualify that answer to leave out the agreement.

Q. In other words, it is the by-laws, rules and regulations of the Baltimore Guild? A. Yes, it is the by-laws, rules and regulations of the Baltimore Guild.

Q. In effect at the present time? A. Yes, sir.

Q. Does that exhibit indicate on the various and respective pages thereof the dates of the various rules and reg- 10065
ulations as to when they were adopted? A. It gives the approximate date when the various rules and regulations were adopted, yes.

Q. Calling your attention to Commission's Exhibit No. 6, an agreement between the Ladies' Ready-to-Wear Guild of Baltimore, Inc., and the Fashion Originators Guild of America, Inc., entered into on September 30, 1935, I will

ask you whether or not that agreement, which is to expire on December 31, 1935, was ever renewed? A. No, sir.

Q. Referring to Commission's Exhibit No. 851 for Identification, are any of the rules, regulations, and by-laws contained therein rules and regulations of the Baltimore Ladies' Ready-to-Wear Guild that were adopted subsequently to December 31, 1935? A. Yes, sir.

Q. Which ones? A. What?

Q. On what pages and which ones? A. Page 6, page 7, and page 8. I beg your pardon, I will have to eliminate page 8; page 9 and page 10.

Q. Will you give those pages again so we may be certain
10067 of that? A. Yes. Page 6, page 7, page 9, and page 10.

Q. Referring to page 6—

Mr. Haycraft: I am trying to get this so I can make my offer. I am not trying to get anything in the record but just to make clear what I am offering.

By Mr. Haycraft.

Q. I notice the date effective is August 1, 1936, as to page 6. I will ask you whether or not the price schedule similar to that was in effect, a price schedule similar to that was in effect on December 31, 1935, as a rule or a regulation? A. Yes, sir.

Q. The same question as to page 7, which refers to the
10068 matter of alteration charges. A. Yes, sir.

Q. As to pages 9 and 10, when were they actually adopted by the Baltimore Guild? A. During April of 1936.

Q. Mr. Roycroft, heretofore in your testimony reference has been made to a so-called "price-line agreement," also in minutes of the Baltimore Guild. A. Yes.

Q. I will ask you to explain for the record what is meant by the term "price-line agreement," and if in doing

so can you clear up on page 6 of this exhibit, Commission's Exhibit 851 for Identification, the matter, because this is the exhibit that we are now discussing. A. The price-line agreement, as I understand it, and as I have referred to it, has to do with a group of suggested prices which the Baltimore Guild adopted.

Examiner Averill: I want to ask the witness several questions about this matter.

By Examiner Averill.

Q. From whom did those suggested prices emanate? A. For whom?

Q. From whom? A. From whom? 10070

Q. By whom were the prices suggested? A. They were suggested by the——

Q. Manufacturer? A. Various members of the Baltimore Guild.

Q. When? A. Prior to the organization of the Guild, why, the price set up on ready-to-wear, and particularly ladies' ready-to-wear in Baltimore was more or less chaotic, you might say, to the extent that one store might be offering prices of $11, another of $10.95, another at $10.75, and another at $10.89, or any price thereabouts that you might think of or that might suggest itself to them.

In order to clarify the price lines, we asked for suggestions from all members of the Guild as to what prices from approximately $11, or $10, up to and around $50, they 10071
felt might be desirable both from—well, particularly from, as I might say, for price appeal. In other words, in my opinion, the $10.95 is a price having a price appeal for women that is more than the full $11 price. The scale as it was finally adopted, or the prices, as were originally adopted in the scale, were taken from the suggestions which came in from all of the members, so that where one member might feel that $10.95 would be desirable, and

another one might feel that $10.89, however, if the majority favored $10.95 then $10.95 it was.

Q. That is how they were arrived at? A. Yes, sir.

By Mr. Haycraft.

Q. Referring to these pages——

Examiner Averill: One moment. I would like to follow my line of thought for a moment in order to clarify this matter.

Mr. Haycraft: Certainly.

By Examiner Averill.

10073 Q. What consideration was given, if any, in arriving at these price-line understandings, to suggestions for these price-line suggestions from the manufacturers of nationally advertised apparel, if these be suggestions, in fact? A. We have had none from the manufacturers. We have made an exception—as a matter of fact, I know we have made an exception in our agreement as it applies to nationally advertised apparel simply at the request of one who at that time had—and I refer to one of our members who was handling an advertised line, or handling nationally advertised merchandise, or carrying nationally advertised merchandise in his line as, for example, merchandise carried in "Vogue" from time to time, as it has a specific price, and "Vogue" is a magazine having a national dis-
10074 tribution. We realized that if our price line in Baltimore was $14.50, and "Vogue" advertised a specific garment at $15, the Baltimore stores carrying that merchandise should tie in with the nationally advertised price, consequently, we allowed an exception in that case so as to permit the Baltimore stores who might be carrying these particular styles, and which were advertised in "Vogue," to offer them to the customer at the nationally advertised price.

Q. If they so desired? A. Yes, if they so desired.

Q. You use the word "permit"; that is what I want to know about. A. It was optional with them if they wanted to mark it any price they chose, but the question was primarily raised to permit them to make their prices and to mark them at those prices as set forth in "Vogue," or other nationally advertised garments.

Examiner Averill: That explains what I had in mind.

By Mr. Haycraft.

Q. Was it an understanding as the result of any—any of these price-line agreements—was it the understanding concerning any of these price-line agreements that the 10076
price of them, of the garments— A. I am afraid I do not understand.

Q. I will start it from a different angle. A. Yes.

Q. Was it an understanding as the result of these price-line agreements that the members of the Baltimore Ladies' Ready-to-Wear Guild would observe the prices on the price schedule which was adopted by the Guild in marking up their merchandise in the ranges covered by that schedule? A. Did I understand you to say "as it understood"?

Q. Yes. A. That they would?

Q. Yes. A. Yes.

Q. It was? A. Yes, it was.

Q. Was there any, outside of the exceptions that you just referred to now, and which I think were further set 10077
forth in the testimony heretofore, what was the policy of the Baltimore Guild as to exceptions from the schedule as to allowing local merchants, members of the Baltimore Guild, to differentiate from the price list, or depart from the price list in those schedules as set forth? A. Well, in the case of coats, the coat schedule, as an example, as set forth in there, why, any coats advertised in a sale, or, as we term it, "under the caption 'sale,'" could be marked any price the retailer saw fit.

Q. Any other exception? A. There is another exception entered in there with regard to suits priced to resell below $17.95.

Q. What is that? A. In other words, any retailer buying suits, why—and he was going to mark them below $17.95, why, he could use his own discretion as to the price he was going to mark them——

Q. With that exception— A. Say that the price stood at $10.95—the suit started at $17.95, but perhaps I had better give you the full range there. In the first place, the dresses started at $10.95. The suits started in at $17.95. The agreement only held true on coats when they

10079 were offered at other than "sales."

Q. And this exception as to coats, was that one of the things took place effective August 1, 1936? A. No, that exception has been in there for a very long while.

Q. That has been in there for a good long while? A. Some time.

Q. That has been in there for a good long time? A. Yes, sir; it has been in there for quite some time.

Q. Was there any exception as to any other garments in the price range other than coats and suits? A. None that I can recall offhand.

Examiner Averill: Off the record.

(There was a discusison off the record.)

By Mr. Haycraft.

10089

Q. You say that was in effect before August, 1936. Was it adopted about April, 1936, Mr. Roycroft?

Examiner Averill: He is referring now to page 6.

Mr. Haycraft: Yes, I am referring to the exception as to suits in $17.95, part of that.

Examiner Averill: Yes. All right.

10081

A. This particular averment, as you have it on page 6, was in effect prior to August 1, 1936, except for some minor changes which were made as of August 1.

Examiner Averill: And for how long had it been effective prior to that time?

The Witness: It was adopted at the April 20, 1936 meeting of the Baltimore Guild.

Examiner Averill: That was its first adoption, 1936?

The Witness: No, that is the one that superseded this one (indicating papers).

Mr. Haycraft: That one superseded it, you mean?

Examiner Averill: Yes, the one on page 6.

10082

The Witness: The one—preceding the one of April 20.

Examiner Averill: 1936?

The Witness: April 20, 1936.

By Mr. Haycraft.

Q. What one did that, in turn, supersede? A. That is what—pardon me—this is off the record.

(There was a discussion off the record.)

Mr. Haycraft: I withdraw the last question.

By Mr. Haycraft.

Q. Let me ask you this question: When did the Baltimore Guild first adopt the price-line schedule or agreement? A. During the latter part of 1933.

10083

Mr. Weisman: That was under the N.R.A.?

The Witness: As I recall it, the N.R.A. was in effect at that time.

By Mr. Haycraft.

Q. Did the N.R.A. have anything to do with that price-line schedule, to your knowledge? A. Just what do you mean by the N.R.A. having——

Q. Well, anyone from the N.R.A., or did you go to the N.R.A. with the schedule? A. We had a member—a member of the organization on the local board of the—at least on the local retail board of the N.R.A.

Q. The point I am trying to make, was the price-line schedule you referred to a part of an N.R.A. project that you were working on? A. No.

Q. All right. When was it in 1933 that the first price-
10085 line schedule was adopted? A. During October, 1933. When you say "adopted," I presume you mean put into effect?

Q. That is right.

Examiner Averill: And thereafter, sir, were there, from time to time, changes, additions or eliminations from that schedule?

The Witness: Yes, sir.

Examiner Averill: Which followed on down consecutively at various times until——

The Witness: Present date.

Examiner Averill: Until August, 1936, at any rate?

The Witness: That is it. The first schedule, or,
10086 at least, price line, was first discussed with the Guild during September, 1933, and a definite schedule put into effect during October of 1933. Since then, why, there have been elaborations, modifications from time to time up until the present day, when we now have in effect the schedule which you have in the booklet there, dated August 1, 1936.

Examiner Averill: I see.

By Mr. Haycraft.

Q. Just one more question. Getting back to the question I propounded a while ago. When was it that the Guild put into effect its price-line schedule on suits—that is, suits priced to retail below $17.95, which is indicated on page 6?

Mr. Bramble: Off the record.
(There was a discussion off the record.)
Examiner Averill: On the record.
The Witness: May I have that question again?
(Last question read.)

A. I presume you mean the exception? 10088

By Mr. Haycraft.

Q. The exception referred to. A. Suits retailing under $17.95?

Q. Yes. A. That exception was made at the board meeting on April 25, 1936.

Q. Can you state why that exception was made?

Mr. Weisman: Wait a moment, let us not go afield on that.
Mr. Haycraft: All right.
Examiner Averill: Off the record.
(There was a discussion off the record.)
Mr. Haycraft: Probably I better ask a couple of questions. 10089
Examiner Averill: On the record?
Mr. Haycraft: Yes. We will leave this for the time being, and take 7, I think I can ask a couple of questions and give you a basis to rule on them.
Examiner Averill: All right. Go ahead.

By Mr. Haycraft.

Q. Referring to your schedule of alteration charges on page 7 of this Commission's Exhibit 851 for Identification, I will ask you whether or not this schedule is similar in form to the second page of Commission's Exhibit 859 already in evidence, which on its face was made effective June 1, 1932? A. I would like to qualify my answer, if I may. You will note that the particular schedule that you refer to is a schedule of the Retail Merchants Association.

Q. Yes. A. Which was adopted June 1, 1932, and antedates the organization of the Baltimore Guild.

10091 Q. Would you say, then, that— A. Pardon me just a moment.

Q. Yes. A. What you have offered in evidence here is in effect a schedule of the Retail Merchants Association of Baltimore which I had simply in my minute book as an office copy, so to speak, because the Guild schedule was patterned after the one which had been adopted by the Retail Merchants Association.

Q. In other words, the schedule of alteration was a matter that had been adopted by the Retail Merchants Association prior to the organization of the Baltimore Guild? A. Yes, sir.

Q. And the Baltimore Guild simply adopted that schedule as a part of its activities, did they? A. Yes, sir.

10092 Examiner Averill: That is all.

By Mr. Haycraft.

Q. Would you say that the schedule of alteration charges, page 2 of Commission's Exhibit 859, was one of the rules or regulations of the Baltimore Guild at the time it began—that is, from the time it began, for the time of its existence as a beginning, in 1933? A. I am inclined to think that this schedule as promulgated by

the Retail Merchants Association was adopted by the Baltimore Guild shortly after the Guild's organization.

Q. Was it continuous throughout the life of the old organization, and then adopted by the new organization? By the "new organization" I mean the present Guild.

Examiner Averill: You mean the incorporated Guild?

Mr. Haycraft: The incorporated Guild, with such modification as was necessary from time to time to make.

A. Yes, sir.

10094

By Mr. Haycraft.

Q. So that page 7 of Commission's Exhibit 851 for Identification is a continuation of a schedule of alteration charges of misses' and women's wearing apparel, originally adopted by the Guild in 1933? A. Or some time thereabouts, yes.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit No. 851 for Identification, the paper being the by-laws, rules, regulations and agreement of the Ladies' Ready-to-Wear Guild of Baltimore, Inc., to which objections have heretofore been made, all objections are overruled and the paper will be received in evidence, and the same will be marked Commission's Exhibit 851, 10095
pages 1, 2, 3, 4, 5, 6—page 7 has been withdrawn, and will be physicaly removed from the papers—the page heretofore spoken of as page 8 will be received in evidence and marked "page 8"; pages 9 and 10, as originally contained, not being offered, will not be any part or parcel of this exhibit. The page No. 8 is headed "Ladies' Ready-to-Wear Guild of Baltimore Regulations Governing Fashion Shows." That

is the page referred to. Those pages received in evidence will be bound together and given one exhibit number, namely, Commission's Exhibit No. 851, without any subnumbers thereunder.

(The document heretofore marked for identification Commission's Exhibit 851 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Roycroft, in carrying out the functions and details of the activities—in carrying out the functions of your office as secretary of the Ladies' Ready-to-Wear Guild
10097 of Baltimore, what have been your duties and what have you done aside from keeping the minutes which you have gone into heretofore? A. Taken care of the general correspondence of the Baltimore Guild.

Q. Yes. A. Also I have accepted it and acted as the headquarters for, or, at least, have maintained the headquarters of the organization in my office as the result of which all suggestions, complaints, and what not, have, for the most part, come to my attention, or have been brought to my attention.

Q. With whom have you principally had correspondence? A. With the local members.

Q. Do you carry on correspondence with the Fashion Originators Guild of America, Inc.? A. From time to
10098 time.

By Mr. Haycraft.

Q. Would you write to them when you had a complaint that the local rule, a local rule was being violated—a rule of your Ladies' Ready-to-Wear Guild of Baltimore? A. Would I write to them if I had a complaint that the local rules were being violated?

Q. Yes. A. No.

Q. No? A. No.

Q. Would you write to them—what would be the circumstances under which you would write to them? For instance, would you acquaint the Fashion Originators Guild of America of any infraction of the rules of the local Guild? A. Not necessarily.

Q. I do not mean necessarily; I am asking you whether you did or not. A. You said would I, if I understood you correctly, and I said——

Q. Yes. A. —I said not necessarily.

Q. Have you, in any event? A. I do not understand.

Q. Have you ever notified them? A. Have I notified them—may I repeat that question, just for a minute— 10100
have I notified the Fashion Originators Guild of America, Inc., of any violations or infractions of the rules of the local association; is that your full question?

Q. Yes, have you done so? A. Of what guild?

Q. Of the Ladies' Ready-to-Wear Guild of Baltimore. A. No, sir.

Q. No? A. No.

Q. Is it your custom, Mr. Roycroft, to acquaint the executive secretary of the Fashion Originators Guild of America, Inc., of applications that you have had for membership in the Ladies' Ready-to-Wear Guild of Baltimore, Inc.? A. It was the custom to notify Mr. Golby as executive secretary of the Fashion Originators Guild of America, Inc., as to any action taken by our board con- 10101
cerning members or local retailers who might have been or whose applications might have been received by our Board of Directors for acceptance by the members.

Q. Did Mr. Golby, in turn, call upon you to inform him as to whether or not certain retail dealers in Baltimore were members of your organization or had applied for membership? A. From time to time; yes, sir.

Q. What would you do when those requests were made? A. I would answer his inquiry.

Q. Calling your attention to Commission's Exhibit 103, I will ask you whether or not the "For Madam Dress Shop," operated by Mrs. Edward D. Fenton, became a member of the Baltimore Guild in September, 1935, or thereafter? A. I would like to answer the question by stating that Mrs. Fenton never operated the "For Madam Dress Shop."

Q. Did Mrs. Fenton purchase the "For Madam Dress Shop"? A. I do not know.

Q. Did Mrs. Fenton ever become a member of your organization? A. Yes.

Q. She did? A. Yes.

10103 Q. Under what name did she become a member of your organization? A. Mrs. Edward T. Fenton—Mrs. Edward D. Fenton.

Q. Where was she located? A. As far as I can recall, in the Guilford Manor Apartments, or it may have been the Cambridge Arms, I do not know; but I think it was one or the other.

Q. You think it was one or the other? A. I do; yes, sir.

Q. Now, directing your attention to Commission's Exhibit 104, I think it is a lettered exhibit A and B, I suppose it is. I will ask you whether or not you have a recollection of the subject-matter of that letter? A. I recall—to answer your question, Mr. Haycraft—I recall the condition, if I may call it that, that necessitated the writing

10104 of this letter.

Examiner Averill: Now, I wish you would put in there that it appears that the letter in question is a letter from whom.

Mr. Weisman: From the Fashion Originators Guild.

The Witness: From the Fashion Originators Guild of America to myself, as secretary of the Baltimore Guild.

Mr. Haycraft: On October 1, 1935.

By Mr. Haycraft.

Q. I show you Commission's Exhibit——

Mr. Weisman (interposing): Well, now——

By Mr. Haycraft.

Q. —111, 112 and 113, and ask you if you recall——

Mr. Weisman (interposing): May we have those?

Mr. Bramble: May I see those?

Mr. Weisman: May we get through with one exhibit at a tim Judge, instead of hopping from one to another?

Examiner Averill: I think it would be much 10106
better, but I do not know what they contain.

Mr. Haycraft: Cannot do it that way, it is impossible, Mr. Examiner.

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. Showing you Commission's Exhibits 111, 112 and 113, I ask you whether or not you are familiar with the telegrams therein set forth?

The Witness: May I have the question?

(Last question read.)

A. I am not familiar with the Exhibit No. 111 that was 10107
sent by a member of the Baltimore Guild to the Fashion Originators Guild and did not pass through my hands. The same applies to Exhibit No. 112. I am familiar with Exhibit No. 113.

Q. That is your telegram, is it not? A. It is a telegram of Ladies' Ready-to-Wear Guild of Baltimore sent by me.

Q. And addressed to Mr. Post?

Mr. Weisman: I object to that, the document speaks for itself.

Examiner Averill: I know, but let it show on the record so that we may know what we are talking about.

Mr. Weisman: Withdraw the objection.

Examiner Averill: You see what I mean?

Mr. Weisman: I should not have objected. Mr. Albert is going to conduct the examination from now on. I am leaving.

By Mr. Haycroft.

10109 Q. What is your answer—addresesd to Mr. Post? A. Yes, sir.

Q. Would you say that the other two telegrams, Commission's Exhibits 111 and 112, relate to the same subject-matter? A. Yes.

Q. Mr. Roycroft, what was the situation in Baltimore that prompted the sending of your telegram to Mr. Post, under date of October 1, Commission's Exhibit 113? A. As I recall, an announcement sent out by a resident of Baltimore in the form of an invitation to her—I suppose you might term it that—friends and associates, directing attention to the fact that Chezrozette, who was going to conduct a fashion show at her residence, or at the residence, I think, of a friend of hers—the location of this friend's house being in a section which is zoned in Baltimore City, as strictly residential. In other words, by permitting Chezrozette to go into that section she was unquestionably having an advantage which none of the local retailers could have. The zoning laws of Baltimore preclude the possibility of a local retailer setting up for business in that section.

10110

Examiner Averill: This Chezrozette is a dealer?

Mr. Haycraft: No.

Examiner Averill: In Baltimore?

The Witness: No, he is a New York retailer coming down to Baltimore.

Examiner Averill: I see.

The Witness: Setting up in the restricted neighborhood, selling——

Examiner Averill: Under the guise of a private house?

The Witness: The Guild merchandise under the guise of a fashion show.

Examiner Averill: Yes.

The Witness: We shopped the etsablishment and found that they were violating the itinerant vendor's 10112
laws of the State of Maryland, brought the State license bureau into the picture; they, in turn, brought the two local aids into the office of the State license bureau, cautioned them as to what would happen if they attempted to repeat it—I mean, repeat the arrangement; and, as I recall it, subsequently noted either Chezrozette or Jane Engel.

By Mr. Haycraft.

Q. Who was Jane Engel? A. I understand that Chezrozette is a branch, or something to that effect, of Jane Engel in New York.

Q. Where in Baltimore was this display to be made? A. I do not recall the exact address, but it was in the 10113
vicinity, I think, of University Parkway, in that general location, one of the most exclusive residential sections of Baltimore.

Q. How did you say you learned of this taking place? A. The particular lady who was working out the details with Chezrozette had sent invitations around to the residents of Baltimore, extending an invitation for them to attend.

Q. I notice here it says, "Baltimore Guild definitely opposed Chezrozette or Jane Engel displaying merchandise in Baltimore as planned. Announcements indicate practically all Baltimore Guild regulations will be violated during this showing. This set-up places them in the classification. Baltimore retailers insist Fashion Originators Guild compel them to conform to our regulations when operating locally." What were the Guild regulations that would be violated? A. Selling——

Mr. Weisman (interposing): Will you answer that, will you make that plain. Do you refer to the Baltimore Guild?

10115 Mr. Haycraft: That is what it says.

Mr. Weisman: All right. The reason I say this —off the record.

(There was a discussion off the record.)

Examiner Averill: But I think the telegram clearly shows it refers to the local Guild regulations in Baltimore which were being violated.

Mr. Weisman: Yes.

Examiner Averill: All right.

By Mr. Haycraft.

Q. Go ahead, now. A. Primarily, that they would be selling from an apartment house shop; secondly, that they would be setting themselves up in Baltimore under the
10116 guise of a display, and from what we had been given to understand, actually selling merchandise.

Q. Was there any rule or regulation of the Baltimore Guild that you recall being violated, or that would be violated, if that showing was allowed? A. Not that I can recall at the present time.

Q. How about the price-line agreement? A. I had no knowledge as to what price line Chezrozette used, so that—

Q. Did you see the announcement? A. Yes, but the announcement was not an announcement of Chezrozette, but an announcement of a Baltimore woman, simply calling attention to the fact that this fashion show would be held at her home, and made no effort to quote prices, so to speak.

By Examiner Averill.

Q. Well, did your Guild take steps, or did you take steps, acting for your Guild, to follow up and see what was actually done, or undertaken to be done, about that fashion show or so-called fashion show? A. Yes, sir.

Q. Would you mind telling us what steps? A. We ar- 10118
ranged to have Mrs. Lapedus present.

Q. That is your shopper? A. That is the Fashion Originators Guild shopper, present at either Mr. Golby's or Mr. Post's suggestion, and we arranged to have her present on the first day to observe and see what actually transpired. She came back and reported to me that—she came back and reported merchandise was actually being sold. As a matter of fact, they were using the second floor as sort of a fitting room, I am told. I then called the State License Bureau, knowing—being familiar to a certain extent with the itinerant vendors' law in Maryland, I called Mr. Bratton, and stated to him what was actually transpiring. He said we would have to have evidence, and, consequently, the next morning I sent Mrs. Lapedus out the 10119
second time with money, gave her instructions that, if possible, to buy or make a purchase there. She came back that afternoon with the dress, as I recall. She had paid about $17.95 for it, with a sales check. With that evidence I then went over to Mr. Bratton's office, submitted the sales check and the report of the shopper, and on the strength of that he communicated with the two ladies involved. It was only a two days' showing, as I recall, and as he explained to me at that time it was only a matter of an hour or two

yet before they were going to close up anyhow, but he would have them in there within a day or two and sort of read the riot act to them. He explained to me that an out-of-State retailer coming into the State of Maryland, taking orders and actually making delivery, and consummating sales in Baltimore City, without having first taken out an itinerant vendors' license, they were in violation of the State laws, and that if a case really wanted to be made, of course, they were perfectly willing to prosecute, but the violation, in his opinion, possibly did not justify bringing Chezrozette back into the State of Maryland for this particular offense, but that they would put themselves on record with them.

10121

Examiner Averill: Do you know whether the firm calling themselves Chezrozette are manufacturers or retailers?

Mr. Haycraft: They are New York retailers.

Examiner Averill: New York retailers?

Mr. Haycraft: Member of a New York Uptown Guild.

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibit 114, and ask you if you recall writing that letter to Mr. Post in reply to his letter which is in evidence as Commission's Exhibit 104?

10122

Mr. Bramble: May we look at that just a moment?

Examiner Averill: You may look at it.

Off the record.

(There was a discussion off the record.)

Mr. Haycraft: Read the last question.

(Last question read.)

A. I can recognize it as a letter I wrote; I cannot recall having written it.

By Mr. Haycraft.

Q. I cannot do that because the record is gone now, but I will ask you now so that you will have the matter entirely before you this question which will clarify it: If you will explain what price lines were meant in this particular letter? A. The price-line schedule, or at least the price lines which were being used by the Baltimore stores; namely, $10.95 to $49.95, I think.

Q. Did you at a meeting with the members of the local guild discuss this matter—first, I will ask you had you had a meeting with the members of the local guild with respect to this matter? A. I think we had a meeting with the members of the Baltimore Guild at which this particular 10124
matter was discussed, yes.

Examiner Averill: Was that the meeting of the Baltimore Guild prior to the sending of the two telegrams; namely, Commission's Exhibits 111 and 112, which, according to your testimony and according to the signature thereto, was sent out by members of the Guild and not by the Guild itself, so that—first, was that directly afterwards or some time after the period that you have reference to?

The Witness: I am inclined to think that our meeting was prior, but before definitely answering I would like to check up our minutes against the date of this telegram.

10125

By Mr. Haycraft.

Q. Have you got the date of that meeting now? A. There is an approximate date on that letter, is there? If there is some date that you can give me I would appreciate it.

Mr. Haycraft: October 22 was the date of that letter.

Examiner Averill: '35?
Mr. Haycraft: '35.

By Mr. Haycraft.

Q. Can you find it? A. To answer your question, Judge, I think the meeting of September 30, 1935.

Examiner Averill: '35?
The Witness: Yes.

By Mr. Haycraft.

Q. By reference to those minutes, can you find out when
10127 this matter was discussed, and, in fact, whether it was discussed at the meeting of September 30, 1935? A. Yes.

Q. Will you do so? A. Yes.

Q. Have you done so? A. I have.

Q. Was it? A. It was.

Q. It was? A. Right.

Q. Those minutes are in evidence as Commission's Exhibits 852-A to C? A. No, A to D.

Q. A to D? A. A to E, I think—wait a minute, there seems to be a whole lot of the alphabet here.

Q. Is it A to G? A. A to G.

Q. A to G? A. Right, A to G is right.

Q. I show you Commission's Exhibit No. 115 and ask you if you recall receiving the original of that letter? A. Just a moment until I get hold of the exhibit itself.

10128

(The witness examined the exhibit for some time.)

The Witness: Now, if I can have the question read again, please.

(Question read.)

By Mr. Haycraft.

Q. Do you recall receiving the original of that letter? A. I do.

Q. You do recall receiving it? A. I do.

Q. Now, I will ask you whether or not you made any attempt to ascertain whether the garments—whether the agreement referred to in that letter was carried out? A. I beg your pardon.

Q. I will ask you whether or not you made any attempt to ascertain whether or not the agreement that is referred to in that letter was carried out? A. I think I mentioned earlier in my testimony that I had Mrs. Lapedus, the Fashion Originators Guild of America, Inc., shopper, attend the fashion show on two days for the purpose of ascertaining exactly what happened, or transpired there.

Q. Did she, Mrs. Lapedus, the shopper for the Fashion 10130
Originators Guild of America, Inc., report to you the prices at which the garments were being sold? A. Yes.

Q. She did? A. Who?

Q. Your shopper. A. Our shopper?

Q. Yes. A. Oh, I did not have your question clearly in mind. I do not think she gave me a complete range of the prices at which the merchandise was being offered. I think, however, she did mention several of the prices, and the prices, as I recall, why, were rather in line, or comparable to the prices at which the Baltimore stores were offering the merchandise.

Q. Did she quote that there were any "off" prices reported as being observed by her as being quoted by the dealers at that fashion show?

10131

Mr. Weisman: If the witness knows.

A. I do not recall at this time.

10132 *Charles F. Roycroft—For Commission—Direct.*

Room 401, United States Appraisers Store Building, Baltimore, Maryland, November 11, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same appearances.)

CHARLES F. ROYCROFT resumed the stand and testified further as follows:

10133

Direct examination (continued) by Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit No. 114, a letter you wrote to Mr. Post under date of October 2, 1935, in which you state as follows, in substance: We feel very definitely that Chezrozette in coming to Baltimore and possibly identifying with the Baltimore stores the very dresses they have will cause our members, or particularly the smaller shops, considerable embarrassment, and it is at their suggestion I am writing and asking the F.O.G.A. to at least insist that the established price line promulgated by the Guild here be adhered to by Chezrozette. In what way would the sale of any dresses by Chezrozette cause embarrassment to the members of

10134

the Baltimore Guild? A. We in Baltimore had established regular prices for merchandise in the opinion of a number of our smaller shops, or establishments, particularly those catering to the trade to which it was reasonable to assume would be invited to this particular show, and the offer by Chezrozette of merchandise at prices at variance with our established prices, why, would create confusion in the minds of the customers of the Baltimore stores.

Q. Can you give us an illustration of how it would cause confusion? A. Well, as a sample of what it would do, we had in Baltimore a $17.95 retail price. We had in Baltimore a $15 price. For Chezrozette to come into Baltimore with $16.50 merchandise, or a price thereabouts, we were inclined to feel that the Baltimore customers, or, at least the customers of the Baltimore stores would not be in position to know whether they were getting from Chezrozette $15 merchandise at $16.50 or $17.95 merchandise at $16.50. As a matter of fact, I might say that what did happen was that at least in the instances of the merchandise that I purchased from Chezrozette was getting $17.95 for $15 merchandise.

10136

Q. It was the same identical price line? A. The identical merchandise that I bought from, or, at least, my shopper bought from Chezrozette and at Chezrozette's "Fashion Show" in Baltimore, or reputed "Fashion Show"; it was actually a sale of merchandise which took it out of the fashion show category, was being offered by one of the Baltimore stores at $15 because, in order to dispose of mine, I had to sell it at a reduced price because they would not pay any more than they were actually selling the merchandise for.

Q. How was it embarrassing to Baltimore merchants if the Baltimore merchant were selling merchandise at $15 that Chezrozette were selling at $17.95, with an overage in price of $2.95? A. I think anything that would create confusion in the minds of the customers of the Baltimore stores would have a tendency to embarrass the Baltimore stores.

10137

Q. Do the customers of the Baltimore stores expect the stores to sell the same merchandise at the same price; that is, the same merchandise as to grade at the same price?

Mr. Albert: That is objected to. There has been no foundation laid to show that this witness knows what the customers expect of the Baltimore stores.

This witness has not been shown to have an intimate, or even casual knowledge with the workings of the customers of the Baltimore stores.

Examiner Averill: I think the gentleman is an expert. I think he is qualified to give his opinion on the matter, a matter of that type and character; although I rather have in mind what his answer will be, so I shall most reluctantly have to overrule your objection and give you an exception. Mr. Witness, you may answer the question.

Mr. Albert: On second thought, Mr. Examiner, I shall withdraw the objection.

10139 A. I am not qualified. I cannot speak for the customers. I do not know what they think.

By Mr. Haycraft.

Q. What prices, or, to make it more specific, and get at it without so many questions, these prices that you refer to are prices to the consuming public, are they not, retail prices of the garments, just so the record may be clear? A. Yes, I am speaking of retail prices except in the case where I refer to selling merchandise to a store, and that was a sale to a store by me to simply dispose of the merchandise. Of course, in that case, the merchandise was sold at different from the average retail price.

Q. In the next paragraph we have here, it states: "As
10140 mentioned above, we are not asking that cost govern the retail in connection with the price line of their merchandise; while this would be desirable, we can appreciate your inability to enforce the provisions of our schedule"—The part of the letter that I refer to is "cost governing retail"; what do you mean by "cost governing retail" in connection with price lines? A. Exactly as the letter states. At that time the Baltimore Guild had, in fact, an arrangement whereby cost governed the retail price at which the merchandise was sold in Baltimore.

Q. What was the relationship between the cost and the retail price at that time observed by the Baltimore retailers? A. I cannot recall that schedule from memory. I think you have it.

Q. Do you have anything to refresh your recollection from? A. I think you had it in one of the exhibits, if I am not mistaken about it.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. Have you anything to refresh your recollection? A. Yes.

Q. Will you please refresh your recollection, then? 10142

Mr. Bramble: Could we see that? I do not know what it is.

(Mr. Haycraft hands paper to Mr. Bramble.)

The Witness: This is not in evidence, just a memorandum.

Examiner Averill: Oh, no, we just had him look at this memorandum. He wanted to refresh his recollection. Of course you may look at it, I do not mean that.

Mr. Bramble: I see.

Examiner Averill: But it is just something he happened to have in his pocket.

Mr. Bramble: All right.

10143

By Mr. Haycraft.

Q. Now, then, having refreshed your recollection, will you testify as to the relation between the cost and the retail price? A. A specific retail price.

Q. You may make any selection yourself. Take, for instance, a dress that is sold at $10.95 at retail, what would be the cost of that, according to the price list? A. On

that particular schedule we had no cost governing retail on $10.95. Any merchandise price at $6.75 or less, why, could be sold at $10.95 at the discretion of the store.

Q. Take $12.95 there, retail price at $12.95. A. The cost on merchandise retailing at $12.95 would be anything from $6.76 to $7.75. At this point, when we get into this particular phase of it, I would like to clarify this just to a certain extent, namely, that when I say merchandise costing $6.76 to $7.75, it was retailed at $12.95. That held only for a period of three weeks, and not necessarily three weeks from the date a given store received that merchandise, but for a period of three weeks from when the mer-
10145 chandise was first received in Baltimore by any store.

In other words, store A may get the merchandise in to-day, while store B may not get it in for a period of two weeks from now. Store B, under that set-up, would only be required to mark it at $12.95 for a period of a week, because the merchandise had already been in town for a period of two weeks.

Now, there is another angle to it that I think I might clarify, and that is when merchandise—any merchandise that any store might buy—is offered in a sale, and cost did not govern the retailer, as an example, a store might pay $7.75 for a dress, immediately upon its receipt in Baltimore, throw it into a sale that it is offering—they could offer that merchandise at any price they saw fit, below $12.95 or above, provided, of course, it fit into one of our
10146 established price lines.

Q. You would not be allowed to price it between those? A. They could not price it between it; if they went down below $10.95, we had no suggestions.

Q. In other words, if you bought a dress for $7.75, you would expect them to sell it for $12.95 for nearly three weeks, if they were the first one on the market? A. That's it.

Q. But if they were the last one, and there was a sale on, then they could sell it at $10.95? A. If they were the first one, and there was a sale on, they could sell it for anything they wanted to below $10.95, and at any of our established price lines from $10.95 to $49.95, or at anything they wanted to sell it for above $49.95. Our price lining only covers retail prices from $10.95 to $49.95.

Q. In other words, cost did not enter into your sales? A. Not into sales, a cost did not enter into it.

Q. Was there any percentage basis of your mark-up between cost and your price line that you established, or were there varying margins or mark-ups? A. Well, I am not an accountant, but, offhand, looking at the cost figures and the retail figures, I would say definitely that there was a variation of mark-ups. 10148

Q. What would be the cost range for your $15 price line? A. From $7.76 to $8.75.

Q. Your $17.95 price line? A. From $8.76 to $10.75.

Q. Your $19.95 price line? A. We had no $19.95 price line at the time, cost governing retail was in effect.

Q. By the way, when was that in effect, beginning when? A. Again I am going to have to ask to look at the minute book; I do not have the dates.

(Mr. Haycraft shows minute book to witness.)

Mr. Bramble: You are speaking of a particular paper now?

Mr. Haycraft: Still referring to the letter of October 19, 1935, to establish what was meant in a certain paragraph of that letter. 10149

Mr. Bramble: That is Exhibit 114.

Mr. Haycraft: Trying to run the thing back—yes, that is Exhibit 114.

Examiner Averill: Do you want to see it?

Mr. Bramble: No, I think we saw it yesterday.

The Witness: That paper will be down shortly. Now, we are going to a point where I think that

paper I am looking for will give you some definite reference.

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. After refreshing your recollection from the minutes and other papers which you have before you there, can you give us an estimate of the length of time that those cost prices—cost governing retail price arrangement, or agreement, was in effect by the Baltimore Guild? A. If I understand your question correctly, the Baltimore Guild
10151 had such an arrangement in effect for the period of time of about two months.

Mr. Albert: From when to when?

The Witness: From some time in the first half of 1935 until the early part of 1936 or some time around April, 1936, when it was modified.

Mr. Albert: You said two months; did you mean two months?

The Witness: No, I meant twelve months.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 119, which is a letter from Mr. Golby to yourself, dated October 21, 1935, and advising that David Crystal, Inc., has resigned from
10152 membership in the Fashion Originators Guild and he will be no longer entitled to enjoy the benefits of membership in their Guild. I will ask you what, if any, action was taken by your office on receipt of that letter?

Mr. Albert: May we see this?

Mr. Haycraft: Yes.

Mr. Albert: What is that question now?

(Question read.)

Mr. Albert: No objection.

A. None.

By Mr. Haycraft.

Q. None? A. Not a thing.

Q. Did you in any way acquaint the members of your Guild with that information, the Baltimore Guild? A. No, sir.

Mr. Bramble: What did you say?

The Witness: No, sir.

10154

By Mr. Haycraft.

Q. Referring to Commission's Exhibits 849-A and B, which are the minutes of the Baltimore Guild of February 25, 1935, I call your attention to the second paragraph which says: "The appended report of the committee on price lines was presented by Mr. E. H. Currier, Chairman. Following an extended discussion, and upon motion, which was duly seconded and carried, the report of the committee was adopted, subject to ratification by those members of the Board of Control not present at the meeting." I will ask you whether or not that fixes the date in your mind as to when the cost of price lines was adopted by your local Guild? A. Yes, this is the exhibit that is missing.

10155

(The witness here refers to an unoffered appendment to the exhibit.)

The Witness: I am inclined to feel that subsequent to this meeting—in other words, some time during March of 1935, is when the Baltimore Guild adopted the schedule which terminated during April of 1936.

By Mr. Haycraft.

Q. Is Rose E. Phillips a member of your Baltimore Guild? A. No, sir.

Q. No? A. No.

Q. Did she ever make application for membership? A. No, sir.

Q. She did not? A. She did not.

Mr. Bramble: What was that?

The Witness: No.

By Mr. Haycraft.

10157 Q. Did you ever make an investigation, or cause an investigation to be made of the shop operated by Rose E. Phillips at 420 North Charles Street to see whether she would be eligible for membership in the Ladies' Ready-to-Wear Guild of Baltimore, Md., and when I say "by you," I mean if it were made, I do not mean, personally, but did you have the investigation made by those acting under your supervision, direction, and under your authority? A. No, sir.

Q. No? A. I would like to qualify that answer of "no," by saying that the Rose E. Phillips' shop and her method of operations are known to quite a few members of the Baltimore Guild, and that she was eligible for membership. As a matter of fact, we had one of the officers of

10158 the local Guild call on her and extend a personal invitation to join, but she never acted upon the invitation.

Q. Do you know whether or not she handles Guild merchandise? A. I, personally, do not.

Q. Are Miss Lauterklos or Miss Sedgewick of "Town and Country," 811 South Charles Street, a member of the Baltimore Guild? A. Both of those ladies are members of the Baltimore Guild but not in the capacity that you refer to.

Q. Not in the capacity? A. No.

Q. Then in what capacity are they members of the Baltimore Guild, if other than those which I mentioned? A. They were accepted as members at that time, at that particular time, and subsequently thereto they dissolved their partnership, and they are both operating individually, and as individuals they are members of the Baltimore Guild. One is trading as "Town and Country," and the other is trading as "Cross Country."

Q. The firm of Lee, Inc., at 3424 Eastern Avenue, Baltimore, Md.; is that a member of the local Baltimore Guild? A. Yes.

Q. It is? A. Yes.

Q. How long has it— A. What did you say? 10160

Q. How long has it been a member, do you know? A. What is that that you are referring to there? If I knew what you were referring to there I could save a little time by getting the date from it. I notice you have a paper there.

Q. Yes. A. Are you referring to that paper?

Q. I am referring to Commission's Exhibit No. 128. A. And what is that?

Q. What is the date of that letter? A. The date of the letter is March 11, 1935.

Q. Yes. A. To save time, may I answer by saying that they were accepted for membership shortly after the organization of the Guild.

Q. You mean shortly after the date of that letter? A. Yes. I beg your pardon, shortly after the date of that 10161 letter.

Q. Shortly after March 11, 1935? A. Yes. That fixes it more accurately, shortly after March 11, 1935, or some time thereabouts.

Q. The Sloan Strobel firm, 1033 St. Paul Street—is that firm a member of the Baltimore Guild? A. No.

Q. No? A. No.

Q. Did you make any investigation there as to whether they were eligible for membership or not, and, if so, what were the results of your investigation, if any? A. The investigation which the Baltimore Guild made at that time, as I recall, indicated that that particular firm is operating an apartment shop and not eligible for membership.

Examiner Averill: What do you mean by "apartment shop"? You have used that several times heretofore.

The Witness: Operating from a private residence—that is, this particular store—that is the
10163 particular usage which we give to it in connection with this particular store, sir. We use that differently in connection with some other shops that are located in apartment buildings.

Examiner Averill: You do not mean a shop in a building—a shop in an apartment building?

The Witness: No, not my answer here, no. This is a combination residence and shop, where the individual lives possibly on the second floor and operates on the first floor, or lives in the rear of the first floor and operates in the front part of her place of business.

By Mr. Haycraft.

10164 Q. As a matter of fact, do you know whether there were other businesses conducted in the same block where this store is located? A. I am not in position to answer that at this time.

Q. Would that make any difference in determining whether that particular shop was eligible or was not eligible? A. The location of the shop would not necessarily change its status.

Q. No. Commission's Exhibit No. 132, in or wherein you report to Mr. Golby, in reply to a letter from him that the Sloan Strobel establishment is, in your opinion, "an apartment house." A. No. In our opinion.

Q. In your opinion? A. "In our opinion." Speaking now for the Guild and not for myself.

Q. Yes, speaking for the Guild, the Baltimore Guild, "an apartment shop," and, as such, is not eligible for membership in the Baltimore Guild. Upon what do you base your own "our opinion," as you called it in the letter? A. The report of the shopper who visited the address in question; namely, 1033 St. Paul Street in Baltimore.

Q. Well, now, will you state for the record what your 10166
rules and regulations are as to eligibility with respect to an apartment shop of the Baltimore Guild? A. I have not any. We have no hard and fast rule set up for the eligibility of an apartment shop or shops as members.

Q. What do you consider an apartment shop that would not be eligible for membership as referred to in this letter?

Mr. Albert: That is objected to as entirely immaterial, incompetent and irrelevant for any purpose whatsoever.

Examiner Averill: Objection sustained.

By Mr. Haycraft.

Q. You mean you do not have any rules to determine 10167
what is an apartment shop? A. None that I am familiar with.

Q. Do you have any apartment shops who are members of your Guild? A. It would depend entirely on what you would classify as an apartment shop. We have as members shops located in apartment buildings.

Mr. Albert: But you do not classify those, do you, as "apartment shops"?

The Witness: The shops of the Baltimore Guild?

Mr. Albert: Yes.

The Witness: So far as the Baltimore Guild is concerned, why, we would not and are not classifying them as apartment shops.

By Mr. Haycraft.

Q. What is your definition of an "apartment shop"?

Mr. Bramble: I object to that.

Mr. Albert: I object.

Mr. Bramble: It can serve no purpose.

10169 Examiner Averill: Objection sustained, gentlemen. Exception noted to counsel.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 6, A to something else, E——

Q. Why did you write the letter?

Mr. Albert: That question is objected to as entirely immaterial.

Examiner Averill: The objection to the former question is sustained, but the objection to this question is overruled. He may say why he wrote the letter.

10170 A. Because Mr. Golby wrote me, I think, asking for the information.

Q. Was it customary for you to furnish that information to Mr. Golby?

Mr. Albert: Object to the question as immaterial.

Examiner Averill: Overruled.

Mr. Bramble: Exception.

The Witness: May I have the question?

(Last question read.)

A. It was customary to furnish it upon request.

Mr. Bramble: Off the record.

(There was a discussion off the record.)

Mr. Bramble: May we consider that Mr. Albert's objections will be for me, too?

Examiner Averill: Yes.

Mr. Albert: And when Mr. Bramble objects it may be considered for me also?

Mr. Bramble: Unless there is something special.

Examiner Averill: Yes.

By Mr. Haycraft.

10172 Q. Is Gladys R. Ware, Inc., a member of the Guild? A. No, sir.

Q. Did you make any investigation to ascertain whether she was eligible for membership? A. Yes, sir.

Q. What did you find? A. That she was.

Q. That she was eligible? A. Yes, sir.

Q. Do you know why she did not join your Guild? A. She did join.

Q. I thought you said that she was not a member when I asked you a while ago? A. No, sir.

Q. She is a member? A. No.

Q. She joined and resigned; is that it? A. Yes, she has since gone out of business.

Q. I see. Are you acquainted with Mrs. Mathew Fenton? A. No, sir. 10173

Q. She is not a member of your Guild, the Baltimore Guild? A. Mrs. Edward T. Fenton is. That, I suppose, is the same individual; it may be the wrong Christian name.

Q. I show you Commission's Exhibit No. 137, a letter from J. M. Golby to yourself, and ask you if that refers to Mrs. Edward T. Fenton, or is that the Mrs. Fenton

you have in mind (showing paper to witness)? A. Yes, this is the Mrs. Fenton I have in mind.

Examiner Averill: The witness is now referring to what?

Mr. Haycraft: To Commission's Exhibit No. 137.

Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Did she become a member of the Baltimore Guild on or about April, 1935, April or May? A. I cannot recall the exact date, but she was accepted for membership in the Baltimore Guild.

10175 Q. I show you the last paragraph of the same letter——

Mr. Albert: Which one is that?

Mr. Haycraft: 137.

By Mr. Haycraft.

Q. —in which Mr. Golby says: "Will you kindly let me hear from you regarding the steps the Ladies' Ready-to-Wear Guild of Baltimore have taken regarding the unfair competition of Mrs. Fenton until such time as she takes a shop and joins the local Retail Guild?" Did you make any investigation pursuant to that request, or take any action pursuant to that request? A. Not as I recall.

Q. Do you know what Mr. Golby referred to there as

10176 to unfair competition of Mrs. Fenton? A. Nothing other than as set forth in this letter.

Q. What is a commissionaire, that is what they termed her, is it not? A. My interpretation would be more or less a curbstone broker, somebody that carries their office around in their hat, goes out and solicits orders, and then after she gets the orders, why, attempts to buy them from a manufacturer.

Examiner Averill: Excuse me just one moment. Those orders—if this person is acting in the capacity such as you spoke of and succeeds in obtaining orders, they attempt to place them with manufacturers; is that the idea?

The Witness: May I enquire——

Examiner Averill: Those orders are all obtained from retailers, or are they obtained from consumers?

The Witness: It was that type of operator—not speaking of Mrs. Fenton now.

Examiner Averill: I understand.

The Witness: But that type of operator will 10178
solicit orders from consumers.

Examiner Averill: Consumers, that is what I want to find out.

The Witness: And they attempt to fill the orders by placing them with a manufacturer. She may have a catalog, or something of that sort, and sell from a catalog.

Examiner Averill: Thank you.

Mr. Martin: In other words, she does not carry anything in stock but buys the goods after she gets the order.

The Witness: My understanding of a commissionaire is that, yes.

By Mr. Haycraft. 10179

Q. Mr. Roycroft, I now direct your attention to Commission's Exhibit 138, which is a letter from yourself to Mr. Golby under date of May 3, 1935, and ask you if you sent that letter in reply to Commission's Exhibit No. 137?

A. May I look at it?

Q. Read the context of it (handing paper to witness).

A. Yes, sir.

Q. Is the Mrs. Mathew Fenton mentioned in Commission's Exhibit 138 the same Mrs. Fenton referred to as Mrs. Edward Fenton? A. Yes, there is only one Mrs. Fenton.

Q. All right. A. There is no reference to the first name in Exhibit 137, but in the Exhibit 138 she is referred to as Mrs. Mathew Fenton. As a matter of fact, it should be Mrs. Edward T. Fenton, as I recall it.

Q. Now, in this paragraph, Commission's Exhibit 138: "With regard to Mrs. Mathew Fenton, your suggestions along these lines, I feel are rather well taken. While the Guild, as such, is not in a position to do anything, unquestionably our individual members are, you can rest assured
10181 that the full facts will be placed before them at the next meeting, and I feel quite certain your organization can count on their co-operation." Did you, as a matter of fact, acquaint the members with the information you received from Mr. Golby in Commission's Exhibit 137 at the next meeting of the Baltimore Guild as promised in this letter? A. I do not recall definitely, but I am inclined to feel that at the meeting following the writing of this letter, why, Mr. Golby's letter, which is Exhibit 137, was read for the information of the members.

(There was a discussion off the record.)

Q. I show you Commission's Exhibit 142, a letter from yourself to Mr. Jack Goldston, Fashion Originators Guild
10182 of America, dated August 22, 1935. What position does Mr. Goldston hold in the Fashion Originators Guild, to your knowledge? A. I really do not know.

Q. Did you send this letter to him? Do you recall sending the letter referred to? A. Yes.

Q. Do you recall the occasion, that is, why you sent that letter?

Mr. Albert: That is objected to, if it please the Court, as immaterial. May I see the letter, Mr. Roycroft?

The Witness: Yes, sir (witness hands paper to Mr. Albert).

Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: The objection is overruled. He may answer that question if he can, if he recalls why he sent it. He says he does not recall the position that the man occupies.

The Witness: May I have the question, please?

(Last question re-read.)

A. In an effort to have the Fashion Originators Guild assist in keeping at least a certain number of copies out 10184
of Baltimore. May I just say this off the record to Mr. Haycraft: You are asking about the first part of the letter, I assume?

Q. Yes, that is the main part. A. Yes.

Examiner Averill: May I see it?

(Counsel hands paper to Examiner Averill.)

By Mr. Haycraft.

Q. This Mrs. Lapedus mentioned in the letter, that is the Guild shopper? A. The Fashion Originators Guild shopper.

Q. The Fashion Originators Guild shopper? A. Yes.

Q. Was this shortly after she began her duties as shopper? A. Yes, sir. 10185

Examiner Averill: This letter bears date August 22, 1935.

The Witness: Yes.

Mr. Haycraft: Yes.

The Witness: She started some time during August.

By Mr. Haycraft.

Q. Who is Mr. Morganthau mentioned in the second part of the letter? A. He is divisional merchandise man with O'Neill & Company.

Q. Who is Jack Rappaport, and what name does he trade under? A. He trades as Jack Rappaport, Inc.

Q. In Baltimore? A. In Baltimore.

Q. How would you describe him? As a retail dealer here? What sort of a shop does he operate? A. The shop is located in the 200 block of North Charles Street. At that particular time, I think, he was handling either one or two price lines; I do not recall which, and specializing,
10187 as far as I know, in copies. Regardless of the fact that he was handling the low-cost range merchandise, why, he did not—that is, he individually did not have occasion to buy from F.O.G.A. houses, but what he was doing was buying copies of F.O.G.A. merchandise, and being—or, rather, having a location in the 200 block of Charles Street, which is right in the heart, so to speak, of our better women's apparel stores, right in that district, why, he was naturally spraying them all over the window.

Q. What price range do you recall that he was selling?

Examiner Averill: Selling these copies, you mean?

Mr. Haycraft: These copies, yes.

The Witness: Speaking of retail?

10188

By Mr. Haycraft.

Q. Yes, retail. A. One of them was a $10 price. I don't at this time recall the other.

Q. You refer to it as a shop. Is his place of business confined to ladies' and misses' ready-to-wear? A. Yes, sir.

Q. And Hixbie is mentioned in the last paragraph of this letter; what sort of a place is that? A. It is a chain

organization located on West Lexington, just west of Liberty, and, for the most part, trying to go Jack Rappaport one better.

Q. You mean by "chain organization," it has retail shops in a number of cities? A. That is my understanding. I do not know that they operate them all as Hixbie's; I cannot answer definitely for that, but it is one of a chain.

Q. And both those concerns were not members of the Baltimore Guild, and because of the nature of their business could not become members, did you say? A. No, I would not say that.

Examiner Averill: Now, which question are you answering? That they were not members? 10190

Mr. Albert: The important part that Mr. Haycraft tacked on, your Honor.

Examiner Averill: I know, but there are two questions there.

Mr. Haycraft: I will withdraw the question.

By Mr. Haycraft.

Q. These two concerns, Rappaport and Hixbie, were not members of the Baltimore Guild at that time? A. No, sir.

Q. Have they since joined the Guild? A. No, sir.

Q. Ever made application to join? A. No, sir.

Mr. Albert: Would you care to have the last half of your question answered now, Mr. Haycraft, in the light of the answer that was given, obviously, the last half of the question? 10191

By Mr. Haycraft.

Q. O'Neill & Company mentioned here, is that a department store? A. Yes, sir.

Q. A department store handling Guild merchandise, that is, F.O.G.A. merchandise, is that right? A. It is a

department store handling all types of merchandise, as its name would imply.

Q. I say, it handles F.O.G.A. merchandise? A. Yes, they handle it.

Q. Was it a member of your local Guild at that time? A. Yes, sir.

Q. Well, had they attempted to meet the competition of Rappaport? A. You will have to clarify that question a little more—what competition of Rappaport?

By Mr. Haycraft.

Q. I am asking you whether they sold copies—that was
10193 my question.

Examiner Averill: No, that was not the question.

By Mr. Haycraft.

Q. Whether O'Neill sold copies to meet the competition of Rappaport. A. I can answer that by saying no. Now, if you want to refer to this exhibit, I mean, I can explain this to you.

Q. I will ask you specifically whether the O'Neill Company, to your knowledge, sold a dress in Baltimore that had been copied by Brenner-Suessman, a manufacturer, from a Guild member? A. May I see that? Will you repeat the question?

10194

(Last question read.)

A. Are you referring to a dress made by Brenner-Suessman, or to an original made by Altmark?

Q. I am asking you whether O'Neill sold a dress manufactured by Brenner-Suessman, which was a copy of a dress made by Altmark? A. To the best of my knowledge, no.

Q. Did they display it for sale?

Mr. Albert: That is objected to as immaterial.

Examiner Averill: The objection is overruled.

Q. Did they display it for sale?

Mr. Albert: That is objected to as immaterial.

Examiner Averill: Objection overruled. Read the question.

(The question was read.)

Mr. Albert: If the witness knows.

Examiner Averill: Yes, if the witness knows.

A. I can only answer that question by repeating what 10196
Mr. Morganthau of O'Neill & Company, told me and relate my experience at that time.

Mr. Bramble: We object to that.

Mr. Albert: We object to that.

Examiner Averill: Do not state that at the moment.

By Mr. Haycraft.

Q. Did you go to O'Neill's store to see whether or not they had a copy of the Altmark dresses in stock? A. Yes, sir, that dress.

Q. Did you find one there? A. Mr. Morganthau showed me one.

Q. Did you discuss with Mr. Morganthau the return of 10197
that copy to Brenner & Suessman? A. I discussed with him first his reasons for having it.

Q. What reasons did he give you for having it? A. A matter of self-protection.

Q. From what? A. He wanted to protect himself from the sale of that dress in Baltimore, he having the original.

Q. Who was selling a copy of it in Baltimore to his—who did he say was selling a copy of it in Baltimore? A. I do not recall that he said anyone was, now.

Q. Just to refresh your recollection on that, I will ask you to read the second paragraph or the third paragraph of the letter from yourself to Mr. Weinstein, Commission's Exhibit No. 142. A. We spoke to Mr. Morganthau with the view of having him return the copy to Brenner & Suessman and he indicated that if we could give him any assurances that this copy would not find its way into other Baltimore outlets such as Rappaports and a number of others over which the Guild has no control, he would be most willing to return it to Brenner & Suessman. As a matter of fact, he purchased it and had it confined to him for the sole purpose of protecting his originals.

10199 *By Mr. Haycraft.*

Q. I show you Commission's Exhibit 143 and ask you if you received the original of that letter and whether this is in reply to Commission's Exhibit No. 142? A. It is.

Q. It is? A. Yes.

Q. Did you have the information contained in that letter to analyze? A. Yes.

Q. And did you convey it to Mr. Morganthau? A. Yes.

Q. What resulted? A. As I recall the copies were sent back to Brenner & Suessman.

Mr. Bramble: This is a letter? What letter do you refer to? I think the questions of counsel are somewhat obscure.

10200 The Witness: This is the letter from Mr. Golby.

Mr. Bramble: What is the date?

Mr. Haycraft: October 23.

Mr. Bramble: What year?

Mr. Haycraft: '35.

Mr. Bramble: 1935?

Mr. Haycraft: Yes.

Mr. Bramble: Thank you.

By Mr. Haycraft.

Q. In this letter I notice that it states that since writing this letter we have learned from Marizon-Rosenberg that Rappaport will return the copies in question and that they will sign a declaration of co-operation. Who is Marizon-Rosenberg? A. It is a New York buying office, as I recall.

Q. Do you know whether or not Rappaport returned the copies and became—and signed the so-called "Declaration of Co-operation" as well? A. No, I do not recall it.

Q. Did you, yourself, invite them to become members of your Guild, or at any time subsequent to August 22, 1935, issue or extend to them such an invitation? A. I do not recall that. If you care to have me, why, I will be glad 10202
to elaborate just a bit on that.

Q. Do so. A. That letter came from Mr. Golby, as I recall, and I think his information was obtained from Marizon-Rosenberg. As I recall the facts as stated in Mr. Golby's letter, why, at the time I received it or shortly thereafter we did pass on Mr. Rappaport. What we were particularly interested in was seeing whether or not copies could be kept out of Baltimore and Rappaport was making a particular effort to buy up all of the copies that he could get hold of and when we saw him he told us he knew nothing about the commitment of the Marizon-Rosenberg as stated in that letter, but when he went to New York he would find out about it.

Q. Was that the last contact you had with him about 10203
it? A. I did not have any contact with him.

Q. Anyone from your organization? A. No, I think there was some further contact but he never joined the Baltimore Guild.

Q. Never? A. Never.

Q. Did he discontinue handling copies? A. That is debatable. I have heard indirectly that he did and I have heard indirectly that he did not. I do not know.

Q. I show you Commission's Exhibit No. 144, a letter from Mr. Golby to yourself, and there does not appear to be any date on it, I do not know why, and I will ask you whether or not you complied with the request contained in that letter?

Mr. Albert: May I see that letter, please?

Mr. Haycraft: Yes.

(The letter was handed to Mr. Albert.)

Mr. Albert: I do not see the materiality of this, your Honor, but it will probably be less painful not to object. This is just a little social chit-chat between the two.

10205 (The letter was handed to the witness.)

A. I do not definitely recall whether I complied with the letter or not.

Mr. Albert: It is now 12.30, Mr. Examiner, shall we adjourn for lunch at this time?

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: We will go ahead until 1 o'clock.

By Mr. Haycraft.

Q Referring to Commission's Exhibit No. 146, who is Mr. F. H. Alperstein, mentioned in there? A. He is, as
10206 far as I know, the principal owner of Stanley's.

Q. That is a Baltimore organization? A. Yes.

Q. It is? A. Yes.

Q. Does he also own a firm named "Gaxton's"? A. Again I will have to say to the best of my knowledge he is the principal owner.

Q. Does both Gaxton's and Stanley's handle ladies' ready-to-wear? A. In the sale of ladies' ready-to-wear Gax-

ton's does, and also accessories, and Stanley's handle ladies' ready-to-wear.

Q. They have been members of the Baltimore Guild up to August 27, 1935? A. Yes.

Q. Referring to Commission's Exhibit No. 149, who is the A. Weinstein mentioned in the first paragraph of that letter, the letter from yourself to Mr. Golby under date of October 25, 1935? A. He is the retailer located at 360 North Charles Street in Baltimore, primarily engaged in the sale of furs.

Q. Did you, on or about that date; namely, October, 1935—did he, rather, on or about that date, October, 1935, go into the ladies' ready-to-wear business? A. He had been 10208
in it.

Q. He had been in it? A. Yes, sir.

Q. In the last line of that letter, after reciting the facts that you have there, you make the following statement, "Will you please investigate these matters and let me hear from you promptly." What investigation did you expect Mr. Golby to make?

Mr. Albert: That is objected to as calling for a conclusion of the witness and he is certainly incompetent to testify to it and I cannot see any materiality as to what he expected Mr. Golby to make in the way of an investigation under certain circumstances.

Examiner Averill: Read the question. 10209

(The question was read.)

Examiner Averill: Overruled. I think he can answer what he expected.

Mr. Bramble: Exception.

Mr. Albert: Exception.

A. I expected him to check up with his records and with certain of his members to ascertain whether the informa-

tion that had been given me in Baltimore was founded on fact.

Q. With respect to the stores—first let me ask you this, with respect to the source of supply of these various retail dealers, Weinstein, Rice and so forth. A. Yes.

Q. At the time this letter was written in October, 1935, was E. A. Weinstein a member of the Baltimore Guild?

Mr. Albert: That is Commission's Exhibit No. 149?

Mr. Haycraft: 149.

Mr. Albert: 149?

Mr. Haycraft: Yes.

10211

By Mr. Haycraft.

Q. Was he? A. Not as I recall.

Q. Did he later become a member? A. Yes, sir.

Q. Do you recall when? A. Shortly after the time of this correspondence.

Q. Did Bertram S. Rice ever become a member? A. No, sir.

Q. Did you ever solicit them to become a member? A. I asked Mr. Rice to make application.

Mr. Albert: Now, if your Honor please, for the last hour and fifteen minutes we have heard a series of questions as to whether Mr. A, B, C, D were members of the Guild, without any information being

10212 elicited, in my humble opinion, as to any materiality, and may I ask that counsel be curtailed on this point unless Mr. Haycraft will state what he intends to show because if he seeks to elicit a certain type of information it may be that we can concede that certain people were members of the Guild and certain people were refused membership in the Baltimore Guild. I do not think we should be required to sit

here and listen to six or seven questions on each name to no purpose at all.

Examiner Averill: I do not have the correspondence before me and I cannot say, because I do not know. I will permit the examination to continue.

By Mr. Haycraft.

Q. Mr. Roycroft, you testified yesterday, I believe, that the agreement that you had with the Baltimore Guild—that the agreement that the Baltimore Guild had with the Fashion Originators Guild of America, Inc., rather, expired on December 31, 1935, is that correct? A. The last agreement that we had with them expired as of that date. 10214

Q. Why was it not renewed? A. It was not renewed on advice of counsel.

Q. Was there any controversy between the Baltimore Guild and the Fashion Originators Guild of America at or about December, 1935? A. I do not recall any then at that time. There was some—I do not know whether I would refer to it as a controversy, we had some correspondence or some communications, verbally or otherwise, between the Guild and the Baltimore Guild, and the Baltimore Guild had under consideration the advisability of renewing its contract. As a matter of fact, the Guild placed itself on record to renew the contract subject to the approval of, shall I say, of counsel.

Examiner Averill: You mean the Baltimore 10215 Guild?

The Witness: The Baltimore Guild it was who had it up for consideration; that is up for consideration of the renewal of the contract. The Board of Directors and subsequently, the members at a general meeting acted favorably with the proviso, however, that we would be governed by our counsel's opinion, and I think shortly thereafter, at least,

possibly, it may have been within a day or so, I do not know exactly the date, the dates are not clear in my mind, but right around that time is when the Federal Trade Commission's bill of complaint, I think, was filed. With that in mind, I suppose, our counsel recommended that we defer, at least that we not renew the agreement which had expired as of December 31, 1935.

Cross-examination by Mr. Albert.

Q. I show you Respondents' Exhibit 75 for Identification, and ask you if you received this letter, Mr. Roycroft,
10217 from Mr. Golby? A. Yes.

Mr. Albert: I offer that letter in evidence.

(The letter, heretofore marked for identification Respondents' Exhibit 75, was marked as an exhibit and received in evidence.)

By Mr. Albert.

Q. Was that statement put in the letter by reason of your knowledge that the Fashion Originators Guild would not enforce the local Guild rule with respect to price-line maintenance? A. I think the second sentence in that paragraph gives the answer. As I said, that while this would be desirable, we can appreciate your inability
10218 to enforce that provision of our schedule, meaning the schedule of the Baltimore Guild.

Q. Had the Fashion Originators Guild at that time engaged in any practice of sustaining or assisting in the maintenance of that fair trade practice of the Baltimore Guild, Inc.? A. Meaning the schedule now in effect?

Q. Right. A. I mean in effect at that time?

Q. Right, yes. A. No, sir.

Q. When did that schedule, in so far as the Baltimore Guild was concerned, cease to operate? A. Some time during April of 1936.

Q. And since that time have you in any way attempted to enforce any such schedule, or similar schedule, of cost governing retail? A. No, sir.

Q. In so far as price lining is concerned, in and of itself, as distinguished from a price line which includes cost governing retail, when was the price lining adopted by the Baltimore Guild? A. Price lining?

Examiner Averill: What is the use of going over all that again? It is all in the testimony.

Mr. Albert: If your Honor will bear with me for 10220
just a moment. I do not believe that the record is quite as clear as the explanation that has been given to your Honor as the result of all of the "off-the-record" conversations, and, while I agree that undoubtedly your Honor is familiar with what I am about to ask the witness, I do not think it is reflected in the record itself, and, if you will bear with me, I will try to make it just as short as possible, in order to fill the holes in the record properly.

Examiner Averill: All right, sir.

A. Price lining, as such, was adopted originally during September of 1933, or some time thereabouts, and continued as price lining until, I believe, some time around 10221
March of 1935.

By Mr. Albert.

Q. How is it that this practice of price lining was adopted? As a result of what condition in the industry in Baltimore? A. A conglomeration of prices locally that was more or less confusing, I might say, to the consumers as a whole.

Q. Would you be a little more specific in saying what you mean by "confusing"? A. Well, I take one price line as an example, a $10.95 price line. Prior to the adoption of price lining by the Guild, there may have been as many different prices around that figure as there were retail stores in town. Now, one store is a $10.95, maybe another $10.89, another $10.50, $10.75, and numerous others. As the result of which, in my humble opinion, I do not think the average consumer, meaning customer, could be entirely clear as to whether the values of one store were better or probably more attractive than the values the other store was offering at a price line somewhere near
10223 there. Now, to eliminate that confusion is when we more or less adopted this standard schedule of price lines.

Q. Was that arbitrarily adopted, or did that result as a result of agreement amongst the local retailers?

Mr. Haycraft: That is a bit curious in form, "arbitrarily adopt." I do not know what that means.

Mr. Albert: All right, I withdraw the question.

By Mr. Albert.

Q. I ask you, Mr. Roycroft, to produce, please, the minutes of the Board of Control, September 23, 1933.

(The witness hands paper to counsel.)

Mr. Albert: I offer in evidence minutes of the
10224 Ladies' Ready-to-Wear Guild of Baltimore, of the Board of Control thereof, dated September 23, 1933, signed by Mr. Roycroft as secretary, particularly the latter half.

Mr. Haycraft: No objection.

Examiner Averill: You have seen it?

Mr. Haycraft: Yes.

Examiner Averill: Gentlemen, the paper that has just been submitted, which purports to be min

utes of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore, September 23, 1933, will be received in evidence and marked Respondents' Exhibit 76.

(The paper was marked Respondents' Exhibit 76, and received in evidence.)

By Mr. Albert.

Q. Was your original price-line policy adopted pursuant to these minutes of September 23, 1933, being Respondents' Exhibit No. 76? A. Yes, sir.

Q. Had the Fashion Originators Guild any hand whatsoever in the establishment of that price line? A. No, sir. 10226

Q. As a matter of fact, at that time, did they even know of the existence of it? A. No.

Q. Did the Fashion Originators Guild at any time in the establishment of your price line, in so far as the schedule was concerned, have anything to do with the fixation of the various price lines? A. No, that was purely local.

Q. Now, except for the period from April, 1935, roughly speaking, to April of 1936, your price line in no way required a retailer to sell a particular cost-price dress at any particular sale price, did it? A. No, sir.

Q. And, as a matter of fact, if a retailer purchased a dress for $2 and wanted to sell it for $50, he could do so, he could do so provided he sold it within the price line 10227
of the bracket of your lining policy; is that not so? A. Yes.

Q. And if a retailer purchased a dress for $22.75 and wished to sell it at 50 per cent. of that price, he could do so within the particular price line established by the schedule at that time, could he not? A. Yes.

Q. Now, then, you have testified with respect to the particular off-price sale as concerns the Bonwit Company,

and the permission that was given to sell goods at that time. Would you mind explaining that more in detail, especially as regards the experimental nature of that permission, and the test that was made for the benefit of all the retailers of Baltimore at that time?

Examiner Averill: Is that not already in? Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

A. During November of 1933 Mr. Lester Bonwit of Bonwit-Lennon at one of our meetings raised the ques-
10229 tion concerning clearance sales, and the advisability or desirability of permitting clearance merchandise when offered in clearance sales to be sold at what we term off prices. He was quite insistent, and, as the result, he was given permission to run a clearance sale, using off prices. At the same time Hutzler Brothers Company, for a time approximately thereabouts, ran a clearance sale, using regular prices. Subsequently, a comparison as to the results obtained indicated that the use of off prices by Bonwit-Lennon had been no more effective than the use of regular prices by Hutzler Brothers Company, and it was definitely decided by the Baltimore Guild that in the future all merchandise should be offered at regular prices, no exception would be made for clearances.

10230 *By Mr. Albert.*

Q. Has any complaint ever been made by the Ladies' Ready-to-Wear Guild of Baltimore, Inc., to the Fashion Originators Guild of the failure of any member of the Baltimore Guild, Inc., to comply with the price line established by the Baltimore Guild? A. No, sir.

Q. And, of course, since no complaint was made to the Fashion Originators Guild, no action was taken by the

Fashion Originators Guild on any dispute that might have arisen between the Baltimore Guild, Inc., and its local retailers? A. That is right.

Mr. Albert: May I have the minutes of April 17, 1936, please?

(The witness hands minutes to counsel.)

The Witness: You may as well take the book.

Mr. Albert: Thank you.

By Mr. Albert.

Q. Bringing you down to the O'Neill purchase of alleged copies, Mr. Roycroft. When the existence of these copies in the O'Neill store was called to the attention of the 10232
Fashion Originators Guild what, if anything, happened, to your knowedge? A. They had insisted that notwithstanding the reasons advanced by O'Neill & Company, that under the terms of the existing contract between the two Guilds, and the declaration of co-operation which had been signed by O'Neill & Company, that the copies would have to be returned to Brenner-Suessman.

Q. Is it not a fact, to your knowledge, Mr. Roycroft, that in so far as the O'Neill Company was concerned, they purchased the originals of these dresses, and they purchased the copies of the original dress that they had formerly purchased, with no intention whatsoever of selling these copies, but with the intention of absorbing a loss thereon in order to protect their original purchase? 10233
A. That is as I understand it from Mr. Morgenthau, because when I called at O'Neill & Company the copies were not on display, but were obtained by someone in the department, at his request, producing them from behind the partition, or wherever it was they keep the merchandise.

Q. And is it not a fact that these copies were purchased by O'Neill by reason of the thought, in line with the O'Neill Company, as expressed to you by Mr. Morgen-

thau, that the sale of these copies of the original dress, which had been confined to O'Neill, would cut the heart out of the market of the original dress? A. That is the way he expressed himself to me.

Mr. Albert: May I have Commission's Exhibits 842 and 855?

(The witness hands papers to Mr. Albert.)

By Mr. Albert.

Q. I show you Commission's Exhibits 855-A and B, Mr. Roycroft, and ask you if it is not a fact that there was nothing done, in so far as that letter is concerned, and
10235 that it is merely an invitation to discuss certain matters (handing exhibit to witness)? A. There was nothing done locally as the result of this letter being received in Baltimore.

Q. Directing your attention to Commission's Exhibits 843-A to G, Mr. Roycroft, I notice that that agreement is signed by some twenty-seven parties, being retailers who are members of the Ladies' Ready-to-Wear Guild of Baltimore. Did each of those parties, to your knowledge, subscribe to the fact that consumer confusion, loss of confidence, and lack of style consciousness, had greatly been contributed to by style pirating and copying? A. Yes, sir.

Q. Did all of those parties referred to subscribe to the
10236 opinion that these practices of style piracy and copying were harmful and detrimental to the consuming public, and were unethical? A. There were none expressed in my presence.

Q. Was any communication sent to the Baltimore Guild dissenting from any of the propositions or agreements set forth in Commission's Exhibits 483-A to G?

Mr. Haycraft: Same objection.

Examiner Averill: The objection is overruled.

A. I received none.

By Mr. Albert.

Q. I see. Would you be good enough, Mr. Roycroft, to explain the effect of apartment house shops upon the Baltimore market? A. I am not certain, Mr. Albert, being a non-retailer, that I am qualified to answer that.

Q. Very well.

Mr. Albert: No further questions, your Honor.

Mr. Haycraft: I only have about two. 10238

Mr. Bramble: I do not think I will have many, so it will not take long, Mr. Haycraft.

Mr. Haycraft: All right.

By Mr. Bramble.

Q. Mr. Roycroft, does the price-line schedule referred to in the several exhibits, and in the testimony, apply to anything other than interstate business of the members of the Baltimore Guild? A. No, sir.

Q. Could any merchant outside of the members of the Baltimore Guild purchase merchandise from the members of the F.O.G.A., if you know?

Mr. Haycraft: When? 10239

By Mr. Bramble.

Q. During this period that we have had the contract—that they had the contract? A. Yes, sir.

Q. I believe you testified that you have no contract with them at this time, and that the contract was terminated December 31, 1935; is that correct? A. Yes, sir.

Q. Was the Baltimore Guild ever a member of the F.O.G.A., or any of its members? A. No, sir.

Q. You have not answered that, Mr. Roycroft. A. The Baltimore Guild was never a member of the Fashion Originators Guild, nor was the Baltimore Guild ever a member of any of the affiliated memberships of the Fashion Originators Guild.

Q. Who were eligible for membership in the Ladies' Ready-to-Wear Guild of Baltimore? A. Any legitimate dealer operating in Baltimore.

Q. Was not the whole purpose of the Ladies' Ready-to-Wear Guild of Baltimore to prevent what is known as "style piracy"; principally? A. That was the principal purpose for which the Ladies' Ready-to-Wear Guild of

10241 Baltimore was formed.

Q. Were members of the Ladies' Ready-to-Wear Guild of Baltimore restricted to the purchase of ladies' garments from members of the Fashion Originators' Guild of America, Inc., under the terms of the agreement? A. No, sir.

Q. The members of the Ladies' Ready-to-Wear Guild of Baltimore, did such members buy such garments from manufacturers other than members of the Fashion Originators Guild of America during the continuance of their agreement between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc.?

Mr. Haycraft: I object to that. There is no

10242 foundation laid for this witness answering that question; this witness is not in the retail business; this witness is not a retailer; he is not in position to know what the members of the Ladies' Ready-to-Wear Guild of Baltimore did, and, of course, anything he would say would be hearsay on that subject.

Mr. Bramble: If you know.

Examiner Averill: If he knows he may answer that; and if he does not he will say so.

A. Yes, sir.

By Mr. Bramble.

Q. May any members of the Ladies' Ready-to-Wear Guild of Baltimore retire from its membership at any time? A. Yes, sir.

Mr. Bramble: I think that is all, your Honor.

Examiner Averill: Any redirect examination, Mr. Haycraft?

Mr. Haycraft: Yes. 10244

Redirect examination by Mr. Haycraft.

Q. Referring to Commission's Exhibits 855-A and 855-B, you were asked if anything was done with respect to that letter. I will ask you whether or not it was not read at a meeting of the Ladies' Ready-to-Wear Guild of Baltimore and discussed at the meeting? A. As I understand the question that was asked me originally, it did not have to do with more or less formal handling of the correspondence, but I understood it to mean was anything done as a result of that letter coming into Baltimore, or anything done by the Baltimore stores, members of the Ladies' Ready-to-Wear Guild of Baltimore as a result of that letter coming into Baltimore. To such a question as I understood it my answer was no. 10245

Q. You mean with respect to the holding of August promotional sales, and so forth? A. The elimination of August promotional sales, pre-seasonal sales, and matters of that sort, in general, I would say.

Q. I take it, then, that it is your testimony that the subject-matter of the letter was spoken about, and discussed at a meeting of the Ladies' Ready-to-Wear Guild

of Baltimore, and it was decided not to follow the suggestion of the Fashion Originators Guild of America, Inc., with respect to the elimination or restriction of the August sales as therein referred to? A. As I remember that letter, it was not directed to the Ladies' Ready-to-Wear Guild of Baltimore; that is, to the Guild itself, but was directed to the individual retailers in Baltimore asking for opinions, and what not, as to the suggestions contained in it.

Q. That is true, but you have already testified, have you not, that this matter was discussed at the meeting of the Ladies' Ready-to-Wear Guild of Baltimore, and that those who attended knew of it, and that the contents of that
10247 letter were discussed at the meeting of the Ladies' Ready-to-Wear Guild of Baltimore? A. I am inclined to believe that it was discussed. As a matter of fact, I am reasonably certain that it was discussed by some of the representatives who had received it at one of the meetings of the Ladies' Ready-to-Wear Guild of Baltimore.

Q. Was a decision reached that they would not follow the situation with respect to the restriction of August coat sales? A. Yes—well, I do not recall offhand what the decision was, now that I think the matter over, but I do know that nothing happened.

Q. Then your answer is that you do not recall? A. I do not recall. In other words, August coat sales continued that year, and for that reason I say I do not recall offhand
10248 what the decision was, but as I say, I do know very definitely that nothing happened to change the situation as it then existed.

Q. Do you have Commission's Exhibits Nos. 843-A to G in front of you? A. Just a moment and I will see if I can find if. I have it.

Q. I will ask you how many of the signatures on that exhibit were made in your presence? A. All but, I would say, four or five.

Q. Did you observe that each one of them read the full text of the agreement before they signed it? A. The ones that were signed in my presence?

Q. Yes. A. There was no necessity for observing it because they were signed after a meeting at which the entire agreement was read to them.

Q. This is the agreement that was placed before them for their signature after the meeting? A. As far as I can recall, there was a special meeting held for the expressed purpose of reviewing this agreement after which the agreement was placed on a table and all of them who cared to do so, or who had authority to do so—and had authority to do so, rather—I will put it that way—and 10250
had authority to do so, signed it.

Q. And the rest of the signatures were obtained through the mail? A. No, sir. The rest of the signatures were obtained by a representative working under my jurisdiction. I spoke to the individuals in question and made a definite appointment with them for someone to bring the agreement up to their office and they carried it up and obtained the signature and brought the agreement back to me.

Q. Do you know who wrote the agreement? A. The agreement, in its present form, was prepared at a board meeting of the Ladies' Ready-to-Wear Guild of Baltimore on September 11, 1933.

Q. Where did the first draft of the agreement come from; did it come from the members of the Ladies' Ready- 10251
to-Wear Guild of Baltimore or from the members of the Fashion Originators Guild of America, Inc., or from the Fashion Originators Guild of America, Inc., itself? A. Speaking of the agreement that was signed?

Q. The first draft that came before that. A. The first draft of what?

Q. Of the agreement. A. Of this agreement?

Q. Between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc. A. Which was signed?

Q. No, the first agreement that came in for consideration.

Mr. Albert: That is objected to as entirely immaterial and is entirely too far remote to be of any value whatsoever. Now, we are not talking about this agreement but we are talking about all sorts of papers and documents, and possibly discussions and things of that sort which led up to the agreement itself. Since the agreement is supposed to represent a meeting of the minds of the parties thereto, it seems to me that this is quite immaterial.

10253

Mr. Bramble: I object on the same ground.

Examiner Averill: The question is this: Was the draft of an agreement which finally this became the document, the agreement which is in evidence, received from points outside of the City of Baltimore and submitted to your membership for consideration, or did it originate with your membership; that is the point. If you know, will you please say so, and if you do not know will you say so, too? In any event, will you tell us, please, what your information is in that regard?

The Witness: I do not know definitely. I do not have, or, at least, I do not know of when the original draft was presented the first time. I am not in a position to say as to that. In fact, I do not know who the original person was that presented it at the time that that occurred.

10254

By Mr. Haycraft.

Q. Did Mr. Hutzler first present it? A. There is nothing in the minutes to indicate who presented it, and I cannot recall. That took place better than three years ago.

Q. Let us see the minute book a minute.

Mr. Albert: I have no objection to that.

(Mr. Haycraft thereupon examined the minute book for a few minutes and then presented it to the witness, who read one of the minutes therefrom.)

By Mr. Haycraft.

Q. Did Mr. Mehling present the agreement originally at a meeting of September 5? A. Yes, I will have to amend my answer to the first question. I see that in the minutes of the meeting prior to the one of September 11, why, the agreement was presented by Mr. Mehling, who is the secretary of the Retail Merchants Association of Baltimore. 10256

Q. You were asked about whether the rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore were used for intrastate business. A. I beg your pardon.

Q. You were asked on cross-examination whether or not the rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore were only used in the intrastate business of those firms. A. I do not think that is the exact question that I was asked.

Mr. Bramble: It was the price-line schedule that was referred to.

By Mr. Haycraft.

Q. Was your answer restricted to the price-line schedule? A. Yes, the way I thought the question was worded, and as I answered it. 10257

Q. By that do you mean that when the members of the Ladies' Ready-to-Wear Guild of Baltimore sold goods out of the State of Maryland that they did not observe the price-line agreement? A. Sales consummated outside of the State of Maryland, why, in my opinion as secretary of the Association would not be subject to the price-line agreement that we had in effect.

Q. What do you mean, they would not be subject to it? A. The store would be free. In other words, if a store set up a show, or was selling outside of the borders of Maryland, and sold merchandise, why, they were transactions outside of the City of Baltimore and outside of the State of Maryland. We, in the Ladies' Ready-to-Wear Guild of Baltimore, as I understand it, as secretary, why, made no effort to tell the stores about what price that merchandise ought to be sold at.

Q. How about advertising in the newspapers that went beyond the State line? A. What do you mean about advertising in newspapers that went beyond the State line?

10259 Q. I say, would you expect the rule, or would the rule be observed in the advertisements of companies in, say, the "Baltimore Sun," with respect to prices in regard to merchandise offered for sale beyond the State line? A. In other words, were any prices by members that might have advertised, would they appear under those conditions in editions of the paper going beyond the border for sales intended to be made beyond the border?

Q. Yes. A. No, if I understand your question, which I am not at all sure I do.

Q. There was no restriction on that contract, is that the idea you mean to convey? A. When you say "no restriction" you mean that the store, or, first, rather, so that I may get this correctly, rather than say what I think, would you mind being a little specific, Mr. Haycraft, and tell me

10260 what you mean?

Q. By that I am now asking you whether it would be allowed to use prices not in line with the price line in the Baltimore newspapers? A. You mean would they be allowed to advertise prices not in line with the price-line schedules, and place those advertisements in the Baltimore newspapers?

Q. Yes. A. I do not think so. I certainly do not think that the schedule would permit of that, no.

Q. So that whether anything in your rules and regulations should state that this would only apply to the City of Baltimore or the State of Maryland, that would be the case? A. I beg your pardon?

Q. So that whether there is anything in your rules and regulations which state that this would only apply to the City of Baltimore, or the State of Maryland, that would be the fact?

Mr. Bramble: I object.

Mr. Albert: I object.

Examiner Averill: Sustained.

By Mr. Haycraft. 10262

Q. You said that merchants other than members of the Guild could buy merchandise, did you, Mr. Roycroft? A. Members of what Guild are you speaking of now?

Q. The Ladies' Ready-to-Wear Guild of Baltimore. A. The Ladies' Ready-to-Wear Guild of Baltimore?

Q. Yes. Can merchants, not members of the Ladies' Ready-to-Wear Guild of Baltimore, buy Guild merchandise? A. Yes. That is specifically stated in the contract or in the agreement between the two Guilds.

Q. Are there any members of the Ladies' Ready-to-Wear Guild of Baltimore that have not signed the so-called "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. None that I know of.

Q. Can a retail merchant who has not signed the so- 10263
called "Declaration of Co-operation" with the Fashion Originators Guild of America become a member of the Ladies' Ready-to-Wear Guild of Baltimore? A. We have had no cases along those lines that I can recall at the moment.

Mr. Albert: I should think that is an answer to that question, if your Honor please.

By Mr. Haycraft:

Q. Do you not restrict your membership to merchants who have signed the so-called "Declaration of Co-operation"—so-called "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. Again, I have got to repeat that that condition has never arisen as far as I can recall. As I mentioned earlier in my testimony, the primary purpose of the Ladies' Ready-to-Wear Guild of Baltimore, when it was formed, was for style protection. If a member is not sold on style protection, or, at least, if a dealer is not sold on style protection and refuses to sign the declaration of co-operation with the
10265 Fashion Originators Guild of America, Inc., why, why would he want to come along with the Ladies' Ready-to-Wear Guild of Baltimore, so to speak, in its efforts to eliminate style piracy?

Q. What is your definition of a "legitimate dealer"?

Mr. Bramble: What?

(Question read.)

Mr. Bramble: I object to that.

Mr. Feldman: That is an unfair question. That is a very unfair question.

Examiner Averill: Overruled. The witness may answer if he knows.

Mr. Albert: If he knows.

Examiner Averill: The witness has testified that
10266 any legitimate dealer could become a member of the Ladies' Ready-to-Wear Guild of Baltimore.

The Witness: I might answer it by saying that the board of the Ladies' Ready-to-Wear Guild of Baltimore would, in all likelihood, be the proper body to determine what constitutes a "legitimate dealer," in so far as the acceptance into and for membership into the Ladies' Ready-to-Wear Guild of Baltimore is concerned, rather than the secre-

tary, so that my opinion, I do not think, would carry a great deal of weight.

Q. What did you have in mind when you made that statement on cross-examination? A. A dealer in ladies' ready-to-wear and operating along the established business lines, or accepted business lines, in Baltimore.

Examiner Averill: Gentlemen, we will adjourn to 10.30 o'clock to-morrow morning.

(Whereupon, at 4.15 o'clock P. M., November 11, 1936, the hearing in the above-entitled matter was adjourned.) 10268

Room 401, United States
Appraisers Store Building,
Baltimore, Maryland,
November 12, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances:)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

Mr. Haycraft: I will call Mr. Hutzler. 10269

CHARLES J. HUTZLER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your name? A. Charles J. Hutzler.

Q. Mr. Hutzler, you have given your full name to the reporter? A. Yes. Charles J. Hutzler.

Q. Where do you live? A. Baltimore County.

Q. Where did you say you lived? A. Pikesville, Baltimore County, Maryland.

Q. What is your occupation? A. Merchant.

Q. Merchant? A. Yes.

Q. What type of a store are you associated with? A. What?

Q. What type of a store are you associated with? A. Department store.

Q. The name of that store is what? A. Hutzler Brothers Company, Inc.

10271 Q. What position do you hold in that store? A. I am secretary of the corporation and assistant general merchandising manager.

Q. How long have you been in that position? A. Which?

Q. Secretary and assistant general merchandising manager? A. I have been assistant general merchandising manager for a little over a year, and secretary of the corporation since the first part of October.

Q. How long have you been associated with the store? A. Practically eleven years.

Q. Who is president of the company? A. Albert D. Hutzler.

Q. Albert D. Hutzler? A. Yes.

Q. Is he your brother, father, or cousin? A. Cousin.

10272 Q. Do you ever merchandise or have anything to do—in other words, before you were assistant merchandising manager or associate merchandising manager—by the way, which is it? A. Oh, did I say "associate"? I meant assistant.

Q. Assistant merchandising manager? A. Yes.

Q. Before you were assistant merchandising manager what, if anything, did you have to do with the sales of the store? A. Well, preceding my going into the general mer-

chandising part of the business, I was divisional merchandising manager of the ready-to-wear department, which position I have held since September, 1930, and until about June, 1935.

Q. In that position you have just referred to, do you have under your supervision the ladies' ready-to-wear department in the store? A. Yes.

Q. In that position when you were in charge of the ladies' ready-to-wear department, what garments—just give us a brief description of the type of merchandise in ladies' ready-to-wear that Hutzler Brothers Company, Inc., handle in the price ranges? A. We handled dresses, I would say, silk dresses from about $4.75 cost all the way 10274
up to the top, and, of course, cotton dresses also at certain times of the year, and approximately the same relative prices in the other departments like coats, furs and sportswear. Then, we also had a basement department which went into lower prices, but those departments did not head up to me.

Q. You mean the departments that you had under your division all sell dresses costing $4.75, and what was the retail price range of them? A. We generally, I believe, we tried to get $7.95 or $8 for our $4.75 dresses that were sold in the regular way. Does that answer your question?

Q. Up to about how high do you go? A. To the top.

Q. What do you mean by "the top"? A. We have a French room, as we call it, where we have had dresses and 10275
costumes selling, maybe, as high as $400 or $500.

Q. Where do you buy the merchandise which you sell in these various departments that were under your supervision? A. In the general wholesale market.

Q. Where is that? A. Anywhere, but primarily in New York.

Q. Where, besides New York, do you buy? A. Boston, Chicago, occasionally from the West Coast. Those are the primary markets.

Q. Do you import any? A. Not in recent years we have not imported any dresses. There may be certain articles of sportswear that we imported.

Q. This French shop that you referred to a moment ago had dresses selling as high as $500. Were they all of domestic manufacture? A. Yes.

Q. They were? A. Yes.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first learn of that organization? A. I think probably as far back as 1932.

Q. Do you recall what you first learned about it; that
10277 is, how it came to your attention? A. As I recall, at that time we were having a great deal of difficulty because of the style piracy situation. The existing copyright laws and patent laws did not adequately protect the originator of style merchandise, and as a matter of means, or a study to give that originator the protection afforded by the copyright and patent laws for other lines of manufacture, or for other lines of merchandise, we found, I might say in passing, that it did not give it. In other words, the existing copyright laws and patent laws did not adequate protect the originator of style merchandise, and some other lines, a means was sought to give that originator the protection afforded by the copyright and patent laws for other lines of merchandise. The Fashion Originators Guild of America was the outgrowth of that. Some handful of bet-
10278 ter manufacturers—originally, I think, determined on a program that would correct that situation.

Mr. Haycraft: I move to strike the answer as not responsive to the question.

Mr. Albert: Your Honor please, that answer is the most perfect answer that could possibly be given to Mr. Haycraft's question. It may be that Mr. Haycraft does not particularly like the answer to

the question he got, but it is certainly a perfect answer to it.

Examiner Averill: Well, it may be that the answer is pretty long, but it is responsive to the question. The motion to strike, therefore, is denied.

By Mr. Haycraft.

Q. Did you have anything to do with the organization of the Fashion Originators Guild of America? A. Nothing whatsoever.

Q. How did you learn as to the facts that you have just recited as to its purposes?

Mr. Albert: That is objected to as immaterial. 10280
Examiner Averill: Objection overruled.
Mr. Albert: Exception.

A. The facts in my answer, I mean, were in discussion generally; in fact, were common discussion, really, at that time between many manufacturers and many retailers.

By Mr. Haycraft.

Q. My question is how you learned what the purposes of the Fashion Originators Guild of America were?

Examiner Averill: His answer is that it was a matter of common knowledge, and it came to him in that way. That is his answer boiled down. 10281

By Mr. Haycraft.

Q. You said that you had heard of the Fashion Originators Guild of America as early as 1932? A. Yes.

Q. Were you solicited to co-operate in any way with the Fashion Originators Guild of America in 1932, and by "you," I refer to the Hutzler Brothers Company store? A. No.

Q. No? A. No.

Q. Did you at that time volunteer to, and did you voluntarily co-operate with the Fashion Originators Guild of America, Inc., in its purposes? A. No.

Q. At that time were you in sympathy with its purposes? A. Yes.

Mr. Bramble: I object to that and move to strike the answer.

Examiner Averill: He can say if he is or if he is not. That is sufficient.

By Mr. Haycraft.

10283 Q. I show you Commission's Exhibits 99-A to E, and ask you if you recall receiving that, which apparently is a form letter written on the letterhead of the Fashion Originators Guild of America under date of June 16, 1933?

Mr. Bramble: We would like to see that before he interrogates the witness on it.

(The witness examined the document.)

Examiner Averill: Mr. Witness, can you not answer that question one way or the other without having to read through the entire letter?

The Witness: Just what is the question now?

Examiner Averill: Read the question.

(Question read.)

10284 A. Yes.

By Mr. Haycraft.

Q. Did Hutzler Brothers Company, Inc., sign the so-called "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When? A. After that letter was received; I do not recall the exact date, but it was some time after June—the middle of June, 1933.

Q. Has Hutzler Brothers store continuously since that date been co-operating with the Fashion Originators Guild of America in its— A. (Interposing) Co-operating to what extent?

Q. To the extent of signing declarations of co-operation.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

A. No.

By Mr. Raycraft.

Q. That was the only one? 10286

Examiner Averill: What was the only one?

Mr. Raycraft: The only declaration of co-operation signed.

A. The original declaration of co-operation we signed was the only one that that store has ever signed.

Q. To the best of your recollection—I am going back to this now—did you sign the so-called declaration of co-operation with the Fashion Originators Guild of America in the month of June and year of 1933? A. Yes.

Q. It may have been in July, but it was right about—is it before or after that? A. I mean, it was after June.

Examiner Averill: You see my point now, "after July"; when the fact is that the Guild was formed 10287
in September and "after July" would go on and on for years and years, so we are no better off than before.

Mr. Raycraft: I do not think he knows positively, and the only way we can tell is to get the original and find out.

Examiner Averill: He can say before or after the formation of the Guild.

Mr. Albert: How can you find it out unless you ask him.

By Mr. Haycraft.

Q. Do you know when it was, the exact date that you signed this declaration of co-operation? A. My recollection is between the middle of June and the first of August.

Examiner Averill: '33?

The Witness: 1933.

By Mr. Haycraft.

10289 Q. Then, if I understand your testimony correctly, you signed no further declarations, as a store, since that time?

Mr. Albert: That is objected to as having been previously answered and made perfectly clear in the record.

Mr. Martin: It is not clear in the record. We are trying to clear it up for the benefit of the record and of the Examiner.

Examiner Averill: The question only makes it worse. The way Mr. Haycraft has it now it would only make the confusion worse. If Mr. Haycraft will listen to his question he will see that it only makes the confusion more complex. Read the question.

10290 (Question read.)

By Mr. Haycraft.

Q. —declarations with the Fashion Originators Guild of America, Inc.; is that right? A. I think I answered this question before.

Q. You did, but apparently the Examiner did not feel that it was clear enough on the record. A. No, we did not sign any other declarations.

Examiner Averill: With the Fashion Originators Guild of America?

The Witness: With the Fashion Originators Guild of America, your Honor.

Examiner Averill: That is the point.

By Mr. Haycraft.

Q. You were also an officer of the Ladies' Ready-to-Wear Guild of Baltimore; is that right? A. Yes.

Q. President? A. Yes.

Q. How long have you been president? A. Since its incorporation; before that I was chairman.

Q. Will you state for the record the steps that you 10292
took—strike that out. Did you have anything to do with the formation of the Baltimore Guild, and by "Baltimore Guild" I refer to the Ladies' Ready-to-Wear Guild of Baltimore?

Mr. Albert: May I ask, if your Honor please, that Mr. Haycraft differentiate between the corporation and the association?

Mr. Haycraft: I have not talked about any association so far.

Mr. Albert: The Ladies' Ready-to-Wear Guild of Baltimore, Inc., was recently incorporated, and he might have had something to do with the incorporation of that which was separate and distinct from the organization which existed prior to it, but we 10293
would like to know which one you are referring to.

Mr. Haycraft: I was asking him about the Guild.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record. The question must be made clear so the witness may know whether the question refers to his activities as chairman of the unincorporated guild, or whether it refers to his activities as president of the incorporated guild, and the evidence in the record already shows when the incorporation took place.

Mr. Albert: If your Honor please, at this time may I most respectfully ask your Honor to direct Mr. Haycraft to say "association" in his question if he refers to the "association" and "incorporation" if he refers to the corporation and thereby separate the two?

10295

Examiner Averill: I am not going to tell counsel what his questions should be. I am only making suggestions because I do not think it is fair to insist upon certain things being asked by counsel, my own interest being to see that the record is clear in this regard.

Mr. Albert: If your Honor please, then, if your Honor thinks I am unreasonable in asking for a severance or separation I will not press it.

Examiner Averill: I think it is absolutely essential if you are going to understand the record. I agree fully with you in that regard. Nevertheless, I did not propose to be put in the position of directing counsel's question.

10296

Mr. Haycraft: The "Inc." is not on the end of that question. It is not included in the question, I think, at all.

Examiner Averill: I will let it go that way, but I do want to say on the record that except for this conversation that took place off the record the witness would not know what counsel is talking about, and it leaves the record as before.

Mr. Haycraft: I will take that chance.

By Mr. Haycraft.

Q. Answer the question. A. What is the question?

Q. (Question read.) A. Yes.

Q. Yes? A. Yes.

Q. What did you have to do with it? A. I was chairman of the meetings at which it was discussed. As representative of Hutzler Brothers Company I approved its formation.

Q. Did you originate the idea of the organization of the first and original Baltimore Guild, or did the idea come from someone else? A. I do not think I can give a direct answer to that. I would have to go into it a little in detail. We had a group as early as 1932 in Baltimore that 10298
met informally from time to time and discussed joint problems. So that we had this nucleus of stores at the time that we all signed declarations of co-operation with the Fashion Originators Guild of America, Inc. At that time we had learned that in New York, and I think, I am not sure of this, but I think in Chicago some of the retailers had signed agreements with the Fashion Originators Guild jointly. We probably discussed with them, individually—

Q. By "them," will you be a little more definite? A. In fact, Mr. Golby of the Fashion Originators Guild of America, Inc., came to Baltimore on one occasion and discussed the thing with us, and I think the result of that whole conversation or discussion was the formation of the Ladies' Ready-to-Wear Guild of Baltimore. 10299

By Mr. Martin.

Q. That is, the first and original Ladies' Ready-to-Wear Guild of Baltimore?

Mr. Albert: Oh, I thought that was so perfectly clear that no reference was necessary to it. Apparently, now, it is not even clear to Commission's counsel.

Mr. Martin: I was afraid that Mr. Albert was dumb enough not to know, so I am making it so clear that anybody in the world could know.

Mr. Albert: Oh, oh! I was not the one who was asking any question about that. I asked no question about that at all, Mr. Martin.

Examiner Averill: Gentlemen, we will do without personalities, if you please.

By Mr. Haycraft.

Q. Now, did you sign the agreement between the Baltimore Guild, as chairman—between the Fashion Originators Guild and the Baltimore Guild, as chairman of the
10301 Baltimore Guild, Commission's Exhibits 843-A to F in this case?

Mr. Albert: Is Mr. Martin trying to impeach his own agreement in evidence? This is simply delay. I am getting sick and tired with all this waste of time, if your Honor please, with nothing being elicited. It is taking ten questions to get something out which we could get if we only had one question. After all, if your Honor please, we are down here from New York and it is costing us a lot of money to stay here. I do not think that we should be subjected to this unnecessary and worthless waste of time with questions of this character.

10302 Examiner Averill: Well, now, let us be quiet a moment and I think we will get along a lot faster. He can look at it and say whether he signed it or not.

(The witness examined the document.)

(The Witness: Yes, sir.

Mr. Haycraft: What is the answer?

The Witness: Yes.

Mr. Bramble: What is the date of that? Is that the first one?

The Witness: Yes.

By Mr. Haycraft.

Q. Did you draw up this agreement, or was it presented to you by Mr. Golby?

Mr. Albert: I object to the form of the question, and also on the ground, also, that both of these questions are immaterial.

Examiner Averill: Objection overruled.

Mr. Bramble: Exception. I am not objecting in the first instance, your Honor, because when an objection is made it is made for both. 10304

The Witness: Mr. Golby gave us copies of the contracts that the Fashion Originators Guild of America had already signed up with the Uptown Retail Guild of New York, and I think the Michigan Avenue Guild of Chicago as a guide. We may have taken certain clauses from those contracts verbatim and added others of our own suggestion.

By Mr. Haycraft.

Q. Do you have any personal recollection of the clauses that you added at your suggestion to this original agreement?

10305

Mr. Albert: That is objected to as immaterial.

Mr. Feldman: The agreement speaks for itself.

Examiner Averill: The objection is overruled. He has a right, I think, to go into the formation of the agreement.

The Witness: That is a hard question to answer definitely. I think there were one or two things that we may have objected to and changed.

By Mr. Haycraft.

Q. Do you have any present recollection of what they were? A. Well, there is one thing that I remember something about. I think that, in the rules and regulations of the Fashion Originators Guild of America, I think the rule against selling "apartment shops." We modified that rule so that, as far as the Baltimore Ladies' Ready-to-Wear Guild was concerned, they could sell "apartment house" shops in Baltimore under certain conditions.

Q. Now, after—strike that out. This first agreement, that is, Commission's Exhibits 843-A to F, expired, by its terms, on December 31, 1934. During that period of time
10307 did the Baltimore Guild co-operate with the Fashion Originators Guild of America in carrying out the agreement, Commission's Exhibits 843-A to F? A. Yes.

Q. Now, subsequent to December, 1934, and until September 30, 1935, the date that the record in this case shows that the present Baltimore Guild, that is, the Ladies' Ready-to-Wear Guild of Baltimore, was formed, what was the relationship between the Baltimore Guild and the Fashion Originators Guild of America with respect to the subject-matter of the agreement that existed prior to December, 1934? A. We really overlooked the fact that the contract had expired. So until we were apprised of that, and I think for some time during the course of the year, I think probably in July or June, we were under
10308 the impression that the contract was still in force.

Q. And carried on? You had been carrying on? A. Well, yes.

By Examiner Averill.

Q. In other words, you just continued to do exactly as you had done? A. Yes.

Q. When you thought the agreement was in effect? A. Yes.

Q. Or the contract, rather, was in effect? A. Yes.

Q. In Baltimore? A. Yes.

Q. During this interval, that was the way you transacted your business as you did transact it; in other words, during this interval you transacted your business as you had transacted it prior to that time— A. Yes.

Q. —is that correct? A. It is, Judge.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. According to the terms of the agreement entered into on September 30, 1935—strike that out—I am not quite ready for that, yet. What, if anything, did you have to 10310
do with the formation of the present Ladies' Ready-to-Wear Guild of Baltimore, Inc., as organized as of September 30, 1935? A. I thought that the answer I made to the previous question as to the formation of the Ladies' Ready-to-Wear Guild of Baltimore answered that; that the same answer, and I now think that the same answer would apply to this question perfectly.

Q. Possibly. Can you just testify as to what the change was, or, first, why the change in the form of the organization was made?

Mr. Albert: That is objected to as incompetent, immaterial and irrelevant, and, in all events, certainly not binding on the Fashion Originators Guild of America. 10311

Examiner Averill: That may be all very true, but, nevertheless, there are other respondents in this case besides the Fashion Originators Guild of America. The objection is overruled. The witness may answer the question.

Mr. Bramble: Exception.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. If you will just answer the question, please.

The Witness: What is the question?

Examiner Averill: Read it.

(Question read.)

The Witness: Up to the time of the incorporation we were a membership organization composed of dealers in ready-to-wear located in Baltimore City.

We had no dues, and practically no expenses. The minimum of expenses that we did have was
10313 paid by the Retail Merchants Association of Baltimore who were good enough to allow us the use of their offices.

At the time of the incorporation we found that we might have expenses and that since a number of our membership were not members of the Retail Merchants Association of Baltimore that the organization should be incorporated under—so it would be a separate and distinct organization.

By Mr. Haycraft.

Q. Did the Fashion Originators Guild of Baltimore, or any officers of the Fashion Originators Guild——

Examiner Averill: Of Baltimore?

10314 Mr. Haycraft: Question withdrawn.

By Mr. Haycraft.

Q. Did the Fashion Originators Guild of America, or any officers of the Fashion Originators Guild of America, make any suggestions to you with respect to the advisability of incorporating? A. No.

Q. What was the increased expense that you anticipated? A. So far the dues that have been collected have,

primarily, been used to answer the charge of the Federal Trade Commission.

Q. Was that what you anticipated when you incorporated? A. No. As a matter of fact, we had agreed with the——

Mr. Albert (interposing): If it please the Court, may I interpose an objection here in the light of the witness' answer that the expenses that had to be met so far have been only the defense of the Federal Trade Commission's complaint that it certainly is immaterial as to what expenses were anticipated if they did not actually arise.

Mr. Haycraft: I do not think the objection needs 10316
a reply.

Examiner Averill: Overruled. We will save time by going ahead.

Mr. Albert: Probably so. We have wasted enough time already.

The Witness: What is the question?

Examiner Averill: Read it.

(Question read.)

The Witness: We had agreed with the Fashion Originators Guild of America that we would like to have a shopper in Baltimore.

The Fashion Originators Guild of America, through one of your exhibits that is already in the record, had sent out a letter to the retailers 10317
throughout the country, asking for subscriptions. None of the Baltimore stores was willing to give a retail subscription either directly or through the Ladies' Ready-to-Wear Guild of Baltimore. We did, however, feel that we should help defray at least some of the expenses of a shopper in Baltimore because we heartily approved of the idea and felt we were deriving some benefit, the same bene-

fit as the Fashion Originators Guild of America, so that by raising funds we hoped to meet some of the expenses of that shopper.

And, I think, as Mr. Roycroft testified yesterday, or the day before, we did make one payment to the Fashion Originators Guild of America as a contribution towards the cost of the shopper's salary which was paid directly by the Fashion Originators Guild of America.

By Mr. Haycraft.

Q. That was made before December, 1935, or since De-
10319 cember, 1935? A. I cannot tell you the exact time it began, I cannot tell you the exact time the payment was made, Mr. Haycraft, but I think, however, it was made around the first of January, 1936, possibly before and possibly shortly after.

Q. What dues did you have at the beginning of the incorporation, or subsequently thereto what dues did you levy on the members of the Baltimore Guild?

Mr. Bramble: We object to that because we do not see what they have to do with the issues here, what dues they levied on their own members.

Mr. Haycraft: Well, let it go. It is already in evidence, I guess, one way or another, anyhow.

Examiner Averill: Do you withdraw the ques-
10320 tion?

Mr. Haycraft: Yes.

The Witness: It is in.

By Mr. Haycraft.

Q. This shopper that you referred to, you say she benefited you as much as the Fashion Originators Guild of America; by "you" do you mean the local Guild? A. Yes.

Q. Has that shopper continued to function in Baltimore since January, 1936? A. She is still functioning.

Q. But the Baltimore Guild, as an organization, is not contributing to her expenses? A. No.

Q. No? A. No.

Q. And the individual retailers in Baltimore are not contributing; is that correct? A. No, not to my knowledge.

Q. Your store is not doing so in any event, itself? A. No.

Q. According to the record, the agreement entered into between the Baltimore Guild, Inc., and the Fashion Originators Guild of America on September 30, 1935, expired December 31, 1935, and has not been renewed? A. Well.

10322

Q. What has been the relationship between the Baltimore Guild, Inc., and the Fashion Originators Guild of America since that time; that is; since December 31, 1935, with respect to the subject-matter in the last agreement? A. There has been no reason for us to require anything of the Fashion Originators Guild of America, Inc., through our contract, our former contract, which has expired since that time.

Q. Will you explain what you mean by that?

Mr. Albert: May I have the answer read, I did not hear it.

Examiner Averill: Read the answer.

(Answer read.)

10323

By Mr. Haycraft.

Q. Will you explain what you mean by "no reason"? A. Well, in our own rules, regulations, by-laws, and so forth, we can function without any help from the Fashion Originators Guild of America. Our contract with them simply agreed to do certain things that we have agreed to do among ourselves, so we have not had any difficulty before or since on account of the contract expiring.

Q. Do you know whether or not, as a matter of fact, you kept the Fashion Originators Guild of America informed as to the status of your membership? A. I cannot say. Mr. Roycroft could have answered that question, but I cannot.

Q. Have you changed in any way the rules and regulations that were in existence at the time of the expiration of the contract with the Fashion Originators Guild of America? A. We always make changes; seasonal changes, in our, or in certain of our agreements, but of a minor nature.

Q. If you carried—strike that out. If you know, has a
10325 store, regardless of the Baltimore Guild, and I refer to your own store now, continued to co-operate with the Fashion Originators Guild of America in its campaign against piracy, style piracy, and as indicated in the so-called "Declaration of Co-operation" that you signed in January, 1933?

Mr. Bramble: I object to that as obviously entirely outside of the issues in this case, incompetent, immaterial, and irrelevant.

Examiner Averill: Overruled. If the witness knows, he may answer. If he does not, he can say so.

The Witness: We have been using the warranty stamp on our orders, and have been returning
10326 copies when they have been adjudged copies.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

By Mr. Haycraft.

Q. Will you explain, please, for the record, just what you mean by "returning copies," and how they are adjudged copies? You said, "I think, when they are adjudged copies." A. Yes.

Q. Will you explain just what takes place, and how you do it? A. When we place orders with non-Guild manufacturers we reserve the right, through this warranty clause, to return them should they be copies of original designs from manufacturers who are members of the Fashion Originators Guild of America. When the merchandise comes into our stock we may have, or we may find that we have an original dress, if it is a copy, in our stock, or we may find that another retail store will notify us that we have a copy.

By Examiner Averill.

10328

Q. Just one moment. A. Yes, sir.

Q. You mean they notify you that the garment that you are displaying is a copy? A. I should qualify that.

Q. Yes. A. I would like to qualify that because they do not notify us directly.

Q. Whom do they notify? A. They notify the Ladies' Ready-to-Wear Guild office through Mr. Roycroft, and also we may be notified by the shopper, from her original sketches. If the particular dress involved has been proved a copy, or has been adjudged a copy, we will return that to the manufacturer.

10329

CHARLES J. HUTZLER was thereupon recalled as a witness for the Commission, and having been previously sworn, testified further as follows:

Cross-examination by Mr. Albert.

Q. Mr. Hutzler, how often do you go to New York? A. Frequently.

Q. In the course of your business you are continually traveling at various intervals between Baltimore and New York? A. Yes.

10330 *Charles J. Hutzler—For Commission—Cross..*
Herbert L. Bergdahl—For Commission—Direct.

Mr. Albert: That is all.

Mr. Bramble: No questions, your Honor.

Examiner Averill: Any redirect? I do not suppose there is, Mr. Haycraft.

Mr. Haycraft: Nothing further.

Room 901, 45 Broadway.
New York, New York,
November 17, 1936.

10331 Met, pursuant to adjournment, 10 o'clock A. M.

Before: EDWARD M. AVERILL, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER Esq. (1450 Broadway, New York, New York), appearing for the Fashion Originators Guild of America.

STANLEY KAUFMAN, Esq. (GOLDWATER & FLYNN, 60 East Forty-second Street, New York, N. Y.), appearing for Textile Affiliates.

10332

HERBERT L. BERGDAHL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your full name, please, Mr. Bergdahl. A. Herbert L. Bergdahl.

Q. Your residence? A. New Rochelle, New York.

Q. Your occupation? A. General merchandising manager of the Associated Merchandising Corporation, New York office.

Q. Will you describe for the record what the Associated Merchandising Corporation is? A. Well, it is a New York office of a group of twenty stores located in various cities of the United States. These twenty stores own this office. Does that answer your question?

Q. What function does the office perform, generally speaking? A. Well, the office performs various functions of services in this market for its member stores. Among other things, the office gathers information in the 10334
market for the buyers in the stores. They handle so-called open orders in the market for the member stores at their request, when such orders are received from the stores, and they gather style information for the respective stores.

Examiner Averill: Are these stores that you speak of, retail, wholesale or what?

The Witness: They are retail stores, retail department stores.

Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Probably right now it would be a good idea to get this in evidence. Mr. Bergdahl, this is a list of the stores 10335
(indicating paper)?

(A paper was thereupon marked for identification Commission's Exhibit 860.)

By Mr. Haycraft.

Q. I ask you if you can identify this Commission's Exhibit 860 for Identification, as a list of the members of

the Associated Merchandising Corporation—that is, the member stores that you referred to? A. I can.

Mr. Haycraft: I offer it in evidence.
Mr. Weisman: May I see it?
Examiner Averill: Let him see it.
(Mr. Haycraft hands paper to Mr. Weisman.)

By Mr. Haycraft.

Q. As of what date is that list? A. Well, that is as of —I think that was prepared as of July of this year. That list also contains the stores that we service in other countries, in Europe and Australia and Canada.

10337

Examiner Averill: Are you offering that?
Mr. Haycraft: Yes.
Examiner Averill: Any objection?
Mr. Weisman: No.
Examiner Averill: Gentlemen, the paper in question, which purports to represent a list of the members of the Associated Merchandising Corporation, will be received in evidence and marked Commission's Exhibit 860.

(The paper heretofore marked for identification Commission's Exhibit 860 was marked as an exhibit and received in evidence.)

10338

The Witness: May I state that the foreign stores are merely serviced out of our office, and are not owners—are not part owners in the office itself.

By Mr. Haycraft.

Q. Then I will ask you to name those stores, which stores you mean. A. Those stores that we served for export purposes are Harrods, Ltd., of London; Selfridge & Company, Ltd., of London; The Myer Emporium, Ltd., of

Melbourne and Adelaide Australia; Farmer & Company, Ltd., of Sydney, Australia, and the Hudson's Bay Company retail stores of Canada.

Q. How long have you occupied the present position that you have testified to? A. For about five years.

Q. Before that, what did you do? A. Before that I was primarily ready-to-wear merchandise manager, garments, all ladies' apparel.

Q. Where? A. In the same office, the A.M.C., since from 1929 until about 1931 or 1932, at which time I took on additional duties in the office.

Q. Since 1929 you have been in the office of the A.M.C.? A. No, I have been in the office before that; I have been 10340
in the office since 1922.

Q. In 1922. In what capacity from 1922 to 1929? A. Well, I started in the office in one of the very lowest positions, and was moved up from time to time, from assistant buyer to buyer, to basement manager of the office, and then ready-to-wear manager of the upstairs garment departments, garment and accessory departments, after which I took on general duties, merchandising the whole buying—all the buying activities in the office.

Q. Do you have a superior officer? A. Yes.

Q. Who is he? A. Phillip J. Reilly, Col. Phillip J. Reilly.

Q. What position does he occupy? A. He is the director of the Associated Merchandising Corporation and the Retail Research Association. 10341

Q. About how many employees are employed? A. Approximately 250, more or less.

Q. In a general way, what functions do these employees perform? A. The general function of the whole office is to serve the stores in this market, that is, with the exception of the retail research division.

Q. What is the retail research division? A. That is a division which corresponds in the store to the non-mer-

chandising departments, the non-selling departments, such as the superintendent's division, the comptroller's division, the advertising and publicity divisions—those activities are centered in what is called here as the Retail Research Association.

Q. How is the work divided—that is, how many employees do you have in the retail research division, and how many in the A.M.C. proper? A. Well, I have not counted them, but I think that they would roughly be about three to one.

Q. That is, three to— A. Three times more employees in the merchandising end of the work than in the research
10343 activities—maybe it is four to one, I would not know.

Q. During the time that you have been with the Associated Merchandising Corporation, which I think we would better call the A.M.C., in the interest of brevity—have you had occasion to call upon or meet manufacturers of ladies' ready-to-wear garments in the New York area? A. Yes, I have.

Q. To what extent have you familiarized yourself with the business of manufacturing——

Mr. Weisman: I object.

By Mr. Haycraft.

Q. —and selling of ladies' ready-to-wear garments?

Examiner Averill: The witness may answer that
10344 question—to what extent you have familiarized yourself.

A. Well, during the first several years, say up until 1929, I was very active as a buyer in the organization, buyer of various types of merchandise, primarily coats and dresses, and, in some cases, sportswear. I was also active as manager of the basement——

Examiner Averill: Wait a moment. Who were you buying from manufacturers or wholesalers?

The Witness: Buying from the manufacturers in New York City for the——

Examiner Averill: I do not mean the names of them, I just want to know the class.

The Witness: From the manufacturers in New York City. Subsequently, as basement manager, I came in contact with the manufacturers and their problems as a manufacturer would, and afterwards as a manager of the ready-to-wear division I came in contact with the manufacturers who made merchandise for us, and from whom we purchased as 10346
an executive would, and discussed the problems that pertained to them, and to us, in connection with the merchandise that was made for us as well as other problems that might be vital to the industry.

Mr. Weisman: May it please your Honor, I respectfully move that the answer be stricken out as not responsive to the question.

Examiner Averill: Well, I cannot agree with the gentleman fully there.

Mr. Weisman: May I have an exception?

Examiner Averill: Yes, sir.

Mr. Weisman: Thank you.

By Mr. Haycraft.

10347

Q. Since that time—you covered in your answer up to 1929, I believe, did you not, the time you were a buyer? A. Yes—well, yes, up to the time that my duties were enlarged. Now, in the last four or five years, of course, my activities have been spread over more divisions in the organization, and my duties have been to watch the policies of the organization and see that the general—as a general rule, the stores were getting the service that they wanted

out of this market, and then, in that time, my activities, if anyhing, have been more in the nature of an executive than they were previously.

Q. When you refer to having goods manufactured for you, just what did you have in mind? A. Well, goods manufactured for our stores as against orders we placed in the market.

Q. I see. What is the custom in that respect? Will you describe that? A. In connection with the stores—in connection with the orders that are placed by store buyers themselves, we give them the information that we may have as to commenting on the market, and giving them
10349 the benefit of any advice we may have, or any facts we have found regarding the market, and they use their own judgment.

Examiner Averill: Who placed the orders with the manufacturers?

The Witness: The buyers. I said in connection with the orders the buyers placed. I prefaced my statement with that.

Examiner Averill: All right; all right.

The Witness: Yes.

Examiner Averill: The buyers placed the orders?

The Witness: Yes.

Examiner Averill: That is, the individual members placed the orders?

10350 The Witness: Yes. I said there were two kinds, there were orders the buyers placed from the stores, see?

Examiner Averill: Yes.

The Witness: When they come to town they place their own orders. There are also occasions when we place orders for them when they are not here, you understand?

Examiner Averill: Yes.

The Witness: Now, in both instances we assist them. In one case we merely give them the information that they may want, and they act on their own judgment after that.

In the second case, when we do all the buying, or when we do the buying of the orders, and have all to do with the placing of the order, we use our own judgment. Of course, in accordance with instructions that we get from the stores.

After the orders are placed, either by the store buyer or the office, we follow those orders to see that they are carried out the way the manufacturer has agreed to do, understand. We have service organizations that follow the orders to see that they are delivered on time, and as nearly as possible in accordance with the agreement or understanding that is stated or stipulated on the order. 10352

Does that explain the——

By Mr. Haycraft.

Q. Are there other buying organizations similar to yours in the New York market?

Mr. Weisman: I object to that as immaterial, not within the scope of this proceeding.

Examiner Averill: The objection is overruled.

Mr. Weisman: Exception.

Examiner Averill: I take it that is in connection with trying to establish some custom in the industry. You may answer that question. 10353

A. I would say that there are; yes, sir.

By Mr. Haycraft.

Q. To your knowledge, do they perform the same or similar functions with the retail dealers that they repre-

sent out in the country? A. For all practical purposes, it is the same; yes, sir.

Q. I show you Commission's Exhibit 92, and ask you if you can recognize the names listed thereon as being organizations somewhat similar to yours, or if they are exactly similar, say so? A. Well, the Cavendish Trading Corporation is very similar to ours, I think. The Specialty Stores Office is very similar to ours. Now, by that I mean that they are similar in management and ownership—that is, that the stores own and control the offices, and regulate the service that they want out of that office, and then there are other offices, such as offices where the office is owned by
10355 a corporation that not only owns the office but the stores as well. That is a little different, but the work done in the office is the same. Would you also——

Q. Yes. A. Do you mean that I should also tell you——

Q. Yes; also indicate those, if you recognize any of those offices? A. Did you also mean that I should indicate those other types of offices, as far as I am familiar with them?

Q. Yes.

Mr. Weisman: May I know what the witness is referring to?

Mr. Haycraft: Commission's Exhibit 92.

Examiner Averill: Commission's Exhibit 92. He is picking out certain names on that list, sir, as I understand it, which come within these different,
10356 I might say, classifications, that he is telling us about.

Mr. Haycraft: Resident buying offices.

Examiner Averill: That means New York.

Mr. Haycraft: Yes.

A. Fashion Originators Guild supplying resident offices signed by the Guild, there is the centrally owned offices and stores such as the Allied, the May Company, the Asso-

ciated Dry Goods. There is one more, but I do not see it on here, so I won't mention it—oh, yes, the William T. Knott Company.

Now, then, there is another group, that in which the office is owned by private individuals, in New York City, who rendered a service for the stores. They render this service to any extent that the store wishes—that the respective store wishes to pay for it, and then they have various fees that they charge based on the service that they render the store.

Now, such an office would be—such offices would be Frohman & Altman, Jack Harthlay, Kirby, Block & Fischer, Felix Lilienthal, McGreevey, Werring & Howell, 10358
Mutual Buying Syndicate, Joseph K. Rosenberg, Amelia Rosenau.

Those are about all that I would care to mention.

Examiner Averill: Let me see those.

Mr. Haycraft: I wish to make a correction of the statement I made for the record a moment ago. The witness is reading from Exhibits 93-A and B.

Mr. Weisman: I did not hear you.

Mr. Haycraft: 93-A and B.

Mr. Weisman: I thought he said Exhibit 92.

Mr. Haycraft: I did say so.

Examiner Averill: He did say so, but he said he wanted to correct it.

The Witness: Perhaps I should add something 10359
to what I have said.

Examiner Averill: One moment before you add anything, now, sir.

The Witness: There is also another type of office called the commission type of buying office, that renders somewhat—practically the same service to its clients, but the service is paid for by the manufacturer. I do not know whether there are any

10360 *Herbert L. Bergdahl—For Commission—Direct.*

names on there or not, because I am not so familiar with them, but there are a good many of those offices in the city who render a very similar service to ours, to that type of service we give our customer, but the manufacturer pays that office for rendering that service to the stores who are members of that office.

By Mr. Haycraft.

Q. Have you testified to the firms with which you are familiar on this exhibit? A. Yes, sir; I have.

Q. Is there such an organization in New York as Asso-
10361 ciated Buying Offices? A. Yes, sir.

Q. Of what does that consist; what is it? A. The Association of Buying Offices consists, in round numbers, I think, of approximately resident buying offices, who have grouped together to study and consider the problems that confront them, that would require discussion. I think they were formulated as a group under the N.R.A. to study the problems that came up at that time, and to consider whether or not they should formulate a code for the resident office industry.

Q. Have you had anything to do with the Associated Buying Offices organization? A. Well, the A.M.C. is not officially a member of the A.B.O., but we have worked with them, and I have in some cases acted as the chairman on
10362 their committees, and have been on their committees, merely in co-operating with them on work that they do, and problems that they consider.

Q. From this experience that you have had with your organization, the A.M.C., and your contact with other buying offices, I will ask you whether or not you are familiar with the problems of the retail dealers, merchants and ladies' ready-to-wear?

Mr. Weisman: Will you direct—well, just a moment—I think the Court will take judicial notice

that a retail dealer and any other business man has multifarious problems; it has not yet been directed to one problem. Would your Honor direct that this question be limited to a specific problem? Obviously, the witness is not going to give us any dissertation on all the problems that confront the retail dealer. Is it a problem in selling, is it a problem in credit, is it a problem in mark-downs, in percentages, in mark-ups? I would like to have it more specific.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. 10364

By Mr. Haycraft.

Q. In giving your answer, Mr. Bergdahl, of course, I refer to those problems that would have to do with the purchase of merchandise, and, to a limited extent, I suppose, to the sale of merchandise—merchandising problems.

Mr. Weisman: I object to that as incompetent, improper, immaterial, no proper foundation laid; obviously the witness from his present testimony has not yet shown a sufficient familiarity to testify with any degree of probative force.

Examiner Averill: The question as it stands now is simply a preliminary question as to whether he is familiar with the type of activities of the retail merchant which have been described. 10365

Now, he may answer that question "yes" or "no," then we will see what further develops.

If you will kindly tell us "yes" or "no," please, Mr. Bergdahl.

The Witness: I think I am familiar with the problems pertaining to the purchasing or selling of ladies' apparel.

Examiner Averill: By the retailer?

The Witness: By the retailer, yes.

Examiner Averill: Have you answered it?

The Witness: Yes.

By Mr. Haycraft.

Q. Now, Mr. Bergdahl, are you familiar with the Fashion Originators Guild of America, Inc.? A. Well, I am familiar with it from the point of view of the contacts that the A.M.C. office had with the Fashion Originators Guild, as well as many of the contacts that our individual stores had with the F.O.G.A., and also the contacts that the Associated Buying Offices had with the F.O.G.A., since—for a great part of the time I have acted as chairman of the committee that conferred with the F.O.G.A. on the problems pertaining to the F.O.G.A. issues.

10367

Q. When was your first contact with the F.O.G.A.? A. In the early spring of 1932.

Q. What was the occasion? A. The occasion was a luncheon at the Garment Center Club, called, I think, by Mr. Rentner and several of his——

Q. Maurice Rentner? A. Maurice Rentner, yes, and several of his associates, I believe such, as I recall it, I think that such people as Mr. Bass, Mr. Sondheim, Mr. Florsheimer, and——

Q. In giving those names, will you give the names of the firms that they represent? A. Well——

Q. As far as you can. A. This is according to my recollection, because I am not positive that they were present, but I know that Mr. Maurice Rentner was there, of Maurice Rentner, Inc.; William Bass, I am quite sure, of William Bass & Company, Inc.; Herbert Sondheim of Herbert Sondheim, Inc., I think at that time it went under a different name, Sondheim-Levy—I am not sure of that, also—and others. There were about fifteen, or approximately twenty people there, mostly manufacturers, but a few retailers. If my memory serves me correctly, I think John B. Sweeney was also present at the time.

10368

Q. Who was he? A. He was the director of the Specialty Stores Association.

Q. That you named a few moments ago as a buying office? A. Similar to ourselves, yes.

Q. What transpired at that luncheon? A. Well, as I recall it, Mr. Rentner exposed for our consideration, particularly for the few retailers who were present, a plan that had been considered to improve or to build up the prestige for better merchandise, particularly dresses, and that this plan was, as I see it, a nucleus for what was called the Fashion Originators Guild—that is, it was the starting, it was the beginning thoughts of the Fashion Originators Guild. There was nothing definite about the 10370
plan that had been laid down, or, at least, it was not exposed to us as a perfected plan by any means.

Q. What was the plan that he suggested at that time? A. Well, he merely stated that they were considering—that this organization had been or was going to be formed, to further the interest of retailers and the public in better merchandise, and that as such they probably would develop a label and attach it to the merchandise, and advertise to the public regarding this organization, and its purposes and standards and so forth.

Q. Was there anything said at that time with respect to the co-operation that was expected from the retail dealers in this plan? A. No, they did ask, however, if we liked the idea, if we thought well of it. That was the purpose of having the two or three or more retailers present, who were 10371
there.

Q. Was there anything said at that time as to the nature of the plan, with respect to the co-operation from textile manufacturers of the plan? A. I do not recall if there was any such plan, or such discussion, rather.

Q. Was there anything said on that occasion with respect to red carding of retail dealers who did not co-

operate with the plan? A. No, I do not believe that that had been conceived up to that time.

Q. Well, did anything go on in that first meeting that you referred to, as far as you are concerned, any further contact? A. Well, as I say, they asked us how the retailers—they asked us how the retailers of the country would react, from our knowledge of the industry, to such a plan. We told them we thought that they would react favorably to such a plan as presented to us at that time, and I think they organized and gathered members, or influenced manufacturers to become members of this association, and began to formulate plans for putting it into
10373 action. We did not hear very much about it after that for a period of several months.

Q. When did you next hear of it, or learn of its activities? A. Well, in the late fall of 1932.

Q. What occurred then? A. Well, at that time the Guild had conceived a plan, I believe, if they could get local retail guilds who would——

Examiner Averill: One moment. When you say the "Guild"——

The Witness: The Fashion Originators Guild of America, New York City.

Examiner Averill: Oh.

The Witness: Had conceived a plan that if they could set up local retail guilds all over the country,
10374 the United States——

Mr. Weisman: Just a moment—Mr. Bergdahl is testifying now as to what happened in the fall of 1932.

Examiner Averill: Yes.

The Witness: Beginning in the fall of the year, I began to have numerous contacts——

Examiner Averill: Oh.

The Witness: —with officials of the F.O.G.A.—

Examiner Averill: Yes.

The Witness: —and discussions with retailers from other cities, and in these conversations with the executives of the Guild——

By Mr. Haycraft.

Q. Will you name them as you go along? A. What is that?

Q. Will you name them as you go along so we can be clear. A. Well, there were Mr. Maurice Rentner and Mr. Golby, and members of the board of governors, I believe they are, and primarily, however, with Mr. Rentner and Mr. Golby and Mr. Kalman.

10376

Examiner Averill: Kolman?

The Witness: K-a-l-m-a-n.

Mr. Haycraft: Kalman, K-a-l-m-a-n; he is with the firm of——

Mr. Weisman: Now——

Mr. Haycraft: —it has gotten away from me, there is a firm there.

By Mr. Haycraft.

Q. With what firm is he? A. Well, I will find out and tell you at a later time.

Mr. Weisman: Off the record.

(There was a discussion off the record.)

10377

Examiner Averill: On the record.

The Witness: Then in the course of these conversations I was told that it was the conclusion of the Guild that it would be—that this plan that they had conceived would be best put over through what they call local city guilds, in the various cities of the United States.

By Mr. Haycraft.

Q. Did they tell you anything else with respect to the plan which they were then— A. Well, they wrote to retailers, I believe, rather profusely, and discussed their plan, and some of which we have copies of, I think. I believe that Mr. Rentner sent out a general letter dated in December, probably the middle of December, stating the plan, discussed local guilds, so-called local guilds, in general, urging the retailers to formulate such guilds, or discussing with them how it might be done.

(A paper was thereupon marked for identification
10379 Commission's Exhibits 861-A and 861-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 861-A and B for Identification, and ask you if you can identify that? A. Yes, this is a letter dated December 6, which was sent by Mr. Rentner to B. Forman, of Forman Company, Rochester, which was turned over to me by Mr. Forman after he had received it.

Q. Is that store a member of the A. M. C.? A. That store is a member of the A.M.C.

Mr. Feldman: What is the date of that letter?
Mr. Haycraft: December 6.
Mr. Martin: December 6, what year?
10380 The Witness: 1932.
Mr. Haycraft: 1932.
Examiner Averill: Are you offering that?
Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. It refers to F.O.G.A. matter? A. Yes, it refers to F.O.G.A. matter.

(Thereupon a short recess was taken.)

Mr. Haycraft: I offer the paper in evidence.

Examiner Averill: Any objection?

Mr. Weisman: No.

Examiner Averill: Gentlemen, the paper in question, which purports to be a letter bearing date December 6, 1932, addressed to B. Forman, B. Forman & Company, Rochester, N. Y., and signed by Maurice Rentner, will be received in evidence and marked Commission's Exhibits 861-A and 861-B, the same consisting of two sheets.

(The letter heretofore marked for identification Commission's Exhibits 861-A and 861-B, was 10382
marked as an exhibit and received in evidence.)

Q. You said a moment ago before recess that the Guild sent out letters to retail dealers describing the plan. Now, I am asking you whether or not any action was taken by the A.M.C. with respect to that plan, or any deliberations held with respect to it? A. Well, the store owners, the store principals exchanged information in some cases as regards what was the best thing to do in connection with the plan proposed by Mr. Rentner.

Q. Was there any objection raised to the plan at that time by the stores, merchandise stores of A.M.C.?

Mr. Weisman: I object to that unless Mr. Haycraft means by his question whether an objection 10383
was raised to the Guild or to Mr. Rentner; for example, if these men met among themselves and some had objections and some did not, I do not——

Examiner Averill: First, let us see whether there were any objections. There may not have been any— Then we can find out later whether the objections were communicated. It will not take but a moment to do that. Go ahead, please, answer the question, if there were any objections.

A. There were—I would not like to call them objections—there was a statement of the problem involved in connection with going along with the Guild.

By Mr. Haycraft.

Q. What was the problem that was involved?

Mr. Weisman: I object to that as immaterial.

Examiner Averill: I will have to hear it before I can tell you whether it is immaterial or not, gentlemen. For the moment I will overrule the objection, subject to motion to strike if it does not appear that it is material.

10385

The Witness: Well, may I answer it?

Examiner Averill: Yes. Exception noted for counsel, please.

A. In connection with this plan which involved formulating some contact with the Guild similar to that which the Guild had with the New York—the Uptown Retail Guild, I believe—there was discussion as to whether or not stores throughout the country, and particularly our stores, could co-operate, if they did agree to such a plan, and among themselves they brought up the question of how they could agree to co-operate in connection with the copied merchandise in the lower price lines, and that problem of the lower price lines was brought to the attention
10386 of Col. Reilly, and to my attention, in conection with our office work in the A.M.C., and also for purposes of conveying that problem to the officials of the Guild.

By Mr. Haycraft.

Q. Did you do so? A. I did.

Mr. Weisman: When?

Mr. Haycraft: I am conducting this examination.

Mr. Weisman: Well, then, I object to the question.

Examiner Averill: One moment. Let us proceed. He will probably ask him that question next, and let us see if he does; if he does not, you can bring out the date.

Mr. Weisman: Let us see if he will.

A. I did so at that time, and have ever since that time.

By Mr. Haycraft.

Q. Now, will you explain— A. (Resumed) Continuously and constantly, and always. 10388

Q. Now, Mr. Bergdahl, will you explain just what the problem is, and how it is a problem——

Mr. Weisman (interposing): I object——

By Mr. Haycraft.

Q. —to the retail dealers with whom you come in contact?

Mr. Weisman: —to that as incompetent, immaterial, not within the issues of this case, and that this witness is not properly qualified, and I further ask that the prior answers which were taken subject to my motion to strike out, now be stricken.

Examiner Averill: Gentlemen, the motion to strike is denied, and the objection is overruled; exception noted for counsel. Read the last question. 10389

(Last question read.)

A. Well, the store principals of our group felt that while it might be advisable to give co-operation, and, in fact, beneficial to themselves to give co-operation, in regard to copying—the copying of merchandise—they questioned how this could be done in the lower-price lines, inasmuch

as the lower price retailers probably would not sign up with the Guild on a similar basis, and, therefore, would not be controlled by the Guild; and, as a result of their inability to control them, they could continue to carry merchandise which were copies, which the stores who would co-operate could not carry—that is, if they acted in good faith, and lived up to any such agreement that they might enter into with the Guild.

By Mr. Haycraft.

Q. What was the form of co-operation that the Guild expected the dealers to give, that you refer to? A. Well,
10391 they expected the retailers at a subsequent date to this time in December——

Q. Let us talk about December first. A. Well, at that time they hoped, or expected, that they could formulate these local city guilds, and that they could make agreements with the city guilds covering a basis of co-operative action, regarding the furthering of the program that they were inaugurating.

Q. A that time what price lines did the members of the Guild manufacture? A. I was told by Mr. Rentner himself that the Guild manufactured dresses largely from $22.50 up; in rare cases from $16.75 up.

Mr. Weisman: Now, I submit the answer be stricken out since it appears that the witness has
10392 given a wrong answer. He says in answer to the question by your Honor "I know"; then he says "I was told." I submit that is not knowledge. Anybody in the world might have told him something. If he is asked "Did Mr. Rentner tell him?" that is one thing. Now, this witness is presupposing. He is trying to give us as his knowledge something that somebody may have truthfully or untruthfully, or correctly or incorrectly told him.

Examiner Averill: My dear sir, if we were to go on that theory no information would ever be elicited. If the gentleman, whom he states is Mr. Rentner, and whom the evidence so far indicates was very active in forming the original plans and ideas, made a statement to this gentleman, which he gives as his authority for it——

Mr. Weisman: I have no objection to him stating on the authority of Mr.——

Examiner Averill: He cannot know everything. I do not actually know you are alive; I think you are.

Mr. Weisman: You have pretty good evidence of 10394
it, Judge.

Examiner Averill: But I do not know it.

Mr. Weisman: You have pretty good evidence of it, but he hasn't any evidence at all. Your evidence is direct. You are not relying on somebody telling you I am alive because I may have died five minutes after somebody saw me. He says that Mr. Rentner tells him something. You know I am alive because you see me and hear me talking.

The Witness: I qualified it further.

Examiner Averill: Really, I must overrule the objection. Go ahead, sir.

The Witness: What is the question?

Examiner Averill: Read the question.

(Last question read.) 10395

Mr. Weisman: May I have an exception?

Examiner Averill: Certainly, with pleasure. Read the answer.

(Answer of the witness read.)

The Witness: May I add to that, sir?

Examiner Averill: Yes, if there is anything else.

The Witness: I also have a staff of buyers who know exactly what each manufacturer is making at

the time, and that confirms the information that was given to me by Mr. Rentner.

Examiner Averill: You mean your buyers reported to you?

The Witness: They did.

By Mr. Haycraft.

Q. Was there any evidence of co-operation entered into by way of agreement or otherwise, in December, 1932, between the A.M.C., or its members, and the F.O.G.A.? A. None that I know of.

Q. Well, when you discussed this problem that you re-
10397 ferred to with the gentlemen that you have named, what did they say with respect to it? What reaction did you get from it?

By Mr. Haycraft.

Q. With whom did you discuss it? A. Well, with the executives of the Guild, Mr. Rentner and Mr. Golby; and, as I recall it, Mr. Kalman.

Q. What did they say with respect to the problem as presented to them? A. Well, they did not say much at that time; they did not say much at that time; they listened, and, as I recall it, they thought that could be worked, but no specific solution was arrived at, since they were attempting to formulate these local guilds, and that
10398 they were going to make the agreements with those guilds, and they were going to see if they could work out their plans with the guilds respectively. I am talking now about December, or thereabouts, in that year.

Q. That is right. A. And that no specific problem arose as between our group and them at that time, since they did not enforce this thing exactly at that date.

Q. Well, then, what happened with respect to the plan of the F.O.G.A., subsequent to 1932? Was there any fur-

ther development? A. No, I believe that the Guild was not entirely successful in formulating these local guilds, or, at least, they were not formulated fast enough to make the plan operative under that scheme.

By Mr. Haycraft.

Q. Did you discuss the F.O.G.A. with Messrs, Rentner, Golby or Kalman during the period of time subsequent to December, 1932? A. Yes, sir.

Mr. Weisman: Now, may I have that question?

By Mr. Haycraft.

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Q. And during those discussions——

Mr. Weisman: Just a moment, please.

A. Will you qualify that period of time?

Examiner Averill: One moment, please; one moment. What is the objection?

Mr. Weisman: The witness has the same trouble I have; he says, "Will you qualify that period of time?"

Mr. Haycraft: Subsequent to December, 1932.

Examiner Averill: All right.

By Mr. Haycraft.

10401

Q. And I will restrict it to the first six months after December, 1932. A. Well, yes. As I recall it, I did have conversation with them.

Q. During those conversations did you learn anything with respect to what the Guild was doing, the F.O.G.A. was doing? A. Naturally, I think I learned something.

Q. What did they tell you as to the subject of the Guild in establishing the local guilds that you referred to a moment ago? A. Why, they explained that it was not—the

plan was not progressing rapidly enough, and that they would have to—that they had another—they were planning another method to go about this.

Q. Did they disclose to you what that other method was? A. They did.

Q. What was it? A. The plan was arrived at late in the spring of 1933 to ask retailers in the country who—to ask all retailers who wished to do business with the members of the F.O.G.A., if they would not sign a declaration stating that they were for the policies of the Guild, and that they would co-operate.

Q. I show you Commission's Exhibits 99-A to E, and
10403 ask you if you can identify that exhibit. A. I can identify it.

Q. What do you know about it? A. Well, that was the letter that was sent out by Mr. Rentner explaining the new policy of the Guild, or at least the policy to ask retailers to sign the declaration——

Mr. Weisman (interposing): Just a moment.

The Witness: —of co-operation.

By Mr. Haycraft.

Q. Did this letter come to your attention in the ordinary course of your duty? A. It did.

Q. How? A. Well, it came to my attention in conferences that we had with the members of the Guild, and also
10404 it came to my attention as the recipient. We received the letter after the Guild mailed it out. The stores received it, and the New York office received a copy of it.

Q. Did you have any discussions with respect to it with your members, or the A.M.C.? A. I had discussion with the members; they had discussion with me, and I passed that information on to the executives of the F.O.G.A.

Q. Was there any objection raised to the plan as set forth in that exhibit by the members of the A.M.C., in or about June, 1933? A. Yes.

Q. Were those objections transmitted to the F.O.G.A.? A. Those objections were transmitted to the F.O.G.A.

Q. To the officials, executive officers? A. Yes, sir.

Q. What were the objections? A. The objection was that we could not go along with their plan as it appeared—as it would apply to price lines below $10.75 cost.

Q. Will you just explain what you mean by that? A. Well, we stated that in conjunction with other of the offices in New York City working jointly together, or at least called together to discuss this subject, called together by the F.O.G.A. to discuss this subject jointly, that we represented retailers all over the country, some 1700 in number, who, for the most part, handled both better and inexpensive merchandise, ranging from a dollar up to the highest price lines, in some cases, and that most of these retailers handled merchandise in the more or less inexpensive to popular priced brackets, ranging, say, part way or halfway up to the price ranges that were handled by the Guild, and that we could go along and co-operate as it pertained to better merchandise, but we could not go along and co-operate below $10.75 costs, because copies were prevalent in the industry; and that manufacturers were not in the habit of designing, and for that reason we would have to have an exemption from the Guild on those price lines if they wished us to co-operate, and unless they would give us such an exemption we would not endorse this movement to our respective retailers. And the Guild recognized at the time—at least they said so—that they were most anxious, the thoughts and ideas of the New York office representatives, because we knew—they said that we knew the problem of the retailer.

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Mr. Rentner says that he does not want to hurt anybody, to foster his own plan, and that he would like to be helpful, and we said—we repeated, or, rather, I will repeat, that we said that below $10.75 we could not go along, and Mr. Rentner said all right, he would go along with that plan, providing otherwise we would co-operate, since he

could in no way see how merchandise costing less than $10.75 could in any way hurt merchandise produced by members of the F.O.G.A. at that time. He did not use the words "at that time," I am using them.

He made the statement at that time, and, therefore, I qualify it that way.

Q. Well, at that time, what price lines were the members of the Guild manufacturing? A. I have already stated the price lines, they were largely from $22.50 up, but in some cases, from $16.50 up.

Q. Well, as a result of the discussion that you had with the executives of the Guild, of the F.O.G.A.—strike that out. Did you recommend to the members of the A.M.C. 10409 that they should sign up the so-called "Declaration of Co-operation" as submitted to them by the Guild? A. I did so recommend.

Q. Did you also, as an executive of the A.M.C., or did officials of the A.M.C., sign the agreement with the F.O.G.A., submitted to them? A. Yes, the A.M.C. did sign the regular agreement furnished by the F.O.G.A. for such purpose.

Q. I show you Commission's Exhibit 92 and ask you if you recognize that as the agreement, copy of the agreement, which was signed by the A.M.C.—that is, similar to the one, if that is not the exact language? A. No, this is not the one that we signed.

Q. Do you have a copy of the one you signed in your 10410 office? A. I think I have a copy—no, I do not have a copy. We sent our only copy to the Guild, and they could furnish you with a copy of the one we signed; but I know it was the regular form provided for in the spring of 1933.

Q. I show you Commission's Exhibit 99-E, and ask you if that is the——

Examiner Averill: What?

A. As I recall it——

Mr. Haycraft: The paper.

A. As I recall it, this is the copy of the agreement that we signed.

Examiner Averill: Is that the same agreement again?

Mr. Haycraft: No, it is attached to this letter, Commission's Exhibit 99.

Examiner Averill: Will you gentlemen bear with me if I would ask the reporter to read me the last part, not of this last question, but the other; it seems to me there is a conflict.

(The record was read.) 10412

Mr. Haycraft: I told him there were two different letters.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

By Mr. Haycraft.

Q. When was it that you had this discussion with the officials of the Guild, and they granted the exemption that you requested? A. That was in the latter part of May and early June of 1933, at the time this letter was being prepared for mailing to the membership, the proposed membership.

Examiner Averill: When the witness says "this letter," he refers to Commission's Exhibits 99-A, B? 10413

Mr. Haycraft: Yes.

Examiner Averill: All right.

By Mr. Haycraft.

Q. Well, did you have any further discussion with the A.M.C., members of the A.M.C., with respect to the letter

itself, and the memorandum on the Guild's resolution, and the declaration of co-operation in anti-piracy attached to the letter— A. Yes.

Q. —Commission's Exhibits 99-A to E, after June 16, 1933? A. Yes, I did, before and after.

By Mr. Haycraft.

Q. Did you have a discussion with the members of the A.M.C. subsequent to June, 1933, with respect to a plan of the F.O.G.A. as expressed in Commission's Exhibits 99-A to E?

10415 Mr. Weisman: Now, your Honor, before the witness answers that question, I object to it unless he will specify in his answer the names of the people with whom he had the conversation, so that we may on our direct case examine them and, if necessary, cross-examine them to see whether he is truthful in his testimony.

Examiner Averill: First ask the witness to simply answer "yes" or "no" to that particular question, and then counsel may ask him other questions.

A. I did.

By Mr. Haycraft.

10416 Q. With whom did you discuss this matter? A. I discussed this whole situation primarily with the garment merchandise managers of the stores who were in the stores at that time.

Mr. Weisman: May I ask——

A. (Resumed.) Also with Col. Reilly, and with some of the store principals, not many, mostly garment merchandise managers.

Q. Where did you have this discussion? A. Why, I had the discussion in the New York office primarily.

Examiner Averill: Yours?

The Witness: Our New York office, yes.

By Mr. Haycraft:

Q. When? A. When these people would visit New York and come here on business; I mean, we discussed the subject quite frequently, and as much as this subject required, and that was quite a good deal.

(There was a discussion off the record.)

Examiner Averill: On the record. Mr. Witness, 10418
will you please state whether about this time, and about this matter, did you have any discussions with any of the officials of the Guild?

The Witness: I did.

Examiner Averill: Where were such discussions held?

The Witness: I did hold these discussions with the Guild on their premises, in the office, at the time, located on Seventh Avenue, I think 5——

Mr. Albert: —12.

The Witness: —12.

Mr. Weisman: May it please your Honor, may we have the time fixed?

The Witness: I stated the time previously, May and June of 1933, that is in connection with this 10419
particular letter here.

Examiner Averill: That is what we are talking about.

Mr. Weisman: May I know what letter he is referring to? He says "this particular letter."

The Witness: June 16, 1933.

Examiner Averill: Commission's Exhibits 99-A and B.

By Mr. Haycraft.

Q. In those discussions, did you present to the officials of the Guild the opinions and objections of the members of the A.M.C., as they were transmitted to you? A. I did.

By Mr. Haycraft.

Q. What did the executives of the Guild tell you with respect to the objections and opinions of the members of the A.M.C. that you transmitted to them? A. I have already told you that it stated—that Mr. Rentner acknowledged the condition that prevailed as far as we were concerned, and agreed to an exemption on the co-operation in
10421 connection with merchandise below $10.75 cost.

By Mr. Haycraft.

Q. I notice that there is no such exemption in the written declaration of co-operation, or in the letter, Commission's Exhibits 99-A to E. A. That is right.

Q. Did Mr. Rentner make any explanation of that?

Mr. Weisman: Just a moment. I object to the attempt to vary the terms of a written instrument which they themselves have put into evidence. The exhibit is complete on its face, and full, and is an exhibit offered by the Commission. Now, they are seeking, obviously, in an effort to anticipate cross-
10422 examination, to impeach their own document, and in an obviously improper manner.

Examiner Averill: One moment, gentlemen, until I read these exhibits that he speaks of. Did he add anything, or make any explanation?

(Last question read.)

The Witness: He did.

Mr. Weisman: Just a moment.

Examiner Averill: One moment, please, sir; there is an objection.

Mr. Haycraft: Explanation of that fact—those things he has just now testified to, with respect to them.

Examiner Averill: You mean Mr. Rentner, give an explanation of why the oral agreement to which the witness has testified, namely, that the members of the A.M.C. were to be exempt from co-operation in merchandise of a value of less than either $10.75 or $10—some places it is stated as $10, other places as $10.75. That is what you mean, is it not?

Mr. Haycraft: Yes.

Examiner Averill: With that explanation of the question in mind, if any other declaration was made 10424
to you later by Mr. Rentner as to why there was no reference to any such exemption in behalf of the A.M.C., in the form of documents which are covered by this exhibit, Commission's Exhibits 99-A to E, inclusive, and you have seen what they are?

The Witness: Yes, sir.

Examiner Averill: If he did make any, why, say so; if he did not, say so.

Mr. Weisman: May I make my objection first?

Examiner Averill: Certainly, I thought you had made it.

Mr. Weisman: Well, a new question has been propounded for the purpose of the record; these 10425
documents are documents which have been offered in evidence by the Commission. They are documents that are signed not by us, but by the A.M.C.

Examiner Averill: They are not signed by anybody.

Mr. Weisman: Well, if they are not signed, the purpose of having them in evidence is merely to show the type—the exact context of documents that were signed.

Examiner Averill: But there is nothing in here as far as this exhibit goes to show that any member of the A.M.C. ever signed the declaration of co-operation in anti-piracy, as it is headed, which is in here as Commission's Exhibit 99-E.

Mr. Weisman: Except——

Examiner Averill: That being the case——

Mr. Weisman (interposing): Well, that is not the case.

Examiner Averill: That is all it appears, may I say?

Mr. Weisman: May I refresh your recollection—

10427 except that this witness this morning testified that Commission's Exhibit 99-E was an exact copy of a document that A.M.C. signed. Am I correct about that, Mr. Bergdahl?

The Witness: As I recall it.

Mr. Weisman: Yes.

The Witness: That is an exact copy.

Mr. Weisman: That is an exact copy.

Examiner Averill: Yes.

A. Mr. Rentner told me, in the presence of other resident office managers, that he was giving us an exemption on merchandise below $10, but would not make this as a general condition to all retailers, since the retailers that were not asking for it—he was not worrying about—he

10428 would take care of us but he did not care about the others particularly, since they were not asking for it, why bring it up, and, therefore, he wanted nothing in writing to this effect, and it was a gentleman's agreement between us, and we agreed to that, and that was all right.

By Mr. Haycraft.

Q. Did you say you wished to correct a statement? A. Yes.

Q. What was the statement? A. Yes, I did. He stated here, I think inadvertently, that the stores had signed Exhibit 99-A and B, and that the office had signed 99-E. E is the last one here. Now, the stores and the offices, as I recall it, signed 99-E, or unless they—that was, they had the privilege of making a—of writing it in their own words, if they wished. The letter in which $10 is mentioned—I do not know that the $10 is not mentioned in 99-E at all, it is merely mentioned in Mr. Rentner's letter, to which is attached 99-E, but in connection with the New York offices, I doubt whether very many of us ever got 99-A and B, that was verbally understood, that is, 99-A went out to the stores, that was generally circulated in the trade, 10430 and that was what contained the $10 quotation.

Q. Well, Mr. Bergdahl, if you had not had this understanding or agreement with Mr. Rentner just described, would you have recommended to the A.M.C. stores that they sign the so-called "Declaration of Co-operation," or would you have signed the so-called "Declaration of Co-operation"?

Mr. Weisman: I object to the question as incompetent, irelevant and immaterial.

Examiner Averill: Read the question.

(Last question read.)

A. I——

Mr. Weisman: Just a moment. 10431

Examiner Averill: Wait a moment. He has made an objection.

The Witness: I am sorry.

Examiner Averill: I would like, with permission of counsel, to ask this witness if this paper, Commission's Exhibit 99-C— Show it to Mr. Weisman, too, so that he can see what I am referring to.

(Witness hands paper to Mr. Weisman.)

Mr. Weisman: Yes.

Examiner Averill: If that paper—here is what I am after especially—if that paper was before him at the time that he recommended, as he says he did recommend, the signing of the declaration of co-operation, Commission's Exhibit 99-C.

Mr. Weisman: I have no objection to your Honor asking him that question.

Examiner Averill: I would like to know. You can both see the——

Mr. Weisman: —the relevancy.

Examiner Averill: —the relevancy of it.

10433 Mr. Haycraft: I was going to take that up next.

Mr. Weisman: I would like, your Honor, to ask for an explanation of that.

Mr. Haycraft: I am going to take that up next.

Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: I should think that in fairness to the witness before he answers that question that his attention should be directed to Commission's Exhibits 99-C and 99-E.

Mr. Haycraft: C, D and E, all three.

Examiner Averill: And see if he had that paper before him or knew of its existence when he recommended it.

Mr. Haycraft: All right.

10434

By Mr. Haycraft.

Q. I show you Commission's Exhibits 99-C and D, and ask you if you received that in your office, or were you familiar with that paper at the time that you signed the so-called "Declaration" similar to Exhibit 99-E? A. I don't recall ever having seen these.

Examiner Averill: You mean 99-C?

The Witness: 99-C.

Examiner Averill: Go ahead now and answer the question.

The Witness: In fact, I can state definitely that I never saw it.

By Mr. Haycraft.

Q. Now, will you answer my other question?

Mr. Weisman: Now, wait a moment, I have an objection to the other question. It has not been ruled upon. He asked him a question.

Examiner Averill: Yes, I know, but now that 10436
the witness has been shown those papers I am going to let him answer the question.

Mr. Weisman: May I respectfully object on the ground that that question is two questions in one, in the first place, and, in the second place, whether or not this grand A.M.C., or Mr. Bergdahl, while it may seem to him important, whether or not he recommended it, there is no testimony in this case to that effect that it would have made one iota of difference to these stores, and, as a matter of fact, it is in evidence that half of the stores, or at least three fourths of them, have repudiated Mr. Bergdahl and the A.M.C., and are now co-operating with Guild. 10437

So I mean it is entirely unimportant. There is no proper foundation laid for the question, would he have recommended it. The significance——

Examiner Averill: I think counsel will later thank me for overruling him. Note an exception.

A. Why, I should not have recommended this, and so told Mr. Rentner at the time, and——

Mr. Weisman (interposing): I ask that the latter part of the answer be stricken out, and I ask that this witness be directed by the Court to confine himself to the questions.

That question was perfectly plain, would he have recommended it, and when he answered "I would not," that was the end of that answer, and he knows it. We have here an intelligent witness.

Examiner Averill: Read the answer.

(Answer read.)

Examiner Averill: Strike everything from that answer after his statement "I should not."

10439 Counsel may bring out further questions about the matter, but as far as that question is concerned, that is the answer to it.

Mr. Haycraft: Is it stricken out, "that he would not have recommended it"?

Examiner Averill: "Would not have recommended it" is not stricken out.

Mr. Haycraft: Read his answer.

(Answer read as follows: "A. Why, I should not have recommended this——")

Mr. Haycraft: Strike out beginning "—and so told"?

Examiner Averill: Yes; my opinion is that is a sufficient answer to the question.

10440 *By Mr. Haycraft.*

Q. I will ask you to answer the second part of the question, would you have signed the so-called "Declaration" yourself, recommending the A.M.C., if you had not had such an agreement with Mr. Rentner?

Examiner Averill: Is that not the same question?

Mr. Haycraft: No. One is as to his recommending it to his members, and then the other, himself.

Mr. Weisman: In other words, Mr. Haycraft, notwithstanding your Honor's ruling, sees the vice of his question and is attempting to correct it after he has been permitted to answer it. My objection to it was that there were two questions in one.

Examiner Averill: Now, then, he has split them, we have had the witness' answer as to what he should have done in connection with his members recommending to them. Now he is asked about himself.

Mr. Weisman: Yes.

Examiner Averill: He may answer that question. Go ahead. 10442

By Mr. Haycraft.

Q. Would you have signed it yourself? A. I would have signed it if the stores had first signed, because we are governed by the stores' instructions.

Q. Did you transmit to Mr. Rentner your position with respect to requiring such an agreement from him before you would recommend the signing of the so-called "Declaration of Co-operation" to the member stores of the A.M.C.? A. Yes.

Mr. Weisman: Wait a moment. I object to that as being already twice answered.

Mr. Haycraft: No.

Examiner Averill: If it has already been answered, why, I do not know. The objection is overruled. 10443

Mr. Weisman: Exception. I may say in fairness to Mr. Haycraft, I expect to move to strike all this testimony out when he gets through with this line, as to Mr. Rentner. Mr. Rentner was not the Guild. Mr. Rentner was a member of the Guild—any more than Mr. Bergdahl is the A.M.C.

Examiner Averill: What I am anxious to know from you gentlemen—off the record, if you please.

(There was a discussion off the record.)

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. Who was Maurice Rentner at this time, Mr. Bergdahl? A. He was the director of the Guild, as far as I know.

Mr. Weisman: I ask——

The Witness: The chairman, or the head of it, anyway.

10445

Mr. Weisman: I ask that the answer be stricken out. It is his guess. It is a poor one, I might say; it is a poor one.

The Witness: I think it is on the stationery.

Examiner Averill: Let me see some of those letters. That exhibit may show it there. That is the one from Mr. Rentner (referring to paper on the table).

Mr. Weisman: Yes, that is from him personally.

The Witness: It does not say on there. Some of those letters may show it.

Mr. Haycraft: Where is the one we just had?

Examiner Averill: Gentlemen, let us not waste time. I guess it can be admitted what he was. I

10446

believe you would not deny what he was, if he was anything. I do not know whether he is president, or what.

Mr. Weisman: There will be no question in this case. Mr. Rentner was one of our directors. He was a very active man in our affairs.

Examiner Averill: All right.

Mr. Weisman: But we deny his right to do what is contrary——

Examiner Averill: Of course.

Mr. Weisman: —to our written letters. We object to having this witness come in and say, willy nilly, "Yes, we signed this," and say, "We took the word of Mr. Rentner for this."

The Witness: Your Honor, could I——

Examiner Averill: No, no.

Mr. Haycraft: I will ask him this.

By Mr. Haycraft.

Q. Mr. Rentner is chairman—apparently appears as chairman from the various letters.

Examiner Averill: Counsel admits he was one of 10448
their directors.

Mr. Haycraft: It is not a question of one of the directors, he was the executive, the director——

Mr. Weisman: No, he was not. When you are ready to take the stand and testify, I will subject you to cross-examination and show up your complete knowledge in this case.

Mr. Haycraft: I might do the same thing.

Mr. Weisman: You call me and try to.

Examiner Averill: Gentlemen, we will have it established later as to what Mr. Rentner was, what his position was.

Mr. Haycraft: He was the Guild, no question about it. 10449

Mr. Weisman: Like you are the Federal Trade Commision—making a statement like that, that he was t' Guild.

Mr. Feldman: Is Mr. Bergdahl the A.M.C.?

The Witness: What do you think?

Examiner Averill: Gentlemen, let us go on. The next question, please.

By Mr. Haycraft.

Q. Subsequent to June, 1933, did you, in your official capacity with the A.M.C., co-operate with the F.O.G.A., in carrying out the agreement that you had signed? A. We did carry out our agreement with the Guild as far as it applied to merchandise from $10.75 up is concerned.

By Mr. Haycraft.

Q. How long after June 16, 1933, did you first acquaint the members of the A.M.C. with the agreement that you had with Mr. Rentner? A. Well, I would have to look up to see my letters that went out on that to determine just
10451 the exact date that I did send out such word.

By Mr. Haycraft.

Q. During the year 1933, say from June on to the end of the year, did you have any further contacts with the officials of the F.O.G.A. with respect to their plan of anti-style piracy? A. Well, I recall that we had conversation with the F.O.G.A. They called certain meetings in which they apprised the resident officers of things that they were planning, and I attended such meetings during that year.

Q. Was there anything done by the F.O.G.A. during that period of time, with respect to checking up on retail dealers, members of your A.M.C., to determine whether or not they were co-operating with the Guild in the return
10452 of copies to manufacturers? A. I do not——

Q. By "copies" I mean copies adjudged to be copies of Guild dresses. A. I do not recall that any agressive action was taken to find out whether or not anybody was——

Mr. Weisman (interposing): Cheating.

A. (Resumed).—was living up to the agreement.

By Mr. Haycraft.

Q. Do you know whether or not during that period of time any retail dealer was red carded, so to speak, by the Guild?

Mr. Weisman: I object to that as immaterial.

Examiner Averill: You mean any retail dealer, member of their association?

Mr. Haycraft: Yes.

Examiner Averill: Of the A.M.C.?

Mr. Haycraft: Yes.

Mr. Weisman: Well, how would that be material?

Examiner Averill: I do not know. Let us see. 10454

Mr. Weisman: All right.

A. I would not know.

Mr. Weisman: All right, I withdraw the objection, he would not know.

The Witness: I do not know, in fact. You had reference to the year 1933?

By Mr. Haycraft.

Q. Yes, that is right, all 1933. Are you familiar with any efforts that were made by the Guild during the balance of the year 1933, that is, from June until December, to enforce their plan, or to carry out their plan of anti-piracy? A. Well, I do not know that the Guild did anything to carry it out as an organization here from New York, no. 10455

Q. It did not come to your attention? A. It did not come to my attention.

Q. I will ask you whether or not you received copy of letter from Mr. Golby under date of January 5, 1934, and accompanying papers which are in evidence as Commission's Exhibit No. 621-A to G? A. I did receive them.

Q. On or about the time— A. On or about January.
Q. On or about that time?

Examiner Averill: What date is that?

Mr. Haycraft: January 5, 1934.

Mr. Weisman: May we have a recess? We are about half-way through the afternoon session—a recess of five minutes?

Examiner Averill: I was going to let you out at ten minutes to four.

Mr. Weisman: I have received a telephone call.

Examiner Averill: All right.

(Whereupon a short recess was taken.)

10457 Examiner Averill: All right, gentlemen.

By Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 621-A to G, I will ask you whether or not the subject-matter of this letter, and the accompanying documents, were called to your attention by officials of the Guild, prior to the issuance of this letter? A. As I recall it, we had—they called the resident officers to a meeting at the headquarters of the F.O.G.A. to discuss these particular practices here.

Q. At or about that time or before? A. Well, it was before this was issued. As I recall it, this was a meeting in which these were discussed.

10458 Q. Was there any discussion of these various practices on the part of the A.M.C. at or about that time? A. No, we thought as a whole—I mean, concurred, that they were reasonable, as far as I recall it. I stated whatever objections I personally had at the meeting and I think they were jointly arrived at as they are now, more or less.

Q. During the year 1934, do you recall there having been brought to your attention any complaints from the Guild as to whether or not the members of the A.M.C.

were co-operating in the plan, in the anti-piracy plan? A. Well, I don't recall any particular citations that we were not co-operating. I recall getting a letter, I think, from the Guild, stating that we were co-operating.

Q. Was it that year or the following year? A. Well, I am not sure, I do not know just exactly when, but I do not recall any—I do not recall that very much went on as far as the differences of opinion, or otherwise, during the year 193—the balance of the year 1933 and 1934, inasmuch as the Guild recognized, or at least it worked out that way, that the exemptions——

By Mr. Haycraft. 10460

Q. During the year 1934 do you have any recollection of being requested to co-operate, requested by the Guild, to co-operate in getting the Code Authority to recognize—A. To recognize what?

Q. To curb style piracy?

Examiner Averill: To recognize it?
Mr. Haycraft: To curb style piracy.
Examiner Averill. Oh, to curb. Excuse me.
Mr. Haycraft: Yes.

A. Why, as I recall it, the Guild expressed a desire to get into the code such a clause governing copying of merchandise.

By Mr. Haycraft. 10461

Q. Did you co-operate any in that effort on the part of the Guild? A. I think I would say I assisted materially in doing so.

Q. What did you do? A. I helped to frame the clause that was presented to the Government for approval——

Examiner Averill: When you say "Government" you mean "Code Authorities"?

The Witness: Well, the Code Authorities.

Mr. Weisman: Ha, ha!

The Witness: I understood it had Federal endorsement.

Examiner Averill: I know, sir, but the Government is so huge that unles we have some idea as to what particular branch, we have no idea what you have reference to.

The Witness: I see.

Examiner Averill: It might have been some other branch, Department of Justice, or something else.

The Witness: I am sorry.

10463 *By Mr. Haycraft.*

Q. Who served with you on that committee? A. As I recall it, representing the retailers a Mr. Irving Fox, and someone from Macy's.

Mr. Weisman: Will you tell us who Mr. Irving Fox, was, or do you want to keep that dark?

The Witness: No, I do not want to keep that dark at all.

Mr. Weisman: Tell us.

The Witness: He is counsel for the N.R.D.G.A.

By Mr. Haycraft.

Q. National Retail Dry Goods Association, is that it?

10464 A. Yes.

Q. And someone from Macy's, did you say? A. A gentleman from Macy's, whose name I do not recall. Mr. Fox and I met at the N.R.D.G.A., possibly with one or two others, but I do not recall—to discuss the advisability of retail participation in the clause, in trying to get a clause into the code, and subsequently we had a meeting, at the Dress Code Authority headquarters at 1440 Broadway, at which were present retailers as well as manufacturers,

manufacturers representing higher-priced makers, as well as low-priced makers, but not so many low-priced, mostly the better end, I think from $10.75 up; probably, as far as the manufacturers were concerned, were represented at that meeting—the Code Authority executives, and a few retailers.

Q. Did anything come out of that by way of a code legislation? A. Yes, a clause governing copying of merchandise was framed, which was intended to be presented as an amendment to the Dress Code Authority.

Q. Coming now into the year 1935, Mr. Bergdahl, did you have any discussions with the executives of the F.O.G.A. during the first six months of that year, with 10466
respect to the policy of the Guild and the extent of co-operation on the part of the retail dealers, members of A.M.C.? A. Yes, I did.

Q. When did those discussions take place? A. Well, early in the year 1935, as I recall it, Mr. Post called at an A.B.O. meeting.

Q. First tell us who Mr. Post was, so far as you knew him? A. Mr. Al Post at that time director—executive director of the F.O.G.A., having been appointed in the fall of 1934, as I recall it, called on us to invite our co-operation, and further strengthening the Guild program to control copying. Does that answer the question?

Q. What did he have to say with respect to the Guild program as to copying? A. Well, he invited our additional 10467
co-operation and asked our ideas about it at the time, and we told him we could go along if and when the conditions that we had previously stated had been met by the Guild and by the situation in the industry, by conditions in the industry; namely, that we could go along and co-operate below $10.75 cost when the chain stores would be a part of the Guild, and when the industry in the low-priced brackets would have learned how to create so-called "original" designs.

Q. Well, what was the proposition that they were making to you at that time that caused you to make that statement? A. Well, I do not recall that there was a concrete proposition made, that was to be subject to further discussion.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 862 for Identification, and ask you if you can identify it?

(A paper was thereupon marked for identification Commission's Exhibit 862.)

10469 A. That is a letter for the most part dictated by the writer—by myself—and sent by the Association of Buying Offices, signed by Mr. H. I. Kleinhaus, Executive Secretary, explaining the——

Q. Let us not go into that. A. I understand.

Q. What is the date of that? A. March 30, 1935.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman: May I see it?

(Mr. Haycraft hands Commission's Exhibit 862 for Identilcation to Mr. Weisman.)

Mr. Weisman: All right, then, I will not object if you will let the answer go in.

Examiner Averill: All right.

(There was a discussion off the record.)

10470 Examiner Averill: On the record.

By Mr. Haycraft.

Q. At the time that letter was written, did you have anything to do with the F.D.O.? A. I was chairman of their F.O.G.A. committee; I think that is what they were.

Q. About March 30, 1935?

Mr. Weisman: Does the record show clearly that the last remaining answer that I objected to was stricken out?

Examiner Averill: Yes.

Mr. Weisman: I want to be sure.

Examiner Averill: It was stricken out. The reporter has the language that was stated.

By Mr. Haycraft.

Q. I asked you whether you had a meeting of this committee on or about March 30, 1935. A. Yes, we did, a meeting of the committee as well as the Association. That was a weekly meeting, if I recall, a weekly meeting. 10472

Q. Who called the meeting? A. This subject was discussed at a meeting, a weekly meeting of the offices, called by the president at that time, Mr. John Bloch.

Q. President of what? A. The Association of Buying Offices.

Q. At this meeting, what was the subject of discussion? A. Well, one of the subjects of discussion was an article that we had read in the "Women's Wear Daily," a short article which stated that the Guild had decided to invite the $10.75 manufacturers to register their merchandise for protection.

Q. Was that matter discussed at that meeting? A. That matter was discussed that day, and this letter was dictated and sent to the Guild.

Q. All right. 10473

Examiner Averill: Who was the Guild?

The Witness: The Association of Buying Offices.

Mr. Haycraft: I made a mistake.

Examiner Averill: Oh, A.B.O.

By Mr. Haycraft.

Q. Subsequent to the date of this letter, March, 1935, did you have, or attend, a joint meeting of the Association of Buying Office and the F.O.G.A.? A. As I recall it.

Q. Where this matter was discussed? A. As I recall it, this letter resulted in a joint meeting, if I recall correctly.

(A paper was thereupon marked for identification Commission's Exhibit 863.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 863 for Identification, and ask you if you can identify that (showing paper
10475 to witness)? A. Yes, that is the letter as the result of the joint meeting, summing up the understanding.

Q. Who wrote it? A. Written by Mr. Kleinhaus, secretary of the Association of Buying Offices, to Mr. Maurice Rentner, chairman of the F.O.G.A., dated April 5, 1935.

Mr. Haycraft: I offer it in evidence.

Examiner Averill: Any objection?

Mr. Weisman: I have no objection if Mr. Haycraft would like to stipulate that the answer to this may go in.

Mr. Haycraft: I expect to offer it.

Examiner Averill: Gentlemen, the paper that has been marked for identification Commission's
10476 Exhibit 863, which appears to be a mimeographed copy of a letter dated April 5, 1935, addressed to Maurice Rentner, chairman, F.O.G.A., New York, from the secretary of the A.B.O., Inc., will be received in evidence and marked Commission's Exhibit 863.

(The paper heretofore marked for identification Commission's Exhibit 863 was marked as an exhibit and received in evidence.)

(A paper was thereupon marked for identification Commission's Exhibit 864.)

(A paper was thereupon marked for identification Commission's Exhibit 865.)

Mr. Weisman: Are you going to offer the reply?

Mr. Haycraft: I am coming to that.

Mr. Weisman: May it please your Honor, the answer to this is here.

Examiner Averill: It cannot go in all at once.

Mr. Weisman: But I think obviously the time to put it in is with the original letter. I am not going to fight about it. I am going to insist. He might as well get it now. 10478

Examiner Averill: Be a little patient.

By Mr. Haycraft.

Q. I will ask if you can identify this letter, Commission's Exhibit 864 for Identification? A. Yes, I can identify that.

(A paper was thereupon marked for identification Commission's Exhibit 866.)

By Mr. Haycraft.

Q. Did you send this out to garment merchandise managers of the A.M.C.? A. I did.

Q. Does that relate to the subject-matter of the exhibit just received in evidence? A. That does. 10479

Examiner Averill: Commission's Exhibit 863?

Mr. Haycraft: Exhibit 863. I offer this in evidence, dated April 10, to garment merchandise managers, entitled "Developments in F.O.G.A.," from the witness, Commission's Exhibit 864 for Identification.

Mr. Weisman: I have no objection.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 864 for Identification, bearing date April 10, 1935, and headed "Developments in F.O.G.A.," apparently sent to garment merchandise managers, addressed to merchandise managers, and from H. L. Bergdahl, merchandise manager, will be received in evidence and marked Commission's Exhibit 864.

(The paper, heretofore marked for identification Commission's Exhibit 864, was marked as an exhibit and received in evidence.)

10481 *By Mr. Haycraft.*

Q. The merchandise managers referred to in that exhibit are merchandise managers of whom? A. Merchandise managers of ready-to-wear in our stores.

Q. That is the A.M.C. stores? A. A.M.C. stores.

Q. I show you Commission's Exhibit 865 for Identification, an original letter from Albert M. Post to the Association of Buying Offices, Inc., dated April 23, 1935, and ask you if you can identify that as a reply to Commission's Exhibit 863? A. I can, sir. That is a reply to a letter dated April 5. That letter read, it being a typographical error, "We have your letter of April 6th."

Q. But it is a reply to this letter (showing paper to witness)? A. It is a reply to this letter.

10482

Mr. Haycraft: I offer it in evidence.

Examiner Averill: In other words, the witness when he makes that statement means the letter bearing date April 5th, now in evidence as Commission's Exhibit 863?

Mr. Haycraft: Yes, the first line just read says, "We have your letter of April 6th."

Examiner Averill: I see.

Mr. Weisman: You are offering this letter in evidence, to which I have no objection.

Examiner Averill: No objection?

Mr. Weisman: I would ask your Honor to read this paragraph.

Examiner Averill: Just a moment.

Mr. Haycraft: And as soon as he reads that read the next one.

Examiner Averill: Wait a moment, I have not put this in yet.

Mr. Haycraft: Pardon me.

Examiner Averill: Gentlemen, there being no objection, a letter heretofore marked Commission's 10484
Exhibit 865 for Identification, consisting of two sheets firmly attached, will be received in evidence and marked Commission's Exhibit 865, the same being a letter dated April 23, 1935, addressed to Association of Buying Offices, Inc., New York City, and signed "Albert M. Post, Executive Director." The evidence shows Mr. Post is of the F.O.G.A.

(The paper, heretofore marked for identification Commission's Exhibit 865, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Upon receipt of this letter, Commission's Exhibit 865, was there a meeting of your committee held? A. 10485
Upon the receipt of——

Q. Mr. Post's letter. A. —Mr. Post's letter, dated April 23?

Q. Yes. A. Yes, we had a meeting upon receipt of this; I do not say just because of this, but we had a weekly meeting at which this letter was discussed.

Q. Did you address a letter to Mr. Post in reply to that? A. We did.

Q. I show you Commission's Exhibit 866 for Identification, and ask— A. When I say "we," in this case it means the A.B.O., the Association of Buying Offices.

Q. I show you Commission's Exhibit 866, and ask you if you can identify that as a carbon copy of a letter from H. I. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Mr. Maurice Rentner, chairman of the Fashion Originators Guild of America, also attention of Mr. A. M. Post, dated April 27, 1935, and a reply to Mr. Post's letter of April 23, 1935, which is in evidence as Commission's Exhibit 865 (handing paper to witness)? A. This is the reply to Mr.
10487 Post's letter of April 23, 1935.

Q. I will ask you whether or not the letter which you just identified represents the judgment and opinions and attitude of the members of the A.B.O. meeting held on April 26, 1935?

Mr. Weisman: Just a moment. I would like for you to read that prize question to his Honor. We now have a letter in evidence——

Examiner Averill: One moment.

Mr. Weisman: Now, just——

Examiner Averill: Wait. Read the question.

(Last question read.)

Mr. Weisman: The letter is in evidence and it means what it says, and this statement whether it
10488 represents the attitude, and so forth, and so on, ad nauseum, does not add to or detract from the letter, and I submit the question is wholly improper and incompetent. He offers a letter in evidence and the letter speaks for itself.

Examiner Averill: One moment, please, before you answer. I will have to sustain that objection, gentlemen. I think the letter, so far as it goes, speaks for itself, in regard to the feelings of the members of the Association, of the A.B.O.

Mr. Haycraft: Well, if that is conceded——

Examiner Averill: It has not been received in evidence.

Mr. Haycraft: I am offering it in evidence.

Examiner Averill: Yes.

Mr. Haycraft: Of course, I want to point out that the letter does not bear the witness' signature, and I am asking the witness as to whether or not the statement contains, as he recalls, what was the attitude of the members of the meeting.

Mr. Weisman: If you are going to take that attitude, then I will object to the witness putting this letter in evidence, and ask you to bring Mr. Kleinhaus in and ask to submit Mr. Kleinhaus to cross-examination. 10490

Examiner Averill: I have no objection to him asking the witness, apart from his letter, if he was present at a meeting, to which this letter may have referred, and what took place at that meeting, if he wants to.

Mr. Haycraft: All right.

Examiner Averill: But it is all here in the letter, and I do not see why it is necessary to go into it again.

Mr. Haycraft: I merely want to show that what is in the letter is in evidence.

Examiner Averill: It is already in evidence.

Mr. Weisman: The letter is in evidence. 10491

Examiner Averill: It is going to be received in evidence—I have not got it in yet but it will be. The copy of the letter bearing date April 27, 1935, from the Association of Buying Offices, Inc., by H. I. Kleinhaus, executive secretary, to Maurice Rentner, chairman, F.O.G.A., New York City, and heretofore marked Commission's Exhibit 866 for

10492 *Herbert L. Bergdahl—For Commission—Direct.*

Identification, will be received in evidence and marked Commission's Exhibit 866.

(The paper, heretofore marked for identification Commission's Exhibit 866, was marked as an exhibit and received in evidence.)

(Whereupon, at 3:50 o'clock P. M., November 17, 1936, the hearing in the above-entitled matter was adjourned.)

10493 Room 901, 45 Broadway,
New York, New York,
November 18, 1936.

Met, pursuant to adjournment, 10 o'clock A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same appearances.)

PROCEEDINGS.

Examiner Averill: This is a reconvening of Docket No. 2769. Gentlemen, we will proceed when you are ready.

10494 Mr. Haycraft: All right, Mr. Bergdahl.

HERBERT L. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Now, the last matter that I called to your attention, Mr. Bergdahl, was a letter from the Association of Buying

Offices to Maurice Rentner, chairman of the F.O.G.A., under date of April 27, 1935, in reply to Mr. Post's letter of April 23. Did you have any further discussion with the officials of the F.O.G.A. with respect to the subject-matter of these two letters? A. Well, I think we did have some discussion; yes, sir; shortly after April 27—they were the very first part of May.

Q. Was anyone else besides you in on the discussion? A. Yes, there was a committee designated from the Association of Buying Offices, consisting of, as I recall it, Mr. Greenebaum, Milton Greenebaum, Mr. John B. Sweeney, myself, and Mr. Post, Mr. Reinitz—Mr. Post representing the F.O.G.A., and Mr. Reinitz representing the $10.75 manufacturers, and I think Mr. Kleinhaus of the Association of Buying Offices. 10496

Q. Where was this meeting held? A. This was held at the Office of the Specialty Stores Association, at 1441 Broadway, I think that is. I am not sure about that.

Q. When was it held? A. I believe the date was May 4.

Mr. Haycraft: I ask that this paper be marked for identification.

(A paper was thereupon marked for identification Commission's Exhibit 867.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 867 for Identification and ask you if you can identify it? A. Yes, sir. These are the minutes that we agreed—— 10497

Mr. Weisman: No. The answer to that question is either "yes" or "no."

The Witness: Yes.

By Mr. Haycraft.

Q. What is it? A. These are the minutes——

Mr. Weisman: I object to that. I object to the witness describing the document until it goes into evidence. He is now going to testify as to what it is. I am entitled to see it before he refers to the contents of it, and before a witness begins to read from its contents and place them into the record. I think that he should identify it and then it should be offered into evidence before anything further is done.

Mr. Haycraft: I want to get some further identification.

Examiner Averill: He said the date was so and so. He can state whatever it is, a letter, minutes, and so on.

10499

By Mr. Haycraft.

Q. Go ahead. A. These are the minutes of the meeting held on May 4, 1935.

Q. Meeting of who? A. These several gentlemen that I have just mentioned representing the organizations that I have just mentioned.

Q. Who prepared the minutes, this paper? A. I am not sure.

Q. Where did you get it? A. They were prepared at the time when we were in the meeting, but who prepared this particular copy I cannot say whether it was Mr. Kleinhaus or Mr. Reinitz; I cannot say.

10500

Q. I show you Commission's Exhibit 868 for Identification and ask you if you can identify it? A. This is, as I recall——

Mr. Weisman: I think the answer to that question should be either "yes" or "no" if he can identify it.

A. I can. I recall it.

By Mr. Haycraft.

Q. What is it? A. It is a copy prepared by Mr. Reinitz at the time that this meeting was in session, that we were in session at this meeting.

Q. Where did you get it? A. I believe that Mr. Reinitz made one copy at the time for himself and gave us one copy and he kept one copy.

Q. Is this the copy that he gave you? A. This is the copy that he gave this committee that was there.

Q. Does that—where did you get it? A. I got it from the files of the Association of Buying Offices.

Q. Where did you get 867 for Identification? A. Same place. 10502

Q. Can you testify whether or not either 867 for Identification, or 868 for Identification, correctly sets forth what transpired at this meeting, what occurred at this meeting?

Mr. Weisman: I object.

Examiner Averill: Sustained.

By Mr. Haycraft.

Q. Do you have any independent recollection of what occurred at that meeting? A. I do.

Q. Will you testify as to what that recollection is? A. Well, we spent a whole lot of the session—in fact, we spent the whole of the session, or, at least, the better part of the session more or less on a discussion of the question of taking in the $10.75 price groups as members of the Fashion Originators Guild of America, particularly the problems that were involved as far as the retailers were concerned. We pointed out that the condition was no different that time than had prevailed in 1933 when the Fashion Originators Guild of America asked us to sign the original agreement, and that unless some provision could be made for leniency in the enforcement of the policy we could not agree to recommend to the retailers, rather, who repre- 10503

sented—the retailers whom we represented that they should go along and take in the $10.75 manufacturers. We particularly came down to two points that until such time as the chain store operators had become a partner in this program, or signed up with the Guild, and until such time as the low-end manufacturers were—and until such time as the low-end manufacturers would have become prepared with designing staffs to take care of the retailers' requirements we would have to expect, as I said before, leniency as to the enforcement of the piracy law on low-end merchandise. We further agreed, or at least, discussed, and I think that there was an agreement down there between us that the Fashion Originators Guild of

10505 America was to send out a letter to the retailers containing the gist of what I have just explained as to our discussion at this meeting, and to convey to them that there was to be some leniency while this program was being developed so that the retailers could go along, at least to convey to our membership that there was an understanding that they would have an exemption or leniency on low-end merchandise. We went into that at some length at the meeting to define what leniency should mean. All of this was to be put in a letter which was to go out to retailers from the Fashion Originators Guild of America prior to taking up the $10.75 manufacturers into the Guild.

Q. Was such a letter ever sent? A. As far as I know, no such letter was ever sent.

10506 Q. Did Mr. Reinitz ever submit to you a draft of such a letter?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant as to what he did or did no do. I submit that the question is obviously incompetent, immaterial, and irrelevant for the reason that he is now calling on this witness for an answer to corroborate or bolster up his own testimony.

He says that he does not know of any letter ever being sent. That closes that line of inquiry.

Examiner Averill: Objection overruled. He may answer that question.

Mr. Weisman: Exception.

Examiner Averill: Noted.

A. Mr. Reinitz did submit a letter to us as a proposed letter to be sent to retailers. The letter was a letter that would come up for consideration at their governing body or board, and it was the one that it was proposed to send out.

Mr. Haycraft: I ask that this document be marked Commission's Exhibit 870 for Identification. 10508

(A document was thereupon marked for identification Commission's Exhibit 870.)

Examiner Averill: Now, I want to get the status of these exhibits because I think we are getting considerably confused on the record as to just what they are. We have 867 for Identification.

Mr. Haycraft: 867 for Identification, the witness has identified as being the minutes of a meeting he attended.

Mr. Weisman: Do not describe them.

Mr. Haycraft: 868, draft of minutes by Reinitz.

Mr. Weisman: I object to that. 10509

Examiner Averill: I do not want that. I just want to know what the numbers are at present.

Mr. Haycraft: 869 has not been identified by the witness.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 869 for Identification——

Examiner Averill: For identification.

10510 *Herbert L. Bergdahl—For Commission—Direct.*

By Mr. Haycraft.

Q. For identification, and ask you if you know what it is? A. This is a letter from Mr. Reinitz.

Mr. Weisman: I object to him describing it.

Examiner Averill: Sustained.

By Mr. Haycraft.

Q. What is the date?

Mr. Weisman: I object. He has identified it sufficiently.

Examiner Averill: Overruled. Proceed.

10511

A. This is a letter from Mr. Reinitz dated May 9, 1933.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 870 for Identification, and ask you if you know what it is, and if you can identify it? A. This is an attachment to Mr. Reinitz' letters of May 9.

Q. How did these papers come in your possession? A. Well, from the Association of Buying Offices.

Q. I will ask you whether or not Commission's Exhibit 870 for Identification, purports to be a proposed Guild letter.

10512

Mr. Weisman: I object to what anything proposes to be, especially a description of any paper. It is certainly highly improper.

Mr. Haycraft: I am entitled to that description.

Mr. Weisman: I submit that he is not entitled to any proposals. Many proposals are made, and disposals are sometimes few.

Examiner Averill: If the paper does not state it and clearly on its face, you are entitled to some further identification.

Mr. Haycraft: He says a Guild letter to retailers. I am asking whether this is one that he referred to in his testimony.

Examiner Averill: Overruled. He has not testified to that paper as I recall it. The moment you offer it you can go into that further.

Mr. Weisman: Then you will have to show it to me.

Examiner Averill: If the paper does not show on its face what it was, who it is from, and to whom it is addressed, or what it is, it is proper to ask what the paper is but not its contents. There is a clear line of distinction there. If it does show on its face what it is, why, it speaks for itself and that is not proper. 10514

Mr. Haycraft: I ask that this paper be marked for identification.

(A paper was thereupon marked for identification Commission's Exhibits 871-A and 871-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 871-A and B for Identification, and ask you if you can identify it? A. This particular paper is——

Mr. Weisman: I object.

Examiner Averill: Sustained. 10515

By Mr. Haycraft.

Q. Can you identify that? A. Yes.

Q. Yes? A. Yes.

Q. What is it? A. That was an approval.

Mr. Weisman: I object.

Examiner Averill: Sustained.

By Mr. Haycraft.

Q. No. I do not want to know what that is, but I want to know what the paper is. A. This is a letter from the Association of Buying Offices.

Examiner Averill: And to whom does it go?

By Mr. Haycraft.

Q. To whom is it addressed? A. It is a copy of a letter from the Association of Buying Offices to Mr. Bert Reinitz.

Q. Of what date? A. It is dated May 13, 1935.

10517 Mr. Haycraft: I ask that these papers be marked for identification.

(Papers were thereupon marked for identification Commission's Exhibits 872-A and 872-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 872-A and 872-B for Identification, and ask you to state what it is? A. This is my letter to our stores with regard to the agreement between the merchandise managers in our stores, explaining my understanding——

Mr. Weisman: I object, your Honor. You see the vice of this.

10518 Examiner Averill: No, no. Sustained. Do not say that.

By Mr. Haycraft.

Q. No. Under what date is it? A. Under date of May 13, 1935.

Q. Did you send this letter out of May 13, 1935, after you had— A. What is that?

Q. Before you sent this letter out on May 13, 1935, had you had any further discussions with the officials— I

show you Commission's Exhibit 873 for Identification, being an original letter, signed by Albert M. Post, addressed to the Associated Buying Offices, and dated June 21, 1935, and ask you if you identify that (handing paper to witness)?

Mr. Albert: Your Honor please, Mr. Weisman is paying no attention to the question; he is reading previous exhibits, and now Mr. Haycraft commences——

Examiner Averill: I know he is, but you can pay attention to this hearing. I am going to save any rights Mr. Weisman has, and he knows it.

Mr. Weisman: Indeed I do, your Honor; thank 10520 you.

A. What is that?

By Mr. Haycraft.

Q. Do you identify that?

Examiner Averill: Do you identify that?

By Mr. Haycraft.

Q. Did you receive that? A. Yes, the Association of Buying Offices received it.

Q. That is where you got it? A. Yes.

Q. Who was Mr. Reinitz at the time that this correspondence and meeting took place in May and June of 10521 1935?

Mr. Weisman: If he knows.

A. Bert Reinitz is the publicity relations man, and runs his own office, an office of that nature, and he is, as I understand, and as I have been told by Mr. Reinitz as well as by Mr. Post and Mr. Rentner, that he represents the

$10.75 manufacturers as publicity agent as well as the Guild.

Examiner Averill: What guild?

The Witness: The Fashion Originators Guild of America.

Mr. Haycraft: I ask to have this document marked for identification.

(A document was thereupon marked for identification Commission's Exhibit 874.)

By Mr. Haycraft.

10523 Q. I show you a letter from the Guild to yourself, dated July 1, 1935. Did you receive that? A. I did.

Mr. Haycraft: I ask that this be marked for identification.

(A document was thereupon marked for identification Commission's Exhibit 875.)

Mr. Weisman: This is one which is already in.

Mr. Post: It is in a couple of times, I think.

Mr. Weisman: I would like for your Honor to read it. It is in already. I think it went in at Philadelphia.

By Mr. Haycraft.

10524 Q. I show you Commission's Exhibit 875 for Identification, and ask you if you can identify it? A. This is a letter dated July 3, 1935, which I sent to our garment merchandise managers, a copy to our general merchandise managers in our stores of the A.M.C.

Q. Did you also send a copy of it to Mr. A. M. Post? A. I did.

Q. Of the Fashion Originators Guild of America? A. I did.

Q. Did you put that on as a result of the N.R.A. decision? A. I did.

Mr. Weisman: Then I want it to stay on. I want it to appear. I will ask you a few questions about that later on.

The Witness: I will be glad to answer them.

Examiner Averill: If you want it on there we will put it on, and if you do not want it on there, there is no objection to it going off, I suppose.

Mr. Haycraft: Not under the circumstances.

Mr. Weisman: We have a question to ask about this next one.

10526

By Mr. Weisman.

Q. I notice there is something in red pencil on here, and also underscoring in the body. I do not suppose that was on the letter when you got it? A. No.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 876, Mr. Bergdahl, purporting to be an original letter from Mr. Post to yourself, dated July 22, 1933, and ask you if you received this letter? A. Right.

Q. I call your attention to the pencil and pen and red pencil notations in the upper left-hand corner. Were those notations on the letter when you received it? A. No, sir. I placed them on there. 10527

Mr. Haycraft: I offer the letter in evidence without the notations.

Mr. Weisman: May I see it?

Mr. Haycraft: Here it is. I ask that this be marked for identification.

(A letter was thereupon marked for identification Commission's Exhibit 877.)

Mr. Weisman: With regard to Commission's Exhibit 876 for Identification, now offered in evidence, Judge, I have not got any serious objection. To me it is not anything that is material or competent in this proceeding. I would like your Honor to read it, and if you think it will help you in determining the issues—it is a personal letter—I will withdraw my objection. I shall look to your Honor for guidance in this matter.

Mr. Haycraft: I would like to ask a question before you rule, your Honor.

Examiner Averill: Certainly.

10529 *By Mr. Haycraft.*

Q. Is that letter in reply to your comment referred to in Commission's Exhibit 875? A. This is in reply to that letter, if that is what you mean.

Mr. Weisman: Except that it appears that it is not. If you will read the letter, it says that it is not. That is the trouble with questions of this kind where the witness simply flies right off the handle and says that this letter is in reply to it because this definitely says that the other letter was in reply to it.

By Mr. Haycraft.

10530 Q. I will ask the witness if you have any such letter? A. I do not have it; at least, it does not specify the date, and it may be that Mr. Post can produce it. I do not know where it is. I cannot. I do not know what it refers to.

Examiner Averill: Gentlemen, now, about this paper. The paper heretofore marked Commission's Exhibit 876 for Identification, the same being a let-

ter bearing date July 22, 1935, a form letter from Albert M. Post, Executive Secretary, Fashion Originators Guild of America, to Mr. H. O. Bergdahl, New York City, will be received in evidence and marked Commission's Exhibit 876.

(The document heretofore marked for identification Commission's Exhibit 876, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 877 for Identification, and ask you if that is the original of the letter which—rather, I ask you if the original of that letter was sent to Mr. Post under the date shown thereon? A. I did send him such an original letter under that date, July 22. 10532

Mr. Haycraft: I offer the letter in evidence.
Mr. Weisman: May I see it?
Mr. Haycraft: Here it is.

By Mr. Haycraft.

Q. This is a carbon copy of the letter? A. This is a carbon copy of the letter under date of July 22, which I sent to Mr. Post.

Mr. Haycraft: I offer that in evidence.
Mr. Weisman: Let me look at it.
Mr. Haycraft: I ask that this be marked for identification. 10533

(A document was thereupon marked for identification Commission's Exhibit 878.)

By Mr. Haycraft.

Q. This will be the next one. You can be looking this one over. A. All right.

Mr. Weisman: Is this the answer to this?

Mr. Haycraft: I wish you would not do that.

The Witness: The witness was reading it.

Mr. Haycraft: I am not offering it in evidence. I am offering this one in evidence.

Mr. Weisman: I do not think it is proper to show the witness these letters when they are not offered, or properly handed to them.

Examiner Averill: Gentlemen, a paper which has heretofore been marked Commission's Exhibit 877 for Identification, and which appears to be a copy of a letter bearing date of July 22, 1935, in two
10535 sheets firmly fastened together, the same being written by Mr. H. O. Bergdahl to Mr. Albert M. Post of the F.O.G.A., New York City, will be received in evidence and marked Commission's Exhibit 877.

(The paper heretofore marked for identification, Commission's Exhibit 877, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 878 for Identification, and ask you if you can identify that as the original letter received by you from Albert M. Post of the Fashion Originators Guild of America? A. Yes. That is Mr. Post's reply to the letter I sent him under the date of this other
10536 one.

Q. That is Commission's Exhibit 877? A. That is right.

Q. I notice there are certain pencil notations in this letter both in black pencil and in red pencil. Were they on the letter when you received it? A. No.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 879, and ask you if you received that from Mr. Post, being a letter dated August 12, 1935? A. Yes.

Q. I show you Commission's Exhibit No. 881, which purports to be a carbon copy of a letter from Mr. Post, and ask you where that was? A. That was attached to Commission's Exhibit 879.;

Q. When you received it? A. Yes.

Q. I also show you Commission's Exhibit 880— A. It was not attached—it was enclosed when I received it.

Q. —carbon copy of a letter from Mr. Post to Bulloks, under date of August 12, 1935? A. That was enclosed with 879 when I received it, both of them.

Q. I notice that there are certain pencil notations on these papers; were they on there when you received them? A. Yes. That is, some were and some were not on there 10538
when I received them. These were not on there.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 882, which purports to be an original letter from Mr. Post to yourself, under date of August 21, 1935, and ask you if you received that letter (handing paper to witness)? A. I did.

Q. I notice certain lead pencil notations at the bottom, "P. S.," in whose handwriting is that? A. Those were on the letter when I received it, and I recognize that as similar to Al Post's; the ones in the upper left-hand corner are my own, and were not on there when the letter was received.

Q. And the same with reference to the red pencil mark- 10539
ings? A. Yes, that is right, that is my writing.

By Mr. Haycraft.

Q. Did you hold any discussions, or meetings, with merchandise managers, or members of the A.M.C., between August and December of 1935, where the subject of returns of garments to manufacturers was discussed? A. Well, I would have to refresh my memory to say for sure

what dates we held the meetings on, but we did hold meetings and this subject was discussed.

Q. Did you, as representing the A.M.C., also discuss this matter at meetings of the A.B.O.? A. Yes, we did.

Q. I show you Commission's Exhibit 885 for Identification, and ask you if you can state what that is?

Mr. Weisman: Now, I am objecting to him stating what it is.

Examiner Averill: Just state if you can identify it.

By Mr. Haycraft.

10541 Q. Can you?

Examiner Averill: That is what he means.

A. I can identify it.

By Mr. Haycraft.

Q. What is it? A. That was a summary of the problems that pertained to co-operation on low-end merchandise presented at a meeting held at the Associated Dry Goods Corporation offices on Fifth Avenue, New York City, Fifth Avenue and 34th Street, at McCreery's, at which was discussed——

Mr. Weisman: No, no, no, do not tell us what
10542 was discussed.

The Witness: I am sorry.

Mr. Weisman: I submit he has told us.

The Witness: I think I have covered it.

Examiner Averill: That is all right; he has stopped.

(The paper was marked for identification Commission's Exhibit 885.)

10543

By Mr. Haycraft.

Q. Where did you get this? A. I was at the meeting when it was handed out by Mr. DuBrois, I believe.

Q. Well, were the subjects listed here all discussed? A. Yes, they were.

Mr. Haycraft: I offer it in evidence.

Examiner Averill: Any objections?

IRVING E. PLAUT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

10544

Examiner Averill: Give the reporter your name, please.

The Witness: Irving E. Plaut.

Mr. Goldman: If your Honor please, I would like to state my name is Robert P. Goldman. I am a member of the firm of Paxten & Seasongood, attorneys of Cincinnati, who are attorneys for the John Shillito Company, of which Mr. Plaut is an employee. I am here simply as the personal attorney of Mr. Plaut. The Shillito Company is not a party to these proceedings, and is not appearing in any way.

10545

Examiner Averill: I see. Delighted to have you, sir, and any assistance we can give you we extend to you with pleasure.

Mr. Goldman: Thank you.

Mr. Weisman: We shall be delighted to join in the extension of any courtesies to Mr. Goldman. I would like to have a statement from you, Mr. Goldman, whether or not this witness has been subpoenaed, or comes here voluntarily from Cincinnati to aid the Commission?

Mr. Goldman: The witness has been subpoenaed, sir.

Mr. Weisman: You have a subpoena?

Mr. Goldman: Yes.

Mr. Weisman: All right, sir, that will make the record complete.

(There was a discussion off the record.)

Examiner Averill: That discussion is off the record. The witness has given his name as Irving E. Plaut, Cincinnati, Ohio.

Direct examination by Mr. Martin.

10547 Q. What is your residence, Mr. Plaut? A. Cincinnati, Ohio.

Q. What is your occupation? A. Divisional merchandise manager, ready-to-wear.

Q. For whom? A. John Shillito Company of Cincinnati, Ohio.

Examiner Averill: The name of that firm, please?

The Witness: Shillito.

Examiner Averill: How do you spell that?

The Witness: S-h-i-l-l-i-t-o.

By Mr. Martin.

Q. How long have you been in the employ of John
10548 Shillito Company? A. Over three years.

Q. Do you recall just when you went with them? A. Around July, 1933.

Q. And have you occupied your present position at all times since you came in their employ? A. Yes.

Q. Have you ever heard of an organization called the Fashion Originators Guild of America? A. I have.

Q. Do you know whether or not at the time you entered the employ of the John Shillito Company, the Shillito

Company had signed a declaration of co-operation in anti-piracy with the Fashion Originators Guild of America? A. I believe they had prior to my coming there.

Q. What are your duties as divisional merchandise manager? A. Having a group of buyers under me in the ready-to-wear, and I supervised them, and most times go to the market with them.

Q. Mr. Plaut, you have already testified that you entered the employ of the John Shillito Company in July, 1933. Now, since that time has the John Shillito Company co-operated with the Fashion Originators Guild of America in accordance with their signed declaration in anti-piracy? A. To the best of my knowledge, they have. 10550

Q. I show you Commission's Exhibit 99-C, the last paragraph thereof, and ask you if since you have been in the employ of the John Shillito Company that stamp—that clause, rather, was placed on your orders for ready-to-wear garments? A. To the best of my knowledge, it has been put on every order.

Mr. Weisman: What did he refer to?

Mr. Albert: 99-C.

By Mr. Martin.

Q. Now, Mr. Plaut, did the Guild shopper ever visit your store? A. She did.

Q. What was the name of the shopper in Cincinnati? A. There were two, but the one that has been there the longest time has been Mrs. Levy. 10551

Q. Did she visit your store? A. Frequently.

Q. All right, sir. Go ahead. What was the other one's name? A. I do not recall.

Q. But there was another? A. Prior to Mrs. Levy.

Q. Did the other one visit the store? A. Yes, sir.

Q. Do you recall when it was that these shoppers visited your store?

Mr. Weisman: He has not testified that they visited the store co-jointly. In other words, it was seriatim, they had one shopper and then that shopper was discontinued, and they had another.

Q. Do you recall when Mrs. Levy first visited your store? A. I do not recall the exact date.

Q. The year? A. During the year 1935.

Q. Did the other shopper visit your store prior to that date? A. I believe she did.

Q. Did the John Shillito Company, at the request of one shopper, or at the request of the Fashion Originators Guild, return garments which the John Shillito Company
10553 was advised were copies of garments registered by the Fashion Originators Guild members?

Mr. Weisman: I object to the form of that question. I object because counsel is leading this witness, and I think, in fact, that counsel has made an unconscious error in this matter because we have stipulated in this case that the only garments returned were garments that were ordered—were not garments, first, let me say, that were ordered returned, but were garments which had been prior thereto adjudged copies. Now, you are leading up to this question with the fact that they were garments returned merely because they were thereafter adjudged copies.

10554 Mr. Martin: If the question is not plain I would like to have it be made plain.

Mr. Weisman: Adjudged copies of originals manufactured by the Fashion Originators Guild of America members.

Mr. Martin: I will take your amendment, because I think it makes it very exact.

A. We co-operated with them, and we returned the copies.

By Mr. Martin.

Q. Now, Mr. Plaut, do you know whether or not the John Shillito Company has ever been red carded? A. Yes.

Q. Before I go to that, did you ever refuse to return garments which had been adjudicated or adjudged copies? A. What do you mean by that?

Q. Which had been adjudged copies? A. Not to my knowledge, with the exception of having one when it was advertised and the shopper came in and happened to see 10556
it and we asked permission to hold it to cover the advertisement, which permission was granted.

Q. Now, do you recall when it was that the John Shillito Company was red carded? A. I believe in the month of February.

Q. What part of the month? A. Early part of February, if I am correct.

Q. February of what year? A. 1936.

Q. How did that come to your attention? What was the first notice that you had? A. The first and only and final notice was when I saw it in "Women's Wear."

Q. You do not know? A. No.

Q. Now, Mr. Plaut, at the time that the John Shillite Company was red carded, did you have any orders out- 10557
standing for goods, or for garments, rather, with manufacturers who were members of the Fashion Originators Guild of America? A. We did.

Q. Do you recall who those members, or, rather, who those manufacturers were? A. Some of them I do.

Q. Will you name some of them? A. Witlin Schneider.

Q. All right. A. C. H. D. Robbins.

Q. All right. A. If I can, I would like to refresh my memory. I have a memorandum.

Q. All right, sir.

Examiner Averill: What was the name of the last one?

The Witness: C. H. D. Robbins.

Examiner Averill: C. H. D. Robbinson?

The Witness: Yes, sir.

By Mr. Martin.

Q. Next? A. Starr-Friedlander.

Q. All right? A. Lyttle Brothers.

Q. All right. A. E. N. Marcus.

Q. All right. A. Lewis Cohen.

10559 Q. All right——

Mr. Weisman (interposing): Just a minute. I am trying to write these down. You see, you did not give me a list like you did, Mr. Martin, so I have to write them down, and I would like for you to go a little more slowly. You see, all Mr. Martin has to do is to check them off of his list. What was that last name again?

The Witness: E. N.——

Mr. Weisman: E. M.?

The Witness: No, E. N. Marcus.

By Mr. Martin.

10560 Q. And the next? A. Lewis Cohen.

Q. The next one? A. Parnes Levinson.

Q. All right. A. Junior Guild.

Q. All right. A. Aywon Dress.

Q. All right. A. Joanne Junior.

Q. Yes. A. Reich & Goldfarb.

Q. Yes. A. Louise Mulligan.

Q. Now, Mr. Plaut, what did you do when you found that your store had been red carded with reference to

seeing about orders which you had outstanding with manufacturers who were members of the Guild? A. We sent them all telegrams asking them when they were going to ship the merchandise because we were going to have a spring opening.

By Examiner Averill.

Q. In that part of your answer in which you spoke of the spring opening, was that one of the things that you stated to the manufacturers in your telegram? A. Yes.

Q. It was? A. It was, your Honor.

Q. And that telegram went out to the several manufacturers? A. It did, your Honor. 10562

By Mr. Martin.

Q. Now, Mr. Plaut, I hand you Commission's Exhibit 886 for Identification and ask you if you can identify that paper? A. I can.

Q. What is it? A. A telegram sent to Starr-Friedlander on March 3.

Q. By whom? A. By me.

Q. I show you Commission's Exhibit 887 for Identification and ask you if you can identify that? A. I can.

Q. What is that? A. "Regarding telegram"——

Q. Do not say what is in it. Just say if you can identify it. A. Yes, I can.

Q. What is it? A. It is an answer to the telegram we sent to manufacturers. 10563

Q. Who is it from? A. This is from Starr-Friedlander.

Q. To whom? A. John Shillito Company.

Q. Where? A. Cincinnati.

Q. Ohio? A. Yes.

Q. Under what date? A. March 3, 1936.

Q. Was that received by you in answer to the telegrams which is marked Commission's Exhibit 886 for Identification? A. That is correct.

Mr. Martin: I offer these in evidence, your Honor.

Mr. Weisman: No objection.

Mr. Weisman: It will be stipulated by the respondent that similar telegrams were sent to Witlin & Schneider, Joanne Junior, Aywon Dress, Reich Goldfarb, Honnel Brothers, Louise Mulligan. It is also stipulated that a telegram was sent to C. H. D. Robbins and the reply was sent as follows: "Can make part shipment next week upon receipt of new Guild signed declaration." It is also stipulated that a similar telegram was
10565 sent to Louise Mulligan and a similar answer was received from Louise Mulligan. It is likewise stipulated that a telegram was sent to Junior Guild and a reply by Junior Guild and a like answer was received.

Mr. Martin: It is further stipulated that a similar telegram was sent to Lewis Cohen Company and a similar answer received from them.

Mr. Weisman: Well, I cannot—this answer is a little different.

Mr. Martin: Do you want to put that in?

Mr. Weisman: Yes.

Examiner Averill: Can you not make your difference in your stipulation?

Mr. Weisman: Yes. And that the letter—the
10566 notice to Lewis Cohen, was answered by a letter from Lewis Cohen, acknowledging receipt of the telegram, and stating: "We have been advised by our attorneys that a repudiation of your signed declaration of co-operation constitutes a breach of your basic agreement with the Fashion Originators Guild of which we are a member, and therefore with us, and they were justified in refusing to ship

merchandise to you based upon such repudiation until such time as you enter into a new agreement with the Guild and its members."

By Mr. Martin.

Q. Now, Mr. Plaut, when you received these replies from the F.O.G.A. members stating that they could not fill your orders, what did you do next? A. I left for New York that afternoon with our dress buyer, Mr. Fishel.

Q. Well, what did you do when you got to New York? A. When I got to New York, went to the dress houses with Mr. Fishel, and Mr. Rosensweig, and asked them about the merchandise that they owed us. 10568

Examiner Averill: When you say the "dress houses," do you mean those houses located in New York to whom you had sent telegrams?

The Witness: Yes, your Honor.

Examiner Averill: Rather than other people.

By Mr. Martin.

Q. Did you call on C. H. D. Robbins? A. We did.

Q. Who did you see there? A. I would like to have permission to refresh my memory——

Q. Certainly, go ahead. A. About the——

Mr. Weisman (interposing): Wait a moment. Let us hear what he wants to refresh his memory from. 10569

The Witness: To refresh my memory on interviews we had with these manufacturers.

By Mr. Martin.

Q. Do you have anything there that will refresh you, notes?

Mr. Weisman: What, have you got? Did you make notes at the time?

The Witness: Yes, sir.

(Witness withdraws paper from pocket and refers to same.)

Mr. Feldman: At that time?

Mr. Weisman: At that time?

The Witness: In their showrooms.

Mr. Weisman: All right.

By Mr. Martin.

Q. Who did you see at Robbins? A. Mr. Joe Lagowitz
10571 and Mr. Nate Hyman.

Q. Well, what did they tell you? A. I asked Mr. Lagowitz, "How are our orders coming along?" Mr. Lagowitz said, "All of your dresses are in work, and will be ready next week." I said, "Fine, and then will you ship about the middle of the week?" Mr. Lagowitz: "No, you know we cannot ship a dress until you are signed up with the Guild."

I said, "Can we see the goods which you owe us?" Mr. Lagowitz: "You know exactly what you bought." I said, "Will you ship us these goods in any way, shape, or form? In other words, "ship through someone else?" Mr. Lagowitz: "We will not ship anything to you either directly or through anyone else until and unless you sign
10572 up with the Guild."

I said, "But after all at the time that we purchased this merchandise there was nothing to prevent you from showing, selling, or shipping to us."

Mr. Lagowitz said, "That's right, but you knew at that time that we were not showing or shipping to White's." I said, "What has White's got to do with Shillito's? We were not red carded, and the order was placed by us and accepted by you in good faith."

Mr. Lagowitz said, "I am sorry, but there is nothing we can do for you." I said, "Will other Cincinnati stores have your merchandise?" Mr. Lagowitz said, "Yes, they have already received their merchandise." I said, "When you wired me you referred to the new Guild declaration." Mr. Lagowitz said, "Yes." I said, "And this declaration reads substantially as the first except that it carries a stronger enforcement clause." Mr. Lagowitz said, "Right." "Mr. Plaut: Do you realize"—I withdraw that. I said, "Do you realize that by our adherence to the Guild program we would be chasing our customers into chain stores like Lerner's, Grayson's, and Maugle's, and others whom the Guild cannot control and who are all stocked 10574
up with Guild copies?" Mr. Lagowitz said, "We suggest that you comply with the Guild. With the help of Shillito's and all other stores the Guild can stop Lerner's." I said, "Have we ever copied any of your dresses?" And Mr. Lagowitz said, "I don't know."

Mr. Fishel said, "Neither we nor you knew anything about this matter turning up at the time the purchases were made, so I cannot see how you can make it retroactive to apply to back orders."

Mr. Lagowitz said, "I myself elect not to ship any back orders to you; I am acting entirely on my own." During the——

Q. Now, what happened——

Mr. Weisman (interposing): Let him finish. 10575

A. During the course——

By Mr. Martin.

Q. All right. A. —of the conversation, a model came over to show a new style. Mr. Lagowitz said to the girl, "Don't show here." Mr. Lagowitz also stated that thirty-seven dresses were reordered by Maybelle and reorders were also received from Pogue's.

Q. Now, Mr. Plaut, who is Mr. Lagowitz? A. To my knowledge, Mr. Lagowitz is a member of C. H. D. Robbins.

Q. A member of the firm? A. Member of the firm.

Q. Who are those other two firms, Maybelle and Pogue's? A. Both stores are in Cincinnati.

Q. Retail department stores? A. Retail stores.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Martin.

10577 Q. Mr. Plaut, there is a reference in your testimony that Mr. Lagowitz told you that you knew at the time that they were not shipping to White's; what was he referring to there? A. At the time that we purchased the goods from C. H. D. Robbins, White's were in the showroom at the same time that I was.

Q. Now, just who—what White's? A. R. H. White's of Boston.

Examiner Averill: I see.

By Mr. Martin.

Q. Is that a retail department store? A. Retail department store, and, to my knowledge, White's were already red carded and we were not.

10578 Q. All right, sir.

Examiner Averill: Is that a Cincinnati concern?

The Witness: No, R. H. White is of Boston.

By Mr. Martin.

Q. Is White's a member of the A.M.C. group? A. Yes, that is right.

Q. After you left Robbins', where did you go then? A. To Witlin & Schneider.

Q. Well, who did you see there? A. Mr. Witlin and Mr. Al Marks.

Q. Who was with you—who went with you? A. Mr. Fishel and Mr. Rosensweig.

Q. Well, what did Witlin & Schneider tell you? A. When we arrived Mr. Marks was busy waiting on customers. Models were displaying goods, and were not told not to show us. We took numbers of the display dresses. Mr. Marks spoke to Mr. Plaut and told him that although they were more than anxious to co-operate, his hands were tied. He suggested that Mr. Plaut return——

Q. Referring to you, he suggested that you— A. Yes, return along later that day and discuss the matter per- 10580
sonally with Mr. Witlin. He mentioned during the conversation that Pogue's ordered 120 dresses, and Horne's bought 150.

Q. Well, did you go back to see him? A. I returned to Witlin & Schneider later in the afternoon alone and spoke to Mr. Witlin, and he later stated he would do nothing—he would do everything in his power to ship merchandise to us, but that in view of the Guild's restrictions he did not see how he could do it.

Q. Did you go to see anybody else? A. Louise Mulligan.

Q. Who went with you? A. Mr. Rosensweig and myself.

Q. Who did you see there? A. Mr. John Irwin.

Q. Who is Mr. John Irwin? A. I am not sure if he is a 10581
partner of that concern or not, but as far as we were concerned we always had our dealings with Mr. Irwin.

Q. All right, sir. A. They are a Chicago concern, but they were showing their goods at the New Yorker Hotel.

Q. All right, sir, what did they tell you? A. I said to Mr. Irwin, "How do we stand with your firm? Mr. Irwin said, "I am sorry, but we know we cannot do anything. I am terribly upset about the whole thing. I only wish

there would be something I could do, but we are not permitted to show or ship you any new goods." I said, "Do you owe us any goods?" Mr. Irwin said, "I think we shipped you everything on back order. If there is still anything on back order we will ship it unless we are instructed to the contrary."

Q. What else did he tell you? A. "Instructions were issued to all Chicago firms not to ship any merchandise whether on back order or otherwise."

Examiner Averill: You mean he told you that?

The Witness: That is right; have a note. (Witness refers to notes.) Mr. Irwin said, "There is one
10583 thing"—Mr. Irwin said, "There is one thing I will say, you know we can confine our line to one store in the town even though we are not permitted to ship red carded stores, we are not going after any other accounts in those cities."

By Mr. Martin.

Q. Who else did you go to see? A. Junior Guild.

Q. Who went with you there? A. Mr. Rosensweig.

Q. Who did you see there? A. Mr. Harry Cohen, representing Junior Guild, which is their salesman.

Q. All right, what did they tell you? A. I said to Mr. Cohen: "What are you doing about the merchandise you owe us?" Mr. Cohen said: "Originally we shipped all
10584 back orders and reorders on numbers you have already had in stock, but yesterday I received this wire."

Q. Did he show you the wire? A. Showed me the wire. "We can neither ship nor show to red carded stores (witness reading from paper). Shows wire reading as follows, 'Mr. Harry Cohen, Room 821, Hotel New Yorker, New York: Absolutely cannot accept any orders from red carded accounts.' A. O. Gilder."

Q. What else did he tell you? A. Mr. Cohen said: "At the beginning of this controversy all Chicago manufacturers met with the approval of their attorneys. They decided to ship back orders and reorders. However, now that instructions from the Guild were issued to the effect that we are not permitted to ship any more we have to abide by their instructions. I will say that this controversy is interfering with business from this room to the extent of fully 25 per cent. However, I look for a quick settlement and, therefore, we are not soliciting new business in your town."

Q. Is Junior Guild a Chicago house? A. Yes, sir.

Q. All right, who next did you see? A. Joanne Junior. 10586

Q. Who did you see there? A. Mr. Martin Zinn and Mr. Rosensweig was with me.

Q. Who was Mr. Martin Zinn? A. One of the partners of Joanne Junior.

Q. All right. What did they tell you? A. I said, "Mr. Zinn, what are you doing about our back orders and reorders?" Mr. Zinn said, "I wish I could do some thing. I am just about at my wit's end. You know I have always co-operated with the A.M.C. since the first day I have been in business, and they have always worked with me, but there is nothing I can do about it.

Examiner Averill: Who are they?

The Witness: A.M.C.

Examiner Averill: Oh, yes, I know. 10587

A. (Resumed) Mr. Zinn said, "I have been to see Mr. Golby of the Guild several times in an effort to arrive at some solution for my firm, but he has always been very abrupt, had little time to speak to me, and told me not to worry that this mess would be over in a few days, but he is not telling me how to cover my expense on loss of the A.M.C. business. (Witness continuing to refer to paper.) "Mr. Plaut pointed to some suits"——

Q. All right, sir. A. (Witness again refers to paper) I, pointing to some suits: "You know I can use at least fifty of those suits." Mr. Zinn said, "I know it, I can book at least 300 from the A.M.C. to-day, but I am afraid of the Guild. You know, if they penalize me they can prevent me from obtaining any piece goods, and that would just about ruin the firm."

Q. All right. Did you go to see anybody else? A. Frank Starr-Friedlander.

Q. Who was with you? A. Mr. Rosensweig.

Q. Who did you see there? A. Mr. Frank Starr.

Q. Anybody else? A. And Mr. S. Friedlander.

10589 Q. All right. What did they tell you? A. I said, "How about the goods we have on orders?" Mr. Friedlander said, "We cannot ship or show to you. After all, you realize we are subject to a fine and punishment by the Guild. I said, "But didn't we place these orders prior to this controversy?" Mr. Starr said, "Yes, but we cannot do a thing. One mistake the Guild made was to prohibit shipments of back orders. They should have permitted us to ship all merchandise on order, then if they wanted to do so could have red carded your account and we would have refused to ship you any new merchandise, but as matters now stand we cannot ship you a dress until the Guild tells us to do so."

Q. All right. Where did you go next? A. To Lewis Cohen.

10590 Q. Who went with you there? A. Mr. Rosensweig.

Q. Who did you see there? A. Miss Corelli.

Q. Who is she? A. From what she told me, she was interested in the concern.

Q. All right, what did she tell you? A. I said, "How about some dresses from you?" Miss Corelli said, "We wish we could ship to you, but we cannot do a thing. The red card prevents our doing so. It really is too bad, because I don't know when we ever had a better line than

we have now, and it is certainly a shame that I cannot ship you the goods that you bought, or show you any of the new things.

Examiner Averill: Then you had back orders?

The Witness: Yes, your Honor.

Mr. Martin: Had orders with all of these places, your Honor.

Examiner Averill: I see.

A. (Resumed) It now seems to be a question of dog eat dog. I said, "Yes, but we bought these goods before anything turned up, and, after all, a contract is a contract, and an order is a contract." Miss Corelli said, "I know, 10592
but it can't be helped. I blame the A.M.C. for not receiving the back orders." "Miss Corelli, it seems that they threatened to make a football of all the garments they received from Guild houses, and that is why the Guild stopped shipments on all back orders."

Mr. Weisman: Who said that?

The Witness: Miss Corelli.

By Mr. Martin:

Q. Who did you go to see next?

Mr. Weisman: Have you got a copy of what he is reading there, Mr. Martin? I notice you quoted. Have you got a copy of what he is reading? 10593

Mr. Martin: What business is it of yours?

Mr. Weisman: I want to know if you are quoting him correctly.

Mr. Martin: I am not quoting him at all. I am going to ask him a question.

Mr. Weisman: You just quoted him.

By Mr. Martin.

Q. Who did you go to see next? A. Reich & Goldfarb.

Q. Who went with you there? A. Mr. Rosensweig.

Q. Who did you see there? A. Mr. Reich, Mr. Goldfarb and Mr. Grettinger.

Q. All right, what did they tell you? A. I said, "What about our goods on order?" Mr. Reich said, "I don't know what to do, I can't ship to you because of the Guild instructions. I will do anything in the world to be able to ship, but I am afraid of the consequences. You see, it is not only the 5,000 of the fine, but it is the silks, the Guild silk people will refuse to ship me, and then where
10595 am I? I only wish I knew how to get out of the Guild. About six months ago I resigned, and then I let them talk me into getting back again. Now, I tried to resign, and I can't do so. I only wish I had stayed out when I was out." I said, "Can we see any of your new things?" Mr. Reich said, "You know we can't do that."

Q. Were any of these orders which you had outstanding with Guild manufacturers filled—were any of these orders which you had outstanding with Guild manufacturers, at the time you were red carded, were any of them subsequently filled by the manufacturers? A. They were not.

Mr. Martin: That is all.

Examiner Averill: Will you tell me, before you go, any further, what this reference to A. O. Gilder
10596 is?

The Witness: He is the owner of Junior Guild of Chicago.

(Witness folds paper and makes motion to place same in pocket.)

Mr. Weisman: Do not put that away.

The Witness: Mr. Gilder signed that telegram, Judge; he is the owner of that firm.

Examiner Averill: Yes.

Cross-examination by Mr. Weisman.

Q. You just read off a little resume, did you not? A. That is right.

Q. And you put that resume back in your pocket, did you not? A. That is right.

Q. Now, will you please take it out of your pocket and put it on the table in front of you? Will you?

Mr. Martin: Your Honor please, I object to that.

Examiner Averill: No, there is nothing unusual about that.

Mr. Martin: All right, sir.

Examiner Averill: He has a perfect right to do 10598
that.

(Witness removes paper from pocket.)

By Mr. Weisman.

Q. Now, before you came to court that resume was prepared, was it not? A. It was prepared.

Q. By whom was it prepared? A. By Mr. Rosensweig and myself.

Q. When was that paper prepared? A. March 4, 1936.

Q. Who told you to prepare it? A. On the advice of our counsel.

Q. Who was your counsel who told you to prepare it? A. Mr. Bob Goldman.

Q. The gentleman who appeared in court to-day? A. 10599
Yes.

Q. How many copies of it did you prepare? A. I cannot recall.

Q. More than one? A. More than one.

Q. Well, are you certain that it was more than one copy of that? A. Yes, sir.

Q. Is that in the form that you prepared it on March 4? A. My——

Q. Or did you first draw a draft of it and then correct it, after your lawyer had seen it? A. The lawyer did not see it until we wrote this all up on March 4 in New York City.

Q. Well, was that written up in New York City? A. That is right.

Q. Well, who told you—was Mr. Goldman in New York City with you? A. He was not.

Q. Well, did you not tell me a moment ago that you prepared that at the request of your attorney, or at his direction? A. That is right.

Q. Well, what did you do, call him up on the long-
10601 distance phone? A. No, before I left Cincinnati.

Q. Well, let us see, then, before you left Cincinnati your attorney told you that you should go in and see these people and make a record of what they said and what you said? A. That is right.

Q. Is that correct? A. Yes.

Q. Now, how long were you in New York?

Mr. Martin: That is objected to as immaterial.

Mr. Weisman: Oh, no.

Examiner Averill: He may inquire; he has the right to attack——

Mr. Weisman (interposing): —the credibility.

Examiner Averill: —the weight or credibility of the witness' statement.

10602 Mr. Martin: All right.

Examiner Averill: Go ahead.

Mr. Martin: I have no particular objection; go ahead.

By Mr. Weisman.

Q. How long were you in New York? A. I believe four or five days.

Q. When did you leave for New York from Cincinnati? A. March 3.

Q. Then, when did you prepare this, at the close of your visit, or during your visit, or before your visit commenced? A. Going into each manufacturer, we closed it, as we were in the showroom, or outside the showroom, individually.

Q. Well, you did not walk around with a typewriter in your hand, did you? A. No, we did not.

Q. You made notes, did you not? A. Yes, that is right.

Q. Have you got these notes? A. No, I have not.

Q. When you were in New York, you made this up in New York in its present form—you have just stated that; is that not so? A. This is the substance of our interviews with these manufacturers. 10604

Q. Do you not understand English? Did you not understand my question?

Mr. Martin: I object; the witness answered the question.

Examiner Averill: One moment, just one moment. I will look out to see that the witness is protected. Read the question.

(Last question read.)

Examiner Averill: The question is, is this in its present form?

Mr. Weisman: The question is——

Examiner Averill: Read the question again.

(Previous question read as follows: "Q. Now, when you were in New York, you made this up in New York in its present form—you have just stated that, is that not so?") 10605

Examiner Averill: No, he did not state that.

By Mr. Weisman.

Q. Well, did you not?

Examiner Averill: He stated clearly that he made the memorandum either in the showroom or

before they left the merchandising house, or wherever it was they had the interviews. That later in the day, or evening, then he read it over and prepared this paper.

Mr. Weisman: That is right.

Examiner Averill: Which was later reduced to typewritten form.

Mr. Weisman: Yes.

Examiner Averill: That is his testimony.

Mr. Weisman: That is what I want.

By Mr. Weisman.

10607 Q. And that was done in New York? A. That is right.

Q. And that was done ultimately in New York in the form you have it before you; is that not so? A. Make that question clear?

Mr. Weisman: May I mark this for identification (having reference to the paper that the witness has been reading from)?

(Witness draws paper closer to himself.)

Mr. Weisman: You are not afraid that I will mark it for identification?

The Witness: No.

Mr. Weisman: Will your Honor direct him to have it marked?

Examiner Averill: I do not know what you are
10608 trying to do. I do not understand the procedure.

Mr. Weisman: I want to mark this for identification so that I may refer to it, so that he may not——

Examiner Averill: Let me see this paper. What is all this after? I do not know. I do not see what it is leading up to. As I understand, gentlemen, the witness has stated very clearly about this thing; of course, this particular writing

here was not done in the stores where he went or the showrooms, or whatever they were where he went to see the different people with whom he had placed orders for goods, but either were made, I presume, either by pencil or by some kind of memoranda——

The Witness: That is right.

By Examiner Averill.

Q. Suppose I ask you a few questions about that. These were made up from pencil memoranda, or data, which later, when you went to the hotel— A. To the A.M.C. office. 10610

Q. The A.M.C. office? A. A.M.C. office.

Q. Were prepared then? A. Yes, sir.

Q. It was there reduced to a typewritten form? A. Yes, sir.

Q. This which you have is the typewritten form in which it was prepared by you, which was finally delivered to you after you had finished reducing your notes to writing? A. After they were reduced to writing.

Examiner Averill: It seems to me that there is no trouble there. I think the thing is now beginning to clear up very nicely, Mr. Weisman.

Mr. Weisman: There is no trouble. I simply want to get the facts.

10611

By Mr. Weisman.

Q. Mr. Plaut, as a matter of fact, was not that statement that you have read from prepared in the office of the A.M.C.? A. Yes, sir.

Examiner Averill: He said so.

The Witness: This is the one that we made up when we came back from the manufacturers.

By Mr. Weisman.

Q. What was the necessity of preparing it in the A.M.C.?

Mr. Martin: I object to that as entirely immaterial.

Mr. Weisman: Let us see whether it was or not.

Mr. Martin: The witness has testified that his store was a member of the A.M.C., and it was made up in the A.M.C. office.

Examiner Averill: I know, but he may have a very simple explanation for that.

10613 Mr. Weisman: Let us find out what the explanation is, your Honor.

Examiner Averill: He can state why he went there instead of going somewhere else.

Mr. Martin: Naturally he would go to his own office.

Mr. Weisman: After you have so kindly prompted the witness, let us see what he has to say.

A. Mr. Rosensweig and Mr. Fishel were both connected with the A.M.C. office and that is why it was prepared there.

By Mr. Weisman.

10614 Q. Did you not say that Mr. Rosensweig and Mr. Fishel came to New York with you? A. Mr. Fishel only.

Q. Only? A. Only.

Q. What is Mr. Fishel's connection with your store—Mr. Fishel only is connected with your store, I believe you said? A. That is right.

Q. What did you mean when you said he was connected with the A.M.C.? A. The A.M.C. is the—the John Shillito Company is in the A.M.C. office. That is their office.

Q. What hotel did you stop at?

Mr. Martin: I object to that as immaterial.

Examiner Averill: Overruled. He has the right to find that out.

By Mr. Weisman.

Q. Answer. A. The New Yorker Hotel.

Q. Hotel New Yorker? A. Yes.

Q. You say you got here about March 4? A. Yes.

Q. Did you register in your own name? A. Yes.

Q. With whom? A. Alone.

Q. Why did you not register with Mr. Fishel? Did you? A. No. 10616

Q. Why? A. He did not stop at that hotel.

Q. What did you do with the notes from which you made up this paper; from which you read on your direct examination?

Mr. Martin: He has not testified that he made up this paper.

Examiner Averill: Let us not get too technical about that. Let us get the facts. Let us get the testimony. I think the testimony is very clear on that point now. I will let him answer that question. Objection overruled; exception noted. Read the question.

(Question read.)

Examiner Averill: How long was that afterwards? 10617

The Witness: The same day.

By Mr. Weisman.

Q. Answer the question, please. A. What is the question?

Q. (Question read.) A. Mr. Rosensweig made up the notes and I did not.

Q. Then I understand that you have this paper from which you have read—it is a paper which has been made up from notes which you did not make up at all, and which you did not have at all, but that Mr. Rosensweig made up; is that so?

Examiner Averill: No, which he did not make up; who did make them up?

The Witness: Mr. Rosensweig.

By Mr. Weisman.

Q. Mr. Rosensweig? A. Mr. Rosensweig.

Q. You are absolutely certain of that? A. Well.

10619 Q. Are you? A. Well.

Q. Can you answer the question? A. I would like to have the question repeated.

(Question read.)

Mr. Weisman: That is all the answer that I want to know.

The Witness: I did not give you an answer. I have not given you an answer yet.

Examiner Averill: Read the question.

Mr. Weisman: I would like to have the question read, and also my question and the answer you gave, and the following question and the answer you gave down to where you were asked if you were absolutely certain of that.

10620 (The questions and answers referred to were read.)

Examiner Averill: Is that clear?

The Witness: It is not clear.

By Mr. Weisman.

Q. Well, I will try to make the question clear with you. You have just stated a moment ago, have you not, that the

matter appearing on this paper from which you read was made up from notes which had been made up by Mr. Rosensweig; is that so? A. That is so.

Q. So that it now appears that you did not make up the notes at all and Mr. Rosensweig made them up? A. He wrote down the notes.

By Mr. Weisman.

Q. Now, let me ask you a simple question. You say you were in New York for five days? A. Four or five days.

Q. Four or five days? A. Yes.

Q. During these four or five days you visited these various manufacturers concerning which you have testified; is 10622
that correct? A. On March 4.

Examiner Averill: You testified that you did that on March 4?

The Witness: Yes.

By Mr. Weisman.

Q. You visited all these people in one day? A. Yes.

Q. What time did you get into New York City? A. Around 8.15 or 8.30.

Q. These people that you have testified you visited, you visited them all in one day, that day? A. That is correct.

Q. After visiting them I want you to just try to give us the picture of what you did; correct me if I am incorrect: You went into the showroom and you saw them and you 10623
had certain conferences with them; is that correct? A. That is correct.

Q. Now, after you had those conferences you did not make these notes that you had in the presence of these people, did you? A. One house.

Q. Which house? A. C. H. D. Robbins.

Q. C. H. D. Robbins? A. Right in the showroom.

Q. As to the others, did you make them outside? A. Outside their showroom waiting for the elevator.

Q. Waiting for the elevator? A. Yes.

Q. You did not write all of it in each case, did you? A. No. Mr. Rosensweig did all the writing, I——

Q. And you, we will say, did the prompting? A. We were all there at one time.

Q. You said that Mr. Rosensweig did the writing; what did you do? A. I did the talking as these interviews took place in the showrooms.

Q. No, no, no, I mean what did you do while you were waiting for the elevator while you and Mr. Rosensweig
10625 were there, and while Mr. Rosensweig was writing up these notes? A. The conversation we had in the showroom.

Q. You reviewed it with him? A. Correct.

Q. Right? A. Right.

Q. You yourself did not make a single note? A. That is correct.

Q. There can be no question of that? A. No.

Q. No question? A. No.

Q. Why did you hesitate so long? A. That is correct.

Q. Why did you go to the A.M.C. to transcribe those notes into their present form. First, what time did you go there? A. What is the question?

Q. What time, first, did you go to the A.M.C. to transcribe these notes into their present form as they appear
10626 here? A. Around 4 o'clock in the afternoon.

Q. Whom did you see there? A. I was just with Mr. Rosensweig.

Q. Did you see anybody else when you wrote them up? A. I did not.

Q. Did anybody else aid or assist you? A. No.

Q. You gave it to a stenographer there? A. Mr. Rosensweig dictated to a stenographer.

Q. From what? A. From the memorandums that he made.

Q. And then you left the A.M.C.? A. Yes.

Q. Did you talk to anybody that afternoon? A. I cannot recall.

Q. Try to fix your memory of this a little bit, tax it as far as you safely may and see whether or not you can recall talking either to Mr. Bergdahl or to Col. Reilly that afternoon. A. None whatsoever.

Q. You mean you cannot recall it, or that you did not talk to them, or that you do r t remember; which is it, or what is it? A. I do not remember talking to anyone but Mr. Rosensweig the balance of that afternoon.

10628

Q. When did you go back, yourself, from the A.M.C. office and get this? In other words, when did you get this memoranda back from the A.M.C. office? A. I got it back from Mr. Rosensweig, I believe at the latest the next morning, March 5.

Q. What time? A. Some time during that morning.

Q. Where did you see him? A. At the A.M.C. office.

Q. Did you meet him there by appointment? A. No, he is employed there.

Q. How many copies did he give you? A. I do not recall.

Q. No? A. I do not recall.

Q. More than one? A. I do not recall.

Q. Well, you know that you gave one of them to your lawyer, do you not know that? A. I still cannot recall 10629
how many copies were made.

Q. I did not ask you how many copies were made. A. No?

Q. You listen to my question. A. O.K.

Q. I asked you how many copies he gave you? A. I do not recall.

Q. I asked you whether he gave you more than one. Do you recall that? A. I do not recall that.

Q. Well, now, when you got it back did you read it? A. I did.

Q. When did you read it? A. The morning of March 5.

Q. Where? A. At the A.M.C. office.

Q. Who was present then? A. To the best of my knowledge, Mr. Rosensweig.

Q. Then, what did you do with the copies there that he gave you? A. I took it back to Cincinnati with me that week.

Q. When did you first show it to Mr. Goldman? A. To the best of my knowledge, the time I arrived back, the very day I arrived back in Cincinnati, Ohio.

10631 Q. What day did you get back to Cincinnati, Ohio? A. I usually get back on a Saturday of the same week.

Q. Offhand, can you recall as to this particular Saturday? A. No.

Q. No? A. No.

Q. So this particular occasion you do not know whether it was on a Saturday? A. I do not recall.

Q. Were you in New York over a week-end?

Examiner Averill: You mean on that occasion?

By Mr. Weisman.

Q. On this occasion were you in New York over the week-end? A. I would not know.

10632 Q. Did you not state—are you certain you did not stay in New York over Saturday and Sunday? A. I do not recall, but I am quite sure I have not.

Q. What makes you sure you have not? A. Because I know in over three years working in Cincinnati on trips to New York I am yet to spend more than two or three weeks—two or three week-ends in New York.

Q. And this was not one of them? A. I doubt it very much.

Q. On this occasion? A. No.

Q. Was it not a fact that March 4 was on a Wednesday, and with that knowledge would that change your opinion as to whether or not you spent that week-end in New York City? A. I doubt it very much.

Q. Would it change your opinion as to whether or not you were in New York four or five days? A. I said about four or five days.

Q. About? A. About.

Q. When you say about four or five days, do you mean about two or three days? A. It may have been, it may develop to be that.

Q. What do you mean by four or five days, then? A. It may develop that we spent only two or three days on that trip. 10634

Q. When you testified under oath—

Mr. Weisman: By the way, has this witness been sworn?

Examiner Averill: Yes.

By Mr. Weisman.

Q. When you testify under oath, when you mean two or three days you say four or five days; is that correct? A. To the best of my knowledge, as I can recall now.

Q. Now on this trip you learned all about the difficulty between the A.M.C. and the F.O.G.A., did you?

Mr. Martin: I object to that as not proper cross-examination. 10635

Examiner Averill: If the question was not so all-embracing I think I would allow it.

Mr. Weisman: I will withdraw it and I will make it more specific. I will ask this question now:

By Mr. Weisman.

Q. When did you first tell Mr. Bergdahl that you had—if you did tell Mr. Bergdahl—about you having been red carded?

Mr. Martin: I object. Improper cross-examination. There is no testimony in the record that he ever told Mr. Bergdahl that he had been red carded.

Mr. Weisman: Very well. I will ask the question in another way.

By Mr. Weisman.

Q. Did you ever tell Mr. Bergdahl about this little dossier that you had written up on the day that you came into New York? I will ask you that first.

Mr. Martin: I object as incompetent, immaterial, and irrelevant, and having no bearing on the issues
10637 in this case, and improper cross-examination. Certainly, that has nothing to do with the previous question which was about red carding, and now he is going to something else and it is even more improper.

Mr. Weisman: I think it is quite proper.

Examiner Averill: No, I think he has a right to ask that. He says he has been in the A.M.C. office, and I think he has a right to ask him what he told Mr. Bergdahl, and why.

Mr. Martin: All right, sir.

By Mr. Weisman.

Q. Did you? A. I do not remember.

10638 Q. Well, cogitate about it for a moment and see whether or not you can remember after thinking a moment or two very hard.

Mr. Martin: I suggest that the witness has answered the question. He said that he does not remember.

Examiner Averill: I will let him answer the question. I do not see any harm in having him

pause for a moment to consider the matter a little further.

Mr. Martin: I have no objection if he did or did not show it to Mr. Bergdahl, but I want to speed this thing up.

Mr. Weisman: You could not possibly do that.

By Mr. Weisman.

Q. Answer the question. A. I still do not remember.

Q. You still do not remember? A. No.

Q. Do you remember whether you showed that to the august personage, none other than Col. Reilly? A. I did not.

10640

Q. You remember clearly that you did not show it to him, do you? A. Also to Mr. Bergdahl.

Q. What makes it now so clear when only a moment ago you did not recall? A. What is that?

Q. What makes it now clear? Only a moment ago you said you did not know whether you showed it to Bergdahl or not, and also that you say now you are quite positive you did not show it to Col. Reilly when just a moment ago before this question you said you could not remember; in other words, what suddenly called it up to your recollection that you had not shown it to Mr. Bergdahl? A. I saw Mr. Bergdahl more often than I saw Col. Reilly. I did not see Mr. Col. Reilly more than once in three months, and when I am in New York I see Mr. Bergdahl every day I am in the office.

10641

Q. While you were in the office three or four times because you were in the office three or four days that you were in New York, were you not? A. I did not catch your question.

Q. You were in that office three or four times that week, were you not? A. I believe that is correct.

Q. You were there on very important matters, were you not? Is that so? A. I was there trying to get goods.

Q. Was the getting of goods unimportant to you? A. We wanted the goods.

Q. Was it in your mind important or unimportant for you to get the goods?

Examiner Averill: Just answer the question, Mr. Witness. You know whether it was important or whether it was not to you; there is no sinister implication in that.

A. All right. It was important to get the goods.

By Mr. Weisman.

10643 Q. Why did you not say so in the first place? You do not choose to answer that? A. No.

Q. You knew, did you not, that these goods were being held up because of a controversy between the A.M.C., or, rather, to which the A.M.C. and the Fashion Originators Guild were parties, did you not? A. I knew about it.

Q. What did you know about this controversy? Tell us about it. A. That we were red carded, and being one of the A.M.C. stores, and that is about all I knew.

Q. I did not ask you how you came to know about it, but you said you knew there was a controversy between the A.M.C. and the Fashion Originators Guild of America; is that correct? A. That is right.

Q. You are divisional merchandise manager of John
10644 Shillito & Company? A. Yes.

Q. Is that so? A. Yes.

Q. That means in large degree you are responsible for all the merchandise in your division; is that so? A. That is so.

Q. What? A. That is so.

Q. Now, as divisional merchandise manager, and I assume your division was the ladies' ready-to-wear division, did you not know what were the conditions that had arisen,

and the differences that had come up between the Fashion Originators Guild of America, and the A.M.C.? A. I do not recall.

Q. I did not ask you if you recalled it. I asked you did you then know that? A. I knew about the controversy that was then going on.

Q. You knew there was a controversy? A. I knew there was a controversy.

Q. Did you know what was the subject matter of the controversy? A. No.

Q. No? A. No.

Q. You came on to New York and you spent your time, and you were at least once a day in the office of the A.M.C.; 10646
is that so? A. That is right.

Q. And you knew Mr. Bergdahl; is that so? A. That is right.

Q. You were worried about now getting your goods; is that so? A. Yes, sir.

Q. In this whole time that you were in New York did you ever say to Mr. Bergdahl, in words or in substance, "What is this quarrel between the A.M.C. and the Fashion Originators Guild of America?" Did you ever ask him that? A. I did not.

Q. Were you not interested in finding out?

(Whereupon, at 3.50 o'clock P. M., November 18, 1936, the hearing in the above-entitled matter was adjourned.)

10647

Room 901, 45 Broadway,
New York, New York,
November 19, 1936.

Met, pursuant to adjournment, 10 o'clock A. M.
Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

PROCEEDINGS.

Mr. Weisman: Shall we proceed, Judge?

Examiner Averill: Gentlemen, whenever you are ready you may proceed. This gentleman was on the stand at the time that we adjourned.

10649

IRVING E. PLAUT resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Plaut, you came with the John Shillito Company in 1933? A. That is correct.

Q. What had you done before that? A. Before I was connected with John Shillito Company?

Q. Yes. A. Is that the question?

10650 Q. Yes. A. I was with Joske Brothers in San Antonio.

Q. And in what capacity? A. Ready-to-wear.

Q. I did not say what field. I assume it was the ready-to-wear field. In what capacity were you with that last named concern? A. Buyer of dresses, coats and suits.

Mr. Weisman: I paraphrased the wording used; he said "in accordance with."

Examiner Averill: No, no.

Mr. Weisman: To me when a man says "I did something in accordance with the contract," that means I fully complied with the terms as the contract provided.

Examiner Averill: You call it a contract, it is not a contract, either.

Mr. Weisman: A declaration of co-operation, I accept the correction. And I think I am entitled to know what he is talking about, what his experiences are, what he knows about the ready-to-wear, whether or not he was justified in his direct statement, in saying that he performed in accordance therewith. 10652

Examiner Averill: I cannot agree with you, sir. I do not think the witness has been qualified so far, and certainly has not been questioned along an expert line at all. He has only been questioned in regard to certain facts in connection with the subject of his examination, and I do not think that his past experiences are relevant at this time.

Mr. Weisman: I will accept the ruling of the Court.

Examiner Averill: I wish you would desist from that.

Mr. Weisman: All right.

By Mr. Weisman:

Q. As divisional merchandise manager of Shillito, or Shillito, what were your duties? A. As I explained that to you yesterday, gave you the answer on that. 10653

Q. Now, will you please answer my question? Do you not know to-day? A. I do.

Q. Well, tell us. A. I told you I had a group of buyers, merchandise them at home, go into the market with them frequently, work with them on their advertising.

Q. Yes. A. Consult with them, go over their merchandise and their stocks in the marking room when the goods are received, go over their orders.

Q. Have you finished? A. I have.

Q. Now, you were divisional merchandise manager; is that not so? A. Of ready-to-wear.

Q. Of ready-to-wear? A. Yes.

Q. And you had a superior, did you not, a direct superior who was the merchandise manager, from whom you in turn received orders and directions; is that not so? A. That is so.

Q. And who was that? A. Mr. Jeffery Lazarus.

10655 Q. A Mr. Jeffery Lazarus, and he in turn was responsible to the executives; is that not so? A. That is so.

Q. Let me ask you this: In the exercise of your duties as divisional merchandise manager, the policy of the store, was that fixed by you or by your superiors? A. By my superiors.

Q. And you received your orders from them? A. That is correct.

Q. And carried them out to the best of your ability? A. That is correct.

Q. In the course of the exercise of your duties, when you came there, after 1933, did any of your superiors advise you that it was the policy of Shillito Company that they would not knowingly purchase copies of original garments where those originations had been made by members of

10656 the Fashion Originators Guild? A. That is correct.

Q. And did they at any time down to March 4, advise you that they had changed their policy?

Mr. Martin: March 4 of what year?

Mr. Weisman: March 4, that he testified to, 1935.

Mr. Martin: He has not testified——

Mr. Weisman: 1936, I mean.

Examiner Averill: Yes, this is 1936.

Mr. Weisman: Yes.

Examiner Averill: Read the question.

(Question, as amended, read as follows: "Q. And did they at any time down to March 4, 1936, advise you that they had changed their policy?")

A. I cannot recall that.

By Mr. Weisman.

Q. In other words, you now will tell us that when you came to the New York market to see these manufacturers on March 4, 1936, you do not recall whether or not Shillito had changed its position with regard to the dealing in copies by it? A. When I left for the market, and here on March 4, knew we were red carded, and went to these manufacturers to get that merchandise, that was on order——

10658

Examiner Averill: But the question is whether you knew at that time that there had been, if there was a change of policy on the part of your superiors in connection with their dealings with the F.O.G.A., and its regulations and rules?

The Witness: I cannot answer for the policy of the store.

Examiner Averill: Did they advise you?

The Witness: But I know our declaration was originally $10.75 and up cost.

10659

By Mr. Weisman.

Q. How do you know that? A. I was told that during my time with Shillito Company.

Q. Who told you that? A. The officers of Shillito and—

Q. Did you ever ask for and see the declaration? A. I did not.

Q. Have you ever seen it? A. No, I have not.

Q. Now, is it your testimony that from the time you came to Shillito Company, in July, 1933, down to March, 1936, you understood that the declaration of co-operation only applied to merchandise which cost $10.75 or up? A. That is correct.

Q. And is it your statement also that Shillito Company told you that that was contained in their declaration of co-operation? A. I believe that is correct.

Q. Do you know a Mr. Hile? A. Mr. Heiby.

Examiner Averill: Hiby?

10661 *By Mr. Weisman.*

Q. How do you spell it? A. H-e-i-b-y.

Q. Do you know him? A. He is connected with Shillito.

Q. Well, do you know him? A. I know him.

Q. Who is he? A. Comptroller.

Q. Was he connected with Shillito Company on July 1, 1933? A. I believe so.

Mr. Weisman: I offer the declaration of co-operation signed by John Shillito Company in evidence.

Voice: What is his first initial, Mr. Heiby?

Mr. Weisman: C. J. Heiby.

Mr. Martin: I have no objection if it is properly identified.

10662 Mr. Weisman: Well, do you want me to identify it further?

Mr. Martin: I think that would be a very good idea.

Examiner Averill: All right, go ahead.

Mr. Weisman: Will you mark this?

(A paper was thereupon marked for Identification Respondents' Exhibit 77.)

By Mr. Weisman.

Q. I now show you Respondents' Exhibit 77——

Examiner Averill: 77 for Identification.

Mr. Weisman: For identification; thank you.

By Mr. Weisman.

Q. I now show you Respondents' Exhibit 77 for Identification, and ask you whether or not you recognize that as the letterhead of the John Shillito Company? A. I do.

Q. Who signed it? A. I assume Mr. Heiby signed it.

Q. Well, you recognize that as his signature, do you not? A. I am not completely sure; I don't know definitely 10664
if that is Mr. Heiby himself.

Q. What do you believe it to me, his signature? A. I believe it to be his signature.

Q. Have you seen him sign his name? A. No, I have not.

Q. Have you seen papers signed with his name? A. I have.

Q. And from having seen these papers signed from time to time with his name, you believe this to be his signature? You are not certain, but you believe it to be? A. I am not certain.

Q. But you believe it to be? A. That is correct.

Mr. Weisman: I now offer this in evidence (counsel referring to Respondents' Exhibit 77 for Identification). 10665

(The document heretofore marked for Identification Respondents' Exhibit 77, was marked as an exhibit and received in evidence.)

Examiner Averill: One second, gentlemen, I want to read this paper, because there may be some talk about it, and I want to know what you are talking about.

The Witness: Can I read it?

Mr. Martin: You want to read it?

The Witness: I would like to.

Mr. Martin: Let him see it.

Mr. Weisman: We will give it to you in due time.

Examiner Averill: All right, sir.

By Mr. Weisman.

Q. Now, at the time that your superiors told you that they had adopted a policy of anti-style piracy, did they tell you whether or not they deemed the adoption of such policy to the benefit of the store?

10667 Mr. Martin: Objected to, your Honor.

Examiner Averill: Gentlemen, the paper itself shows.

Mr. Weisman: What?

Examiner Averill: The paper speaks for itself.

Mr. Weisman: Well, I want to know what they told him, Judge.

Examiner Averill: Pardon me.

Mr. Weisman: I did not ask him about the paper.

Examiner Averill: That is correct.

A. I cannot recall.

By Mr. Weisman.

10668 Q. When you came to Shillito Company, they told you that they had signed a declaration of co-operation; that is so, is it not? A. That is so.

Q. Yes. A. On $10.75 and up.

Q. That is what they told you? A. That is right.

Q. And they did not show you that declaration of co-operation? A. That is correct.

Q. Reading from Respondents' Exhibit 77, I see that this exhibit reads, among other things, as follows: "Believing the principle declared by your members to be proper

for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed policy." Now, did you understand at any time what the principle declared by the members of the Fashion Originators Guild was?

Mr. Martin: Objected to as immaterial and irrelevant, and not proper cross-examination.

Examiner Averill: The objection is overruled.

A. Read the question.

Q. (Last question read.) A. The purpose of it was, to the best of my knowledge, by dresses from $10.75 and up, they were not copies. 10670

By Mr. Weisman.

Q. Before you left for New York, did you speak with any of your superiors? A. The superiors spoke to me and instructed me to come to New York.

Q. What did he tell you to do? A. When I left on March 3rd for New York, 1936, I was instructed to get the manufacturers to ship our merchandise.

Q. Well, did they tell you at any time, in words or substance, that they had changed their policy, or no longer thought it proper for the protection of the public, the retailer, and the manufacturer, to support the principle of design—the protection of design origination?

Mr. Martin: Objected to. 10671

Examiner Averill: The objection is overruled.

A. The original agreement was from $10.75 and up——

By Mr. Weisman.

Q. No, no, no, no, no. Now, listen to my question and please try to answer it. If you do not understand it I will try to make it so plain that even you can understand it.

Mr. Weisman: Now, read the question.

(Last question read.)

Examiner Averill: You can answer that "yes" or "no," they either did or did not.

A. Willing to support it from the $10.75 and up, your Honor.

Examiner Averill: Yes.

By Mr. Weisman.

Q. They told you that? A. That is right.

Q. When you went to these manufacturers you went
10673 and saw them with the belief that John Shillito Company was still willing to protect original designs of these manufacturers? A. That is true.

Q. They had not told you, either in words or substance, had they, that they had communicated with the Fashion Originators Guild and advised the Guild that they would no longer protect style originations? A. I don't——

Q. How? A. I do not.

Q. You mean—well, that question was not susceptible of an answer "I do not."

Mr. Weisman: Will you please read the question? See if you cannot make an intelligent answer to it.

(Previous question read.)

10674

A. Only on the original agreement from $10.75 and up.

By Mr. Weisman.

Q. In other words, they had not told you that they had changed their policy? A. That is correct.

Q. You knew, did you not, that when these orders were taken and accepted by the manufacturer they were taken and accepted by the manufacturer by reason of the fact

that Shillito Company had expressed, directly or indirectly, to the manufacturer, that they would protect the original designs of these manufacturers with whom you had placed orders; is that not a fact?

(Question read, as amended, as follows: Q. Did you not know from the exercise of your duties in the New York market, that none of the members of the Fashion Originators Guild, with whom you dealt, the manufacturing members, were willing to sell their merchandise to retailers who would not protect their styles?")

By Mr. Weisman. 10676

Q. Answer that.

Mr. Martin: Just a second—off the record.

(There was a discussion off the record.)

Examiner Averill: Read the question again.

(Question, as amended, reread.)

Examiner Averill: If he does not know, then he may say so. If he does know it, he may answer it. That is easy, if the matter is within his knowledge.

A. That is correct.

By Mr. Weisman.

Q. Do you know whether or not the executives who had sent you on to New York were also aware of the practice you have just told us about on the part of the manufacturing members of the Fashion Originators Guild with whom you dealt? A. I don't know. 10677

Examiner Averill: It is the same answer.

By Mr. Weisman.

Q. Do you not know it was the practice of these manufacturers who were members of the Fashion Originators

Guild to refuse to deal with retailers who would not protect their style originations?

Mr. Martin: Objected to.

Examiner Averill: He has told us that already.

Mr. Weisman: Let him tell it to us again. I cannot see—I am lost in this score of speeches by my adversary and I want to make sure the record is straight in so far as I can see it.

Examiner Averill: He may answer the question.

The Witness: May I have the question?

(Last question read.)

Examiner Averill: He may answer that ques-
10679 tion.

A. That is correct.

By Mr. Weisman.

Q. Now, you testified on your direct examination, did you not, that you were acquainted with the Fashion Originators Guild of America? A. That is correct.

Q. What did you mean on your direct examination when you stated that you were acquainted with the Fashion Originators Guild of America? A. The protection of their styles from $10.75 and up, and buying from these houses, it had been very pleasant; they never said we could not get any of their merchandise.

10680 Q. Do you know a Mr. Minster? A. I do.

Q. Who is Mr. Minster? A. Vice-president of John Shillito.

Q. One of your superiors? A. That is correct.

Q. An executive? A. That is correct.

Q. And fixes the policy to some degree of Shillito Company, which you carry out? A. That is correct.

Q. Before you left for New York on March 3 did you talk with Mr. Minster at all? A. I cannot recall.

Q. Well, would you say that you did not talk with him? A. I would not say that.

Q. Do you remember whether Mr. Minster ever told you, in words or substance, that he had notified the Guild that they were through with the Guild? A. He mentioned to me that he was resigning from the Guild because he was not going to sign that other declaration, dresses below $10.75 in cost.

Q. I see. Do you mean—let us see. He told you that he was resigning from the Guild. Did he tell you whether he had resigned? A. I can't recall that.

Q. Well, let me ask you this: Is this a letterhead of John Shillito & Company (showing paper to witness)? Do you recognize that? A. I do. 10682

Q. Do you recognize Mr. Minster's signature? A. I do.

Mr. Weisman: I now offer this in evidence.

Examiner Averill: Off the record.

(There was a discussion off the record.)

(Whereupon the letter was marked Respondents' Exhibit 78 and received in evidence.)

By Mr. Weisman.

Q. So I take it that when you came yourself to New York you did not know that your company had advised the Fashion Originators Guild of America that they severed all connection with them? A. I did not.

Q. I take it you regularly read the "Women's Wear Daily"? A. That is correct. 10683

Q. I take it you think that it is an authentic periodical and contains authentic statements of the doings in the industry in which you are interested?

Mr. Martin: I object. We do not mind boosting the "Women's Wear Daily" a little, but I do not see what that has to do with the issues in this case.

Examiner Averill: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. When you saw the statement in "Women's Wear" that your store was red carded, what did you understand by that?

The Witness: Read the question.

(Question read.)

A. Nothing more than just reading about it.

By Mr. Weisman.

Q. When you read about it, what did it convey to your
10685 mind? A. That we were red carded by the Fashion Originators Guild of America.

Q. What did that mean to you?

Examiner Averill: He means, "What does red carding mean to you?"

A. That we could not get any merchandise from the Fashion Originators Guild of America houses, houses connected with the Fashion Originators Guild of America.

By Mr. Weisman.

Q. Did this article state why you had been red carded? A. If I recall correctly, we would not sign any declaration of dresses regardless of prices.

10686 Q. Did you, when you saw this statement in "Women's Wear," discuss it with any of your superiors? A. I do not recall.

Q. What is your best recollection?

Mr. Martin: I object.

Examiner Averill: What is the materiality of whether he discussed it with his superiors or not? I cannot see it at the moment.

Mr. Weisman: I will not urge it if your Honor does not think it material.

Examiner Averill: It does not seem to me to be so at the moment.

Mr. Weisman: Withdrawn.

By Mr. Weisman.

Q. Have you ever discussed with Mr. Post the protection of merchandise below $10.75? A. That is not the case here. I never discussed it with Mr. Post.

Q. Did you ever write him about it? A. I may or I may not have.

Q. What is your best recollection? A. That is the best 10688
recollection I have.

Q. When would you say for the first time that you understood that the Fashion Originators Guild of America, Inc., was protecting merchandise that cost below $10.75?

Mr. Martin: If your Honor please, I must record a strenuous objection to that. It is absolutely immaterial.

Examiner Averill: I am not going to permit that any further. I am sorry, but I simply cannot do it. I will have to stop the examination along that line.

Mr. Weisman: I respectfully note an exception. If your Honor please, I ask to have this particular document marked Respondents' Exhibit No. 79 for 10689
Identification.

Examiner Averill: It may be so marked.

(A letter was thereupon marked for identification Respondents' Exhibit 79.)

By Mr. Weisman.

Q. I show you a copy of a letter dated May 1, 1935, and which has just been marked Respondents' Exhibit 79 for

Identification and ask you whether or not you received the original of that letter from Mr. Post? A. Yes, I received this.

Q. Will you read that letter? A. Yes.

Q. Have you read it? A. Yes.

Q. Referring to Respondents' Exhibit 79 for Identification, would you say that you received that letter on or about May 21, 1935? A. I assume around those dates.

Mr. Weisman: I offer the document in evidence.

(The document heretofore marked for identification Respondents' Exhibit 79 was marked as an exhibit and received in evidence.)

10691

Examiner Averill: You may proceed.

By Mr. Weisman.

Q. When you received Respondents' Exhibit 79 in evidence, did you call the subject matter thereof to the attention of your superiors?

Mr. Martin: I object as not proper cross-examination.

Examiner Averill: Objection overruled.

A. I do not believe I did.

Mr. Martin: Exception noted.

Examiner Averill: Exception granted.

10692

By Mr. Weisman.

Q. Did you notice in this letter which is dated May 1, 1935, the following statement: "Obviously the purpose of our new program is to equalize style protection and make it universal for all stores by taking on membership among the $10.75 dress manufacturers and consider the $6.75 dress group for the late fall"? Did you notice those words in the letter? A. I do not recall them right well.

Q. Did you read them when you read the letter? A. I suppose I did.

Q. Do you know what you do when you read a letter? A. Oh, yes; I read it.

Q. Did you not think and did that not indicate to your mind something different from the co-operation that your superiors had told you about? A. Yes.

Q. Why did you not then discuss it with your superiors if you found there was reference to a different kind of co-operation?

Mr. Martin: I object as not within the scope of the direct examination.

Mr. Weisman: I feel it is very directly in it; 10694
it goes to the discussion that he referred to on his direct examination: it goes to the credibility of the witness; it goes to the reasonableness of his acts; it goes to the statement that he made that the store co-operated, as indicating what he knew about the co-operation, which was certainly brought out, over strong objection, on direct.

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted. Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

Mr. Weisman: To save time, I will withdraw the question and I may come back to it later on after 10695
I have brought out other matters in connection with the examination.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. On your direct testimony you testified you could not get the goods from these people; do you remember that? A. That is correct.

Q. Did you not forget to tell us something about that? A. I I do not recall.

Q. Did you not forget to tell us that shortly thereafter you were offered all these goods and you did not want to take them? A. Long after.

Q. Long after? A. Long after.

Examiner Averill: Proceed.

Q. When you were in New York you spoke to Mr. Bergdahl on your visit of March 4? A. I said I saw him in the office.

Q. When you saw him did you just look at him or did
10697 you also talk to him? A. I said "Good morning" to him.

Q. So that the limit of your discussion was the two words "Good morning," was it? A. It may have been that.

Q. Did you not discuss this difference that you had had with the Fashion Originators Guild of America at that time? A. I do not recall.

Q. Was Mr. Bergdahl your representative in New York on all matters of that kind? A. I do not know that.

Q. You mean you do not know that? Did you not read about it and, in fact, did you not yourself write that he was such? Did you not write so over your own signature? A. I do not recall whether I did or not.

Q. You do not recall? A. I may have.

10698 Q. I did not ask you whether you may have. Do you not remember doing that? Do you not remember that you did? A. There is a possibility.

Q. I did not ask you whether there is a possibility. We all know what possibilities are. I am asking you, as the divisional merchandise manager of John Shillito Company, Cincinnati, Ohio, did you not advise the Fashion Originators Guild of America by means of a letter over your own personal signature and in the name of your company,

John Shillito Company of Cincinnati, Ohio, that Mr. Bergdahl, the gentleman from the particular division with the A.M.C. and the witness who just preceded you, was authorized to represent you in the dealings with the Fashion Originators Guild of America? A. I may have.

Q. I asked you whether you did or not?

Examiner Averill: I suppose you have a letter in regard to the subject. Show him the letter and we will get along faster.

Mr. Weisman: I want to show it by the witness' own testimony as to just what he knew, if your Honor please.

Examiner Averill: You may do so. 10700

By Mr. Weisman.

Q. As a matter of fact, do you not know that you did write them about that? A. I do not recall. I may have been—I may have been the one that wrote the letter, or it may have come from the executives, if it were written.

Q. You knew that your store put on all of its letterheads the words "Associated Merchandise Corporation Member"; did you not know that? A. "Member of the Associated Merchandise Corporation." That is correct, yes.

Q. Did Mr. Bergdahl tell you what was the A.M.C. policy with regard to this controversy between John Shillito Company and the Fashion Originators Guild of America? 10701

Mr. Martin: I object. It is incompetent, immaterial and irrelevant for any purpose whatsoever, if your Honor please.

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did Mr. Bergdahl ever tell you in words or in substance that by reason of the fact that the A.M.C. represented a large number of stores, that the Fashion Originators Guild of America, Inc., and its members would not dare to refuse to bow down to its dictates and would not dare to refuse to do its bidding?

Mr. Martin: Same objection.

Examiner Averill: The objection is sustained, gentlemen.

Mr. Weisman: Exception.

10703 Examiner Averill: Noted.

By Mr. Weisman.

Q. Did Mr. Bergdahl ever tell you in words or in substance that the A.M.C. would succeed in breaking the Guild and its members if its members stood together and refused to buy merchandise from the members of the Guild—the members of the A.M.C.—under the declaration of co-operation?

Mr. Martin: I object.

Examiner Averill: Sustained.

Mr. Weisman: Exception. I think it is perfectly competent to show whether they really wanted this merchandise. When you take these questions and

10704 link them up with their refusal to take the merchandise which was offered to them within three days, I say to your Honor that it illuminates the whole situation and shows that he came on to New York and he took all of the testimony down and he wrote it all down as to their conversations, and that this was all part and parcel of a fraudulent conspiracy entered into between these various stores and the A.M.C. to destroy these manufacturers in the pro-

gram that they had theretofore gone along with, and I say it is perfectly competent in view of the prior testimony because it shows that they did not want the merchandise at all and this was simply a ruse to accomplish their purposes.

Mr. Martin: I move that that tirade be stricken from the record.

Examiner Averill: As a part of the affirmative defense it may be correct, but as a part of the cross-examination I do not think it is pertinent; and therefore I will sustain the objection.

Mr. Weisman: Exception. If your Honor please, it is now 12.30 and I should like to take the noon adjournment now if your Honor doesn't have any objection. 10706

Examiner Averill: Gentlemen, it is 12.30, so we will adjourn until 2 o'clock for lunch.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Averill: Well, gentlemen, when you are ready, you may proceed.

IRVING E. PLAUT resumed the stand and testified further as follows: 10707

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Plaut, have you at any time since February refreshed your recollection as to whether or not you saw a notice in the "Women's Wear Daily" of the red carding of Shillito Company? A. I remember seeing it in "Women's Wear."

Q. Are you certain of that? A. Yes.

Q. Are you certain that you saw it in the month of February? A. I believe that is correct.

Q. Well, it could not be any other time, could it, if that was the first you learned of it? A. That is correct.

Q. Now, would it surprise you to learn that no such notice ever appeared in any issue of the "Women's Wear Daily" for February? Then what would you say, where you learned for the first time of the red carding? A. Then show me the date when it appeared.

Q. You show it to me. I did not say it ever appeared. A. Yes.

10709 Q. What I want to know from you now is whether anybody prior to your taking the stand here refreshed your recollection by telling you that such an item appeared in the "Women's Wear Daily" during the month of February?

The Witness: Repeat that question, please.

(Last question read.)

By Mr. Weisman.

Q. 1936. A. No, they did not.

Q. Did you prior to taking the stand discuss the matter that you thought such a notice appeared in the "Women's Wear Daily" for the month of February, 1936? A. No.

Q. Well, now, if such notice did not appear, or such
10710 reference did not appear in the "Women's Wear Daily" during the month of February, 1936, can you offer us any explanation as to where you really heard of the fact that the Shillito Company had been red carded? A. I can't recall.

Q. Is it possible that one of the executives of the store might have told that to you and that you never saw it in any paper? A. I can't recall that.

Q. Well, a few moments ago you recalled that you saw it in a paper. Now you say you cannot remember whether you saw it in a paper or not. A. You did not ask me that.

Q. Well, I am asking you. I do not want to quarrel with you. I want to get it very plain. Are you absolutely certain that you saw it in the "Women's Wear Daily" during the month of February, 1936, a statement setting forth, in words or substance, that Shillito had been what we have referred to here as red carded by the F.O.G.A.? A. To the best of my knowledge I saw it in the "Women's Wear" in February.

Q. If it should appear that there was no such item in 10712
the "Women's Wear" for the month of February, 1936, where would you then say that you learned this? A. Manufacturers not shipping us the merchandise.

Q. What would your explanation be for having told us here that you saw it in the "Women's Wear"? Well, what do you say? A. I said I recalled seeing it in February in the "Women's Wear"——

Q. Now, that is not what the Judge said to you. A. See?

Q. I said to you, if it did not appear in "Women's Wear," what would your explanation be to us and to the Court of your statement now that you think you saw it in "Women's Wear"? What would have led you to that belief? A. I cannot answer that.

Q. Did anybody ever tell you to say that you saw it 10713
in "Women's Wear"? A. They did not.

Q. You said a moment ago that you might have learned of the red carding from the manufacturers. Do you remember saying that to me only two minutes ago? A. Correct.

Q. Well, how could that be possible when you stated that after you saw the red carding you came to New York on March 4? I will withdraw that. After the middle of

February, when was the first time that you saw the manufacturers about this goods? A. March 4 we saw them in New York.

Q. Well, what did you do between February 17—that is about the middle of the month, when you were red carded—and March 4? Did you not come to New York at all? A. I cannot recall that we came to New York between those dates. Might have been there prior to that.

Q. No. Were you there between those dates? A. I can't recall——

Q. Well, look— . A. —if we have or we have not.

Q. What? A. I can't recall if we have or if we have

10715 not.

Q. Well, that is perfectly apparent, you either have or you have not. A. During those times.

Q. I understood you to testify this morning that you supervised all advertising in connection with your department; is that so? A. That is correct.

Mr. Weisman: Mark this, please.

(A paper was marked for identification Respondents' Exhibit 82.)

By Mr. Weisman.

Q. I show you Respondents' Exhibit 82 for Identification and ask you whether or not you recognize that (handing paper to witness)? A. I do.

10716 Q. What is it? A. Dresses with the F.O.G.A.——

Q. No, what is this, the exhibit? A. A copy of Shillito's ad.

Q. That was run in the paper? A. That is correct.

Q. Pursuant to your directions? A. That is correct.

Mr. Weisman: I now offer this in evidence.

Examiner Averill: We will admit the paper in evidence and mark it Respondents' Exhibit No. 82.

(The paper heretofore marked for identification Respondents' Exhibit 82 was marked as an exhibit and received in evidence.)

Mr. Haycraft: Would it be out of order, Mr. Examiner, to inquire as to what issue in this case, or what statement of the witness as to this exhibit, is intended to be referred to as relevant? I cannot figure it out.

Examiner Averill: Only this: the witness said he prepared advertisements; he was asked whether he prepared this, and he said he did. That is the one statement, except that the general trend of the witness' testimony is in connection with their policy. 10718
Now, this goes to show that at the time of its inception, namely, in October——

Mr. Haycraft: November.

Examiner Averill: In November, on November 6, 1935, which, as you recognize, antedates the matters for which he came to New York, that at that time, at any rate, they were in accord up to a certain point, at any rate, with the policies of the F.O.G.A.

Mr. Haycraft: Then it substantiates his testimony on direct examination.

Examiner Averill: Absolutely; that is all.

Mr. Haycraft: I just wanted to get——

Examiner Averill: It is that part of his testimony, understand—off the record. 10719

(There was a discussion off the record.)

Mr. Weisman: I want to clear up something that I think perhaps is not clear in your Honor's mind.

Examiner Averill: Yes, sir.

By Mr. Weisman.

Q. What is your average mark-up——

Mr. Martin: Objected to——

By Mr. Weisman.

Q. —in the dress department? A. Costing $10.75 and up?

Q. Yes. A. Around 38 per cent.

Q. When you say around 38 per cent., do you mean 38 per cent. of the selling price or of the cost? A. Cost.

Q. Well, what would you say that your average sales price for a garment costing $10.75 was? A. $16.95.

Q. And it is your opinion that the difference between $10.75 and $16.95 is 38 per cent. of $10.75? A. How?

Q. Is that correct? A. You said an average from $10.75 cost and up, not on one price line.

10721

Mr. Weisman: Read the question.

(Last question read.)

By Mr. Weisman.

Q. Is that correct? A. Read the question again, please.

(Question re-read.)

A. I am talking about cost on retail.

Q. No, is that correct what you have just said? A. On the retail, the difference.

Q. It is 38 per cent. on the retail? A. Approximately.

Q. Well, then, why did you tell me a few moments ago that your 38 per cent. was 38 per cent. of the cost?

10722

Mr. Martin: Now, if your Honor please, I am going to interpose another objection here, that all of this entire line of cross-examination is irrelevant and immaterial and outside of the scope of the direct examination.

Examiner Averill: There is not a shadow of doubt on that part of it.

Mr. Weisman: Well, then——

Examiner Averill: But, as I stated when I admitted it, I admitted it and gave the reason for its admission. If he wants to find out that one little thing, I do not know why he should not find it out.

Mr. Haycraft: He has told you about cost and now he wants to do something else.

Mr. Weisman: No.

Mr. Haycraft: He has told us that $10.75 was the cost of these garments at $16.95.

Examiner Averill: He also gave us a percentage.

Mr. Weisman: Yes.

Mr. Haycraft: He also gave a percentage on an average.

10724

Mr. Weisman: No, but you——

Examiner Averill: He did not say that was mark-up on an average.

Mr. Weisman: No, he said $10.75 was cost.

Examiner Averill: Then I do not see why——

Mr. Haycraft: That is what this whole cross-examination is going to.

Mr. Weisman: May it please your Honor—please do not take this.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Weisman.

10725

Q. Now, Mr. Plaut, you believed this advertisement which is Respondents' Exhibit 82 to be truthful, did you not?

Mr. Martin: Objected to.

Examiner Averill: Objection sustained, gentlemen.

Mr. Weisman: May it please your Honor, I want to show that the very things he says were a fact

are by this advertisement shown not to be a fact, if you let me go along and show it.

Examiner Averill: Gentlemen, there is the thing that speaks for itself. You have his testimony that it speaks for itself and we can compare the two without asking him.

Mr. Weisman: No, we cannot, your Honor, because your Honor has not seen the point I am asking him——

Mr. Martin: I do not see it.

Mr. Weisman: You certainly would not. That is not surprising.

10727 Mr. Martin: How did you guess?

Mr. Weisman: I do not have to guess; I have been around the circuit with you.

Examiner Averill: Off the record.

Mr. Weisman: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. The last question was withdrawn—either overruled or withdrawn.

Mr. Weisman: I do not care, we will take it as withdrawn and we will have this in the record (showing paper marked Respondents' Exhibit 82 to the Trial Examiner).

Examiner Averill: That is all right; give it to me.

10728

By Mr. Weisman.

Q. Just one question. Prior to 1936 was Shillito Company, while co-operating with the Guild in its policy of anti-piracy of original designs, in the habit of returning merchandise which was copied if the merchandise cost less than $10.75 wholesale?

Mr. Martin: If he knows.

Mr. Weisman: If you know.

The Witness: Read the question, please.

(Last question read.)

A. We did.

By Mr. Weisman.

Q. Did you do that in accordance with your declaration of co-operation?

Mr. Martin: Objected to. He does not know.

Mr. Weisman: Wait a moment. He knew a great deal when he testified for you; he knew—— 10730

Examiner Averill: How?

Mr. Weisman: The question is, "Did you perform in accordance with the issuing of this declaration?"

Examiner Averill: But now, if you are going to ask him, you will have to permit it "in accordance with your understanding."

(Question, as amended, read as follows: "Q. Did you do that in accordance with your understanding of your declaration of co-operation?")

A. Dresses was returned——

By Mr. Weisman. 10731

Q. Dresses were returned. A. Were returned when the Guild shopper came into our department and identified them.

Q. As copies?

Mr. Martin: Now, let him answer. He will——

Examiner Averill: Oh, no, but that is what he means.

Mr. Weisman: Yes.
Examiner Averill: Just to identify them.
Mr. Weisman: That is it.
Examiner Averill: That is correct?
The Witness: That is right.

By Mr. Weisman.

Q. Yes, and if she identified a dress which cost $6.75 or $4.75 as a copy, you would return it; is that not correct? A. We were co-operative.

Q. Yes. A. In returning.

Q. Yes, and you returned it? A. Yes.

10733 Q. And would you so return it in accordance with your understanding of what your declaration of co-operation called upon you to do?

The Witness: Read that question, please?
(Question read.)

A. Correct.

Q. I did not hear you. A. Correct.

(A paper was thereupon marked for identification Respondents' Exhibit 83.)

By Mr. Weisman.

Q. What is that? A. Dress ad.

10734 Q. Look at it. A. Dress ad.

Examiner Averill: Dress ad of whom?
The Witness: Shillito Company dress ad.

By Mr. Weisman.

Q. It was caused to be inserted by Shillito Company? A. Correct.

Q. In the Cincinnati "Times" of April 2, 1936? A. "Times-Star," to be correct.

Q. What? A. "Times-Star," to be correct.

Q. Cincinnati "Times-Star" of Thursday, April 2, 1936?

Examiner Averill: He said yes.

By Mr. Weisman.

Q. Is that correct? A. Yes.

Q. Was that done under your direction? A. And advertising department.

Q. Yes. A. Dresses in my division.

Q. These dresses are all in your division? A. That is right.

Mr. Weisman: I now offer this ad.

Mr. Martin: I now object to this, your Honor, on the ground it is irrelevant and immaterial and in no way germane to the testimony of this witness and contrary to the prior ruling of the Trial Examiner, and it is further outside of the scope of direct examination and has no bearing on the issues in this case. 10736

Mr. Feldman: In the case of——

Examiner Averill: How?

Mr. Weisman: Just an echo, Judge.

(Mr. Feldman confers with Mr. Weisman at this point.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. Gentlemen, the objection will be sustained for the reasons that we have stated off the record, and the paper which has been identified by the witness as an advertisement of the Shillito Company of dress goods which are in his department and the same bearing date of April 2, 1936, will be marked Respondents' Exhibit 83 for Identification and returned to counsel for such use as he may desire in the future to make of the paper. 10737

By Mr. Weisman.

Q. I show you this paper and ask you if you recognize that (handing paper to witness)?

Examiner Averill: Mark it.

Mr. Weisman: Yes.

(A paper was thereupon marked for identification Respondents' Exhibit 84.)

A. I recognize it as a Shillito ad, but I don't have anything to do with the basement.

10739 *By Mr. Weisman.*

Q. You recognize it as a Shillito Company ad? A. Yes.

Q. In what paper would you say it was run? A. It says there Cincinnati "Post."

Q. And what date? A. Friday, April 10.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. Gentlemen, the advertising appearing in the Cincinnati "Post" for April 10, 1936, which is testified to by the witness as being a Shillito Company basement ad, but not in his department, will be marked Respondents' Exhibit 84 for Identification and returned to counsel for respondent for such use as he may desire.

10740 All right, sir.

(A paper was thereupon marked for identification Respondents' Exhibit 85.)

By Mr. Weisman.

Q. I show you this telegram, dated November 4, 1935, marked Respondents' Exhibit 85 for Identification, and ask you did you cause that to be sent to Mr. Post (handing paper to witness)? A. That is correct.

Mr. Weisman: I offer this telegram in evidence.

Mr. Martin: Objected to as irrelevant, immaterial, having nothing to do with the issues in this case and outside of the scope of the witness' testimony and not proper subject of cross-examination.

Examiner Averill: Gentlemen, I must sustain that.

Mr. Weisman: Just wait a moment, Judge, before you sustain this. You better let me tell you what the purpose of it is. We will show now, having laid the foundation with this, that the houses referred to here, which we have a list of, were such houses as made goods down at $4.75 and $6.75, 10742
showing that at this time they were handling goods at $4.75 and $6.75, so obviously the story about $10.75 protection could not be correct.

Examiner Averill: All right. No, sir, I cannot receive it. If you want to show those things, you may show them on direct, maybe. I do not know what good they would be on direct, but I cannot admit that.

Mr. Weisman: Your Honor please——

Examiner Averill: Does not cover the testimony of the witness. You cannot open the doors any further along that line.

By Mr. Weisman.

10743

Q. During the year 1935 were you doing business with the International Dress Company at 1400 Broadway?

Mr. Martin: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Weisman: I am entitled to ask him who he did business with.

Examiner Averill: In what year?

Mr. Weisman: 1935, prior to his red carding.

Mr. Martin: Clearly not proper cross-examination.

Examiner Averill: Gentlemen, I think that objection is sound. It is certainly not part—not proper cross-examination under the direct and I have gone too far that way now; I cannot go any further.

Mr. Weisman: Exception.

Examiner Averill: Yes.

Mr. Weisman: I make this offer of proof: If I had been permitted to have pursued the inquiry, he would have stated he was; I would thereupon
10745 be in a position to show that the International Dress Company manufactured dresses and sold them at a price below $10.75.

The Witness: In the summertime.

Examiner Averill: Do not testify.

Mr. Weisman: And I would have shown the same with regard to the Casino Dresses and the same with regard to Henry Gans.

Examiner Averill: You may offer those in your own——

Mr. Martin: I move, your Honor, that the offer to prove be stricken.

Examiner Averill: That is granted, because that is a part of your direct. If you wish to put those things in, you would perhaps be permitted to do
10746 that. I do not know how it will be then.

Mr. Weisman: Exception.

Examiner Averill: Yes, sir.

Mr. Weisman: Thank you.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Weisman.

Q. Have you got with you the memorandum from which you testified yesterday? A. I have.

Q. Will you turn to it, please?

Examiner Averill: Has anybody got a copy of yesterday's?

Mr. Martin: I will give you a copy of it, your Honor.

Examiner Averill: Mr. Bergdahl had a copy of it a while ago.

Mr. Haycraft: You mean of the record?

Examiner Averill: Yes. I mean what he testified to yesterday. 10748

Mr. Haycraft: Yes. All right, sir, you may have it (handing record to the Trial Examiner).

By Mr. Weisman.

Q. When you called upon these people at that time, did you or did you not know that they had an agreement among themselves that they would not sell to any retailers who were refusing to protect style originations? A. That is correct.

Q. Mr. Plaut, when you called upon Robbins and you saw Mr. Lagowitz there, did you not? A. That is correct.

Q. How do you know it is correct? A. I saw Mr. Lagowitz there.

Q. Well, do you remember that? A. I do. 10749

Q. Or do you say it is correct because it is on that paper in front of you? Which is it? A. Both is correct—both are correct.

Q. If you did not have the paper, would you know it was Mr. Lagowitz that you saw? A. I have known him for years.

Q. Then you know him? A. Yes.

Q. Now, when you saw Mr. Lagowitz, you asked him, did you not, whether or not he would ship you this merchandise through somebody else? A. That is correct.

Q. What did you mean by that? A. Just what I said.

Q. Well, tell us. I do not understand exactly what you mean. A. Well——

Q. Did you mean that he should seek through some subterfuge to ship you these goods contrary to his arrangement with the other members of the Guild, by consigning them to someone else, which consignee would in turn send them to you? That is what you meant, was it not? A. Read that question.

10751 Q. (Last question read.) A. Just asked him a question, if he would ship goods through someone else.

Q. Well, what did you mean by that question? A. It is a simple question, it answers for itself—it speaks for itself.

Q. You answer it for us now. A. O.K.

Q. Mr. Divisional Merchandise Manager of Shillito Company. A. Said, "Will you ship to anyone else?" He said, "No."

Q. Well, what did you mean? A. To ship through someone else than ship to Shillito. I asked him——

Q. Why did you want him to ship these goods through somebody else for you? A. I do not understand that.

Q. What was in your mind? A. What?

Q. What was in your mind? A. I do not get the ques-
10752 tion.

Q. What was in your mind? A. Me?

Q. You. A. Oh, I meant merchandise.

Q. Whom did you think he was going to ship them to so you could get them? A. I have no idea.

Q. No idea? A. No idea.

Q. What was the difference between shipping it to you and shipping it to someone else for and on your account?

Mr. Martin: I object to all of this as incompetent, immaterial and irrelevant for any purpose whatsoever.

Examiner Averill: You have already probed him enough on that.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you mean that this man, on behalf of C. H. D. Robbins, caused these dresses to be shipped to you surreptitiously?

Mr. Martin: I object.

Examiner Averill: Sustained. 10754

Mr. Weisman: Exception. I make the offer to prove that had I been permitted to have the answer to that question the witness would have so testified.

Mr. Martin: I move that the offer to prove be stricken from the record.

Examiner Averill: Overruled.

Mr. Feldman: How can you strike an offer to prove?

Mr. Albert: Never heard of such a thing.

By Mr. Weisman.

Q. Were you anxious to get those dresses by hook or crook?

10755

Mr. Martin: I object.

Examiner Averill: The witness may answer the question. I will let him go a little further into that.

A. I would not say that. I said through someone else.

By Mr. Weisman.

Q. That was by crook. You mean that you were not anxious to get them by hook, but you wanted to get them by crook; is that the idea?

Mr. Martin: I object.

Examiner Averill: I think we all understand about it. Let us go to something else.

By Mr. Weisman.

Q. I just have one other further question. You testified yesterday that there was a shopper by the name of Mrs.
10757 Levy? A. That is correct.

Q. In Cincinnati? A. Yes.

Q. That is correct, that you so testified? A. Yes, and I also knew you had a shopper by the name of Mrs. Levy.

Q. This shopper came into your store quite frequently? A. She did.

Q. She came in openly and notoriously and there was nothing furtive about her visits, was there? A. No.

Q. You knew she came? A. Oh, I knew she came in, yes. She came in on the floor and looked around.

Q. You knew her? A. We did.

Q. And the help knew her? A. I do not believe the help knew her.

Q. Some of your help? A. Possibly the buyers.

10758 Q. She came into the store for the first time, did she not, and she came up to you and told you who she was? A. I believe she did.

Q. Naturally, you would not let a stranger come in and go over your stocks, would you? A. A public institution like that, we have thousands of customers coming in and looking over our stocks and we do not know who they are. They come in and we do not know whether they come in to buy goods or what they come in for. We could not possibly know that.

Q. How did you find out that she was a shopper, then? A. She came down and visited me and told me that she was.

Q. Oh, she told you she was? A. She did.

Examiner Averill: A recess will be taken for five minutes.

(There was a short recess taken.)

Examiner Averill: Back on the record. Proceed.

Redirect examination by Mr. Martin.

Q. Mr. Plaut, on cross-examination Mr. Weisman asked you as to when you came to New York on or about March 4 and when you left? A. Yes. 10760

Q. Did you check it up with the hotel to find out, the Hotel New Yorker? A. I did.

Q. What did you do and what did you find? A. I asked about it, I checked it up last night at the New Yorker Hotel and I have that verified, that I got in New York Tuesday night, March 3, by plane from Cincinnati, Ohio.

Q. When did you leave— A. May I finish?

Q. Go ahead. I did not mean to interrupt you. A. I had that verified by the New Yorker Hotel. I can refresh my memory——

Mr. Martin: All right.

Mr. Weisman: I object to his refreshing his memory unless he says his memory has need to be refreshed. He has not—this witness has not said yet that his memory needed to be refreshed. I think that he should go ahead until his memory needs to be refreshed. Certainly there is no necessity for him reading from a document until he says he cannot remember. 10761

Examiner Averill: In this particular matter I do not think there will be any harm in the witness going ahead and stating it that way.

By Mr. Martin.

Q. When did you leave? A. I left on March 6, Friday night, and was back in Cincinnati Saturday morning.

Mr. Albert: That is correct.

By Mr. Martin.

Q. I hand you Respondents' Exhibit 81, and ask what
10763 was that telegram—in other words, why was that telegram sent to the F.O.G.A.— A. I do not understand.

Q. Handing you Respondents' Exhibit 81, Mr. Plaut, I will ask you why was that telegram sent to the Fashion Originators Guild of America by your store, if you know?

Mr. Weisman: I object to why it was sent. The telegram speaks for itself. He cannot say that he sent the telegram for some reason when the telegram might indicate another.

Examiner Averill: This does not show the reason.

Mr. Weisman: I do not think that would be testimony of any value, if your Honor please. He might have sent that because he expected his wife to
10764 have twins.

Examiner Averill: On the other hand, he might have had a telegram from someone else and sent it in reply thereto.

Mr. Weisman: I submit that the question should be asked in a different form.

Examiner Averill: He has asked his reason. Objection overruled.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Why was that telegram sent? What was your reason for sending it?' A. Louise Mulligan wired John Shillito Company to authorize the F.O.G.A. for them to ship us merchandise.

Mr. Martin: I ask to have this document marked as Commission's Exhibit 888 for Identification.

(The document was marked for Identification Commission's Exhibit 888.)

Mr. Weisman: I do not understand the answer, I think, your Honor.

Examiner Averill: Let him see the telegram and you will understand. There is no great deep dark secret about this matter. 10766

By Mr. Martin.

Q. I hand you Commission's Exhibit 888 for Identification. A. Yes.

Q. What is it? A. Telegram to the John Shillito Company attention of Miss Doris Wood from Louise Mulligan.

Q. What is the date? A. March 17, 1936—I beg your pardon, March 12, 1936.

Examiner Averill: Who from?

The Witness: Louise Mulligan. The wire——

By Mr. Martin. 10767

Q. Do not say what it is. Do not state its contents. Was this received by the John Shillito Company? A. That is correct.

Mr. Martin: I offer this in evidence.

Mr. Weisman: No objection.

Examiner Averill: Gentlemen, the telegram in question which has just been identified by the wit-

ness and to which there has been no objection, and which is a telegram to the John Shillito Company, Cincinnati, Ohio, signed Louise Mulligan, Inc., and from Chicago, Ill., under date of March 12, 1936, will be received in evidence and marked Commission's Exhibit 888, having heretofore been marked Commission's Exhibit 888 for Identification.

(The document heretofore marked for Identification Commission's Exhibit 888, was marked as an exhibit and received in evidence.)

By Mr. Martin.

10769 Q. Did this telegram prompt you to send a telegram which is Respondents' Exhibit No. 81? A. That is correct.

Mr. Martin: That is all.

Recross-examination by Mr. Weisman.

Q. Did not the desire to get the goods prompt you to send a telegram, or did you not want the goods? A. We wanted the goods.

Q. Then was it the wanting of the goods that prompted you to send the telegram?

Examiner Averill: You asked him what prompted him. What prompted him was the lasting moving thing before him before he sent the telegram, and

10770 that does not mean because he needed the goods that he sent the telegram, but he told you he sent it because he received this telegram, the underlying motive is not inquired for. There may have been an undercurrent of desire back of the whole thing, but this seeks the prime motivation.

By Mr. Weisman.

Q. In other words, if you did not get that telegram from Louise Mulligan you would not have wired the Fashion Originators Guild of America; is that correct? A. That is correct.

Q. Why did you wire the Fashion Originators Guild of America with regard to the other people? You did not have any telegram in those cases.

Examiner Averill: What?

(Question read.)

Mr. Martin: I object. He has already answered that. The facts are not as he has stated them there. I object to an improper premise being the basis of the question. 10772

Examiner Averill: Let the reporter read the question.

(Question read.)

Mr. Martin: I object. He has already answered that.

Mr. Weisman: There is no prompting to the others.

The Witness: Louise Mulligan's line was a confined line to the Shillito Company in Cincinnati, Ohio.

By Mr. Weisman.

Q. Did you say that you got this telegram from Louise Mulligan? A. Miss Doris Wood got the telegram from them, Miss Doris Wood of the John Shillito Company, and she turned it over to me. 10773

Q. Did you answer it? A. I believe one of the executives of the John Shillito Company answered this wire.

Q. How do you know that? A. Is that telegram shown here?

Q. Did you say a moment ago that you answered that telegram? A. I will correct that statement and say a member of the firm answered the telegram.

Q. How do you know a member of the firm answered the telegram? Are you sure you did not answer it? A. A telegram was answered there.

Q. No, no, no. Answer my question. In answer to a question by Mr. Martin you said that you answered that telegram.

Mr. Martin: No, sir; I did not ask him did he answer the question.

Mr. Weisman: Will you please keep still and
10775 make a legal objection instead of trying to prompt the witness.

Mr. Martin: I just want to try to keep you straight.

By Mr. Weisman.

Q. Do you remember seeing that telegram—do you remember receiving that telegram? A. There is no question about it.

Q. You, personally? A. Miss Doris Wood received it.

Q. What did Miss Wood do with it so far as you know when she received it? A. She turned it over to me.

Q. What did you do with it? A. I took it up with Mr. Minster of the John Shillito Company.

10776 Q. What did Mr. Minster of the John Shillito Company do with it? A. If I recall correctly, he wired the Fashion Originators Guild of America to authorize Louise Mulligan to ship the merchandise to us.

Q. That was the same day that you received the telegram? A. That I do not recall.

Q. Well, it appears so. Did you not testify that this was a copy of the telegram (indicating)?

Examiner Averill: He did not.

Mr. Weisman: He said it came.

Examiner Averill: No, because you got it in by way of agreement. You did not press the witness with those questions because you did not know what his answers might be, and so it was put in by agreement between you and Mr. Martin, and he let it go in, and I permitted it to go in, and I am not quite sure that I did wisely in doing so in view of later developments.

Room 901, 45 Broadway,
New York, New York, 10778
November 20, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same appearances.)

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

10779

Q: At the last session at which you testified, or in your former testimony, Mr. Bergdahl, you were asked to look in your files to see if you could find the correspondence with members of the A.M.C. who were advised, or advising them with respect to the understanding you had with Mr. Rentner in the summer of 1933. Do you recall the papers to which I have reference? A. Yes. I know what you are talking about.

Q. Have you made a search of your files for that purpose? A. Yes, sir.

Q. What is this sheaf of papers which I am now handing you? A. These are letters between our stores—between executives in our stores and Mr. Reilly, our director.

Q. In what month and in what year? A. All of them seem to be, or are, in the last week of June, 1933.

Q. Do they relate to the subject matter I asked you to inquire about? A. They do.

(The paper heretofore marked for Identification Commission's Exhibit 900, was marked as an exhibit
10781 and received in evidence.)

By Mr. Haycraft.

Q. Mr. Bergdahl, I call your attention to the following language in this letter, Commission's Exhibit 900: "This is to inform you that the members of the Association of Buying Offices, Inc., will endorse this movement on your part to its member retailers. It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems." A. (Witness referring to paper.) The conclusions were that it would not be advisable for Mr. Rentner and Mr. Post openly to admit that we had exemptions, but they would grant verbally those
10782 exemptions to us, since they recognized that leniency would be required until such time as the chains were members of the Guild; and, furthermore, they recognized that leniency was necessary until such time as the low-end manufacturers would be equipped with designing staffs to take care of retailers' requirements. Are those conclusions, sir?

Examiner Averill: That is enough.

By Mr. Haycraft.

Q. How did you arrive at those conclusions?

Examiner Averill: That is a fair statement.

Mr. Weisman: Now, I object to the next question.

Examiner Averill: What is it?

Mr. Weisman: "How did you arrive at those conclusions?" Now, they are going into the operation of his mind. He has given his conclusion. Having given us the ultimate, it is perfectly incompetent for this witness to keep on spraining his wrist by patting himself on the back. He has given us his conclusions, and until such time—— 10784

Examiner Averill: I think the objection is sound, gentlemen!

Mr. Haycraft: All right.

Examiner Averill: He has told us his conclusions, now. The objection is sustained.

By Mr. Haycraft.

Q. What was the basis for those conclusions?

Mr. Weisman: Objected to.

The Witness: May I answer that one?

Examiner Averill: What was the question?

(Question read.)

Mr. Weisman: I object. 10785

Examiner Averill: Has he not told us?

Mr. Haycraft: I will put it this way——

Examiner Averill: Now, his conclusion is drawn. Read the question.

(Question again read.)

Examiner Averill: Now, off the record.

(There was a discussion off the record.)

Mr. Haycraft: I haven't any further question. I withdraw the question.

Examiner Averill: I think that answers it. I do not see that there is anything further to go on.

The Witness: May I add anything further about that paragraph?

Mr. Haycraft: Well, I am going to ask you——

The Witness: I am sorry.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: All right, gentlemen, let us go forward.

Mr. Weisman: By the way, you were not even right about that, one of your usual exaggerations.

10787 Examiner Averill: Have you not finished with this (referring to Commission's Exhibit 900)?

By Mr. Haycraft.

Q. The reference to the many conferences in which we have stated our problems refers to what conference (handing Commission's Exhibit 900 to witness)?

Mr. Weisman: May I have that last question?

(Question read.)

Mr. Haycraft: That is, conference with whom, or between whom.

Mr. Weisman: May I have the question.

(Question again read.)

10788 A. Conferences between members of the A.B.O. and members, or executives of the F.O.G.A.

By Mr. Haycraft.

Q. What members of the A.B.O.?

Mr. Weisman: If you remember.

A. I do remember.

Mr. Weisman: I know, I can see it by your joy.

A. Mr. Greenebaum and myself, particularly, as well as Mr. Rentner and Mr. Golby of the Guild, particularly, of the F.O.G.A., your Honor.

Examiner Averill: Yes. Where and when.

A. Conferences—many conferences between the date of May 4 and the date of this letter.

By Mr. Haycraft.

Q. Where? A. At the offices of the Guild; Mr. Greenebaum's office, I think, and in luncheons over the table. I 10790
remember one in particular between Mr. Golby, Mr. Rentner and myself at the—at the Ritz, I think it was.

Mr. Post: Do you not mean Post?

The Witness: I am sorry, Mr. Post and Mr. Rentner.

Mr. Weisman: Wait a moment——

The Witness: At the—at the Ritz-Carleton, I think it was.

By Mr. Haycraft.

Q. Now, at these conferences, did either Mr. Rentner, Mr. Post, or Mr. Golby—? A. It was not Mr. Golby.

Q. —any three of them, give any explanation why the arrangement or agreement that you had with them with 10791
respect to leniency was not to be made public?

Mr. Weisman: No, no. He said "in words or substance."

The Witness: Thank you, sir—said in words or substance that the Guild had now signed several thousand retailers. I do not know whether he had said six, seven or eight, but in the neighborhood of

several thousand—and that obviously since we only represented 1,700 retailers he did not want to have anything appearing on the records anywhere that he had ever agreed, at least in that year, that there should be any exemption for low price merchandise. Is that complete? Does that answer it?

By Mr. Haycraft.

Q. Yes. I want to make clear on the record, if I can, Mr. Examiner, what, how——

Mr. Weisman (interposing): "What, how"?

Mr. Haycraft: I will strike that out.

10793

By Mr. Haycraft.

Q. I would like to ask the witness to explain to the Examiner, and for the record, as to what would be needed in the way of protection on a $10.75 cost line——

Mr. Weisman: Objected to——

By Mr. Haycraft.

Q. $10.75 manufacture cost line.

Mr. Weisman: It is incompetent.

The Witness (continuing): If $10.75 manufacturers are to be given protection by the F.O.G.A., complete protection, as they propose to do, it would

10794 be necessary for retailers to return copies at all price lines even down to a dollar or less——

Mr. Feldman: 50 cents.

The Witness: 50 cents.

Examiner Averill: Now, wait a moment, let the witness testify.

The Witness (continuing): —in order to cooperate properly. And that was impossible at the

time, and that is why leniency was asked for of the Guild, the leniency that I have been talking about ever since——

Examiner Averill: Yes.

The Witness: —the meeting of May 4.

Examiner Averill: Yes.

By Mr. Haycraft.

Q. Why is that so?

Mr. Weisman: I object to this. He just said why.

Examiner Averill: What he means is this—one moment. You mean by saying it was impossible to 10796
get that, that the low-price retailers——

The Witness: The low-price manufacturers.

Examiner Averill: The low-price manufacturers——

The Witness: Yes.

Examiner Averill: —would not be willing to do so?

The Witness: The low-price manufacturers were not equipped to do so with designing staffs, see?

Examiner Averill: Yes.

The Witness: Were not equipped to do so.

Examiner Averill: Well——

The Witness: They did not have it, but retailers had to have merchandise, you see, so that here we 10707
would be in a position of having to buy merchandise that we knew we would be asked to return, because there was none other than that type of merchandise offered, do you not see?

Examiner Averill: In the low prices?

The Witness: In the low prices. Practically everything is a copy of something that is better, emulated, or copied, or adopted, or something, from

something that is better, in the low-price ranges, and they were not equipped in any way whatsoever, see, to give us merchandise that were not copies, or, I should add to that, except in a very slight degree. You see, they were not equipped to give us copies—

Examiner Averill: Which could be sold at the low prices?

The Witness: Which could be sold at the low prices, in those brackets where 83 per cent. of the piece units of the merchandise manufactured in the United States is sold, 83 per cent. of the total production of the United States, on or about the year 1935 was below $6.75 cost, most of which were

10799

copies, and produced for the mass consumption in this country. Does that explain it, your Honor?

Examiner Averill: It gives us your views; that is what I was trying to get.

The Witness: That is right, those are my views.

Examiner Averill: That is right; yes.

By Mr. Haycraft.

Q. Now, with respect to cost lines above $10.75.

Mr. Weisman: Judge, is this not a good time to adjourn, it is 12.30.

Examiner Averill: Is it 12.30? Well, let us finish with this subject.

10800

The Witness: What is that?

By Mr. Haycraft.

Q. What was the situation with respect to cost lines above $10.75, as the plan originally started when you first co-operated with the Guild? A. Well, for the price lines above $10.75, we felt—I felt that we could co-operate down to and including $10.75, and that was originally, and in the year 1935, I felt that we could co-operate down to and

including $7.75, since $7 and $8.75 had been added subsequent to the prior—as price lines in the market—they had been added as price lines in the market subsequent to June, 1933. That is, there may have been a very few, but very few price lines at $7 and $8 during 1933; but in 1935 quite a few had been added, and we felt—I felt that retailers can go along down to and including $7.75; that is, to return copies down to $7.75, but not to co-operate, that is, on returning copies of $7.75. Is that clear?

Examiner Averill: Yes, I see what you mean.

By Mr. Haycraft.

Q. In other words, if a garment was sold to you, to one 10802
of your member stores, at a cost of $8.75, and it was a copy of a dress manufactured by a Guild manufacturer, of, say, wholesale cost of $20, did you believe that the $8.75 garment should be returned as a copy? A. Yes, we felt—we felt that it was practical, because the market was more equipped with designing staffs at that price, you see, than in the lower brackets, and, for that reason, the instances would be less, because in above $6.75 the relative volume of pieces sold in the United States is small, see? And the number of instances that we would be called upon to make returns are relatively few; but when you go below $7.75 you get into a tremendous volume of transactions where the mass population of the United States are served, and with whom we do business. 10803

Q. That would include the basement stores? A. Basement stores, upstairs stores, budget shops, and all of that type, chain stores, mail order chains, and all of that category who previously did their business in merchandise, or did their business, up to this year, in merchandise costing up to $6.75.

Mr. Haycraft: Do you want to take a little recess?

Examiner Averill: Yes, sir. Gentlemen, it is now half-past twelve. We will adjourn until 2 o'clock, unless you want to come back sooner?

Mr. Martin: No, sir; 2 o'clock will be fine.

Examiner Averill: All right.

(Whereupon, at 12.32 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Averill: Proceed.

10805

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Bergdahl, did you present your views and your opinions to Mr. Rentner and other officials of the Fashion Originators Guild of America at the time you had the discussions with respect to the activities of the Guild during 1933, 1934 and 1935?

Mr. Weisman: I object to that as having already been answered three or four times on three or four different occasions.

10806

Examiner Averill: I am rather inclined to think it is already in evidence, but he may say so again.

A. Yes, I did, from the beginning to the end, as I have stated previously.

By Mr. Haycraft.

Q. When did you first meet Mr. Post, or know Mr. Albert M. Post, the present executive director of the Guild? A. Well, I could not tell you. I have known Mr. Post for several years, not intimately until the last three or four, but for several years I have known him in the industry from his retail activities.

Q. Did you have any conversation with him in June, 1933, with respect to the Guild particularly?

Mr. Weisman: I object.

Examiner Averill: Overruled.

Mr. Weisman: May it please your Honor, let me call your Honor's attention to the fact of the inherent vice in this question, because the evidence clearly shows that Mr. Post was not with the Guild in June, 1933. 10808

Examiner Averill: They may have discussed it, anyhow.

Mr. Weisman: Suppose they did, what relevancy or competency has it on direct examination?

Examiner Averill: I do not know, but we will see what he says. Objection overruled.

Mr. Weisman: Exception.

The Witness: I would like to be specific in answering the question. Will you please read the question again?

(Question read.) 10809

A. As I recall it, I did.

By Mr. Haycraft.

Q. Can you give me the approximate date? A. On or about June or July 1, somewhere in that neighborhood, if my memory serves me correctly, I discussed with Al Post—in 1933.

Mr. Weisman: I object to what he said.

10810 *Herbert L. Bergdahl—For Commission—Direct.*

By Mr. Haycraft.

Q. What did Mr. Post do at that time? A. At that time he was merchandise manager for Mandel Brothers, Chicago, Illinois.

Q. Will you state the circumstances of that conversation and the substance of it?

Mr. Weisman: I object to that as immaterial. Suppose he did have a talk with anybody. Suppose he talked with somebody connected with the Emporium in San Francisco, or with Mr. Weber of Hudson Brothers in Detroit, Michigan, this witness is speaking with somebody who is unconnected with

10811 us. It would not be pertinent. He has done so, and now he wants to know the circumstances of that conversation and how this could be under any kind of circumstances used against us I cannot see.

Examiner Averill: If Mr. Post at that time was not connected with or affiliated with the Fashion Originators Guild of America I do not see that it has anything to do with this particular case. Objection sustained.

Mr. Weisman: Even Mr. Haycraft knows that.

By Mr. Haycraft.

Q. At that time were you active in the committee work of the A.B.O.?

10812

Mr. Weisman: I object.

Examiner Averill: This question is what this witness did. He has a right, a perfect right to ask him that. He just asked what this witness did at that time.

Mr. Weisman: We do not want to deal with "activities." If that is the purpose of this testimony he should tell us what he did because his statement

that he was "active" means nothing. That is a conclusion. One man might think that he was doing so much and was being quite active, when another might think that a different set of movements constituted activity, and the third one might think that was not active at all on the part of either one of them, and it gives you no consensus as to what might actually mean "activity" as being anything definite. What this man did is one thing. If he will tell us what he did then we can tell whether that is active or not.

Examiner Averill: Overruled.

Mr. Weisman: Exception. 10814

A. Well, I was still chairman of the committee. As such, I was active in conversations with the Guild, the F.O.G.A. You have reference to 1935?

By Mr. Haycraft.

Q. 1933. A. No, I was not. There was no A.B.O. at that time.

(The letter heretofore marked for identification Commission's Exhibit 906, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Bergdahl, what was the occasion of sending out that letter? 10815

Mr. Weisman: I object to that. Now, after we have gotten through getting this in, the vice of this becomes more particularly apparent because after he gets this letter in, which in itself is incompetent, he is not satisfied with the letter and we must assume that all, under our theory of law, that ante-

dates the letter is entered into the letter, and the reason for the entry into evidence of the document is, I still think, are very dubious of probity, and I think we all know that after he gets the letter in he should stop there, but no, he is not satisfied with that, but he now tries to get in crabwise information now which he says was the occasion for sending out the letter. This is certainly a pari patetic presentation of words and letters and things of that sort in evidence, and I think it is highly improper.

10817 Examiner Averill: I am inclined to agree with you. The paper on its face states the occasion for sending out the letter. There is no use of his repeating what is contained in the first paragraph of the letter. That shows the occasion and what it arose from.

Mr. Haycraft: I desire to know beyond that.

By Mr. Haycraft.

Q. Did you have any discussions with any official of the F.O.G.A. with respect to sending out this letter to the members of the A.M.C.? A. May I refresh my memory from looking at that letter?

Q. Yes. A. I did.

Q. What was it?

10818 Mr. Weisman: I object as incompetent, immaterial and irrelevant.

Examiner Averill: Overruled.

Mr. Weisman: Exception.

A. I discussed the subject of returns at that time with both Mr. Post and Mr. Rentner.

By Mr. Haycraft.

Q. What about the letter? Did you say anything to them about sending out this letter to members of the A.M.C.? A. No, I do not recall that I did. I do not know whether I did or not.

Mr. Weisman: May I ask that the prior question and answer be stricken.

Examiner Averill: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 907 for Identification and ask if you can identify that as an original letter 10820
from Mr. Post to yourself under date of October 8, 1935? A. I can.

Q. I will show you Commission's Exhibit 908 for Identification and ask you if you can identify that as an original letter from Mr. Post to yourself under date of October 9, 1935? A. Yes.

Q. The pencil notations in the upper lefthand corner, were they on it when you received it? A. No, they were placed on there by myself afterwards.

Q. I show you Commission's Exhibit 909 for Identification and ask if you can identify that as a letter and form attached to Commission's Exhibit 908 for Identification, when you received it? A. They were on there; yes, sir.

Q. Dated October 4, is it not? A. It is. 10821

Q. Did you receive these exhibits for identification in the ordinary regular course of business? A. I did.

Mr. Haycraft: I offer in evidence Commission's Exhibits for Identification, 907, 908 and 909.

Mr. Weisman: No objection.

(The paper heretofore marked for identification Commission's Exhibit 909, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 907, reference is made to the Retailers Research in the first paragraph; what is the Retailers Research? A. I identified and defined it as being one branch of the A.M.C., the non-selling activities in the department stores of the retailers—it heads up in New York in the general status of the non-merchandising activities.

Q. It is a part of the A.M.C.? A. It is the A.M.C.

Q. Had you had any conversation with Mr. Post prior to October 8, 1935, that prompted him to send you that list, sir? A. Well, I think Mr. Post volunteered this in-
10823 formation to me as the result of conversations on returns.

Q. In other words, you had no previous conversation about any specific returns? A. We had plenty of conversations about returns, I did with Mr. Post, especially as to the amount of them because I did not know how much they were, anyway, and he said he would show me, he said he would prove it to me that they were not very much, and he sent it to me so that I would know about it. I think it was voluntary on his part as the result of our conversations.

Q. What action, if any, did you take upon receipt of this October 9, 1935, either in the capacity as merchandising manager of the Associated Merchandising Corporation, or chairman of the F.O.G.A. committee of the
10824 A.B.O.? A. We discussed this at our weekly meeting.

Q. Who is "we"? A. The A.B.O., Associated Buying Office members.

Q. Did you take any other action?

Examiner Averill: What was the action?

The Witness: We agreed among ourselves that this group was fairly representative of the market in which Mr. Post, or of which Mr. Post discusses in that letter, and that we should help to get these

manufacturers into the Guild. It was part of the program of getting them all together so we could force them to come along. We were guilty of forcing it just as much as they were, and I will admit it freely.

By Mr. Haycraft.

Q. What did you do in order to bring that about? A. Why, I think I went so far as to go with Mr. reenebaum, I believe at the invitation of some of these manufacturers here to a dinner meeting to express my personal views to these people, and as far as I understand it, and Mr. Greenebaum understood it, the views of the A.B.O., re- 10826
garding the question of this group becoming members of the Guild.

Q. What did you tell them at that time at that dinner meeting?

Mr. Weisman: I object. He has told us his views. He has told us what his views were. He probably told the meeting his views. Did you give the meeting the benefit of your views on this subject?

The Witness: I expressed to that group the opinions I had regarding the F.O.G.A. on the question of membership, and as far as I could see what the retailers were thinking about it. I, however, expressly stated that we could not commit the re- 10827
tailers but we could state what we thought that they believed, or would do.

By Mr. Haycraft.

Q. What did you tell them your views were and why did you tell them that you thought the retailer knew about it—I withdraw that. What did you tell them that you thought the retailer would do?

Mr. Weisman: It does not do me any harm. I am glad to hear that Mr. Bergdahl was in favor of this.

The Witness: You knew it. You knew it.

Examiner Averill: That is all right.

Mr. Weisman: I had always gathered that he was against this particular thing, and I am delighted to know that he was for it.

The Witness: You must have known it.

Examiner Averill: Objection sustained.

By Mr. Haycraft.

10829 Q. Mr. Bergdahl, in this letter from Mr. Post to you October 9, 1935, he states: "Will you kindly present this matter to your membership and advise us when it will be convenient to go into the matter more thoroughly?" Did you do that? A. We took it up with our membership and advised the Guild, I believe, verbally. I cannot say that we wrote a letter.

Q. What did you advise the Guild? A. We advised them, as I have already stated, that we thought this list of manufacturers was fairly representatives of that part of the industry, and I—that they thought—and I thought that they ought to go ahead and try to take them in as members, and that we should help them to do so because then it had reached this stage of the game where we felt

10830 we had to get these low-end manufacturers in if we were going to survive, and if our business was going to live in the low end we had to get all of the others in with us. We were in a miserable state of affairs and liked to have some company, if you please.

Q. What was done, Mr. Bergdahl, with respect to the agreement between you and Mr. Rentner as to the matter of leniency in return of goods on the part of retail dealers after the $6.75 group of manufacturers became members of the Guild in October, 1935?

10831

Mr. Weisman: I object to this question as having already been answered at least once, and possibly twice, and I object to its being answered again on the ground that it unnecessarily adds cost to the respondents in this case, and it is simply a reiteration of the same thing over and over again, and it seems to me that we are just chasing ourselves around in a circle.

Mr. Haycraft: Is it necessary to answer that?

Examiner Averill: What is the situation?

Mr. Haycraft: It has not come up to this point in my examination. I have taken this as a historical presentation of this whole situation. I have come now for the first time to October, 1935, and I have not been there before.

10832

Examiner Averill: Are you referring in this question to these parties whose names are shown on Commission's Exhibit 909.

Mr. Haycraft: Except those parties that became members of the Guild.

Examiner Averill: Such of them as became members.

Mr. Haycraft: Yes, up to this time there was a return of goods, and I am asking whether there was any variation in it.

Mr. Weisman: Why don't you ask him the conversation as he had it between so and so, and what he said and what the other fellow said, and I will have something concrete. These omnibus shotgun explosions out of the window in the hope of hitting a butterfly are impossible to properly cross-examine upon. I have no objection to putting the facts before the Court.

10833

Examiner Averill: Mr. Bergdahl, please tell us in regard to the particular firms you know what

they may have told you about, or can you give us your knowledge as to the entire situation——.

The Witness: I do not quite catch that, your Honor.

Examiner Averill: Mr. Bergdahl, tell us, please, now—let me state this so you will understand it. In regard to the particular form, that you know what he is talking about now, what, if any, action was taken, and if so, what action it was after this list, Commission's Exhibit 909, of parties had become members, or such of them as had become members, what was the action, if any, that was taken?

10835

The Witness: I do not understand the question, your Honor.

Examiner Averill: Go ahead.

The Witness: I understand the problem very well, your Honor, and I think you misunderstood the question, your Honor, that Mr. Haycraft had in mind. I understand the problem so well, your Honor, that I can penetrate it, I believe.

Mr. Weisman: I ask that the question be properly reframed so that I can understand it, because I do not understand it, and the witness says that your Honor does not understand, and I am sure that we do not either of us understand it and something should be done about it. I must object to the present situation. I, therefore, object to the witness answering a question which neither the Court nor counsel for the respondent understands.

10836

Examiner Averill: I think that the witness can tell us what the facts are, and after all, all that we want are the facts, and after he gives us the answer I will strike it out if necessary. I think that would be the best way to proceed.

Mr. Weisman: In the difficulty that we are faced with now, it would seem to be one possible way out of this maze.

The Witness: I will try to enumerate as briefly as possible the events which followed the taking in of these manufacturers.

Examiner Averill: Go ahead.

The Witness: The admission of these manufacturers into the Guild.

Examiner Averill: That is, those on this list, Commission's Exhibit 909, who later actually became members.

The Witness: Yes, sir. Where was I, then? 10838

Q. (Answer read.) A. —entered into a mutual understanding that there should be more stringent returns, or more enforcement of the return policy on the low end as far as retailers were concerned; that shoppers would become more watchful of low-end merchandise, and more and more, as time went along, no period or no limit date was set, but increasingly as time went along there was to be a greater degree of co-operation by the retailers who handled low-end merchandise with the Guild policy.

Now, that resulted in some stores feeling this policy established by the Guild more than others, particularly those who were more aggressive in the sale of low-end merchandise, and particularly those who had smart buyers who knew how to fix so-called "hot numbers" that were 10839
near or somewhere similar to copies of styles that were manufactured by the Guild members, and one such store I remember in particular which called for some help——

The Witness: Just cross out that last statement, beginning with "one such store." One of the problems—when these return requests were made, as far as A.M.C. stores were concerned I could call

up Al Post on the phone, or Jack Goldston or Mr. Golby and talk it out with them and sometimes they would see my point, and other times they did not, and generally we could get together on something and there was an understanding. They would either return the dresses or they would state what could be done. However, Mr. Post said: "You know this had to be more and more strengthened, and there has to be more and more returns, you cannot get too many excuses in here, or too many exceptions." I said, "I understand that." And then Mr. DuBriell called me on the telephone,
10841 he is the vice president of the Associated Dry Goods Corporation, and he was at that time in charge of their New York office and they were members of the A.M.C., and he said, "Bergdahl, you have got to help me. I cannot live under this policy of returning all that the Guild shoppers are asking us to do, particularly in McCreery's. They have good buyers down there and they have a lot of hot numbers, and they are asking us to return them." So, "Will you see," he said, "if you cannot get Mr. Post and Mr. Rentner and let's sit down and talk this out," so we did and Mr. Post was kind enough to come over to our office with Mr. Golby, I believe, or Mr. Goldston, I am not sure which one it was, but I feel quite sure it was
10842 not Mr. Rentner, but I know Mr Post came over, and Mr. DuBriell and myself, and I think Mr. Greenebaum was there, and we decided that the returns should be limited to an extent since all stores could not be asked to return too much even if it were true at that date. So Mr. Post agreed with me in good faith, and I think Mr. Rentner approved it subsequently, and the board approved it subsequently that if any store returned in any

given month 5 per cent. of the stock it had in any given department, that would be considered sufficient co-operation. If, on the other hand, they wanted to consider their whole dress stock consisting of all departments, including the inexpensive as well as the better dress departments in the store, the figure of 3 per cent. would be figured substantial co-operation, and once that figure had been reached, or either of those figures, whichever the store wanted to take as its basis in any given month, then that store would be given, or would be giving sufficient co-operation that month, and would not have to return any more dresses unless 10844
they chose to do so. That was the spirit of leniency that existed between us at that time.

Mr. Weisman: What time was that?

The Witness: October, 1935.

(Whereupon, at 4.20 o'clock P. M., November 20, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, New York,
November 23, 1936.

Met, pursuant to adjournment, 10 A. M. 10845

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

By Mr. Haycraft.

Q. Mr. Bergdahl, subsequent to December 5, 1935, did you have any further conversations with the executives

of the F.O.G.A. with respect to the policy discussed in Commission's Exhibits 918 and 920?

Mr. Weisman: Now, just a moment. We have had it once, Judge, before these exhibits went in. He told us at length.

Mr. Haycraft: I said any more from now on.

Mr. Weisman: Then ask him, in addition to what he has already told us, whether there is any more. You have asked him subsequent to December 4, and he has testified fully and at length already as to conversations. Now, what you mean, if he has anything further to add. If that is it, I have no objection; but I do object to a reiteration.

10847

Mr. Haycraft: I have not asked for a reiteration.

Mr. Weisman: Oh, yes, you have.

Examiner Averill: Read the question.

(Last question read.)

Mr. Haycraft: I call attention to the word "further," Mr Examiner.

Examiner Averill: It is all right. The objection is overruled. Just say "yes" or "no" first.

A. Yes, I think so. I recall that we had conversations, Mr. Post and I did.

By Mr. Haycraft.

10848 Q. What was the——

Mr. Weisman: May we have the date?

The Witness: I could not give you the date, sir.

By Mr. Haycraft.

Q. What was the substance of those conversations? A. Well, it is hard for me to state exactly what they were, except that I told Mr. Post that I thought he should not

press the returns issue too much, too strongly, since, if he did, it would precipitate a break in our relationships, since we could not possibly go along any more than we were.

Q. What did he say? A. At that time—at least, at that time.

Q. What did he say as to that? A. Well, he let me know that it was the Guild's policy to expect increased co-operation. This was a—I think I have repeated this before, but this was a progressive co-operation that was supposed to increase as the months went by, and every time we had a return to adjust, that we had some objection to, in conversation with Mr. Post this whole subject would come 10850
up, and even—if I was called over to the office on a style piracy hearing, the subject has come up, and, as I recall it, we did have one conversation in particular in the office. I think it was in January.

Q. 1936? A. 1936.

Q. What— A. In which I stated my views to Mr. Post and he stated his.

Q. Did he, during those conversations, tell you that if the stores did not co-operate as he expected them to, that they would be red carded? A. Well——

Mr. Weisman: I object to the form of the question. There is not any testimony that Mr. Post expected them to co-operate "as he expected them to." The witness has said that Mr. Post expected 10851
increasing co-operation on the matter of returns, and that was all the testimony that we have had on that.

Mr. Haycraft: That is what I refer to.

Mr. Weisman: Well, then, the question should be made to refer to it, not to the co-operation that Mr. Post affixes.

Mr. Haycraft: The question is plain enough.

Mr. Weisman: All right, I think it is now.

Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: He may answer that question. Exception noted. Go ahead.

A. He told me specifically that Mr. Charles Taylor was a bad actor, or a bad boy, or words to that effect; that he was—he was watching him.

By Mr. Haycraft.

Q. With what store is Mr. Taylor connected? A. Strawbridge & Clothier, Philadelphia.

10853

Q. Did he tell you at any time that he was going to red card Strawbridge & Clothier before he did it? A. He did say he was going to red card—he was going to red card Strawbridge & Clothier.

Q. When did he say that? A. When the—the night that the F.O.G.A.-N.R.D.G.A. had had a meeting in the N.R.D.G.A. offices Post called me at his home—at my home, and I was not there, so I called him late in the evening, and he said, "I have decided to send a letter to Strawbridge & Clothier telling them that if they don't sign the new contract, the new agreement, they are going to be red carded."

Q. What did you say to that? A. I said, "Well, Mr. Post, it is your business; you are doing it, I am not. What do you want me to do about it?" He said, "Well, I am just telling you." I said, "All right, I guess there is nothing I can do about it." Says, "O.K."

10854

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. How long after this first conversation did you learn that Strawbridge & Clothier was red carded? A. I do not have anything here that calls it to my mind.

Q. Do you have anything you can refresh your recollection from now? A. As I said before the recess, I think I have in the papers of the firm, the papers from Strawbridge & Clothier, indicating that there was such a meeting and I believe it was about February 4. I had intended looking that up during the luncheon hour so that I could 10856
tell you, but I have not been able to do so; but as I recall it, it was about February 4.

Q. At that time and on that occasion did Mr. Post tell you why the Strawbridge & Clothier store was to be red carded? A. Yes, he did tell me so.

Q. Why did he say they were to be red carded? A. Because Mr. Taylor had refused to divulge the name of a manufacturer at the Guild shopper's request. I should say he had refused to divulge the manufacturer, the manufacturer of an alleged copy or copy's name.

Q. Did you have any further conversation with Mr. Post with respect to red carding any member of the A.M.C.? A. No—well, at about this same time Mr. Post, in February—not February, but in January, Mr. Post did tell 10857
me that the J. L. Hudson Company was——

Mr. Weisman: Chiseling?
The Witness: Not chiseling.
Mr. Weisman: Cheating?
The Witness: Not cheating.
Mr. Haycraft: I object.
Examiner Averill: Proceed.

A. That the J. L. Hudson Company seemed to misunderstand the agreement that existed between Mr. Post and myself and that they wanted so many exemptions, as he stated it, that something would have to be done about it.

Examiner Averill: This was in 1936, January and February, 1936.

By Mr. Haycraft.

Q. Did you later learn that other members of the A.M.C. had been red carded?

Mr. Weisman: We have now a statement of
10859 February 4, and now we have jumped back to January, and another time in December, and may I ask what is referred to by this "later"?

(Question read.)

A. I did.

Mr. Weisman: Wait a minute. I have an objection. I do not know what this "later" refers to.

Examiner Averill: I think it would be well to give some date. It is all mixed up now. We do not know when it refers to.

Mr. Haycraft: My previous question referred to that date, and therefore we have to be accurate.

The Witness: May I explain my last answer——

10860 Mr. Weisman: Wait for a question.

Examiner Averill: You may explain it.

The Witness: The Examiner asked what year, so I said these conferences—he asked me about year what I said these conferences about red carding took place, and I will say that they were all in January and February, 1936.

By Examiner Averill.

Q. You testified, as I recall your conversation, that on or about February 4, 1936— A. Yes, one of them then.

Q. The next conversation you referred to was in January, 1936? A. No, no—oh, yes; oh, yes; he asked me about another conversation.

Q. Yes. A. I said on or about the same time. You know I had no calendar, so I am trying to be honest and explicit and I said on or about the same time.

Q. You then went back to January, 1936? A. Yes.

Examiner Averill: Now I want to ask counsel when this last question was directed to the witness did you refer to January, 1936, or did you refer to February, 1936, or tell us what date you are talking about. 10862

Mr. Haycraft: He made the statement February 4, so it would have to be after that. I do not see what wrong there is in the question, or what harm there is.

Examiner Averill: There is no harm in it, but it would save a lot of time if we would go ahead and state when it was.

Mr. Haycraft: He certainly would be talking about that. Certainly it would be subsequent to January or February, so there is nothing particularly wrong with it.

Examiner Averill: I certainly did not say there was anything particularly wrong with it, but certainly if it were more explicit, if you will just state the date you mean, it would save a lot of time. 10863

By Mr. Haycraft.

Q. After February 4, 1936.

(Previous question read.)

The Witness: I do not understand.

By Mr. Haycraft.

Q. After February 4 1936, did you learn that other members of the A.M.C. had been red carded? A. Yes.

Q. How did you learn of it? A. I read it in "Women's Wear."

Q. You read it in "Women's Wear"? A. Yes.

Q. Prior to February 10 or February 11, 1936, did you know that Strawbridge & Clothier had actually been red carded? A. We learned it on February 10, I believe, 10 or 11. I had been told that they would be if they did not sign a new declaration, but we did not know that they were told—we did not know this definitely until this
10865 announcement came out.

Q. Had you been informed by anybody from the Guild, or the F.O.G.A., that the R. H. White Company had been red carded? A. No.

Q. Had you been told that they would be red carded? A. I cannot say that I was told that, no.

Q. Did you learn of any other stores of the A.M.C. being red carded or that were to be red carded?

Mr. Weisman: Do you mean on or about that time, or when do you refer to?

By Mr. Haycraft.

Q. Subsequent to that time. A. Did we learn?

Q. Yes. A. We learned through announcements in the
10866 press that they were red carded.

Mr. Haycraft: I ask that this be marked for identification.

(The paper was thereupon marked for identification Commission's Exhibit 922.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 922 for Identification and ask you if you can identify that as an announcement in the press referred to in your last testimony? A. No, it is not the one I had in mind. I think I had in mind the one of February 18.

Q. You did not have this one in mind? A. No, I think this is not the one I had reference to, but the one I had reference to is the one in which all the stores were red carded, which I think is dated February 18.

Q. This is dated February 14. A. Yes. There were one or two, and then there were three or four more afterwards, and finally the whole group of sixteen. 10868

Q. When did you learn that Bloomingdale's, Hudson's, Kern's, the Hub of Baltimore, were red carded? A. When we read it in the press.

Q. On or about February 14, 1936? A. Yes.

Q. Between February 10 and/or February 11, 1936, and February 18, 1936, did the A.M.C. stores take any action which was communicated to the Fashion Originators Guild of America with respect to further co-operation with the Guild? A. Between February 11 and February 18; is that your question?

Q. Yes. A. Yes, we did.

Q. Was there any meeting of the A.M.C. held, officials of the A.M.C.? A. No, not that I recall.

Q. Subsequent to February 18, 1936, had your organization, the A.M.C., made any attempt to secure merchandise from the members of the F.O.G.A. with whom you had been dealing prior to that date? 10869

Mr. Weisman: Objected to as incompetent, immaterial, irrelevant, what somebody else did. The best testimony would be as to the people who did it.

Mr. Feldman: They did testify.

Examiner Averill: The objection is overruled.
Mr. Weisman: Exception.

A. Yes, we did attempt to get merchandise for our stores.

Mr. Weisman: I ask that the answer be stricken as irresponsive.
Examiner Averill: The motion is denied.
Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What success did you have in your attempts?

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Mr. Weisman: Objected to, as to the form of the question, on the ground that it is incompetent, irrelevant and immaterial, calling for a conclusion of the witness.
Examiner Averill: The objection is overruled.
Mr. Weisman: Exception.
Examiner Averill: Yes.
Mr. Weisman: May I have my exception, Judge?
Examiner Averill: Certainly, certainly, to all of it.

A. Why, we did not get any merchandise.

Q. Mr. Bergdahl, have you had occasion in your line of duty to make a study of the market for ready-to-wear

10872

garments, dresses, women's and misses' dresses, coats and suits, to ascertain the available sources of supply in the various lines of manufacture, of members of the Guild and non-members of the Guild, to enable you to testify as to the percentage of the market that is controlled by members of the Guild as compared with non-members of the Guild?

Mr. Weisman: Just a moment. I object to that question on the ground it is incompetent, immate-

rial and irrelevant, no proper foundation laid, calls for a conclusion of the witness, is not in proper form and—I think that is enough.

Examiner Averill: Mr. Bergdahl, will you kindly answer the question, because the objection is overruled and exception noted for counsel? You may answer that question as to whether you think you can express an opinion in regard to these matters.

By Mr. Haycraft.

Q. First, whether he made a study.

Examiner Averill: Made a study of them. 10874

A. I did make a study——

Examiner Averill: Yes.

A. —of the market, to find out where we could get merchandise for our stores.

Examiner Averill: From both members of the Guild and non-members?

The Witness: Yes.

Examiner Averill: That is part of that question. That is why I asked it.

By Mr. Haycraft.

Q. Now the second part of it. 10875

Examiner Averill: Now, did you make a study of the percentages?

Mr. Feldman: Has he made previous studies of that character?

A. Well, as a result of our study of the market——

Mr. Weisman: Just a moment. I object to that, "our study." He was asked about his study.

Examiner Averill: Just use it as yourself, please.

Mr. Weisman: Well, if he did it himself, Judge.

Examiner Averill: Well, I——

A. I did not do it myself, Judge. I am in charge of a division of people whose work it is to give me information regarding the market, if I want it, and give our stores information regarding the market, and they—I discussed this subject with them to find out where we could get merchandise for our stores in the market.

Examiner Averill: Yes.

10877 The Witness: And from them—from knowledge, discussions and from the work and effort we made to get merchandise for our stores I think I can give an opinion as to percentages.

Examiner Averill: I see.

The Witness: Maybe——

Examiner Averill: That is all right. What is the next question?

(A paper was thereupon marked for identification Commission's Exhibit 941.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

10878 Q. Have you prepared a memorandum for showing the comparative 1935 dollar volume of members, affiliates and protective affiliates, of the F.O.G.A. as against the entire industry?

Mr. Weisman: I object to the question as incompetent, irrelevant and immaterial unless he shows what he bases that upon. A man comes in and says, "I prepared something, I wrote up a fairy tale and I am now putting it in evidence"; the fact that he

made this up, that he wrote himself a nice story, whatever it is—I have not seen it—would not make him competent.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. Read the question.

(Last question read.)

Examiner Averill: The objection is overruled to that question. You may answer that question.

A. I prepared this memorandum.

10880

By Mr. Haycraft.

Q. I show you Commission's Exhibit 941 for Identification and ask you if that is the memorandum? A. That is.

Q. What was the basis of fact upon which you prepared this memorandum? A. Why, this is the result of collaboration between myself and information I gathered in the office and information gathered by Harris & Serwer.

Examiner Averill: Who?

The Witness: Harris & Serwer.

Examiner Averill: Who is he?

By Mr. Haycraft.

Q. Spell that name. A. Harris & Serwer, H-a-r-r-i-s & S-e-r-w-e-r. 10881

Q. Who are they? A. They are the agency that does publicity work, investigations, and so forth.

Mr. Weisman: It is an advertising——

The Witness: Research.

Mr. Weisman: It is an advertising agency.

The Witness: Research. I think they have been quoted by the F.O.G.A. as an authority, and so forth.

Mr. Weisman: You are mistaken about that like you are about a great many other things. I ask that this be stricken out from this witness' answer, that he thinks we have quoted them. We have quoted them as showing that they do not know what they are talking about.

Examiner Averill: Just a moment. This firm you speak of, are they accountants, public accountants?

The Witness: No, they are not.

By Mr. Haycraft.

10883 Q. Research bureau, are they not?

Mr. Weisman: They are nothing of the kind, Judge.

Examiner Averill: Let him answer.

A. They are a research bureau and I think they have a very good knowledge of the industry.

Mr. Weisman: I ask that that be stricken out.

Examiner Averill: No. I am trying now—this is not evidence we are receiving now; we are trying to establish—it is in an endeavor to show that the sources upon which the witness relied and the sources to which he went to gain the information which enabled him to compare the statement that
10884 has been shown him. That is all we are after right now.

Mr. Weisman: But, Judge, it is clearly incompetent. You cannot pile hearsay on hearsay.

Examiner Averill: Not piling hearsay on hearsay. A man has a right to say how he gathered the information, and if it does not prove to be competent, why, then the paper will be thrown out.

Mr. Weisman: Thank you.

Examiner Averill: But he certainly has a right to state. You cannot possibly ascertain until you ask him.

Mr. Weisman: All right, all right.

Examiner Averill: He may have gone to the very best firm of accountants in the United States.

Mr. Weisman: Suppose he did——

Examiner Averill: That is all right. Please answer the question.

Mr. Weisman: —and that these accountants——

Examiner Averill: But he has a right to say so.

Mr. Weisman: Yes, but that would not make it competent, if these accountants did not have access to our books. 10886

Examiner Averill: I do not know what they had. That is another matter; but you cannot do everything at once.

Mr. Weisman: All right.

Examiner Averill: You want to work the impossible. It cannot be done. If he did it the other way, you would say that was wrong.

Mr. Weisman: All right.

Examiner Averill: And you know it.

Mr. Weisman: I will restrain myself.

Examiner Averill: Off the record.

(There was a discussion off the record.)

(A paper was thereupon marked for identification Commission's Exhibit 942.) 10887

Examiner Averill: Let us go on a little further to see what develops. To my mind that is sufficient.

Mr. Haycraft: I am coming to that.

Examiner Averill: All right, I do not want to hurry you.

10888 *Herbert L. Bergdahl—For Commission—Direct.*

By Mr. Haycraft.

Q. I show you a paper marked Commission's Exhibit 942 for Identification——

Examiner Averill: The same paper you are talking about?

Mr. Haycraft: No, that is the next one, Commission's Exhibit 942. In other words, it is the basis for this, one of the papers he used in preparing that Commission's Exhibit 941.

Examiner Averill: Off the record.

(There was a discussion off the record.)

10889 Examiner Averill: Read the last answer.

(Last answer read as follows: "A. They are a research bureau and I think they have a very good knowledge of the industry.")

(Thereupon the motion was read as follows: "Mr. Weisman: I ask that that be stricken out.")

Examiner Averill: The motion to strike is denied because this is not being received as testimony now; it is only being received as information that would enable us to determine whether the paper when offered, if offered, is competent. I do not know. I cannot tell until I know how it was prepared.

By Mr. Haycraft.

10890 Q. Do you know the way in which——

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. I will ask you, Mr. Bergdahl, where you obtained the information upon which you base your estimate in this Commission's Exhibit 941 for Identification, under

the column entitled "Members of affiliates and protective affiliates"? A. Well, I took the F.O.G.A. membership as of the time this was started, from the 1st of March, or thereabouts.

Mr. Weisman: What year?

The Witness: 1936.

A. (Resumed) And asked Mr. Serwer to prepare a statement, if he could, on what the volume of business was for the respective categories in the industry. He told me he could give me that, and prepared it, and this is the summation of the figures that he gave me.

10892

Examiner Averill: Yes.

By Mr. Haycraft.

Q. Did you make any check of it from your own standpoint? A. Yes, I have checked it, spot checked it, with manufacturers—with members of the F.O.G.A.

Examiner Averill: What do you mean by "spot checked"?

The Witness: Well, I mean that I have taken members of the F.O.G.A. whom I know and asked them whether or not they did so much business. I personally asked them.

Examiner Averill: Do you have with you or have available the papers, if any, that were submitted— 10893
I suppose they were in writing—by this firm you speak of to you, showing the detail?

The Witness: I have not got them with me, no. These are copies here.

Examiner Averill: You mean they are copies here?

The Witness: Yes.

Examiner Averill: Might I look at one of those a moment?

Mr. Haycraft: Surely.

Examiner Averill: Just to see the form of it and let Mr. Weisman see the form of it.

Mr. Haycraft: I will be glad to turn these all over to Mr. Weisman and let him check it against his own records if he wishes. I am satisfied they have been having the same sort of a check made.

Mr. Weisman: No, we made an honest check—

Examiner Averill: No, please.

Mr. Weisman: We made a proper check. This is what we did. Do not take this on the record.

Examiner Averill: Off the record.

10895 (There was a discussion off the record.)

By Mr. Haycraft.

Q. Mr. Bergdahl, do you know Mr. Jack Goldston of the F.O.G.A.? A. Yes, sir.

Q. As far as you know in your contact with the F.O.G.A., what is the position he holds and what does he do? A. He is in charge of the style policy and enforcement activities, as far as I know.

Q. Have you had any contacts or conversations or conferences with him with respect to style piracy enforcement on the part of the Guild? A. When?

Q. During the year 1935? A. Yes, sir.

Q. When did you first have any contacts or conversations or conferences with him with respect to style piracy
10896 enforcement and under what circumstances were you first contacted by him or did you first contact Mr. Goldston? A. You mean Mr. Goldston?

Q. Yes. A. Why, when he first began the work. I think that was the early part of 1935 or late part of 1934. I cannot tell you exactly.

Q. What was the occasion of your contact with him? A. The occasion was the settlement of these disputes or

differences as regards copies, and so forth, between the A.M.C. stores and the Guild, and also when he would call me and ask me to sit on style piracy meetings, style piracy judging committee meetings.

Q. Did you co-operate with Mr. Goldston when called upon to do so? A. Yes.

Q. What was the machinery that was set up by the Guild to determine whether or not an alleged copy was a copy? A. Well, should I go back to the beginning?

Q. Well, first. A. Well, when the retailers—at first, before there were shoppers, the Guild depended upon retailers to make complaints against each other on copies and bring them to the attention of the Guild, of the F.O.G.A., 10898
which would then investigate in some way to ascertain whether or not they were such copies and ask the offending retailers to make returns. Subsequently, they employed Mr. Goldston and shoppers, retail shoppers. They shopped retail shops in several of the cities of the United States, beginning with the largest cities first, and then working down into the smaller cities whose duty it was to watch the style piracy activities. It was the duty of these shoppers to write the F.O.G.A. in the respective cities when they found such things, to represent the F.O.G.A. in the respective cities, as their representative, and to shop the retailers for copies and make reports to the local office of Mr. Goldston in New York here. Mr. Goldston would, when copies were called to his attention by complaining retailers, or through the shoppers, or both, 10899
would investigate and if he thought it was a copy, after examining it, ask the retailers to return those copies. At that time Mr. Goldston may have had some assistance from the manufacturers on these piracy committees before these committees were changed, but it was my understanding that Mr. Goldston did the work pretty much alone. In other words, he judged whether or not it was a copy but he may have had some assistance from the members of the

Guild, the F.O.G.A. It was my suggestion, because of the complaints that I had from retailers from our A.M.C. retailers as well as complaints that I heard from the A.B.O. that the Guild should attempt to set up some kind of a piracy committee that would not be entirely of Guild executives or Guild members. I told Mr. Post at the time that I thought retailers were fair in objecting to having Mr. Goldston make decisions as to whether or not dresses were copies since no matter how unbiased Mr. Goldston might be, retailers would have the valid reason for having an alibi or for excusing themselves, and for finding a reason to differ with Mr. Goldston since he was paid by the
10901 Guild to do his work. I suggested that a style piracy committee should be composed entirely of retailers; and that there should be no F.O.G.A. members on these committees. Mr. Post agreed with me that that was a good idea and he submitted it to his membership. I think they were reluctant to give assent to that type of judging because they felt the retailers—a committee composed solely of retailers might be unfair to the Guild, but he finally did convince them that it would be worth a try—at least, Mr. Post told me that he convinced the members that this should be done. As a consequence, machinery was set up by which the F.O.G.A. could call upon some 200 or 250 buyers and merchandise men in New York department stores and New York resident offices for a revolving, so-called revolving style piracy committees. Does that answer your ques-
10902 tion?

Q. I think so.

Mr. Weisman: May it please your Honor, I do not know if you followed that. I did not object, but it clearly shows it is not responsive, but if your Honor thinks it will help you to see the whole history of the matter, I am not objecting to letting the answer stand as it is.

Examiner Averill: I think it just goes to the history, it probably is not altogether responsive, but I think that it is to a certain degree responsive.

Mr. Weisman: May we have Mr. Haycraft ask when this arrangement was concluded?

By Mr. Haycraft.

Q. Please answer that. A. I asked if I should start at the beginning.

Q. Yes. A. This brings up to the fall of 1935 when this finally went into effect; I do not know just when in the fall, but some time during the fall.

Q. Did you serve on any of these piracy committees? 10904
A. Yes, on two or three occasions I did.

Q. Did any of your employees serve on those committees? A. Yes, they served from time to time.

Q. From your observation and your experience and the reports that you have from your own employees, has the Piracy Committee of the Guild, as it is now selected and constituted—I mean now since December, since the fall of 1935—an impartial and unbiased committee? A. I am sorry to say that I——

Mr. Weisman: Just a moment. May I have that question read?

(Question read.)

Mr. Weisman: I submit the question is wholly incompetent. I call your Honor's attention to the 10905
fact that the method of getting those committees together was suggested by this man. He is asking for a time, furthermore, when this man has not been working upon them as he has heretofore; there has not been that spirit of co-operation and he is too biased to make a fair statement. It is not Guild members; it is retailers. It is retailers who are used to judge.

Examiner Averill: Read the question.

(Question again read.)

Mr. Weisman: I submit that the question is incompetent, immaterial, and irrelevant, and calls for the conclusion of the witness.

Examiner Averill: He has been asked for his opinion, which is a conclusion, of course, and that is what we have to give on matters of this kind. I will overrule the objection; exception noted.

(Question again read.)

A. Why, they may be, but I think generally they are not.

10907 *By Mr. Haycraft.*

Q. What are the facts on which you base that conclusion? A. Well, when my buyers come back I always asked them what the dispute was about, if I was not at the F.O.G.A. office myself, and from those reports I learned certain things about this during the fall of 1935 because there were any of these hostilities, and Mr. Weisman talked about. I learned, for example——

Mr. Weisman: I submit that all of this is hearsay. That the witness has ably demonstrated that what he is testifying to is not first hand. I now ask that all his answer be stricken out.

Examiner Averill: He has not reached the answer. He is now giving the date upon which he has

10908 based his opinion and upon which his opinion, therefore, is given. Certainly, counsel has a right to ask upon which basis his opinion is given.

A. I find that there were, or, rather, I found that there were two—in other words, if there were two better dress buyers, for example, on a committee of three, as against one inexpensive dress buyer, that the two better dress buyers might and frequently were inclined to favor their bet-

ter end—that is, the F.O.G.A. manufacturer, and that they would be tempted to vote against the non-Guild manufacturer, particularly if they had the dress in stock, it would be hard for them to be fair even to a near copy. Now, if there were two inexpensive dress buyers on the committee, they very frequently——

Mr. Weisman: May I now object? I think it is now clear what the situation is to your Honor.

Examiner Averill: All of this thing is going in, as repetition, because I think it has already gone in here, and I think I can put my finger on the record at the point where it has gone in heretofore.

Mr. Weisman: He has been asked the question as to what he based his opinion upon, and he has gone far beyond that. 10910

Examiner Averill: He is telling us so.

Mr. Weisman: May I most respectfully differ with your Honor in regard to that? I am sorry to differ with you, Judge, because the answer to that question would have to be "My buyers came back and told me so and so." And I say that would be hearsay because he is telling what they came back and told him, and we ought to have the buyers here to tell us what they came back and told him, and then we can interrogate them in regard to the matter. This completely shuts me off from any fair kind of cross-examination upon the matter.

Examiner Averill: But he is asking what was the information that influenced this witness. 10911

Mr. Weisman: It would be clearly incompetent. You would have to bring the buyers here.

Examiner Averill: What the buyers told him is what affected his opinion. It is the effect produced upon the minds of the people; it is the effect produced upon the mental attitude, and he is giving us that, although I think it is all in, my objection to

this is that this is all repetitious, this is all right in there already about the buyers on this committee, and how they sometimes came from different businesses and represented the low end or the high end, and that sometimes there were two of the better, and one of the lower, and they would vote one way and the other one would vote the other way, and then vice versa whether there were two of the low end on there and one of the better dresses, they would vote just the opposite. I do not mean to say that those are the facts, but that is in here just how the committee is made up from time to time, and you stated yourself that it differed every day.

10913 Mr. Haycraft: Let the witness finish the answer, if your Honor please.

Examiner Averill: Objection overruled; exception noted. What was the question?

(Question read.)

The Witness: What was my answer to it?

(Answer read.)

A. As against one better dress buyer they would be inclined to favor the copy since it would be to their interest to do so. At least, that was my experience with these committees.

By Mr. Haycraft.

10914 Q. Where did these committees hold their meetings? A. At the F.O.G.A. office generally, but not always. I believe at times they were held out of town, although that was not the original plan as it was originally arrived at.

Q. When they were held in New York where were they held? A. As far as that is concerned, I think they were all held at the office of the F.O.G.A.; every one that I ever heard of, anyhow.

Q. Who selected the committee? A. The F.O.G.A. executives selected the committee.

Q. Who attended the meetings? A. Who attended the committee meetings?

Q. Yes.

Mr. Weisman: At this time, I would like to address myself to a motion to strike. The witness has finished his answer and I would like to make a motion to strike the entire answer and the questions relating thereto since he is now on a new query.

Examiner Averill: I think he is still continuing on the same thing, is he not?

Mr. Haycraft: I am still on the piracy commit- 10916
tees and on the facts on which he based his opinion.

Examiner Averill: Counsel says he is still on the question of supporting his reason for his feelings as he has expressed himself in that regard.

Mr. Haycraft: That is correct, your Honor.

Mr. Weisman: Very well. Let us get over with it as soon as possible.

A. They were attended by the retail members of the Guild as well as the executives of the F.O.G.A. who were in the office; it was held in their office, and manufacturers, the interested manufacturers could be present if they wanted to; not always at the committee meetings, but they were present——

10917

Mr. Weisman: I ask that the latter part be stricken. He was asked who was present and now he is telling who can be present and he should be kept to those who were present, it seems to me under the question that was asked him.

Examiner Averill: He is saying that some of them were present, but not always. You know some classes of people might be there at a certain meeting, and not others, and others be there at a certain

meeting and others be absent; in other words, it changed around from time to time, as I understand it.

Mr. Weisman: Quite true, but this man said he attended altogether two or three and where he gets the knowledge to testify as to all of this I cannot understand. I know that he has testified that on one or two or three occasions he was there. Now, he is describing all of the meetings of these committees which were held, and they were held very frequently.

Examiner Averill: He is giving his general pic-
10919 ture upon which he has stated his previous impression.

Mr. Weisman: I do not see how he can say what happened when he was not there.

Examiner Averill: He is telling us what ones were present, and, of course, different ones would be there on different days.

Mr. Weisman: Of course, if anybody reads this record they would think that this man sat in on each and every one of these hearings, and that he knows what he is talking about, but unfortunately it is obvious that he has not been there, and it is simply a question of a witness who is only too willing to testify.

Examiner Averill: I think the whole thing to
10920 me is as clear as the noon day sun. I understand it very well.

The Witness: But they were——

Examiner Averill: Was the person from whom the alleged copy was taken present at the hearing?

The Witness: I said the interested manufacturers—from the retailer?

Examiner Averill: Yes.

The Witness: No, the retailer frequently was not present, I mean the particular retailer that made the accusation, I do not recall that they ever were present, but they may have been; there was no proscription against anybody, anybody could be there, I guess, that wanted; they were held out in the open.

Examiner Averill: How about the retailer that was accused of having the copy—was he present?

The Witness: Retailers were not accused, but manufacturers.

Examiner Averill: The retailer where the garment may have been found.

10922

The Witness: No, they could be, but if they were out of town, they would not be or could not be, physically.

Examiner Averill: What officials of the F.O.G.A. were present?

The Witness: Any of them that were in the office could be present. They sometimes were held in Mr. Post's office, at which time he might be present if he happened to be there.

Examiner Averill: And how about the rest of the officials of the F.O.G.A.?

The Witness: Mr. Golby might be there, or Mr. Goldston, or any of the three might be there, or all three, or any two of them.

Examiner Averill: That is all I wanted to ask. 10923 I think I have it cleared up as far as I am concerned.

Mr. Haycraft: Shall I continue?

Examiner Averill: Yes.

By Mr. Haycraft.

Q. What was the procedure that took place? A. The procedure was to ask the committee to look over the—

the retail committee to look over the dresses in question, or copies, whatever the case might be, or the suit or coat, and render a decision as to whether or not they thought one was a copy of the other. The committee would reach its decision and tell the F.O.G.A., or Mr. Goldston, what the decision was.

Q. To your knowledge, were those decisions ever changed by officials of the F.O.G.A.? A. Why, not to my personal knowledge, but some of my buyers——

Q. Reported to you such? A. Yes.

Mr. Weisman: I object to what was reported to him.

10925 Examiner Averill: I think that is going too far. The people who reported anything of that sort should be the witness in this case. That is going too far. I have stretched it a good deal, but I cannot go quite that far.

The Witness: Of course, I have one instance where I discussed the matter with Mr. Goldston in some detail, and the decision was changed.

By Mr. Haycraft.

Q. In what instance was that? A. It was in connection with some dress company versus somebody else; I do not think of the name just now. This particular Guild member—that was before they became members of the
10926 Guild, and it was a case in which a given committee went the other way and in which one of our buyers was a member, and the Committee made the decision that the dress was a copy. The manufacturer brought it to my attention, or, at least, it came to my attention, and I called up Jack Goldston, and I said, "Jack, in your own honest opinion, is that a copy of the dress in question?" And he said, "Well, frankly, I do not think it is." I said, "Very well, why do you send it out as a copy, then?" He said,

"Well, I do not know, but that is the decision of the committee." I said, "Well, you had better see that that is changed because obviously this is unfair, and I am going to make an issue of it because it is not right." I think as the result of that there was some change in the decision. However, prior to that when the committee was in action they made two different decisions on that particular dress, which was subsequently brought to my attention.

Examiner Averill: Gentlemen, it is now 4.20, and counsel having asked for an adjournment at that hour in order that he may be present in New York before the United States Circuit Court, we will now adjourn to reconvene at 10 o'clock to- 10928
morrow morning in this room.

(Whereupon, at 4.20 o'clock P. M., November 23, 1936, the hearing was adjourned.)

Room 901, 45 Broadway,
New York, New York,
November 24, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, *Examiner*.

(SAME APPEARANCES:) 10929

PROCEEDINGS.

Examiner Averill: Gentlemen, whenever you are ready, you may proceed.

Mr. Haycraft: All right, Mr. Bergdahl, will you resume the stand.

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination by Mr. Haycraft (continued).

Q. Mr. Bergdahl, based upon your experience and knowledge of the merchandising problems of the retail dealers in women's and misses' ready-to-wear garments, and, in your capacity as general merchandising manager of the A.M.C., and as chairman of the F.O.G.A. committee of the A.B.O., and taking into consideration all the facts that you have related in this proceeding as to the operations of the F.O.G.A. program, to curb so-called style
10931 piracy, please state your opinion of the effect of that program upon the retail dealers of women's and misses' ready-to-wear garments from the standpoint of their ability to obtain a supply of merchandise, and ability to sell that merchandise in competition with other dealers in the industry, confining your answer, first, to so-called specialty shops handling women's and misses' ready-to-wear garments, who are co-operating with the Guild by returning to manufacturers garments that are alleged to be copies of garments manufactured by the members of the Guild?

Examiner Averill: That is quite clear.

Mr. Weisman: That is all right. I have no objection.

10932 Examiner Averill: Now, then, Mr. Bergdahl, you may tell us.

A. Well, specialty stores of the type you have referred to in the question, are for the most part those who deal in better merchandise——

Mr. Weisman: May it please your Honor——

Examiner Averill: Now, wait.

Mr. Weisman: No, no.

Examiner Averill: He has to do this in order to answer the question.

Mr. Weisman: No, he says that——

Examiner Averill: As to ability to obtain supplies.

Mr. Weisman: But, Judge——

Examiner Averill: He must first state what kind of supplies they have to obtain.

Mr. Weisman: I submit that he does not. I want my objection to appear on the record.

Examiner Averill: All right.

Mr. Weisman: He is asked for his opinion. 10934

Examiner Averill: Yes.

Mr. Weisman: He is not asked to argue his opinion; and I submit that a hypothetical question given to a witness, the courts have again and again said if after the witness is qualified, and based on something, he can then give his opinion. Now, this man has been asked his opinion, that in the ordinary and regular procedure requires an answer, in my opinion, thus and thus is the fact, not a long exhortation upon why he thinks it is, or argumentatively presenting his knowledge of it. He is asked for his opinion, and I submit we should have his opinion in answer to such a question.

Examiner Averill: The objection is overruled.

Mr. Weisman: Exception. 10935

Examiner Averill: Yes.

Mr. Weisman: May I have an exception?

Examiner Averill: Surely.

The Witness: Now, may I have my answer read?

Q. (Answer read.) A. (Resumed) In my opinion, therefore, they do not have any trouble getting merchan-

dise, because the whole market is open to them, not only the non-Guild market, but the Guild market as well. As far as selling merchandise is concerned, they are materially assisted by the F.O.G.A. program because of the fact that the program itself tends to eliminate competition; it will eliminate competition on copies, and mere copies of better merchandise made by Guild manufacturers which is handled by these specialty shops.

By Mr. Haycraft.

Q. Now, to that same question, I will ask you to confine your answer to those speciality shops that are not co-
10937 operating with the Guild, and do not return garments to manufacturers that are alleged to be copies of garments sold by members of the Guild. A. All right. Such shops, in my opinion, or, as I understand them, are, for the most part, those shops who handled merchandise in the low-end brackets, primarily up to $6.75 cost, but in rare cases possibly a little higher. These shops have had very little difficulty obtaining merchandise, because they were doing business in brackets where the Guild had very few members, and, furthermore, had very few members— Cross the last out. —as far as selling the merchandise is concerned, they were materially assisted by the Guild program since that program tended to eliminate some competition of these low-end specialty shops who are not co-operating with the
10938 Guild, those signatories to the Guild program, or, rather, those retailers signed up with the Guild program who previously had handled copies and near copies, and adaptations of merchandise manufactured by Guild members, and there might materially assist these specialty shops in disposing of their merchandise with less competition.

Q. With this same question, this same foundation question, I will ask you for your opinion of the effect of the Guild program upon department stores handling both

high- and low-priced garments— A. Is the question finished, sir?

Q. —first co-operating with the Guild program by returning to manufacturers garments that are alleged to be copies of garments manufactured by the Guild manufacturers.

Mr. Weisman: Just wait a minute. I assume that when we are speaking of the Guild program in this query, and in all these lines, this line of queries, my learned adversary is referring to the Guild program, as it was at some particular point. Unfortunately, that point has not been fixed in these questions. Obviously, the program has been 10940
a different one all along. I assume, therefore, if Mr. Haycraft concurs therein, that the question projects itself to the Guild program as it was in February, 1936, and these answers shall be deemed as of that date.

Mr. Haycraft: Yes.

Mr. Weisman: I think that will aid the record materially.

Mr. Haycraft: Correct.

Examiner Averill: Is that correct?

Mr. Haycraft: That is my intention.

Examiner Averill: That is how you understood it, Mr. Bergdahl?

The Witness: Yes. 10941

Examiner Averill: I just want to know if he understands that as to his answers—he said he did —so that will be all right. Read the last question —or do you know what it was?

The Witness: Yes.

Examiner Averill: You know what it was?

The Witness: I understood it; yes, sir.

Examiner Averill: But now off the record.

(There was a discussion off the record.)

Mr. Weisman: Would you like the question read again?

The Witness: No, I am just trying to think—

Mr. Weisman: Oh.

The Witness: —think about the answer. In my opinion, and according to my experience, most department stores handle a range of merchandise, generally, from the very lowest up to price lines that are controlled by the Guild. Many department stores also have budget shops and basements where they specialize in low-end merchandise.

10943 Such department stores co-operating with the Guild could only do so from the beginning with a leniency consideration, as has been described here, and those stores, even with the leniency consideration, which got more stringent as time went along, up to February 1, 1926, when——

Examiner Averill: 1926?

The Witness: 1936.

Examiner Averill: Surely.

A. (Resumed) —when it was withdrawn entirely, I mean, the leniency consideration. And those stores would, when that leniency consideration is withdrawn entirely, find it very difficult to maintain a competitive position in their respective localities. If they chose to co-operate

10911 with the Guild on the complete program, without leniency consideration, they would have to return merchandise in the low end that the specialty shops, who were not co-operating with the Guild, could keep and sell. If they chose not to go along with the Guild, they are then faced with the situation of trying to be competitive with the better specialty stores who handle Guild merchandise and have a free and open market on all price lines, without

having the benefit of buying and handling merchandise that is manufactured by Guild resources—by F.O.G.A. resources.

This would prove, in my opinion, very difficult for most department stores, since most department stores in the United States to-day have been in business for a number of years, and in accordance with the laws of the land have been permitted to grow, invest money, put capital into the business, on handling merchandise whether they were copies or not, without infringing on laws of the land——

The Witness: Whether they were copies or not without infringing the laws of the land. Now, as I understand it, these department stores have 10946
(have been) permitted in accordance with the directors of the industry to handle copies——

Examiner Averill: You mean "have been permitted"?

The Witness: —have been permitted in past business practices, and without infringing on any laws, as I understand it, have been permitted to handle these copies as were made by the industry, and ', after they have built up a big business, or a considerable business, according to their ability, to ask them not to continue handling such merchandise——

Examiner Averill: When you say "such merchandise," you mean copies? 10947

The Witness: I mean copies. —affects their whole tempo and their investment and everything that has been built up by them in their respective communities, so that to some it would be very difficult—to sum it up, it would be very difficult for a department store to sign up with the Guild program, and honestly live up to it.

By Mr. Haycraft.

Q. Now— A. Particularly if they handle low-end merchandise.

Q. Have you completed your answer? A. I think I have, sir.

Cross-examination by Mr. Weisman.

Q. Mr. Bergdahl, as executive director of the A.M.C., who is your immediate superior?

Mr. Haycraft: I object to the question because the witness has not said that he was executive director.

10949

Mr. Weisman: Very well. I will withdraw the question.

By Mr. Weisman.

Q. What is your position with the A.M.C.? What are you? A. At the present time, I am general merchandise manager.

Q. Thank you. The mistake was mine. A. O.K.

Q. As such general merchandise manager, who is your immediate superior? A. Col. Reilly.

Q. What is Col. Reilly's full name? A. Phillip J. Reilly.

Q. From Col. Phillip J. Reilly you take your orders?

10950 A. He is my superior.

Q. Well, what does that mean when you say he is your superior? Do you not take orders from him if he sees fit to give you them? A. That is right. I do.

Q. Now, who is, in turn, the person or persons to whom Mr. Reilly reports to? A. I am sorry, I did not get the question.

Q. Who is, in turn, those to whom Col. Reilly reports? A. Store principals.

Q. You mean, the executive committee of the A.M.C.? A. Yes, if you wish.

Q. No, I do not wish it as I wish; I want it as the facts are. A. Well, it is the same thing, but if you want to call it the executive committee, all right.

Q. It is not what I want to call it. You might be surprised what I really would like to call it. Do you people call it the executive committee? A. Yes.

Q. I just want to get a sketchy picture of the organization for which you work. In other words, does this organization which is composed of, in the main, these eighteen stores, and the executives of these eighteen stores, do they composed the executive committee of the A.M.C.? A. 10952.
That is right.

Q. I said eighteen, but I meant to say twenty. There are twenty of these stores? A. Yes.

Q. Does the executive committee function as the board of directors, you might say, of a corporation, in that it directs the policies and affairs, generally, of the A.M.C.? A. That is right.

Q. The direct executive officer to carry out the directions and policies and fiats of the executive committee is Col. Reilly, Col. Phillip J. Reilly? A. He is.

Q. And you are under him? A. Yes.

Q. As such merchandise manager, have you made any study of the markets, the retail market, and the problems thereto, aside from your direct experience? A. How do 10953
you mean?

Q. Well, I mean, sometimes executives are known to read brochures on the subject which they are concerned with. There are economic professors of various colleges and universities who write on these things, and who conduct researches. Have you made it your business to keep yourself well informed as to who are recognized in the industry, and in the merchandising field, as authorities in this business in which you are engaged?

Examiner Averill: Are there any such?

Mr. Weisman: Yes, your Honor.

Examiner Averill: You mean theorists?

Mr. Weisman: Well, they are not alone theorists, but there are a number of well-known economic advisers who have made great research into these problems, collated the evidence and facts, and presented them to the public. As a matter of fact, I believe it is not secret that the A.M.C. employed one of those, to wit, Prof. Paul H. Nystrom.

Examiner Averill: Read the question.

(Question read.)

10955 Examiner Averill: The question may be answered.

The Witness: What was the question before that?

(The prior question was read.)

The Witness: I do not understand.

Examiner Averill: He means, have you conducted any investigations or read into the literature of the so-called experts or theorists and college professors. A. As I understand the question, I cannot say that I have.

By Mr. Weisman.

Q. In the exercise of your duties, did you ever hear that
10956 there were pamphlets or books put out by the Department of Commerce of the United States, let us say, upon these problems of style piracy? A. No. I cannot say that I have.

Q. Did you ever hear that the advisory council of the N.R.A., after the N.R.A. had been declared unconstitutional, had made a coliation of all the facts which had been made available to it, and had written on this subject of style piracy as applied to the general merchandising of

ladies' ready-to-wear? A. I did not know that they had made such a thesis on style piracy.

Q. Did you ever hear of Professor Nystrom? A. Yes, sir.

Q. Professor Paul H. Nystrom, PhD., Professor of Marketing, School of Business, Columbia University, formerly director of the Retail Research Association, and the Associated Merchandising Corporation. That is the A.M.C., the last one, is it? A. Yes.

Q. When Professor Nystrom was with the A.M.C., was he the head of the A.M.C. at that time? A. He was the director.

Q. Yes. He was in the place that your superior, Mr. 10958
Reilly, now is? A. Yes, sir.

Q. Did you, in the exercise of your duties, ever learn that Professor Nystrom had written books wherein—a book known as "Fashion Merchandising," based upon his experience as head of the A.M.C., and based upon independent investigations and researches that he had made? A. Well, I knew that he had written books.

Q. Did you know that he had written the book that I have just referred to, "Fashion Merchandising"? A. I have heard of it, but I have never read it.

Q. Did you ever feel that, as an expert in this line or engaged in this business, as you have testified—because we will see what sort of an expert you are as we go along—you should, or that part of your duties would be, to inform yourself with what other seemingly well-informed people 10959
had to say and think about these problems?

Mr. Haycraft: I object.

Examiner Averill: Overruled.

Mr. Martin: Exception.

By Mr. Weisman.

Q. Answer the question. A. Why, I think I know what Dr. Nystrom thinks pretty well without reading his books.

Q. You mean you know what he thinks because you have met him? A. Met him and talked to him.

Q. And talked with him about these things? A. Yes.

Q. At great length? A. Yes.

Q. Do you agree generally with Dr. Nystrom's conclusions, or do you differ from them?

Mr. Haycraft: With respect to what? I object to the question in the present form as too broad.

By Mr. Weisman.

Q. With respect to the problems incident to fashion merchandising in ladies' ready-to-wear.

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Mr. Haycraft: I object to that unless it is restricted to the subject matter of this case.

Examiner Averill: I think it is too broad.

By Mr. Weisman.

Q. With regard to style piracy. A. Why, if you will tell me what he wrote at one time or another I will try to answer you.

Q. All right.

Mr. Haycraft: I want to make this plain, that I shall object to any question that will refer to whether or not style piracy is good or is not good as a thing that should be done. That is not an issue in this case. It has not been made an issue in this case. The witness has not testified to that. The witness has testified to the effect that he felt so-and-so about the activities of this particular guild. I wish to object to any generalizations.

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Examiner Averill: I would like to ask if any question has been directly raised as to style piracy per se, and when I say "style piracy" I mean the

copying of designs put out first by certain people and then other people copying them?

Mr. Haycraft: That is not an issue in this case.

Mr. Weisman: As I understand it, there is no allegation that that per se is an unfair thing or that the efforts to curb it per se is unfair.

Mr. Haycraft: No. That is not an issue in this case.

Examiner Averill: It is the methods used in an attempt to curb it that is the issue?

Mr. Haycraft: This effort made by this Guild.

Examiner Averill: Therefore, unless Mr. Weisman sees some good reason, I do not know that it 10964
is essential to go into the question as to the wisdom of the economic set-up or the economic reasons for endeavoring to protect your own designs. It seems to me there is no allegation that that per se is unfair.

Mr. Weisman: May it please your Honor, do I understand that counsel for the Commission will at this time be willing to and will stipulate that there is a right in a manufacturer of an original design to attempt to protect that original design from copying?

Mr. Haycraft: No, I make no stipulation with respect to that question whatever. It is not an issue in this case.

Examiner Averill: He will stipulate that there 10965
is no issue in this case, I imagine, as to that.

Mr. Haycraft: That question has never arisen in this case.

Examiner Averill: As to the individual right to attempt, by any fair means, to protect your own designs. That is not an issue in this case?

Mr. Haycraft: That is not an issue in this case.

By Mr. Weisman.

Q. On page 218 of Dr. Nystrom's book "Fashion Merchandising," he says: "No sooner does a new design of any excellence appear upon the market than goods also appear, usually in poorer materials and workmanship, and almost invariably at lower prices." Do you agree with that?

Mr. Haycraft: That is objected to.

Mr. Weisman: If your Honor please, that is a foundation question. I cannot ask all of my questions at once.

10967 Examiner Averill: Overruled.

By Mr. Weisman.

Q. Do you agree with that, from your experience? A. I would say so.

Q. Dr. Nystrom then goes on and says: "Consumers are confused, and are naturally unwilling to pay higher prices when apparently the same goods are available at lower prices." Do you agree with that?

Mr. Haycraft: Same objection.

Examiner Averill: Overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

10968 A. Not entirely.

By Mr. Weisman.

Q. Tell me wherein you differ. A. Well, in my experience, we have had a number of instances where merchandise is sold in the better priced lines long after it was copied.

Q. Dr. Nystrom——

Examiner Averill: He did not say that that was not so. I do not think the witness has fairly answered the question.

Mr. Weisman: I do not think so, either. I ask the question be read to the witness.

(Question read.)

By Mr. Weisman.

Q. May I also say, when I ask you "Do you agree with that?" that I do not mean do you know of any specific instances where the situation has been different, but I mean: Is that a fair general statement?

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Mr. Haycraft: Of course, I am objecting to all of this as not proper.

Examiner Averill: Oh, this is proper cross-examination; he has a right, when you offer this man as an expert, he has a right to ask him what other men have thought about the matter who have written on the subject. My only idea is—and there seems to be such a confusion among counsel that I do not desire at the present moment to express a definite view upon it—I do not think, from my reading of the complaint, I do not think there is any issue in this case in connection with the efforts to check style piracy, so-called, but that the case is centered upon the methods used in the attempt to——

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Mr. Weisman: Exactly.

Examiner Averill: —check style piracy, resulting with or dealing with, rather, the things that may have been done by this Guild in its efforts to check style piracy, as the copying of the original designs of others is referred to in this case.

Mr. Haycraft: Yes, sir; and also as to whether or not style piracy may or may not be to an ex-

tent, and, also, as to what extent an evil in the industry, and that is the reason I am declining to stipulate with Mr. Weisman on that; and, furthermore, I am making these objections to these questions.

Examiner Averill: That is not a direct issue, as I see it, but I can see that collaterally it would have some effect because of the fact that you are asked to stop something which may be, per se, a beneficial thing; obviously, it would be entirely different from the situation if the thing which you might be attempting to stop was an evil. Obvi-
10973 ously, if two automobiles are rushing down the street at great speed, and in excess of that speed usually adopted by vehicles moving down the street, and one of them is an ambulance upon a message of mercy, and the other is loaded with racketeers or bandits fleeing from the scene of a villainous crime, the actions of officers in stopping the two cars would be considered in a different light.

Mr. Haycraft: Well, then, of course I disagree with the Examiner in the light of the recent decision of the Supreme Court——

Examiner Averill: I do not happen to see it.

Mr. Haycraft: I do not think it makes a bit of difference as to whether the subject-matter of the thing to be stopped is an evil, or not an evil.

10974 Mr. Weisman: That is a wrong interpretation of the——

Examiner Averill: One moment, one moment, gentlemen.

Mr. Haycraft: The contention of the Commission is that regardless of whether it is an evil or a benefit, that you cannot use a boycott to stop it, and that is the issue in this case.

Mr. Weisman: Well, this——

Examiner Averill: One moment——

Mr. Haycraft: In numerous cases where boycotts have been used to protect a beneficial thing, the courts say you cannot do it.

Mr. Weisman: That is not so.

Mr. Haycraft: And that is where the issue is in this case.

Mr. Weisman: Justices Brandeis, Roberts and Stone, those are the respective people who disagree with my friend's statements, and I do not want to add myself to those august presences, it would be presumptuous.

Examiner Averill: Go ahead, and I am going to 10976
let you go into it a little.

Mr. Weisman: Thank you.

Examiner Averill: Not too much, though.

Mr. Weisman: Well, just off the record, please.

(Prolonged discussion off the record.)

Examiner Averill: Now, back on the record. Read the last question.

(Last question read.)

Examiner Averill: I am going to overrule the objection, gentlemen, and let it go on, although I do not think that at this stage, as I have stated off the record, that at this stage the question as to whether the style piracy is an evil or a good is an issue in this case, but I can see where it might be 10977
an issue, or for the affirmative defense, but I am going to let you proceed for a little while on that, and then possibly you——

Mr. Haycraft: I wish to have an exception, Mr Examiner, to that ruling.

Examiner Averill: Yes.

By Mr. Weisman.

Q. Will you please answer, Mr. Bergdahl? A. Well, it would be pretty hard for me to testify as to whether or not customers were confused; I have not heard of any confusion among customers on this plan, on this copying business. I think customers are aware that there is copying.

Q. Well, let me ask you this: Is it your statement that these—that when you find a copy—is it not generally a fact that the copy sells at lower price than the original? A. A copy generally sells at a lower price than the original.

10979 Q. And is it not one of the great contributing factors to that lower price that the manufacturer of the copy takes the benefit of the experimentation, designing, and so forth, of the manufacturer, or the originator, and just takes it over, without the expense of the original manufacturer—the manufacturer of the original had, with regard thereto? A. In the first place, I cannot quite agree that there are originals. I used the word "original" because I think I know what you mean, original with the so-called Guild manufacturers, but that does not mean that it is entirely original, you understand.

Q. We understand what we mean. We mean origination of design, and not of style. A. Now, will you—after I made that statement—what was the question?

10980 (Last question read.)

A. Well, if he takes—if he copies another man's dress, he takes it over, at whatever it costs him, to do that. Now——

Q. Well, is that the best answer you can make, Mr. Expert? A. Why, if a man copies another man's dress, I will——

Examiner Averill: His point is this——

The Witness: —I will agree that he does not share that other man's expense, if that is what he wants me to say.

Examiner Averill: That is what he meant.

The Witness: He does not go over to the man and say, "Here, I will contribute to your expense of doing business"——

Examiner Averill: Oh, no, no.

The Witness: I will agree——

Examiner Averill: Not the expense of doing business, that is not the point. Here is the point: Is there not some expense formed by the man who 10982
puts out what is termed to be an original design, in designing, in having it designed? Is there not some expense in that connection, which expense would not be attached to it who, seeing that design, used it and made a copy of it?

The Witness: That is right.

Examiner Averill: Do you see what I mean?

The Witness: Yes.

Examiner Averill: Is there not something of that sort?

The Witness: Yes.

Examiner Averill: That is what he meant.

The Witness: That is right.

By Mr. Weisman. 10983

Q. Professor Nystrom further says: "No sooner than a new design of any excellence appears on the market, that copies also appear usually in poorer materials and workmanship." Is that not true? A. Well, new ideas are copies, and they are usually copied into lower-price lines.

Q. Well, no, and is it not usually in poorer materials?

A. Oh——

Q. And with poorer workmanship? A. Not always.

Q. No, I did not say "always." It is usually, we know that— A. Well, I beg your pardon, I wish it were usually.

Q. That is different. Do you differ— A. —generally, and many times, the low-end merchandise is better than the better merchandise——

Q. Wait a moment— A. —so let us get it very clear.

Q. Then you differ from Professor Nystrom's statement? A. Undoubtedly; many times I would differ with what he would say, and I think he would agree with me if I would talk to him on the subject, too, because we have had many chats on the subject, and he has admitted many times that I have new slants on things that he did not have.

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Q. I see. A. I am not criticizing him any, see; he has the right to his opinion; but I have a line of work that he never has, and maybe I have a different——

Q. So, let us see. So, then, it is your statement, is it, that usually these copies at lesser prices are in merchandise, that is, in goods, that are equally as good, with equally good workmanship— A. It depends.

Q. —is that your statement? A. It depends on too many things.

Q. Would you then say— A. I will answer it: There are copies—there are copies which are as good, if not better, than the so-called "original"; at lower prices; and there are copies that are inferior, have inferior material and workmanship, at lower prices. There are both.

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Q. Well, now, since this is so, would you not say, then, that by your very answer you have demonstrated that Professor Nystrom's statement, which I read to you before to the effect that consumer influence arises from this, is correct? A. No.

Q. No. All right. Now— A. I think the public knows what is going on. I think I know they are copies, and I think they can tell what they are. I do not think there is any confusion about it whatsoever.

Q. All right. Professor Nystrom further goes on to say: "As a consequence"—referring to the copying—"it is voluntarily impossible for any creator or originator to recover even the cost of his efforts to prepare new designs, to say nothing of making a net profit from any new designs." You differ with that, too, I take it? A. Is that the whole statement?

Q. That is, that ends the paragraph. A. That ends the paragraph, eh? What does that say again? You mean you have read the first two sentences of the paragraph previously?

Q. Yes. A. And now you are reading the entire other subject-matter of that paragraph; is that right? 10988

Mr. Haycraft: I suggest that the witness be allowed to read the sentence, and that portion of it.

Examiner Averill: You might let him see it.

Mr. Weisman: I have no objection.

By Mr. Weisman.

Q. Would you like to see it? A. Yes.

(Counsel indicates in book to witness.)

Q. I just read you the last sentence of the paragraph starting here—I want you to read it—"As a consequence, it is voluntarily impossible for any creator or originator"—I ask you now, do you differ with that statement? A. Just a moment. 10989

Q. All right.

Mr. Haycraft: Of course, Mr. Examiner, I wish to make this observation, as part of my general objection to this question—this witness is not, in my opinion, prepared to testify, or an expert, as to the problems of manufacturers.

Mr. Weisman: Will you so stipulate? Did you not offer him?

Mr. Haycraft: Wait a moment until I get finished. I attempted to qualify him, and, in my humble opinion, I did not do so.

Mr. Weisman: Oh, well, all right, maybe I do not want to ask that question.

The Witness: Wait a moment.

Examiner Averill: Well, now, there is a question pending—if you want to withdraw it, all right.

Mr. Weisman: I withdraw that question in view of the statement made by Mr. Haycraft.

The Witness: What was the statement; may I hear it?

10991 Mr. Weisman: That you were not any expert as to manufacturers' problems.

Mr. Haycraft: I recall my hypothetical question that I placed with him was as to the retail problems, and I object to go into the manufacturers' problems.

By Mr. Weisman.

Q. Professor Nystrom says, referring to concerns which originate their designs: "Such concerns find their designs promptly imitated in a wholesale way as soon as placed upon the market." Now, do you agree or differ with that statement? A. Well, there are certainly exceptions to his statement.

10992 Q. No, I am asking you as a general proposition—do you agree with or differ from that statement? A. Well, I—I will agree with that, with the exceptions I noted.

Q. Now, Dr. Nystrom also says, referring to the industry as a whole: "Almost everyone deplores design copying in principle, but lacking any effective legal check, copying continues openly and brazenly." Do you agree with that statement, or do you differ from it?

Mr. Haycraft: Objected to unless the time is indicated there, Mr. Examiner.

Examiner Averill: Gentlemen, I do not think—I think you have gone far enough.

Mr. Weisman: Your Honor——

Examiner Averill: "Openly and brazenly" are two words—if you want to make it whether copying are assuming larger and larger proportions, all right, ask him that.

Mr. Weisman: Yes.

Examiner Averill: But when you talk about openly and brazenly, we do not know what the witness means by that, or what the learned author meant. 10994

Mr. Weisman: Well, I withdraw that and say:

By Mr. Weisman.

Q. Professor Nystrom tells us that almost everyone deplores design copying in principle, but lacking any legal check copying continues——

Mr. Haycraft: Your Honor understands, of course, I have an objection to all of this line of examination.

Examiner Averill: All this line, yes.

By Mr. Weisman.

Q. Do you agree with that? A. May I read it? May I look at it myself? You said you had no objections. I would just as soon look at it. 10995

Q. Well, here I have no—it is a very simple question; there it is (handing book to witness). I do not want to hide anything from you, Bergdahl. A. Well, I would agree with Dr. Nystrom that copying is a very difficult problem to solve, and it does continue, but I do not want to use the same adjectives.

Q. No. A. I do not know what he meant by that.

Q. That is all right; I am trying—Now, he also says as follows: "Indeed, there seems to be scarcely any industry in the fashion field in which one may not now find producers who not only copy, but who systematically make up their lines by imitation of the best selling numbers of the leading creators in their respective industries." In your opinion, is that true, with regard to the dress market? A. When?

Q. Before the Fashion Originators Guild started its program? A. Well, I think there were many manufacturers—are many manufacturers who do that at the present time.

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Q. In other words, then, I understand you would say that from your experience, that at the time that the Fashion Originators Guild was organized, there were a number of people engaged in this business who did no origination but merely copied the best selling numbers of the leading creators in the ready-to-wear business; is that not so? A. There were, including members of the F.O.G.A.

Q. Now, will you——

Mr. Weisman: I move that the latter part of the answer be stricken out.

Examiner Averill: Why?

Mr. Weisman: Well, because I think it is not responsive, and I will come to the question—I will give him the opportunity to say that immediately after, but I want it to appear very plain; I do not want to cover anything up.

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Examiner Averill: I know.

Mr. Weisman: See?

Examiner Averill: But I do not see why counsel——

Mr. Weisman: All right, I will let it stand, if your Honor thinks it should.

Examiner Averill: Yes.

By Mr. Weisman.

Q. You said in answer to my question, "Yes, and that is true as to some of the people who are now members of the F.O.G.A." Is that correct? A. Yes, "including."

Q. —"some of the members of the F.O.G.A."? A. That is right.

Q. In other words, some of the members of the F.O.G.A., before the formation of the F.O.G.A., made their living by imitating the best selling numbers created by others?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

11000

Q. Is that not so? A. I am not sure whether they did make their living that way or not.

Q. Do you remember at the time that the Guild was formed that copying or pirating of original designs had become very rampant—was on the increase?

Mr. Haycraft: I object to the use of the word "pirating."

Mr. Weisman: Well, I will withdraw the question.

By Mr. Weisman.

Q. You understand that the copying of designs, original designs, by these copyists, is generally referred to in the industry as pirating of designs—or is that something new to you? A. Well, I do not know that it is used any more than copying is, it——

11001

Q. Well, do you know whether or not— A. Since the Guild have come into existence they have used that word more than it was used before. Before that it was copying, as I recall it, copying.

11002 Q. You think that the Guild influenced Professor Nystrom to use the word "pirating"? A. I did not——

Q. Is that it? A. I did not say that.

Q. How do you explain— A. I said that——

Q. How do you explain that Professor Nystrom in his book, which was published before the formation of the Guild, refers to this practice as pirating? A. I could not explain it.

Q. You think it is a mere coincidence? A. I could not explain it, how he came to use certain words.

Q. But you understand that to-day in the dress industry there is a well-defined and customary term known as pirat-
11003 ing designs, do you not know that? A. I know that.

Q. Do you or do you not?

Examiner Averill: Let the man answer the question.

By Mr. Weisman.

Q. "Yes" or "no," Mr. Bergdahl?

Examiner Averill: No, it is not a "yes" or "no" question; go ahead.

Mr. Weisman: Excuse me.

A. I know that that term has come to mean something in the industry since the F.O.G.A.—I mean, commonly among the people in the industry—retailers like myself,
11004 and buyers, and so forth, since the F.O.G.A. has become active, primarily with their piracy committees, that word "piracy" has been used more than before.

Examiner Averill: And has it not come to be in the industry synonymous with copying, the term "piracy," "pirating"?

The Witness: Yes.

Examiner Averill: Synonymous with copying?

The Witness: Now it has.

Examiner Averill: Yes.

The Witness: Yes.

By Mr. Weisman.

Q. Would you say that at or about the time that the Guild was formed there was a great deal of piracy in the ladies' ready-to-wear field?

Mr. Haycraft: Same objection.

Examiner Averill: The objection is overruled.

A. Well, not any more than in the years preceding that. I have been in the business now for—what is it—fifteen years, or thereabouts, and, as I recall it, it was no different 11006
in 1932 than it was in the ten years preceding it.

Q. Well, do you not— A. Mr. Weisman got through saying that he has been in it seventeen years, and he has known it for seventeen years, that it has been business that this has gone on.

Q. No, I did not say anything of the kind. I said I knew the business for seventeen years. Do you not know about when style piracy, as such, commenced? A. Yes, when the ready-to-wear industry began in this country.

Q. When, in your opinion, as an expert, did the ready-to-wear industry begin in this country? A. Oh, I suppose—I should say about seventy-five years ago, as an industry.

Q. That is your opinion? A. Well, it became a sizable business; it began to be around that time, maybe a few 11007
years before that. I think prior to that time it was mostly a private tailoring business.

Q. Do you not know that the ready-to-wear industry in America has only an age as such, in the ladies' field, of about twenty-two years, do you not know that? A. No, I don't.

Q. Do you not know that before that——

Mr. Weisman: We will prove it, Judge; that may sound strange to you—here is an expert that ought to know it, but your Honor does not know it.

The Witness: I——

By Mr. Weisman.

Q. Do you not know that before then the ladies' ready-to-wear industry was carried on by the dressmakers, and there was not really a ladies' ready-to-wear industry? A. Prior to twenty-two years ago?

Q. Yes. A. That is not so.

Q. Let me ask you who, in your opinion, was the first
11009 manufacturer of ladies' ready-to-wear in the City of New York—do you know? A. No, I could not tell you.

Q. Did you ever hear of the firm of Jesse Wolf & Company? A. Yes, sir.

Q. Would it surprise you to learn that it was Jesse Wolf who formed the ladies' ready-to—laid the foundation of the ladies' ready-to-wear industry in the City of New York, and that before the formation of his company we had no ladies' ready-to-wear industry? A. No, it would not surprise me.

Q. Well, then you think that may be a fact? A. Is that twenty-two years ago?

Q. What do you think? You are the expert. A. You are, for that information.

11010 Q. Well, do you not know, as a matter of fact, is it not common knowledge— A. The thing—I will say this—I do not know exactly when it began, but I know that the industry was in existence prior to 1900, that it was an industry, and it has been an industry for some time.

Q. How do you know that? A. Well, I have talked to a good many people who were active in it before I was.

Q. And they told you? A. Yes.

Q. That it was an industry? A. They have been in the business since they were children, and so forth, and it must be an industry that has been going on here for some years.

Q. Do you now say that when the ladies' ready-to-wear industry was formed there was immediately copying, or do you not know, as an expert, that copying first became noticeable in this industry in or about the year 1924? A. Well, now, I have been active in this industry since 1922, and it was very—it was thriving then.

Q. Well, would you say it was thriving to the same degree that you found it thriving in 1929? A. Yes.

Q. In your opinion, this copying, in the dress industry, 11012
then, was not a progressive evil that was growing each year by leaps and bounds——

Mr. Haycraft: I object to the use of the word "evil."

Mr. Weisman: Well, I will withdraw it. I want to make it very plain. I do not want to argue.

By Mr. Weisman.

Q. In your opinion as an expert, would you say that copying, as such, in and by itself, is an evil in the industry, or is generally regarded as an evil in the industry?

Mr. Haycraft: Objected to unless the question carries with it what is meant by copying, whether 11013
he means exact copying, adapting, or coming as near to it as possible.

Mr. Weisman: Pirating, pirating.

Mr. Haycraft: No one knows what copying is exactly, Mr. Examiner.

Mr. Weisman: Nobody but you.

Mr. Haycraft: We have not had a definition yet. I do not think anybody knows what copying is, and I object to the form of the question.

The Witness: I will tell you, your Honor.

Mr. Haycraft: Wait until I get a ruling.

Examiner Averill: Have you not already gone into that with the same witness, this same question asked?

Mr. Weisman: I assumed that that was the basis of the objection, and I did not want to press it, your Honor. I thought to make it plain. Of course, he said it was an evil.

Mr. Haycraft: No, he has not.

Examiner Averill: No, I did not say he testified it was an evil; I said he testified as to it in the early

11015 part of his examination.

The Witness: Will you read the last question to me again?

Mr. Weisman: What?

The Witness: May I have the last question read to me again?

Mr. Weisman: Surely.

Examiner Averill: Let us not go into that again.

Mr. Weisman: All right.

By Mr. Weisman.

Q. This matter of copying, or pirating, would you deny that from the year 1922, and thereon upwards, that it was getting progressively greater, and worse? A. I will

11016 answer that for you.

Q. Well, I want you to, I want your answer. A. But I cannot answer "yes" or "no"; if you want it that way I will decline from answering, but I will try to explain it, and I won't hide anything.

Q. I do not think you would. I think you want to be fair. A. I do not think copying changed any, or the practice of copying, as long as I have been in the business, but all production facilities may have increased, or made copy-

ing a little different than it was before, but the practice itself of copying merchandise has been going on just as aggressively all the time that I have been in business. I mean—since the first day I put my foot into this, I knew that that was the way that the mass of the industry made its living, by copying, by doing something else that the other fellow was doing, whether it was from Paris, or New York, here, or some place else. That is the way they did their business. That is the way the industry grew to be the biggest industry——

Examiner Averill: He also means, I understand, of course, that by reason of the large increase in population—— 11018

The Witness: Yes.

Examiner Averill: —the increase in the number of manufacturers, and the increase in retail stores—

The Witness: And production.

Examiner Averill: —that necessarily there was more copying or more occasion——

The Witness: There was more production.

Examiner Averill: —or more opportunity——

The Witness: There was more production, you see.

Examiner Averill: That is right.

The Witness: I used the words "there was production and copying" but not more copying, because I think that was just the same as it was before. In 11019 fact, when the industry was young, I think they knew so little that all they did was copying, see? I mean, they got all their ideas from Paris, or somewhere else, when it was a young industry—all they did was copying, they knew so little, and, if anything, since, the industry has been going the other way, and, without our so-called good intentions—what we try to tell them to put over—because I think I helped that little matter——

By Mr. Weisman.

Q. You mean you helped the Guild in this program? A. I surely tried to.

Q. And you did that because you thought that the program, when you were helping it, was a good program? A. At the time.

Q. Let me finish? A. At the time I did.

Q. Yes. A. At the time I did; at that time, though, I want to qualify it——

Q. My question qualified it, Mr. Bergdahl. A. Thank you.

Q. You say when you helped you thought that the pro-
11021 gram— A. I was sincere about it at that time.

Q. And you are not most sincere now? A. Well, I have learned a little about it in the meantime.

Q. No, answer it "yes" or "no."

Examiner Averill: He cannot answer "most sincere" now. That is not a question of sincerity. As I understand it, his views have changed.

Mr. Weisman: I want to find out what he said.

Examiner Averill: He might still be just as sincere.

By Mr. Weisman.

Q. Let me ask you this: As an expert, and with the
11022 knowledge that you have testified to here, can you tell us generally whether or not in your opinion in a large number of instances the methods resorted to by the pirate, or the copyist, whichever you prefer, to obtain copies are ethical means or unethical means?

Mr. Haycraft: Objected to.

Mr. Weisman: I want his opinion.

Mr. Haycraft: I object to it.

Mr. Weisman: In his opinion as an expert.

Mr. Haycraft: No place in this.

Examiner Averill: Sustained.

Mr. Weisman: An exception.

By Mr. Weisman.

Q. As an expert, has it ever come to your attention that a great deal of this copying is done by obtaining the original through unethical means?

Mr. Haycraft: I object to the use of the word "ethical."

Examiner Averill: Let him finish his question.

Mr. Weisman: I have finished.

Examiner Averill: You have finished? 11024

Mr. Weisman: Yes.

Examiner Averill: The objection is sustained.

By Mr. Weisman.

Q. Has it ever come to your attention that the copyist, or the pirate, in an effort to obtain the original would cause the original to be purchased by false representations that it was for resale?

Mr. Haycraft: Objected to.

Examiner Averill: Same ruling.

Mr. Weisman: May I understand?

Examiner Averill: The same line of questions; it is the same line, and the objection is sustained. 11025

Mr. Weisman: May I show what these copyists did? A. I mean, that he knows as an expert that these copies were obtained frequently through theft, through misrepresentation, through fraud.

Examiner Averill: I know, but that does not add anything to it.

Mr. Weisman: How?

Examiner Averill: I do not think that adds anything to the issues in this case, as I see them.

AFTERNOON SESSION.

Examiner Averill: Proceed.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Bergdahl, is it your opinion that if retailers were to agree to refuse to handle copies the control and protection of design might be complete and effective?

11027

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant.

Examiner Averill: That is proper cross-examination. Objection overruled.

A. If the retailers—what is that?

Q. If retailers would agree to refuse to handle copies, do you then believe the control and protection of design would be complete and effective? A. Do you mean all retailers?

Q. Yes. A. Every retailer in the United States?

Q. Yes. Well, I mean if we had 5,000 or 10,000 retailers, I mean that I do not mean that you have to get 10,000, I mean as we understand, substantially all. A. I would

11028

definitely disagree with you.

Q. No, no, not with me. I have not expressed any opinion. A. I understand.

Examiner Averill: He has not expressed any opinion. He desires an opinion from you.

A. I could not, if that question means that—if you will ask me, or if you are asking me that if a substantial num-

ber of retailers would agree to refuse to handle copies, then my answer would be no, that that would not solve the problem.

By Mr. Weisman.

Q. I did not ask you that, did I? You knew I did not ask you that, did you not? A. No. I am trying to answer you.

Q. Suppose we read the question. A. Yes.

Q. And you and I want to get along here. A. Yes.

Q. So, if you cannot answer my question, please, just say so, but if you can, please do so. A. I am trying.

Mr. Weisman: Will you read the question again, please? 11030

(The question was read.)

By Mr. Weisman.

Q. Do you understand that question? A. If you will qualify that as to how many retailers.

Q. I mean substantially all or those substantially who constitute all, we all know that you cannot reach or approach perfection in this life, but if substantially all of the retailers would agree to refuse to handle goods, do you or do you not believe that that would solve this problem? A. No, I honestly do not.

Q. In other words, you differ with Professor Nystrom where he says as follows—reading from page 233 of his book "Fashion Merchandising"—if retailers were to agree 11031 to refuse to handle goods—"if retailers were to agree to refuse to handle copies the control and protection of design might be complete and effective," do you disagree with that, or do you not? A. I disagree with that.

Q. Is that not exactly what I asked you a moment ago? A. Well——

Q. Wherein do you find any difference between my previous question and this answer that you have just given when you say "no"? A. Because Dr. Nystrom says if retailers—and he does not clarify that and therefore I am assuming—I would like to ask him about that, but I am assuming that the sentence means all retailers.

Q. You mean 100 per cent? A. No.

Q. In other words— A. No.

Q. In other words, when you read a statement like that appearing in Dr. Nystrom's book from which I have read it, with your experience and knowledge of this industry, and your expert and intellectual approach to it that means

11033 to your mind that not a single one would not agree; is that so? A. I am giving you my interpretation of the question that, I, I—of my interpretation of that statement that you read there.

Q. I think we have enough on that, and I thank you for what you have given us and I will stand and not spend any more time on that, I will stand on that as it is. A. It is on the record that I do agree with Dr. Nystrom in that particular sentence, but I disagreed on the first.

Q. Oh, now, you want to answer that second one "yes"? A. I thought I did answer it "yes."

Q. I understood you answered it "no." Do you mean your answer to that second question to be "yes"? A. I do.

Q. Oh, then I am glad you said so, because I understood you said "no" to it.

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Examiner Averill: Yes, I think you did say "no." Did you mean to say "yes"?

The Witness: Yes, your Honor, I meant to say "yes."

Mr. Weisman: At least, we have it straight, now, your Honor.

Examiner Averill: I think so.

The Witness: I want to be sure; it is on the record that I do agree with Dr. Nystrom in that particular sentence, but I disagree to the first.

Mr. Weisman: I think that is clear, your Honor.

By Examiner Averill.

Q. Is it? A. Yes, sir.

By Mr. Weisman.

Q. If, however, a degree of trade co-operation, such as was theretofore unknown in the fashion industry, would be brought about between retailers and manufacturers, such co-operation would be effective in controlling this design piracy; is that so? 11036

Mr. Haycraft: I object.

Examiner Averill: That is so obvious. Let the witness answer that. Objection overruled.

A. If all retail distributors?

By Mr. Weisman.

Q. That is not what I asked you. A. I mean—I will—I——

Q. If you cannot answer, Mr. Bergdahl, you just say so to me and I think that will answer the question. A. I cannot answer it yes or no.

Q. All right. Well, we will not press you. A. Thank you. 11037

Q. Because I would just as soon find out from you that you cannot answer it yes or no, as otherwise. A. O.K.

Q. In your opinion is design protection, properly planned and executed, a necessity to the sound establishment of industries in the fashion field?

Mr. Haycraft: I object.

Examiner Averill: Sustained.

By Mr. Weisman.

Q. Let me ask you whether or not you are of this opinion, first: "Design protection is as necessary to the designer and the manufacturer of new designs as it is to the inventor of new machines or to the writer of books or music"? Would you agree with that, in your opinion, as an expert, or would you not say that?

Mr. Haycraft: I object. What possible relevancy can this have to it?

The Witness: Are you reading Dr. Nystrom's book?

11039 *By Mr. Weisman.*

Q. Aside from whether I am reading from his book or not, what is your answer to that? A. I would like to know what you are reading from before I answer the question.

Examiner Averill: Just tell him if he wants to know. He has the right to inquire of that.

Mr. Weisman: If your Honor please, I made no reference to any reading from a book, and I simply asked the flat question which I think I am entitled to do. However, I have no objection to telling the witness, in order to satiate his ungovernable curiosity, and I will say that I am reading from the book. I used the book to help me frame the question.

11040

By Mr. Weisman.

Q. However, I will tell you that in my question, I used Dr. Nystrom's magnus opus. A. It does not make much difference, but I would just like to know. Will you read it now the way it is?

Q. (Question read.) A. I have not.

Q. If Dr. Nystrom so holds, you would differ with him? A. I would, yes.

Q. Dr. Nystrom tells us that in his opinion—at page 243 of his book—"Design protection is to the fashion industries what rules of the game are to the major sports." Would you agree with that, or is that an erroneous conclusion, in your opinion?

Mr. Haycraft: Objection.

Examiner Averill: Sustained—no, I think I will let him answer that.

The Witness: What is the question?

By Mr. Weisman. 11042

Q. "Design protection is to the fashion industries what rules of the game are to the major sports"? A. No, and decidedly no.

Q. You would disagree with that? A. Yes.

Q. I also see that Dr. Nystrom says, and I would like to know in your opinion whether you agree with or differ from Dr. Nystrom in this regard: "The present system permitting widespread unauthorized copying of designs created by others is essentially and morally, though not yet legally, as unfair and as wrong as the theft of merchandise." Do you agree with that?

Mr. Haycraft: The same objection.

Examiner Averill: The same ruling.

11043

A. I think not. I do not agree. At least, I would want to qualify it if I did answer it.

By Mr. Weisman.

Q. In your opinion, do: "Most of the copyists find it much easier and less expensive and, on the whole, more profitable to take designs to which others have given great energy and ability, and which already have obtained a cer-

tain degree of popular approval, and reproduce them, if possible, at lower prices and sell them in competition with their originators rather than to attempt to create and design for themselves." Do you find that to be the fact? A. Are you putting that in the form of a question?

Mr. Weisman: Let me read it.

Examiner Averill: No, no, no.

The Witness: I would like to look at it.

By Mr. Weisman.

Q. What was that? A. I say, I would like to look at it.

Q. No, I want the reporter to read it back, and I want
11045 to hold the book and check it up and see whether the record is right, and then if you can answer my question, all right, and if you cannot, all right, too.

Mr. Haycraft: Well, I submit, Mr. Examiner, the witness is entitled to see the book.

Mr. Weisman: I submit he is not entitled to see the book, but he is entitled to the question that was asked him, or to say whether he can or not.

Mr. Haycraft: I think he is entitled to see the book.

Examiner Averill: The question as put to him can be considered by the witness, and he can either say that he cannot answer it, or that he can answer is as it is put to him, and if he cannot, say so, but
11046 he is not entitled to see the book.

Mr. Haycraft: I ask for an exception to your Honor's ruling.

Examiner Averill: Noted.

Q. Now, will the reporter read the question, and if he finds he cannot answer it, just say so, and if you can answer it, just answer it the best you can. A. It is rather long, and that is the reason I wanted to look at it in the book.

Examiner Averill: The reporter can read the question to you again.

Q. (Question read.) A. It is a statement put in a form that I do not believe I can answer, but I could answer it if I am allowed to answer it in my own way, but I cannot answer that "yes" or "no"; that is what I mean. I think I would like to hear the question again.

Examiner Averill: Read the question again, Mr. Reporter.

(Question read.)

Mr. Haycraft: I object to that as having five or six questions in one. Furthermore, the witness is 11048
not qualified to pass upon the possibilities of a profitable return to the manufacturer, or to know what their capacities are, or otherwise, as the case may be.

Mr. Weisman: He can either say yes he knows, or he does not know.

Examiner Averill: I think the question, the complexity of the question is one which the witness can take into his own consideration if he desires. The objection is overruled, and if the witness finds the question is too involved, and he cannot answer it, he may say so, but otherwise he may answer it.

A. I would like to answer that if it were broken down 11049
into—it seems to me there are three or four divisions of it, because I know that I can see three or four in there myself.

By Mr. Weisman.

Q. Will you agree with this statement as a general statement of fact concerning the industry——

Mr. Weisman: Read the question again?

Q. (Question read) A. No, I would not like to agree to that in a blanket form. If you will break it down, all right, and I will agree or disagree with it. I am not trying to be evasive, but I am really trying to answer these things.

By Mr. Weisman.

Q. Let me ask you this: In your experience, is it not your opinion that these copyists or pirating manufacturers find it much easier and less expensive to reproduce an original and sell them in competition with the originators rather than to attempt to create or design for themselves?

11051 Mr. Haycraft: I object as entirely incompetent for any purpose whatsoever.

Examiner Averill: Overruled.

A. There are two or three questions there. If you will break it down, if it is cheaper to reproduce when they copy, if it is cheaper to reproduce, then I can answer that and then I will take up the other part.

Mr. Weisman: May I have the question read again?

Examiner Averill: Oh, no, no, no. If you have it read again and again where will we get?

Mr. Weisman: He says he cannot answer it in that form, and that is the reason I wanted to have

11052 the question read.

Examiner Averill: You have the books right in front of you and you know what you read from.

Mr. Weisman: I tried to break it up.

Examiner Averill: I do not blame him if he cannot answer it.

By Mr. Weisman.

Q. In this form, you, as an expert, say you cannot answer that question? A. No, sir; I cannot.

Q. All right, then, just tell us so. In your experience in this business, have you from time to time met copyists who would state to you that their lines contained copies of the best selling numbers of the best creators in the particular field? A. Oh, I have met copyists. I do not recall that the comments have ever been qualified as being copies of the best creators in the field.

Q. Is it not a common practice for these copyists to make known that their copies are copies of the leading designers and originators in the business? A. They do 11054
not say, they do not usually say that in so many words, but they do generally say that they have copied them, as to whether it is made in Paris or locally.

Q. Speaking locally, do they not generally tell you that they have copied these people so that you might—so that the one who was to purchase might know that he is getting copies of a particular designer that they refer to, or originator? A. Well, they make a statement that they have copies of other people's merchandise, whether it is retail or wholesale; they make a statement of that kind.

Q. Those statements are usually made to induce the purchaser to purchase from them rather than from the originator; is that so?

Mr. Haycraft: I object to the form of that ques- 11055
tion.

Examiner Averill: Overruled.

Mr. Haycraft: How can this witness know what the other man is trying to do?

Examiner Averill: He is giving his opinion. All of this is opinion evidence.

A. It is given as a part of their selling talk.

By Mr. Weisman.

Q. That is the best answer that you are willing to give? A. That is the answer.

Q. I want to know whether that is the best answer you can give. A. I do not know, if I spent a lot of time I could probably answer you better; I do not know; it seems to me that is a good answer.

Q. Dr. Nystrom advises us of his opinion as follows, and I would like to know whether or not you agree with this: "The present lack of a design registration law an effect of copying is considered a lawful activity by the courts amounts to the right to despoil the business of others. It
11057 is entirely illogical that this condition should be allowed to continue." Would you agree with or differ from that statement? A. I differ from it. Why do you not ask me why?

Examiner Averill: I do not see how we can go much further with this type of interrogation.

Mr. Weisman: I only have three more questions.

Examiner Averill: I do not see where we are getting anywhere with it.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Speaking of design protection, Dr. Nystrom states: "Design protection would help to establish order in what
11058 is now chaos." Do you agree that design protection would help to establish order in what is now chaos?

Mr. Haycraft: I object to that as not being established; and, furthermore, we do not know what he means by chaos.

Mr. Weisman: I want to know what he thinks about that. This man is an expert.

Mr. Haycraft: He did not read the book.

Mr. Weisman: His boss wrote it. This man was his superior in the A.M.C., and he is the man who wrote it.

Examiner Averill: I overrule that objection, but I am not going to let this go on any further. Answer if you can and then we will quit.

A. I disagree with it.

By Mr. Weisman.

Q. That is all. A. I am not, I, I, I, I, I will be glad to qualify my statement if I answered it, see?

Q. Dr. Nystrom states that in his opinion the tidal wave of copying that has characterized the fashion industry during the past years—— 11060

Examiner Averill: When was this book written?

Mr. Weisman: This book was—it is the edition of 1932.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. —came since the World War. Would you agree with that? A. No.

Q. In other words, you differ with that statement? A. Yes. Ask me why, will you?

Q. I will ask you to keep still or I will ask the Court to punish you as a recalcitrant, obstreperous and pugnacious witness. A. That is your privilege. 11061

By Mr. Weisman.

Q. I understood you to say that it was a part of your duties to see that the stores got the service out of this market they wanted; is that correct? A. That is right.

Q. In connection with such service, do you fix what service they want, or do they tell you what service they want? A. They tell me.

Q. And you carry out those orders; is that correct? A. What do you mean by "orders"?

Q. Well, I do not mean it in any bad sense. They come in and tell you what they want you to do for them, and you do the best you can, and do it for them? A. Yes, if the individual store's request comes within the broad policies of the organization, why, I do.

Q. Yes, within the broad policy of your organization, do you include the getting for your customers of special dis-

11063 counts?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Averill: The objection is overruled. I think he has a right to show what services he attempts to render his clientele. Go ahead, sir.

A. Well, we certainly assist our accounts in trading with the manufacturers, and many of the orders we place ourselves. We do trade with the manufacturers in the industry for the best price possible.

Q. What form? What do you do to get these, in connection with this trading?

By Mr. Weisman.

11064

Q. To your knowledge, do you know the discounts that generally prevail in the ready-to-wear industry? A. Yes, I think so.

Q. What are those discounts in the ladies' ready-to-wear? When we say that, we mean dresses.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Averill: Objection overruled for the moment.

A. You mean—at what period are you talking about?

By Mr. Weisman.

Q. Well, in 1935. A. Eight per cent.

Q. Well, is that all, 8 per cent.? Do you not want to add something to that? A. I don't know of any other——

Q. All right, if you do not. A. —of any other prevailing discounts to the industry.

Q. All right, if you do not. Now, then, in coats and suits, what was it? A. What period? 11066

Q. Same period. A. Eight per cent, 1935.

Q. All right. Now, during 1935, did you ever obtain for your customers, in line with getting this special service out of the market, a discount from the manufacturers or sellers, which was greater than that regular usual customer's discount?

By Mr. Weisman.

Q. On your direct testimony at page 6093 of the record, you stated that it was part of your duties to see that the stores were getting the service out of the market that they wanted. Do you remember so testifying? A. I remember in substance so testifying.

Q. Now, is part of the service that these stores were 11067
getting, or wanted to get out of the market, the granting to them of special discounts and rebates?

Mr. Martin: Objected to.

By Mr. Weisman.

Q. Was part of these special services the obtainment, by you, in the ladies' ready-to-wear market of advertising rebates from the customers that you do business with?

Mr. Martin: I object.

Mr. Haycraft: I object.

Examiner Averill: Objection sustained for the same reason.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of these special services that you sought to get out of this market the confinement of a particular manufacturer's copies to a particular party, a member of the A.M.C.A., making him the sole person who could
11069 handle those goods in that city?

Mr. Haycraft: I object for the reasons heretofore urged and also the use of the phrase "special services," as no foundation has been laid for that.

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Did you, in attempting to get the services out of the New York market, attempt to get services for your client, or consideration for your client over and beyond that which was customarily and ordinarily given by the manufacturers to the regular and ordinary purchasers in that
11070 market?

Mr. Martin: Same objection.

Mr. Haycraft: Same objection.

Examiner Averill: The same ruling.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of the services that you sought to obtain for your clients out of this market a preferential shipment of merchandise to your accounts?

Mr. Haycraft: Same objection.
Examiner Averill: Overruled—sustained, I mean.
Mr. Weisman: Sustained?
Examiner Averill: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Was part of the services that you sought to get out of this market for your members, the right of cancellation in connection with orders of which was not generally or usually extended to other purchasers in the ordinary course and conduct of the business? 11072

Mr. Haycraft: Same objection.
Examiner Averill: Sustained.
Mr. Weisman: Exception.
Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of the special services that you sought to get for your members out of this market the right to have merchandise which was manufactured by the manufacturers sent to your members on consignment? 11073

Mr. Martin: The same objection.
Mr. Haycraft: Same objection.
Examiner Averill: Sustained.
Mr. Weisman: Exception.
Examiner Averill: Noted.

By Mr. Weisman.

Q. Mr. Bergdahl— A. Yes.

Mr. Weisman: May I have Respondents' Exhibit 920?

Mr. Martin: You mean Commission's Exhibit 920.

Mr. Weisman: Is that it?

Mr. Martin: Yes.

By Mr. Weisman.

Q. In a letter written by you and marked here as Com-
11075 mission's Exhibit 920, you stated, Mr. Bergdahl, the following: "We have repeatedly suggested to the Guild executives that they could obtain better co-operation from retailers if they would declare themselves, as an organization, existing solely for the purpose of style piracy elimination and that they would not be interested in assuming trade association activities." Do you remember that? A. Did they say "we"?

Q. They did say "we." A. That is right.

Q. When you said that what trade association activities were you referring to? A. May I see the letter?

Q. Certainly.

(Counsel hands letter to the witness.)

11076 *By Mr. Weisman.*

Q. Do you see it? A. Well, I do not know.

Q. No? A. I do not see that particular quotation on the letter.

Q. You do not see it? A. I cannot find it immediately.

Q. I will show it to you. A. Will you?

Q. It is right here. A. What?

Q. "We have repeatedly suggested to the Guild executives" and so forth; do you see it now? A. Yes.

Q. Answer the question. A. Now, what is the question?

Mr. Weisman: Let the question be read, please.

Examiner Averill: The question may be read.

(The question was read.)

By Mr. Weisman.

Q. Please answer the question. A. I was—I was—I was—I was referring to, first, trade association activities in general.

Examiner Averill: Let me ask him a few questions here and I think I can clear this up. 11078

By Examiner Averill.

Q. What one, any particular one? If you had any one in particular, would you name it? A. Well, could I just explain my background?

Q. Yes. A. When the F.O.G.A. started, the resident officers asked——

Q. No, no, any one particular trade association activity that you had in mind. A. Well, now, I was a member of this group, I have had to explain exactly——

Mr. Weisman (interposing): Just a moment.

The Witness: —just what happened.

Mr. Weisman: If you will wait just a moment, please, I am addressing the Court and not you. I object to that, Mr. Examiner, as not responsive. Here is a question that is very clear. This witness wrote a letter on December 4, and in that he referred to trade association activities and I am asking him the direct question, what trade association activities do you refer to. 11079

By Examiner Averill.

Q. Yes, that is the question, Mr. Witness. If you will kindly address your reply to that question: What trade association activities do you refer to? The letter refers to some trade association activities, at least it calls them trade association activities. Tell us what activities you refer to. That is all. A. Well, trade association activities in particular.

Q. What are the trade association activities? I do not know. A. Well, they may be anything that a trade association wants them to be.

Q. I know, but you must have had in mind some activi-
11081 ties to which you referred. A. Well, I had in mind all—all those—you see this was a marriage between retailers and manufacturers, if you please; that is, the F.O.G.A. and if they were—we had no objection to trade association activities because we have admitted that, because we have admitted the fact that certain trade association activities were taken up with us in 1934 and they were taken up with us and we agreed to them, the retailers agreed to them.

But, since this was a marriage, if you please, between the retailer and the manufacturer, we told Mr. Rentner that there should be no trade association activities made entirely by the Guild and enforced on the retailers without the retailers' consent. And from the beginning, the
11082 very beginning, Mr. Rentner told me and told the members of the A.B.O. particularly that that was the understanding and this was never going to be a trade association because we had enough trade associations in the field already. I think there were three in the industry.

Q. That does not answer the question yet, sir. A. No?

Q. You have gotten away from the question. A. Have I?

Q. There must have been some activities you had in mind. Tell us what they were, if you know. A. Well, I

think that—I think, in particular, that the dress industry took over all of the trade practices of the—of the N.R.A. without asking the retailers at all, maybe more or less of those—without asking the retailers at all whether that would be O.K.

The retailers have never said they could not have trade association activities. But, inasmuch as this was a combined retail and manufacturer organization, they should not do all of the dictating on trade practices, that we ought to have some meeting of minds on the trade practices, and that is what I had reference to.

The A.B.O. repeatedly told Mr. Rentner and Mr. Golby that they had really never agreed to all of those trade 11084
association activities, but not that they objected to them, but they did not think that they should be subjected to them without consideration, upon the Guild, without having some consideration.

Q. As I recall it, it was all through your testimony, you never referred to any trade association activities other than the piracy question which the F.O.G.A. attempted in any way to enforce against you or your members, is that not so?

Mr. Haycraft: There is the letter of July 1, 1935, which gives us a list of certain practices which the F.O.G.A. sent out.

Examiner Averill: If that is so, let the witness read the letter, because he does not seem to know. 11085

Mr. Haycraft: That is a letter from the Guild.

The Witness: I think we put in that letter. They took over the N.R.A. trade practices and I think I made a notation on the letter to that effect that was put in evidence here. In fact, I think I have written on it "As a result of the N.R.A." It is in there among those letters somewhere.

Examiner Averill: You mean the recent ones?

Mr. Weisman: No, no. I do not think Mr. Haycraft has reference to that one.

Mr. Haycraft: It is one of those in this group (indicating a group of exhibits).

Examiner Averill: If it is in there, let us get it and let the witness refresh his recollection because he does not seem to have any recollection in regard to it.

Mr. Weisman: I think I can refresh his recollection if he really wants to be refreshed.

Mr. Haycraft: I think it is in there.

The Witness: If I need it, I will tell you.

11087 Mr. Weisman: Do not be bashful.

Mr. Haycraft: It had on it "as a result of the N.R.A.," as I recall.

Mr. Weisman: I do not think we need go into that. I think I can carry on more rapidly by asking him another question.

Examiner Averill: Do so.

By Mr. Weisman.

Q. You still have not told me what you meant when you wrote, referring to the Guild—and I think they should not be interested in assuming trade association activities, referring to the phrase "trade association activities," what trade association activities did you have reference to by the Guild? A. Well, all of the activities that are performed 11088 by a trade association.

Q. You did not have any particular one in mind? A. No, sir; I did not.

Q. In the course of your statement, you stated to the Court a few moments ago that the Guild, meaning the Fashion Originators Guild of America, took over the fair trade practices as they were contained in the code, and made them a part of their fair trade practices; is that so; did you say that? A. In substance, I think that is correct.

Q. Do you not know that the Guild was formed prior to the passage of the National Industrial Recovery Act? A. Yes, sir; I recall that.

Q. Do you not know, as an expert with all of your knowledge, that it was not the N.R.A. from which we took up certain fair practices, but the N.R.A. took the fair trade practices from the F.O.G.A. as they had formulated them? A. No, I did not.

Q. You never learned that? A. No, sir; I never did.

Q. All right. You may have been ignorant on that. A. And I was active in it, too.

Q. Was one of the trade practices that you had reference to in your letter, Commission's Exhibit No. 920, the 11090
trade practice which had reference to trade discount, and which read as follows: "No discount shall be given to any retailer in excess of the terms 8 per cent. 10 days E.O.M." A. I never did. I just got through telling you that I did not have reference to any particular discount, or those things, and I am not trying to evade anything. I did not mean that, but I had in mind, Judge, trade association activities, as such, as affecting retailers, that there should be no such of those without consulting us.

Q. In other words, your objection was not to the— A. What is that?

Q. In other words, your objection was not to the anti-piracy, but your main and chief objection, as evidenced by that letter of December 4, is the trade association activities of the Guild? A. No, sir. 11091

Q. What did you mean when you wrote: "We can get better co-operation if the Guild would declare itself as an organization existing solely for the purpose of style piracy elimination, and that they would not be interested in assuming trade association activities." What did you mean to convey by that? Did you not mean to convey the idea that you had told the Guild executives that your objection

was to the trade association activities? A. What was that question?

Mr. Weisman: Let the question be read.

(Question read.)

The Witness: I did not get it.

Mr. Weisman: Read it to him again.

(Question again read.)

The Witness: I do not get it.

Mr. Weisman: Give it to him again.

(Question again read.)

By Mr. Weisman.

11093 Q. Can you answer it now? A. Yes. Well, that was one of the things that we had told them was wrong with their machinery from the beginning—from the beginning—not at the end or any other time, but from the beginning of the Guild's program we told them that we——

Q. Who is "we"? A. "We" refers to the A.B.O.

Q. Did you ever refer to that before December 4, to that? A. I am not sure that I wrote to them.

Q. Well, we will take that up. Did you ever write to them prior to December 4 about that? A. I am not sure.

Q. Did you ever see a letter in that regard? A. Wait a minute. I am not sure whether some of the letters do not contain something about that.

Q. Can you produce a single letter that has it in it? A.

11094 I may be able to.

Q. No, no, no. Will you go over your correspondence between now and to-morrow morning and see if you can bring us a single letter to that effect? A. I will try.

Q. Now, will you? A. I will try.

Q. No, will you go through the correspondence to see? A. Positively.

Mr. Haycraft: What is that?

Mr. Weisman: I asked the witness if he would go through his correspondence and see if he could find a single letter in regard to trade association activities prior to the letter of December 4, and if so bring it down here to-morrow morning, and he has stated that he would. Any objection?

Mr. Haycraft: I just wanted to hear the question and the answer.

A. I said I might be able to and I will try to. I can definitely well substantiate it in person, and with other witnesses.

By Mr. Weisman. 11096

Q. You tell that to Mr. Haycraft. A. I think he knows it.

Q. He does? A. Yes.

Q. Have you any recollection at this time as to when the break definitely came between the Guild and the A.M.C.? A. If I know?

Q. Yes. A. I think the break came in February, about the second week in February.

Q. What year? A. 1936.

Examiner Averill: '36?

The Witness: 1936.

By Mr. Weisman. 11097

Q. Have you any idea of any break in, or, rather, any break—but before I get to that, have you any idea of any particular thing, or, to put it in another way, any particular communication which immediately preceded that break in relations? A. Why, yes, I think so. There were several communications, I guess, or telephone calls, and so forth, in connection with the matter.

Q. Do you remember the famous Reilly letter? A. I did not know it was famous, but I remember it.

Q. Would you say it was infamous? A. No. I would not. I do not think that either one of those terms would be applicable.

Mr. Haycraft: I object to that as an improper characterization of the letter.

Mr. Weisman: He knows what I am talking about.

Mr. Haycraft: I object to the characterization.

Examiner Averill: Proceed.

11099 *By Mr. Weisman.*

Q. Well, we will come back to that in a moment. A. All right.

Q. But you remember the Reilly letter that was sent out in February, was it—about what date? A. Well, the date is on it, it is the second week in February, I think.

Q. Was it February 16? A. I do not recall.

Q. Or February 17? A. Look at it and see.

Q. You remember the substance of that letter? A. I think I do.

Q. What was the substance of that letter, as you remember it? A. The substance of the letter, as I recall it, was that, as to members of the Guild, that we could get along with them only—or perhaps I should say that we
11100 could go along with them—I will say, definitely, that we could go along with them only as originally agreed upon; namely, that we would co-operate in making returns down to and including $10.75. We stated, furthermore, that it was never our understanding that we were to be obligated by the trade practices that the Guild might adopt without consulting us. I do not know that that is in there, but that is the extent of the letter.

Q. That is right. Now, when you sent that letter which is—you saw it before it was sent, did you? A. I do not recall, but I think I did.

Q. And you wrote in there the following: "We have been authorized by the store principals of eighteen member stores of this association to inform you that from this day on we would like to be put on record as being willing to co-operate with the F.O.G.A. only on the matter of style piracy elimination, as originally agreed." A. Uh-huh.

Q. Uh-huh. What do you mean by "uh-huh?" A. Yes.

Q. Did you not expect that after that letter was written the members of the F.O.G.A. would no longer be willing to deal with those eighteen member stores? A. We did 11102
not know what they would do. We hoped that they would see it our way and that they would not act precipitantly and that they would reconsider the action they had already taken.

Q. Did you ever say to anybody in words or substance that the F.O.G.A. would not dare red card a member of the A.M.C.? A. I do not recall it.

Q. Might you have said that? A. I may have.

Q. As a matter of fact, wasn't it your belief at the time that letter was sent to the F.O.G.A. that by reason of the huge volume of purchasers which were controlled by the A.M.C. that the members of the F.O.G.A. would not have sufficient courage to red card any non-co-operating A.M.C. member? A. That was not my interpretation. I can give you my interpretation. 11103

Mr. Weisman: Just read the question to the witness. He either does not understand, or will not understand.

The Witness: That is not my interpretation.

By Mr. Weisman.

Q. I did not ask you for your interpretation. A. No. Do you—but you can have my thoughts in my mind on it, if you want.

Q. No, I do not want that, I want to get an answer to the question. You can either answer it "yes" or "no."

Mr. Weisman: I will ask that the question be read again.

Q. (The question was read.) A. I would like to have it again.

Mr. Weisman: Again.

Q. (The question was read.) A. That was not my reasoning process at all.

11105 Examiner Averill: The letter to which counsel refers was a letter, a copy of which is now in evidence as Commission's Exhibit No. 924.

Mr. Haycraft: Also Respondents' Exhibit No. 37.

Mr. Weisman: It is Respondents' Exhibit 37?

Mr. Haycraft: Yes.

Examiner Averill: And it is also Commission's Exhibit No. 924.

Mr. Weisman: Well.

Mr. Haycraft: Apparently both.

By Mr. Weisman.

Q. Do you know whether or not prior to the formation
11106 of the Guild and the co-operation with it by retail stores that retailers, themselves, had frequently resorted to copying; that is, that they caused articles that they received, originals to come in their hands and then sent them out to special manufacturers to be copied? A. Do I know anything of such transactions?

Q. Yes. A. No, but I have heard of such.

Q. Did you ever, personally, take part in such? A. No, sir.

Q. You are certain about that? A. Positively.

Q. Do you remember an occasion when Abraham & Straus had sent out some linens and had them made up into copies? A. No, sir. I remember the transaction, but not as you said it.

Q. Do you remember the action when the Guild complained that Abraham & Straus had ordered some goods? A. Yes.

Q. Will you give us your recollection of what the facts incident to that transaction were?

Examiner Averill: Yes, if you will just do so. Now, that is a very clear and direct question, and I am going to ask you to answer it. I am afraid 11108
the witness did not understand the previous question.

Mr. Weisman: Oh, he understood it perfectly well. He is dodging for a little time.

A. May I tell it in my own words?

Examiner Averill: That is what he asked you to do. Go on. Go on. Go on.

The Witness: As I recall it, someone from Abraham & Straus, Miss Kirpel, called me and said that Mr. Post had talked to her or called her and asked her to take off some dresses "off sale" that they had featured in a Sunday advertisement in which they had stated that they were copies of 11109
"Miami fashions," I think it was, Miami or Palm Beach, or something like that.

So I said what price were they, and she said $5.95 or $6.95 retail. I said, "Well, I will talk to Mr. Post about it." So, I called up Mr. Post and said, "What about this Abraham & Straus transaction?" As I recall it, he said, "Oh, you are going to tell me that they get an exemption, is it, because of the price line?"

I said, "Yes, that is the idea." And he said, "Well, in this case, I will be honest with you, I will be frank with you about the matter, I am going to give you a red card on this," so I said, "Oh, I do not think you will, and maybe you will, but if you do we do not think you ought to handle us individually as individuals because you are a big organization and can lick any individual retailer, and so if you want to send a red card to Abraham & Straus"—no, he did not say "send a red card," he said, "if you want to, we will return the agreement or declaration to you of Abraham & Straus."

11111

I think I said, "No, if you send it to them that is your business, but if you do you had better send back all of our agreements and we will probably talk it over." And I said, "Furthermore, I would like to discuss this with the A.B.O. because they know what the understanding is, and they might want to ask me about the matter and take me up on this, because you are not going to handle retailers as individuals."

"Well," he said, "you do not need to burn up, Burgie, let us talk this over." I said, "All right, you know I have got that kind of an agreement with you on low-end merchandise, and while it is too bad the advertisement ran that way, still, it

11112

ran, and that is the way the industry is doing it, the retail industry," and I said, "I do not see that they done anything wrong." Well, it was his next move, and I guess Mr. Post reconsidered because nothing more came of the transaction. And that is as far as I know the truth about it.

Q. Let me see if I can help you refresh your recollection a little bit. A. Yes, sir.

Q. Do you remember from which company the original of the dress advertised was obtained? A. Well, I was subsequently informed that the originals, I believe, were from Goodsteins. Is that right?

Q. I am asking you. Do you remember who had ordered the goods to be made up? A. No, sir; I do not know.

Q. Who is Miss Dean? A. She is one of my buyers.

Q. She works under you? A. Yes, sir.

Q. Does that bring any association—does that name bring anything to your mind in connection with this? A. Just how do you mean?

Q. I want to know whether or not the name "Dean" associated with the Abraham & Straus transaction, brings 11114
anything to your mind? A. I know that that is her department.

Q. Do you not know, and do you not remember that it was Miss Dean, your buyer, who ordered these goods made up for Abraham & Straus? A. No, sir; I do not.

Q. You do not remember that? A. No, I do not.

Q. That comes as a total surprise to you? A. No, it does not come as a surprise. She may have done so. I will not deny it, but I do not know.

Q. Let us see whether this is a fair statement of what happened at that time— A. If I know I will tell you——

Q. Let us see if this refreshes your recollection; that the advertisement appeared in a paper wherein these copies were flagrantly advertised as copies——

11115

Mr. Haycraft: I object to "flagrantly."

By Mr. Weisman.

Q. Well, openly; do you remember that? A. I do not think I ever saw the advertisement, but I will take your word for it.

Q. You can do so safely. Do you remember Mr. Post telling you that upon seeing the advertisement, and this

matter being brought to his attention, that he communicated with Abraham & Straus before he spoke with you? A. In the conversation he told me he had called Abraham & Straus about the matter.

Q. Do you remember him saying that to you, in words or substance, that Neil Morse of Abraham & Straus had stated that the position of the Guild was fair and correct? A. No, I did not understand it that way.

Q. And did he tell you at any time that A. & S., through their representatives, did not claim that they had an exemption, but stated to Mr. Post that they wished an exception to be made in this case because the merchandise—

11117 that is, the linen, which went into the copies, had been specially ordered, and that if they did not take it in it would be a complete loss? Does that refresh your recollection to any degree? A. No.

Q. You never— A. No.

Q. You never heard about that before? A. No, I did not, and Mr. Post did not tell me in that conversation anything of that kind.

Q. Did he tell you anything of that kind in any other conversation? A. We never had any other conversation about that, that I recall.

Q. Now, your recollection is that Mr. Post said that if you do not stop the copies, I will send back the declaration of co-operation? A. The way we did to Franklin Simons.

11118 Q. The way we did to Franklin Simons, and you said well, if you do that, you had better send back all the agreements for the member stores; is that it? A. Because you are not going to handle us——

Q. Yes. A. —as individuals.

Q. Yes. A. We are too big and powerful, we would win with every fight.

Q. Did you tell him that, too? A. Yes, yes, sir.

Q. And, therefore, if any member of yours did something which the Guild thought was wrong you had made up your mind that all the A.M.C. stores would act in concert to prevent the Guild from taking such punitive action as it, the Guild, thought was proper; is that it? A. I had made up my mind that our stores would get a fair deal, if I could help them get it.

Q. And you thought that they would get such a fair deal by, in every case, the stores acting in concert? A. Why, I thought it would be a little bit better chance of having a fair deal.

Q. I see. A. Than if we were entirely in the hands of the F.O.G.A.

11120

Q. I see. And did you talk this over with the various store heads to ask them whether or not they acquiesced in such a program on your part? A. Well, I had a lot of discussion with store owners.

Q. Well, let us see. A. They trusted me, I will say that; they thought I understood the situation, and they thought that I was trying to work it out fairly for them, and for the Guild.

Q. And — A. And they knew I was working for the Guild. They certainly knew that. My letters are evidence of that.

Q. And your idea of working it out fairly was that any time the Guild would threaten, or state that an action on the part of one of your stores was a failure to co-operate, and they would therefore seek to return your declaration, that you would say to them, in words or substance, you better send them all on. A. Yes, sir; I felt——

11121

Q. All right, you have answered. A. That is not an answer.

Q. It is quite sufficient for me.

Examiner Averill: No.

Mr. Haycraft: Let him explain his answer.

Examiner Averill: He can explain his answer, sir.

Mr. Weisman: All right, Judge.

Examiner Averill: Yes, go ahead.

A. I felt that it would be unfair to precipitately send back a declaration on an individual retailer at any time without a hearing; in other words, to convict him, and hang him, and throw him out in the dump without giving him a chance to explain himself. I always thought that was——

11123 *By Mr. Weisman.*

Q. How often— A. I always thought——

Q. How often have you convicted and hung and thrown out onto the dump hundreds of retailers by your co-operative action, can you tell me that?

Mr. Haycraft: I object. He has not finished his answer.

A. You point it out and I will answer.

Examiner Averill: Had you finished?

The Witness: I think.

By Mr. Weisman.

11124 Q. What retailer has been convicted and hung and thrown out into the dumps? A. We were.

Q. Who is on the dumps? A. By the F.O.G.A.

Q. Who is on the dumps? A. As far as we were concerned, we were certainly not permitted in your place of business, and we never got a hearing to explain why, or anything else.

Q. In other words, then, you would state that these stores representing a buying power in ladies' ready-to-

wear, as you have stated it, which purchase each year about $50,000,000? A. That is coats, dresses, skirts——

Q. Yes. A. —sportswear——

Q. Yes. A.—that's a lot of lines that are not pertaining to dresses.

Q. Yes. A. I want to make it clear that it covers upstairs and downstairs.

Q. Yes, you have— A. Coats, dresses, sportswear and millinery and a lot of other things.

Q. So now a little bit for a moment about this A.M.C. This A.M.C., how is it governed?

Examiner Averill; He has told you that; he has told you that. 11126

Mr. Haycraft: Yes, that has been told.

Examiner Averill: He has told us that on——

Mr. Weisman: I want to make it very plain.

Mr. Haycraft: I object to further interrogation on it.

Examiner Averill: Sustained. It has been told. Any specific point in connection with its government, you may have that.

Mr. Weisman: Yes.

Examiner Averill: But it has been told. He has told Mr. Haycraft and told you at the opening——

Mr. Weisman: I do not think he told Mr. Haycraft.

Examiner Averill: Yes, and then he told you, at the opening of the examination. 11127

By Mr. Weisman.

Q. Is this correct, that the executives of these twenty stores, concerning whose purchasing power in the ladies' ready-to-wear and misses' and juniors' you have testified to, constitute the governing body of this A.M.C.?

Mr. Martin: Objected to as having already been answered.

Examiner Averill: It has been answered, but it is easier for him to say "yes" and go on.

A. The store principals constitute—the store owners constitute the governing body of the A.M.C.

By Mr. Weisman.

Q. Yes. A. They own the office and it is their office.

Q. Well, a number of these stores of yours send in their orders to your office? A. Most of them do send in

11129 orders to the office.

Q. Yes. A. Not all their orders, but they send in orders.

Q. They send in orders? A. Yes.

Q. And you have buyers in various departments? A. We have what we call representatives, market representatives, they are buyers.

Q. Then, why do you not say "yes." A. No, but we call them representatives and that is exactly what we mean; they are representatives for the store buyers in this market.

Q. Yes. A. And they not only buy, they do all kinds of things; they give information, and they just do——

Q. Miss Dean is one of those, is she not? A. Yes, I told you that before.

11130 Q. Suppose you get a lot of orders in, is it the practice, from time to time, of the A.M.C. to take a large number of orders, and place these orders with the manufacturers? A. Well, that may happen, but that is not the common practice, I mean. You mean bulk them?

Q. Yes, you know what I mean. A. Yes, but that does not happen very often.

Q. Well— A. It may happen, but it is not the common practice, I will say—I will put it that way.

Q. Do you have collections to gather in your place, weekly? A. No—how do you mean, collections?

Q. Well, what did you mean when you said, "No"? A. Well, I did not quite understand you, what do you mean, collections?

Q. Well, if you did not understand me, what did you say——

Examiner Averill: What do you mean by collections, please. Tell us what you mean?

Mr. Weisman: I want to find out what he said, "No" to.

Examiner Averill: He told you he just said that in haste. Now, he is asking what you mean: I do not know what you mean. I thought maybe they passed the hat, I thought maybe they passed the hat. 11132

By Mr. Weisman.

Q. Collection of merchandise. A. Collection of merchandise? Why, no, we do not have that.

Q. Is it— A. We do not have that as weekly; the merchandise men themselves come up to our office every morning and exhibit merchandise for our consideration.

Q. Do you know what the term "collection" means in the dress industry? A. Why, I never—why I never——

Q. You never heard of it? A. I never used it in connection with my work.

Q. No, but did you ever hear it? A. A manufacturer's collection? 11133

Q. Yes. A. Why, yes, it is his line of merchandise.

Q. That is what it is, and it is generally understood as that? A. We do not have any collection in our office.

Q. Oh, no, but in the business, is there not a custom of usage that the word "collection" refers to—not to the passing of a hat—but a manufacturer's line; is that not it? A. Yes, yes.

Q. And did you know when I asked you that question a moment ago that that is what I was referring to? A. No, I did not.

Q. I see. A. No, I did not.

Q. I see, you— A. I thought you might have meant group meetings, or buying meetings.

Q. Now— A. Or other meetings. I am not——

Q. I see. Now—do you sit in with the executive committee? A. Why, I have, once or twice, but generally not.

Q. Well, did you sit in with the executive committee of the A.M.C. when they voted $250,000—I will withdraw that. Did you ever hear that the executive committee of
11135 the A.M.C. voted the sum of $250,000, to subsidize dress manufacturers? A. No.

Mr. Haycraft: That is objected.

By Mr. Weisman.

Q. What?

Mr. Martin: That is objected to.

Mr. Feldman: He said no. Let him answer.

By Mr. Weisman.

Q. Did you ever hear that they had voted a sum to subsidize dress manufacturers?

Mr. Haycraft: Objected to, unless I know what
11136 he is talking about.

Mr. Weisman: It is a very plain question. You know what I am talking about. It is right in the evidence here. One of the subsidizers testified to it.

Mr. Haycraft: You said so.

Mr. Weisman: Well, do you deny it? Turn to Dr. Tily's testimony. What do you mean "I said so"?

Mr. Haycraft: That is what I mean.

Mr. Weisman: Do you deny he said it?

Mr. Haycraft: I object to you characterizing this evidence to suit yourself.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Then, may I make a statement for the record?

Examiner Averill: I do not want it to appear on the record. All I want you to do is go on with your questioning of the witness.

(Last question read.)

Mr. Haycraft: I object to the use of the word "subsidize" unless the witness knows about it. 11138

Examiner Averill: The witness may answer the question. Go ahead and answer it if you can.

A. We never did subsidize any manufacturers.

By Mr. Weisman.

Q. Well, did you ever get a fund together, since February, the A.M.C., to which members, your member stores, contributed equally?

Examiner Averill: What year, please?

Mr. Weisman: I beg your pardon?

Examiner Averill: What year?

Mr. Weisman: In this year, since February, 1936. 11139

Examiner Averill: 1936?

Mr. Weisman: Yes.

Mr. Haycraft: I object to that, Mr. Examiner; not proper cross-examination; irrelevant and immaterial. I carried the direct examination down to the time of the red carding and no further.

Mr. Weisman: Oh, yes, you did.

Examiner Averill: I have no objection to him going a little farther. Go ahead. We will see what this was. The objection is overruled; exception noted.

The Witness: Read the question.

Q. (Last question read.) A. No, we never got a fund together. I do not mean to convey by that that we did not finance the manufacturers, but we never got a fund together, or anything like that.

By Mr. Weisman.

11141 Q. Let me ask you this question: From your knowledge of the workings of the executive committee, is Mr. Tily, of Strawbridge & Clothier, a member of the executive committee? A. Would you let me look and see.

Q. Certainly, by all means. A. I think I can find it.

(The witness refers to papers.)

The Witness: What is the question?

Q. (Question read.) A. Yes, he is.

11142

Room 901, 45 Broadway,
New York, N. Y.,
November 25, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, *Examiner.*

(SAME APPEARANCES:)

PROCEEDINGS.

11144

Examiner Averill: All right, gentlemen, you may proceed.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination by Mr. Weisman (continued).

Q. Mr. Bergdahl— A. Yes, sir.

Mr. Weisman: Off the record. Please do not take this.

(There was a discussion off the record.)

11145

By Mr. Weisman.

Q. You remember at the adjournment yesterday I asked you, in words or substance, whether or not if Mr. Tily of Strawbridge & Clothier had, in these proceedings, testified that the members of the A.M.C. had gotten together to subsidize manufacturers, whether you agreed with that and I told you that I would seek, over the adjournment, to

find in his testimony where he s stated? Do you recall that? A. I recall in substance that.

Q. Yes. A. I do not——

Q. Now— A. I do not recall saying that I agreed that there was a subsidy.

Q. No, I did not say that you did say that. A. Oh, I am sorry.

Q. As a matter of fact, I asked you whether you differed from that. A. Yes.

Q. Mr. Tily, who is president, is he not, of Strawbridge & Clothier— A. Yes, sir.

Q. —and which firm of Strawbridge & Clothier is a
11147 member of your A.M.C., one of your member stores— A. Yes.

Q. —made this statement in the record at page 1764: "We"—speaking of Strawbridge & Clothier—"have been obliged already to make effort from time to time to develop our own resources by subsidizing, by giving them funds, interesting ourselves, indirectly; making loans to them so that they can supply us with these goods * * *." Now, did the A.M.C. do that? A. We made loans.

Q. Mr. Tily also testified as follows, referring to such words of subsidize, or whatever it was—"A. Well, Strawbridge & Clothier in connection"——

Mr. Haycraft: What page?

Mr. Weisman: Page 1861——

11148

Q. "A. Well, Strawbridge & Clothier in connection with the A.M.C. are doing it." Did Strawbridge & Clothier, in connection with the A.M.C., do it?

Mr. Haycraft: Do what?

Mr. Weisman: "What"—give money to manufacturers, or subsidize them, or, as you say, lend it to them.

A. Well, the A.M.C. handled the transactions for the stores.

By Mr. Weisman.

Q. And the way the A.M.C. handled the transaction was that the A.M.C. called these stores together, or the store executives, and got together the sum of $50,000; is that correct? A. No, they did not.

Q. Well— A. They did not get together, but they said we could use that amount of money. It was not gotten together, because, after all, we have the money.

Q. Then, I read you this question as entered at page 1862 of this record: "Q. In other words, I"—meaning 11150
Mr. Weisman—"am then to understand that the A.M.C., acting on your behalf"—meaning Strawbridge & Clothier—"and acting on behalf of other stores who are members of the A.M.C., have advanced to manufacturers of ladies' dresses the sum of $50,000? A. That is my recollection of the total, I am not sure that that is the exact amount." Now, do you say—do you say that $50,000 was not the exact amount?

Mr. Martin: Objected to.
Mr. Haycraft: Objected to.
Examiner Averill: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman. 11151

Q. Will you tell us to whom this money was advanced?

Mr. Haycraft: Objected to.
Mr. Martin: I object.
Examiner Averill: Sustained; I am not going into that line.
Mr. Weisman: Exception.
Examiner Averill: Yes.

Mr. Weisman: I will not argue it any further.
Examiner Averill: Thank you.

By Mr. Weisman.

Q. With regard to this money that you state was advanced to various dress manufacturers, was any note taken as evidence of the advance?

Mr. Haycraft: Same objection.
Examiner Averill: Sustained.
Mr. Weisman: Exception.
Examiner Averill: Exception noted.

11153 *By Mr. Weisman.*

Q. What evidence of the advance did you take from the —did the A.M.C. receive from the borrower?

Mr. Haycraft: Objected to, and I object to any further examination along this line, Mr. Examiner.
Examiner Averill: Objection sustained.
Mr. Weisman: Exception.
Examiner Averill: Objection sustained to any examination along this line.
Mr. Weisman: Exception.
Examiner Averill: Exception noted.

By Mr. Weisman.

11154 Q. Now, Mr. Bergdahl, will you tell us what is the correct name of the organization you have referred to as the A.B.O.?

Mr. Martin: Objected to, he has already stated that.

A. Association of Buying Officers.

Examiner Averill: Offices, is it not?
The Witness: Offices, yes.
Examiner Averill: Yes, offices.
The Witness: Yes.

By Mr. Weisman.

Q. Is the A.M.C. a member of that association? A. No.

Q. Are you a member of that association? A. No, I am not a member of the association.

Q. What is that A.B.O. made up of? A. I testified to that; if you want me to repeat it, I shall do so.

Q. What is the A.B.O. made up of? A. It is an organization of between twenty-five and thirty of what I consider the leading resident offices in this city, leading and representative resident offices in this city. 11156

Q. When you say "leading resident offices in this city," you mean resident buying offices? A. Yes, sir.

Q. And this association, is it an association made up of the executives of these resident buying offices? A. Yes.

Q. And the purpose is for the clearance of ideas? A. The purpose is for the discussion of problems pertaining to that particular branch of the industry.

Q. Where are the offices of the A.B.O.? A. They have no offices, as I recall it.

Q. Well, where do they meet? A. They generally meet at the—in Gimbel Brothers Restaurant, or at the Pennsylvania Hotel, or they may have meetings at any one of the resident offices. I recall—I recall that they have had a meeting at Cavendish Trading. 11157

Q. Was Mr. John Block, of Kirby, Block & Fischer, connected with that association? A. Yes, sir.

Q. And what was his connection in the year 1935? A. He was president.

Q. When was that association formed? A. I believe it was the fall of 1933; August, or thereabouts.

Q. Is that a dues-paying organization?. A. They contribute toward expenses.

Q. How? A. By paying—paying toward the expenses. I don't—I don't know exactly how they do it.

Q. Well, did the A.M.C. at any time contribute to their expenses? A. I think they have.

Q. And when? A. I could not tell you; I do not know.

Q. How recently, do you know? Have you any idea on the subject? A. No, sir; I could not tell you.

Q. Have you any idea how much? A. Well, I think they have contributed around a hundred dollars.

Q. And that is the limit of their contribution? A. That
11159 is all that I know of.

Q. When the F.O.G.A. was first organized, or prior to its organization, before any organization was made, Mr. Rentner, I understand, discussed and disclosed his purposes and his plans as they then were in connection with this association, to you? A. Yes, sir.

Q. And at that time he told you, in words or in substance, did he not, that he believed that the piracy of style was injurious to the retailer and public, as well as to the manufacturer, did he not? A. I recall he made such statements.

Q. And he presented for your consideration a proposed plan or an idea, which ultimately found its way into the formation of the Fashion Originators Guild; is that not so? A. Yes, sir.

11160 Q. And at that time you either, acting on your own behalf or acting on behalf of the A.M.C.—no, I will withdraw that question. And then you had a discussion with Mr. Rentner about this matter, did you not? A. Yes, sir.

Q. After you had this discussion— A. I should say many discussions, I think.

Q. Well, you had the first one, at all events. A. Yes.

Q. Did you then take it up with your superiors? A. Yes, I did.

Q. And did you present to them Mr. Rentner's thoughts? A. I am not sure that I can say I did exactly present Mr. Rentner's thoughts.

Q. Well, I do not mean exactly; I mean, did you convey to them the subject matter of the conference between Mr. Rentner and such other men as were present, and yourself? A. That is right.

Q. And after you had presented these thoughts to the various officials, or the executive committee of the A.M.C., or your superior, Mr. Reilly, you then had further discussions with Mr. Rentner? A. Yes, sir.

Q. In these discussions with Mr. Rentner, Mr. Rentner was seeking to get your ideas, and the ideas of your association, on this subject, as a whole; was he not? A. I thought he was. 11162

Q. Well, I mean, did he not—I mean, do you not still think he was, at that time? A. Well, subsequent events have led me to believe that he just did not care about my thoughts.

Q. I see. A. But I mean, I thought at that time——

Q. Yes, I mean— A. —that he definitely was interested.

Q. I see. And as a result of these thoughts that were expressed and exchanged between Rentner and yourself, you gave Rentner to understand, did you not, or such other men who came with Rentner—there were Bass, I understood you to say, or Sondheim, and some others— that the plan of protection against style piracy was a laudable one? A. In what year? 11163

Q. In 1932, or the latter part of 1932, or the latter part —or the early part of 1933, you have told us that these discussions consumed some time. A. Well, in 1933, I recall that we—I recall that I conveyed my impressions to Mr. Rentner, and that I was sympathetic to this thing.

Q. Well, you were a little more than sympathetic, were you not? A. Yes, I would say that I was at that time.

Q. Yes. A. I was.

Q. As a matter of fact, at that time, were you not, to some degree, enthusiastic about this plan? A. Well, I would not say just exactly enthusiastic, but I——

Q. Would you say you thought well of the plan? A. Yes, I was definitely sympathetic with what they were trying to do.

Q. And, of course, you were sympathetic—when you were sympathetic, you were at that time engaged in furthering the interest of the retailer in this market, were you not? A. Well, I do not understand that question.

Q. Well, I mean that you understood you were being
11165 paid, and that it was one of your duties, in this market to do that which would best serve the interest of the retailer; is that not so? A. I was being paid to work for the A.M.C.

Q. Yes, and you were loyal to your job and to your duties, were you not? A. Yes.

Q. And your duties were to do those things which would further the interest of the retailer? A. Well, if you will explain what you have reference to, I will—I will answer that; but that is a big question there. I know that my superiors at times differed with me, very much so, on this program——

Q. Do you fail to understand that question? A. I was working for the A.M.C. at the time; I was working for them; I was serving them in this market.

11166 Q. Yes. A. That was my job to take care of service for them in this market.

Q. Yes. A. I have explained that in my testimony.

Q. Are you afraid to tell it to me? A. No, sir; I will tell it to you as many times as you want.

Q. All right, then. Was it not your job at that time to further those interests of the retailer as they appeared to you in connection with this ready-to-wear market? A. I am—I don't know the point of it.

Q. I do not care whether you know the point of it or not. A. I was here to work for the A.M.C. Stores. That is what I was doing every day, all the time.

Q. Did you not yourself say to Mr. Haycraft in answer to his question to you, that it was your job to serve the best interests of the retailer in this market? A. No.

Q. That that was your duty? A. No, no, no, that I did not say—if you will read what I said——

Q. Well, what— A. —it is different from that.

Q. What do you think you said? A. I said we—I said the A.M.C. serves its member stores in any way that they want, within the broad policies of the organization.

Q. All right. A. Of the corporation. 11168

Q. In 1932, when you had these discussions with Mr. Rentner, you told him—and others— A. Yes.

Q. —you told him, did you not, in words or substance, that in your opinion the retailers throughout the country would be in favor of this proposed—of a proposed plan, such as he in substance disclosed to you at that time, for the curbing of style piracy; is that not so? A. In 1932, I don't think I expressed myself as in favor of any plan to curb style piracy; I don't recall that I did.

Q. Did you not— A. I have previously stated that I was in sympathy, and said so at a meeting in 1932, with the plan to improve, or to—to improve the conditions of better dresses, as described by Mr. Rentner, and at that time he certainly did not describe anything about the plan in detail, or red carding, or anything else. I mean that. 11169

Q. Well, that is not what I asked you. I am going to ask you this question again— A. Go ahead.

Q. —in another form to see whether I can make you understand it. In or about the time that the Guild was formed— A. Yes, sir; 1932.

Q. Yes . —or shortly before it was formed— A. Yes.

Q. —did you state to Mr. Rentner, in words or sub stance, that it was your opinion that the retailers through out the country would be generally in favor of the plai to curb style piracy?

Mr. Haycraft: I object; he did not say that i his original testimony.

Mr. Weisman: I am asking him whether or no he did.

A. I do not recall that I ever did, Mr. Weisman.

By Mr. Weisman.

11171 Q. Well, if you said it, was it correct and true?

Mr. Haycraft: He did not say that.

Mr. Weisman: Oh, you cannot pull that stuff.

Examiner Averill: Answer the question, if you know.

A. I do not recall that I said it. If you will read it to me I will answer your question, if I ever said that; I won't deny I said it, I will tell you that, if I said it.

By Mr. Weisman.

Q. Well, if you said it was it true?

Mr. Haycraft: I object; he did not say that.

11172 Mr. Weisman: You only said it the other day.

Mr. Haycraft: I object.

A. I just got through telling you I did not say it the other day.

By Mr. Weisman.

Q. Well, what do you think you said the other day?

Mr. Haycraft: He did not say it.

By Mr. Weisman.

Q. Mr. Bergdahl, do you now deny that when you were testifying on your direct examination, that you testified, in words or substances, that Mr. Rentner asked you how you thought the retailers of the country would react to such plan as he disclosed to you? A. I recall testifying that Mr. Rentner—that I said Mr. Rentner asked me, and I recall testifying that I told him——

Q. You told him, did you not— A. —my opinion.

Q. —that in your opinion, such retailers—that the retailers would react favorably, did you not? A. I told him that I thought the retailers would react favorably to the plan he outlined at the luncheon meeting. 11174

Q. Well, that is what I am asking. A. That is right.

Q. Then why do you not say yes? A. No, that is not what you have asked me; you have not asked me that at any time.

Q. The record will clearly show. A. I have asked you to read what I have said, and put it on the record, if you want it there; I won't deny anything that——

Q. I want to see what kind of miserable memory you may or may not have; see?

Mr. Haycraft: I object.

The Witness: Go ahead.

Examiner Averill: Do not answer.

By Mr. Weisman. 11175

Q. In any event, you now state that you told him that you believed it was your opinion that the retailers of the country would react favorably to such a plan as he then presented to you? A. I don't recall that I answered—I don't recall that I said other retailers; I recall that I gave my opinion that—and that I liked the plan; but if I included other retailers, then I will stand by it.

Q. No, I do not care what you will stand by. I want to find out what is the truth. A. You read it to me and I will tell you.

Q. You have just stated that you now remember, that without stating whether you failed to recollect anything else, but that there is one thing that you do remember, to wit, that you told him you were in favor of the plan at some time, you told him that, did you not?

By Examiner Averill.

Q. If you can, I would appreciate it very much. A. I understand the time to be——

11177 Q. Exactly. A. —before or immediately after the Guild was formed. I think he prefaced his question with that.

Q. All right. A. And I have stated in words or substance to the effect that I was at that first meeting, at which this was discussed, and that I said that I—that I thought that we, myself, and—I probably mentioned retailers, but I cannot say exactly, were in favor—or would be in favor of the plan that Mr. Rentner outlined at that time, to foster better merchandise, through publicity, and a label, and things like that, as he outlined at that meeting that day.

Q. All right.

11178 *By Mr. Weisman.*

Q. Did Mr. Rentner at that day which you refer to—and what is your recollection of the time that that day was? A. I should say it was in the first quarter of 1933; which day, I couldn't tell you.

Q. No. All right. Now, we have got the time.

Mr. Haycraft: 1933 or 1932?

The Witness: 1932, I am sorry, 1932.

By Mr. Weisman.

Q. Now we have got the time fixed in the first quarter of 1932, that Mr. Rentner came to you, or sent for you, or had a meeting with you, and others, and disclosed to you this plan that you just immediately talked about. A. Yes, sir.

Q. You have also testified that Rentner disclosed to you at that time that this plan was to be directed to the curbing of style piracy; is that not a fact? A. I don't recall that I ever said that.

Q. Well, if you do not recall it, do you now recall it? A. No.

Q. In other words, it is your statement now that when Rentner first discussed this with you, there wasn't any 11180
talk by him with relation to the curbing of style piracy? A. There may have been.

Q. Well, what is your recollection of it? A. I said I don't recall any such substance, or words, at that meeting.

Q. All right. Now, subsequently, and after this meeting in the early quarter of 1932, you learned, did you not, at some time, that it was part of this plan to curb or ameliorate the conditions which had grown up by reason of style piracy? A. Yes, sir.

Q. When did you first find that out? A. I would say in 1932.

Q. Well, what part of 1932, or our friend, Mr. Haycraft, will object. A. Oh, I cannot say exactly, Mr. Weisman; it is——

Q. Well, what is your best recollection? A. You want 11181
me to recollect something that I don't recollect—it was 1932—I was told at that time that that was the plan, whether it was March, April, May, or June, or September, or October, I cannot say——

Q. All right. A. —definitely.

Q. That is all right. I mean, I understand your situation, but my friend on the other side does not.

Mr. Haycraft: Do not worry about me. I will take care of myself, perfectly capable of it.

By Mr. Weisman.

Q. After this first meeting, you had numerous meetings with Mr. Rentner, did you not, and his associates? A. Yes, we had quite a few meetings.

Q. Then ultimately you did state to Mr. Rentner, in words or in substance, that you were in favor of such plan, one of the elements of which plan you understood to be the curbing of style piracy; did you not? A. Yes, I would say so.

11183 Q. Now, when, would you say, that was done? A. When the—as we were told by Mr. Rentner——

Q. Yes. A. —what his plans were——

Q. Yes. A. —we reacted to them.

Q. Yes. A. And I should say it was 19—let us see, now—the latter part of 1932 and early 1933, that his plans took more shape than they had been in previously.

Q. Yes, that is right. So that we have in the early part—in the latter part of 1932, or the early part of 1933, a sort of crystallization of thought on the part of Rentner, and you, is that right—it took form? A. Yes.

Q. It is another way of saying it. And during this time, from the first quarter of 1932 to the early part of 1933, had you discussed this matter which Rentner, and his

11184 associates, had disclosed to you, with your retailers? A. Why, I think we had, yes.

Q. Well, your A.M.C., and you, yourself, were acting in more or less of a representative capacity, were you not? A. Yes.

Q. And it was the usual and customary thing for you to ascertain the wishes and desires of your principals? A. Yes.

Q. And those principals were the retailers? A. They were the A.M.C. stores.

Q. Yes. Well, the A.M.C. stores are retail stores? A. Yes.

Q. So, then, would you say, in words or substance, that in 1933 when you advised that you were in favor of the plan as it was then disclosed—mind you, not as you claim it was ultimately developed—but as it was then disclosed, you were in favor of it—that by that the natural and reasonable implication was that the stores you represented were generally in favor of it? A. I did not state it to them in that way.

Q. Well— A. Will you let me answer it? A. Wait a moment, just a moment, and I will try to refresh your recollection.

11186

Q. —that you advised them the retailers would react favorably? A. When?

Q. I want to know if you did advise them? A. Mr. Weisman, I have testified about four years' contacts with the Guild. If you will name the place and time when I testified I will say whether or not I did.

Q. All right. Now, I thought your mind was directed to the early part of 1933. A. As many conferences——

Q. Now, at these many conferences, did you state to Mr. Rentner, or his associates, or whoever was present on his behalf, or their behalf, that you believed the retailers would react favorably to the plan that had then been disclosed to you? A. No.

Q. You never told them prior— A. I don't——

11187

Q. —prior to 1933. A. I don't recall—I said prior, but I did not say in 1933.

Q. Did you prior to 1933? A. I have told you that I did to the——

Q. When? A. I have told you.

Q. When? A. To the plan that Mr. Rentner outlined at the first luncheon meeting.

Q. Well— A. I told you to that plan——

Q. Yes. A. —I said we would react favorably.

Q. Now, that was in the early part of 1932. A. That is right.

Q. Then I asked you, you went along and had further conferences with Rentner. A. And the plan developed——

Q. And the plan developed. A. —took shape.

Q. Now, when it took shape, it took shape in conference with you? A. No, not always.

Q. Well, was the shape not disclosed to you? A. Yes.

Q. And you— A. After the shape was formed.

Q. And you knew it prior to 1933? A. I told you in my direct testimony——

11189 Q. Oh, no, no, no— A. —and I——

Q. Now——

Mr. Weisman: May we have an answer to that question?

Examiner Averill: Well, now——

The Witness: I knew what prior to 1933?

Mr. Weisman: What?

The Witness: Make it specific.

Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: What is your answer?

The Witness: What prior to 1933? What did I know? Say it.

11190 *By Mr. Weisman.*

Q. You knew the shape that the plan had taken? A. Well, yes, I knew of—I think I knew part of the shape it had taken. They were forming local retail guilds.

Q. Oh, look— A. That is what I said.

Q. I am asking you a very simple question. Didn't you and Mr. Rentner, and the rest of these people, have a great many conferences wherein Mr. Rentner disclosed to you the terms of this plan prior to 1933? A. No, no; in my direct testimony I did not say that.

Q. You did not say what?— A. I said——

Q. —What you said on your direct testimony, because I did not believe you then, and I want to know what you said.

Mr. Haycraft: I move to strike that question.

Examiner Averill: It is stricken, gentlemen.

Mr. Weisman: All right.

By Mr. Weisman.

Q. I want to know what you now say: Do you now say that prior to 1933 Rentner, or his associates, did not disclose to you that one of the—if not the main point of the plan—was that they were seeking to curb style piracy, or 11192
to ameliorate the conditions which existed as a result thereof? A. You mean you want me to answer "yes" or "no" to that?

Q. Yes; that is right. A. I won't do it.

Q. All right. You mean when you say "You won't" that you cannot? A. That's right, can't, shouldn't, wouldn't.

Q. Well, if you cannot, I am not interested in anything further. You are certain that you cannot answer that "yes" or "no"? A. That is right.

Q. That is all I want to know from you on that score. Now, in 1933—did not Rentner, shortly prior to 1933, in a conference with you, or in numerous conferences with you, seek to give you ideas generally about this plan— 11193
A. Not——

Q. —to curb style piracy. A. Not prior to 1933. Now, during 1933 he did.

Q. Well, now, when in 1933 did he first seek to obtain your ideas, would you say? A. Oh, in January or February.

Q. In January or February? A. Yes.

Q. Then, did he disclose to you, in words or in substance, that one of the purposes of this plan was to curb style piracy? A. Well, he wanted to hire me at the time, and we discussed all kinds of things, and he wanted my ideas about how to run the Guild, and inasmuch as he wanted his own—he wanted to employ me at the time, and he was very anxious to have my ideas—he was not at the time exactly conveying his, but he wanted me to state what my thoughts about the Guild were.

Q. Oh, that is not the question that I asked you. A. Well——

Q. You had certain conferences with Mr. Rentner in
11195 the early part of 1933, and when I say "Rentner," I mean Rentner and/or his associates, whom you have heretofore described. A. Yes; we had these conferences.

Q. All right. A. Primarily around May and June, primarily, but——

Q. May and June of when? A. 1933.

Q. All right. A. But we had conferences and conversations that were personal and otherwise. I have tried to avoid bringing them in here. You know that I have. I never mentioned them.

Q. I am not a mind reader.

Mr. Haycraft: Oh, I thought you were.

A. If you would like me to explain——

11196 Examiner Averill: One moment, please; please, now, not for the record.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Now, I asked you a question about conferences, and you said you had many conferences.

Examiner Averill: Yes.

By Mr. Weisman.

Q. You remember saying that a moment ago? A. Um-huh.

Q. If you shake your head— A. Yes.

Examiner Averill: He said "yes," at least I heard——

Mr. Weisman: I did not know whether the reporter heard it.

The Reporter: He said "Um-huh."

By Mr. Weisman.

Q. At any of these conferences which you have men- 11198
tioned, as being in May or June, 1933, was it disclosed to you, or did you know that the purpose of the Fashion Originators Guild was to ameliorate or curb style piracy? A. To curb style piracy?

Q. Yes. A. Yes, sir.

Q. When did you first find that out? A. Now——

Examiner Averill: What?

Mr. Weisman: That it was the purpose of the Guild to curb style piracy.

A. I think I have made an explanation, and that—

Q. I want to know what you found out. A. That I found out in 1932, I mentioned it a little ago, in 1932.

Q. In other words, we now have you stating that in 11199
1932 you found out that it was the purpose of the Fashion Originators Guild to curb style piracy? A. I so said a little while ago.

Q. I do not care what you said a little while ago. I want to know if you now state? A. Yes.

Q. Please tell us, as nearly as you can, when you found that out. A. Do you want me to state that again?

Examiner Averill: If you can, tell us.

The Witness: A little while ago I said——

Examiner Averill: Do not say what you said a little while ago.

The Witness: I will repeat what I said. I don't know whether it was May, June, July, August or September, it was in those months of 1932 that I found out they were going to go after style piracy.

By Mr. Weisman.

Q. Now, when you found it out, and you say it was in either May, June, July, August or September of 1932, you do not know which month any better than that, did you
11201 communicate to your store principals that that was the purpose of the—one of the purposes of the Fashion Originators Guild? A. I do not recall whether I did or not. I have looked to see if I did, and I cannot find that I have, I cannot find any record of such correspondence.

Q. Well, when you found it out, did you tell Rentner, or his associates, that you were in favor of such a program or purpose? A. As then outlined, I think I did.

Q. That is all right. Now, did you tell Mr. Rentner also, when you found that out, that you believed your store principals would be in favor of such a program? A. I don't think that I said that, but I think I said that I was.

Q. In other words, your best recollection is that when you gave approval to such a program you gave it per-
11202 sonally and not on behalf of the people you represented?

Mr. Haycraft: I object to the use of the word "approval" in that question.

Mr. Weisman: I said such approval as he testified to.

Mr. Haycraft: He did not say he did approve, that is my objection.

Examiner Averill: Read the question.

(The last question was read.)

Examiner Averill: I see no objection to that question; the objection is overruled.

A. I cannot answer it "yes" or "no."

Q. All right.

Examiner Averill: Then do not attempt to.

By Mr. Weisman.

Q. Let me ask you this: When you discussed this program with Rentner, during this period from May to September of 1932— A. Yes, sir.

Q. —were you of the opinion that Rentner was seeking your personal reaction to this plan which he discussed 11204
with you, or that he sought your personal reaction and the reaction of the retail stores you represented? A. I think he was seeking my personal reaction based on my knowledge of—of our retail temperament, especially as it applied to our stores.

Q. I see. And at that time he did not seek to find out from you directly or indirectly how your stores, which you represented, would react to this plan? A. No.

Q. Did you, before you gave Rentner your personal ideas during that period, May to September, 1932, ascertain in any fashion what were the opinions of your store principals toward such a plan? A. No.

Q. Well, did you not testify on your direct examination that before you gave Rentner your opinion, you wrote out 11205
to the stores to get their ideas? A. No, not—if you will specify when——

Q. No, no. A. I said at times I wrote, and at times I did not.

Q. All right, the record will speak for itself.

Examiner Averill: Yes.

By Mr. Weisman.

Q. Do you know whether or not Rentner or the Guild—by the way, I will withdraw that question. By the way, do you know when the Guild was organized? A. I think it was January or February, 1932.

Q. So that all the conversations that you had with Mr. Rentner were all subsequent to the organization of the F.O.G.A.? A. Apparently.

Q. Well, actually, were they not? A. Actually.

Q. During this time you knew, did you not, that the F.O.G.A. was constantly—I will withdraw that—was profusely writing out to retailers to get their opinions upon
11207 the matter of the advisability of curbing style piracy?

Mr. Haycraft: I object to the question unless the time is specified.

Examiner Averill: He says during that period, that is the same period he is speaking of.

Mr. Haycraft: You mean May until August?

Mr. Weisman: Yes.

Examiner Averill: Yes, 1933.

Mr. Haycraft: 1932.

Examiner Averill: 1932, I meant to say.

Mr. Weisman: 1932.

The Witness: Read the question.

Q. (The last question was read.) A. I knew that they
11208 were writing, but not to get opinions.

By Mr. Weisman.

Q. Well, were they writing to urge upon retailers the advantages as they, the Guild, believed them to be? A. Yes.

Q. In this program? A. Yes, sir.

Q. And these letters came to you from your retailers? A. On occasions, yes.

Q. And you saw them? A. Yes.

Q. And you discussed them? A. Some of them.

Q. Naturally— A. Yes, sir.

Q. —you saw the ones that were brought to your attention? A. That is right.

Q. And there were a large number of them brought to your attention? A. Yes.

Q. And in these letters the Guild, among other things, did they not, sought to make it plain to the retailer that the curbing of style piracy was of a benefit to the retailer? A. Yes.

Q. And at that time, that is, we are still in 1932, you agreed with that idea to the extent that it had been disclosed to you? A. Did you say 1932? 11210

Q. Yes. A. The letters that came to my attention were mostly from December on.

Q. All right. A. December, 1932 on, and there were not many in early 1932, or since 1932, I mean, as I recall it.

Q. Well, the date is not important. A. All right.

Q. If it is 1932, or the early—you say it is December, 1932? A. They began.

Q. The date is unimportant. I just want to find out, and if you are mistaken I promise to make no point of it. A. All right.

Q. Now, you saw these letters? A. I saw some of them, yes, sir.

Q. And you even produced one of them here? A. Yes, sir. 11211

Q. And the one that you produced was brought to you, or sent to you, by the retailer to whom the Guild had sent it? A. Yes, sir.

Q. Now, you have produced Commission's Exhibit 861 in evidence; you got that from Mr. Forman? A. I think so.

Q. And who is Mr. Forman? A. He is the owner of B. Forman & Company of Rochester, New York.

Q. And that is one of your member stores? A. That is right.

Q. And when Mr. Forman got this letter, he brought it in to you? A. Yes, sir, as I recall it.

Q. And he brought it in around the time he received it, or shortly thereafter? A. As I recall it, approximately.

Q. Yes, the letter was marked received by them, December 8, 1932, and so then he brought it in, let us say, within a period of thirty days thereafter; is that fair? A. As I recall it; yes, sir.

Q. And when Mr. Forman showed you this communication, you then learned what was therein? A. Yes, sir.

11213 Q. And you saw many other such communications of similar nature and character? A. At that time.

Q. Yes. A. Yes, sir.

Q. And did that not give you any idea of what the Guild program was? A. Yes, sir.

Q. And reading from this exhibit I notice it says as follows: "What the Guild is trying to accomplish is that there should be no copies bought by any legitimate store in the United States regardless of what price store it might be." Did you see that in the letter? A. Yes, sir.

Q. Well, did you not, when you saw this written in the letter to Forman, and in other letters, believe that that was one of the purposes of the Guild? A. Yes, sir.

Q. So that in December of 1933, or in the early part of——

11214

Mr. Haycraft: 1932.

By Mr. Weisman.

Q. December of 1932, or in the early part of 1933, you, and certainly some of your stores, knew that it was the purpose of the Guild that no copies should be bought by any legitimate store in the United States regardless of what the price might be? A. Yes, sir.

Q. Now, subsequently to the receipt by the Forman store of that letter, from the representative of the Guild, the Forman store agreed—or I will withdraw that—signed a declaration of co-operation; is that not so? A. Six months later, I believe.

Q. Yes, and since you say six months later, I assume that you saw the declaration. A. I—yes—I have seen a copy of their declaration.

Q. Yes. A. I do not recall that I ever saw their declaration, Mr. Weisman.

Q. Yes. Have you got a copy of it? A. I haven't it with me.

Q. In any event, there can be no doubt in your mind, 11216
can there, that the Forman Declaration, or the letter, a copy of which you saw, was sent in by Forman subsequently to the receipt by them of Commission's Exhibit 861? A. And subsequent to my——

Q. Well, never mind any more. I just want to make sure. A. It was subsequent.

Q. Yes. A. Yes.

Q. And it was also sent in subsequent to their showing to you the letter, Commission's Exhibit 861? A. And my talking to them about it.

Q. And your talking to them? A. Yes.

Q. Yes. And I show you this letter dated December 29, 1932——

Mr. Weisman: First, may I mark this for iden- 11217
tification.

(A paper was thereupon marked for identification Respondents' Exhibit 86.)

Examiner Averill: Respondents' Exhibit 86, all right, sir.

11218 *Herbert L. Bergdahl—For Commission—Cross.*

By Mr. Weisman.

Q. I show you Respondents' Exhibit 86 for Identification and ask you whether or not this is the original of the copy of the letter which you saw and which you referred to as a copy of the declaration of co-operation (handing paper to witness)? A. That is not the one to which I had reference a moment ago.

Q. Did you ever see a copy of Respondents' Exhibit 86——

Mr. Haycraft: —for identification.

Mr. Weisman: For identification, thank you, Mr. Haycraft.

11219

Examiner Averill: That is that letter he just showed you.

Mr. Weisman: Yes.

Examiner Averill: Did you ever see a copy of it, that one?

The Witness: I was apprised of its contents, but never saw a copy.

By Mr. Weisman.

Q. You say you were apprised of its contents? A. Yes.

Q. Who apprised you of its contents? A. One of the Formans, either Eddie Forman, or his father, B. Forman.

Q. So that you knew, did you not, that after the receipt by the B. Forman Company of Commission's Exhibit 861 and after they had spoken to you, they had sent to the Guild a letter, the substance of which letter they told you about and which you now say is fully contained in Respondents' Exhibit 86 for Identification?

11220

Mr. Haycraft: I object to the form of it, also.

Examiner Averill: The objection is overruled. I see no objection to the form. The witness can answer that readily.

A. The substance came—I wish I could, your Honor—I am probably very dumb about this proceeding——

Examiner Averill: No.

The Witness: —and I am sorry, if that is the case. The substance of this, forming a local guild, was told to me, and that they had made that decision up there——

Examiner Averill: Then you were asked whether the letter which has now been shown to you, Respondents' Exhibit 86 for Identification, covers the matters which were told to you.

The Witness: It does.

Examiner Averill: That is all. 11222

The Witness: That is right.

Examiner Averill: That is all you were asked.

Mr. Weisman: I now offer this letter in evidence, Respondents' Exhibit 86.

Examiner Averill: Show it to our friend.

(Mr. Weisman hands Respondents' Exhibit 86 for Identification to Mr. Haycraft.)

By Mr. Haycraft.

Q. Do you recognize Mr. Forman's signature on this letter, Mr. Bergdahl?

Examiner Averill: Show it to him.

11223

By Mr. Haycraft.

Q. I show it to you (handing paper to witness). A. I cannot say that I recognize it as Mr. Forman's signature, no.

Q. Well, from looking at this letter, and the context of it, do you have any doubt as to whether or not that is the original letter from Mr. Forman to the Guild? A. No, I don't.

AFTERNOON SESSION—2 P. M.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Haycraft.

The Witness: I would like to make a statement, if your Honor please, because I want to make a correction in something I said this morning.

Examiner Averill: You may proceed.

The Witness: Well, I should like to make the correction in this regard, that I think I testified,
11225 if not in these words, in substance that it was my understanding that I had seen a copy of a declaration signed by R. Forman & Company subsequent to this contract, or this agreement, which was shown to me.

I have referred to my files in my office, or had my secretary do so, and find that in the mail or correspondence that Mr. Post sent me in the fall of last year, 1935, that he made the statement that R. Forman & Company, and one other store, were registered under the agreement, of a local agreement, of Rochester local guild. He did not say whether they subsequently signed the contract or not, and therefore while I was under the impression that they had, they apparently had not.

11226 Examiner Averill: Is that all that you want to say in that regard?

The Witness: Yes, sir.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. So that this Respondents' Exhibit No. 86 would be, to your knowledge, the only declaration that Forman & Company had actually signed? A. As far as I know.

Q. As far as you know? A. As far as I know.

Q. During this period, from the first quarter in 1932 until the early part of 1933, the Guild had sent out, had it not, numerous letters and/or bulletins and/or communications, call them whatever you will, to the various retailers advising them of the purposes of the Guild; you do know that, do you not? A. I became familiar with such policies at the end of 1932; yes, sir.

Q. You saw them? A. I saw them.

Q. Then you became familiar with the physical bulletins, did you not? A. I would be willing to say that; yes, sir. I did become familiar with such bulletins at or about the end of 1932.

11228

Q. These bulletins, did they not set forth in general, and in lay language, the aims and/or purposes and/or intentions of the Guild, or purported so to do; is that so? A. As they developed.

Q. Yes. A. Yes.

Q. And when your member stores would receive these bulletins from time to time, or these letters, or these communications, or whatever you called them, they would send some of them, at least, on to you, or discuss them with you, or discuss the contents of them with you, the contents thereof with you; would they not? A. They would.

Q. These bulletins were sent to your member stores as well as to others? A. I think so.

11229

Q. Your member stores, in so far as you know, were treated the same at that time as anybody else? A. As far as I know.

Q. I show you a copy of Commission's Exhibit 454, No. 454, a letter of December 16. A. Yes.

Q. Disregarding the pencil notations on there, did you ever see that before—referring to Commission's Exhibit 454? A. Why, I cannot say—I do not recall that I saw it at the time, but I have seen this.

Q. You have? A. Yes.

Q. To the best of your recollection, what would you say— A. What is that?

Q. It is dated, as you will notice, December 16, 1932, and did you see it at or about the time that it was sent out? I do not mean on that day, but I mean within sixty days or ten days or thirty days or so. A. I am not sure, but I will say that I think I saw it at that time. It certainly has come to my attention because I knew of it.

Q. How did it come to your attention? A. I think it came to my attention by stores asking me what I thought about local guilds.

11231 Q. When you saw this did you notice therein paragraph 3, which, referring to the Guild program, and stating to the retailer: "The point we wish to stress is that when the consumer sees in a legitimate dress shop a dress that appeals to her, she will have confidence that the price asked for this dress represents its true value, and she will either buy it at that price or if she prefers to spend less money than that price, she will select another style dress to suit her purposes, she will understand that by waiting a week or two longer she will not be able to purchase this dress or an inferior copy of the original of that, or similar to it at a fraction of the original." Do you notice that—would you like to see it? A. Why, I have told you.

11232 Q. No, no, no. I asked you, do you notice that, and did you notice that at the time? A. Why, I have told you—

Q. Would you like to see it? A. No.

Examiner Averill: You can answer whether you noticed it or not.

The Witness: I cannot recollect, but I have told you——

By Mr. Weisman.

Q. Now, Mr. Bergdahl, I call your attention to it, and since I have called your attention to it, would you say that in or about December 16, 1932, that you knew from this communication to others, and/or from others, if not from this alone, or from others alone, that that was one of the substantial purposes of the Guild? A. Yes, I knew that that was one of the substantial purposes of the Guild.

Q. I call your attention to this matter contained in this communication which says——

Examiner Averill: Is that the same exhibit?

By Mr. Weisman. 11234

Q. Still referring to Commission's Exhibit No. 454: "We wish to record with all possible emphasis the fact that it is not the Guild's intention to interfere with or to impede in any way whatever the individual retailer's complete control over their business"—I beg your pardon—"complete control over every phase of the operation of his own business. We would not be a party to any compact that would be in reality, or might be construed as designed to regulate prices, or to hamper the free play of competition. All we can—we cannot consider any relationship with merchants which would deprive them of conducting their enterprise in any ethical manner that they may see fit. Needless to say, the acceptance of the Guild proposals 11235 does not limit the retailer's purchases to any group of resources. The only condition stipulated and upon which frank comment of merchants is invited is that they shall not buy copied or pirated merchandise on the principle that this plagiarism has been, definitely been proved to be detrimental to the best interests of the manufacturer, retailer and consumer." You say that at or about the date that it was sent out, did you not? A. I think so.

Q. You knew then that in December, 1932, the only condition stipulated by the Guild was that they should not buy copies or pirated merchandise, did you not? A. I did not know that.

Q. Did you not know that the Guild was urging the acceptance of this principle; that is, that merchants, retail merchants, should not buy pirated merchandise upon the ground that they believed—referring to the Guild, I mean—and said that they, the Guild, believed that the purchasing of pirated merchandise had proved to be detrimental to the best interests of the manufacturer, retailer and consumer? A. I recall such.

11237 Q. You do recall such. Do you recall that such was the claim, plan and position of the Guild in 1932, as evidenced by Commission's Exhibit No. 454? A. I recall such.

Q. Mr. Bergdahl, you have testified that you saw certain notices in "Women's Wear Daily"; is that correct? A. When?

Examiner Averill: You testified that you saw notices. Say "Yes."

A. Yes, yes.

By Mr. Weisman.

Q. The "Women's Wear Daily," was that a paper that was regularly read by you? A. Yes.

11238 Q. Did you in 1932 read it regularly? A. Yes.

Q. While in or about 1932— A. What is that?

Q. I withdraw that question. A. O.K.

Q. Did you not know that in or about the month of May, 1935, at a meeting attended by certain executive members of the A.M.C., or members of the A.M.C., in or about that time, requested—that is, these members of the A.M.C. in or about that time requested, either in words or in substance, that the Guild extend its program to and

take in the $10.75 manufacturers? I refer to May, 1933. I said, erroneously, May, 1935 in my question. A. Do I know that members of the A.M.C. made such a request?

Q. Yes. A. No. No, I do not recall any such request.

Q. Let me ask you if up to May, 1933, the Guild——

Examiner Averill: 1933?

Mr. Weisman: Yes.

Examiner Averill: Your previous question was for 1935.

Mr. Weisman: Yes, but I corrected it to 1933.

Examiner Averill: You corrected it to 1933?

Mr. Weisman: Yes, sir.

Examiner Averill: I just want to keep the record straight. Proceed. 11240

By Mr. Weisman.

Q. You understood my correction to 1933? A. Yes, sir.

Q. We have the formation of the Guild and we have your co-operation, in any event, up to May, 1933; that is correct, is it? A. Yes.

Q. When I say "your co-operation," you have testified that to be a period that is already in evidence that your member stores co-operated? A. Yes.

Q. Was that up to 1933, and particularly 1933, or, I will put it this way: That, in fact, up to 1933, in the month of May, your stores of the A.M.C. and the A.M.C. itself were co-operating with the F.O.G.A. in its program as it was being exercised; is that correct? 11241

Mr. Haycraft: I object to that. May, 1933, there had not been a single one signed up by then.

Mr. Weisman: All of these signed prior to that, every declaration of co-operation you have in evidence was signed prior to May, 1933.

Examiner Averill: There is nothing in the evidence to warrant that, obviously. Objection over-

ruled. You may answer the question. There is nothing to warrant the objection so far.

A. No co-operation was required up to that time.

By Mr. Weisman.

Q. Then it is your statement that up to May, 1933, the stores were buying copies? A. I think so.

Q. That is your best recollection?

Examiner Averill: When you say "stores," what stores do you refer to, Mr. Weisman?

11243 *By Mr. Weisman:*

Q. The member stores of the A.M.C. A. I am quite sure that they were. They could not help it.

Q. Well, wait a minute. A. Yes.

Q. Do you know the terms of the declaration of co-operation, to wit, that the stores will not knowingly purchase a copy of dresses manufactured by members of the F.O.G.A.? A. Yes, sir.

Q. Do you know Mr. Ladd? A. George Ladd?

Q. Yes. A. Yes.

Q. Who is he? A. Merchandise manager of ready-to-wear for Abraham & Straus, Inc., over in Brooklyn.

Q. Is Abraham & Straus, Inc., a member of the A.M.C.? A. Yes, sir.

11244 Q. Do you know Mr. Walter Deiches? A. Yes, sir.

Q. Who is he? A. He was merchandise manager of Bloomingdale's at the time.

Q. New York? A. Right.

Q. When you say "at the time," what year are you referring to? A. 1933.

Q. '33? A. Right.

Q. 1932 also? A. I think he was also in 1932, but I am not sure about that.

Q. Was that store also a member of the A.M.C.? A. Yes, sir.

Q. Right? A. Right.

Q. Do you know whether or not prior to 1933 Abraham & Straus had signed a declaration of co-operation? A. I do not.

Q. Do you know whether or not they had expressed themselves as being in favor of the Guild policy to prevent the copying of styles and originations? A. To the Guild?

Q. Yes. A. I do not know.

Q. Do you know whether or not Abraham & Straus, Inc., on November 1, 1932, said in words or in substance to the F.O.G.A., and by that I mean the Fashion Originators Guild of America, Inc., that they, Abraham & Straus, wished to express themselves in sympathy with, or their sympathy with the efforts of the Guild to prevent the copying of styles? 11246

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Averill: Overruled. He may answer if he knows.

A. I do not know.

By Mr. Weisman.

Q. Did Abraham & Straus, in or about November, 1932, ever divulge that statement of policy of theirs to you? A. No, sir. 11247

Q. Did they ever tell you that? A. That I do not recall.

Q. You mean they might have said it, but if they did you have now forgotten it? A. That is right.

Q. Did they ever state to you that they had informed the Guild in words or substance that they agreed that the copying evil is costing the retailer—and that they, Abraham & Straus, Inc., would like to see this minimized? A. Well, are you quoting that?

Mr. Haycraft: I object.

Mr. Weisman: I object to the witness interrogating me, your Honor. It is just another evidence of rebellious, contumacious and recalcitrant spirit that this witness is evidencing.

Mr. Martin: Oh, my, my, my.

Examiner Averill: He is asking you if you did; I think you can answer that.

By Mr. Weisman.

A. I do not understand it, and I do not know of any such statement.

11249 Q. Do you recall whether or not— A. What is that?

Q. Do you recall whether or not you became aware of the fact in 1933 that the F.O.G.A. proposed to take in, through some form of membership, the manufacturers of $10.75 merchandise? A. 1933?

Q. 1932, I mean. A. I do not know.

Q. You never heard of that before now? A. About 1932?

Q. Yes. A. That the Guild intended to do so?

Q. Yes. A. No, I did not.

Q. Did you ever urge upon the Guild in 1932 that the proper— A. What is that?

Q. —in words or in substance, that the proper protection of all of this merchandise that was being carried by your stores would require that the Guild take into its

11250 membership manufacturers of garments costing $10.75? A. Not in those words.

Q. I did not ask you whether you urged in those words. I particularly said not in words, and I said in substance did you urge upon the Guild that they should take into the Guild manufacturers of merchandise costing $10.75, or costing $10.50? A. I cannot answer that by "yes" or "no."

Q. All right. Did you not a moment ago say—or, as a matter of fact, without any regard to what you said a few moments ago, did you not learn in 1932 that the Guild proposed to take into its membership the manufacturers of $10.75 merchandise? A. I do not recall that I learned any such thing.

Q. Or any similar thing? A. No.

Q. Did you learn in or about May, 1933, that the F.O.G.A. was about to admit into some form of membership the $10.50 manufacturers? A. That refers to 1933?

Q. Yes. A. I did not.

Q. I show you Respondents' Exhibit 45 for Identification, the same being a photostatic copy of a page of "Women's Wear Daily," and ask you whether or not in August, 1933, you saw that? A. I may have seen it. I do not recall. 11252

Q. You do not recall? A. No.

Q. You remembered very definitely that you saw Commission's Exhibit No. 899 in the "Women's Wear," the same being a small article about 2 inches wide by 4 inches long, and notwithstanding that you cannot say whether you saw an article which covers two-thirds of a page, approximately; is that so?

Mr. Haycraft: I object to that as argumentative.

Examiner Averill: Let him answer. The objection is overruled.

Mr. Haycraft: He has said he had not. What is the use of all this? 11253

A. I cannot tell you anything more than I have before.

By Mr. Weisman.

Q. That is your best answer? A. I do not recall it.

Q. Do you deny that you saw it? A. No, sir; I do not deny it.

Q. It was a subject-matter that was not of interest to you? A. No, sir; it was not.

Q. Did you think it was of interest to the members, or member stores of the A.M.C.? A. I think not. I am sure that it was not.

Examiner Averill: Gentlemen, I think that until the paper is in evidence that these questions are not proper in regard to the contents thereof.

By Mr. Weisman.

11255 Q. I show you Respondents' Exhibit No. 44 for Identification, the same being a full page advertisement appearing in "Women's Wear" of July 11, and ask you whether or not you saw that at any time?

Mr. Haycraft: What year?

Mr. Weisman: '33.

A. I may have.

By Mr. Weisman.

Q. As a matter of fact, did you not? A. No. I cannot say.

Q. Do you not know? A. You want me to say if I do not recall it? I do not recall having seen that.

Q. If you had seen it, would you remember it?

11256 Mr. Haycraft: I object to any further interrogation along this line as repetitious, and of no value in the record.

Examiner Averill: I do not think until the paper is received in evidence, or is introduced in evidence, that this line of interrogation would be proper.

Mr. Weisman: Then I will go to something else for a moment and return to it later.

By Mr. Weisman.

Q. Do you not regularly read "Women's Wear"? A. Yes, sir; I do.

Q. Do you think that it is possible that you, who daily read "Women's Wear," would miss a full page advertisement announcing that the dress——

Mr. Haycraft: I object to that as reading from a document that is not in evidence.

By Mr. Weisman.

Q. What is almost a full page advertisement such as this? 11258

Mr. Haycraft: I object. He said he did not.

Examiner Averill: Sustained. The witness says he does not remember so.

Mr. Weisman: I am trying to refresh his recollection. People who have flexible recollections need to have them stimulated from time to time.

Mr. Haycraft: I object to any further interrogation and use of this exhibit.

By Mr. Weisman.

Q. Is it not a fact that the A.M.C. and the F.O.G.A. both regularly have used the "Women's Wear Daily" as a media of getting notices to the trade generally, a policy adopted by both of them? 11259

Mr. Haycraft: I object.

Mr. Weisman: This is a different question.

Mr. Haycraft: He can answer for the A.M.C., but how can he answer for the F.O.G.A.?

Mr. Feldman: He can answer it as an expert. He certainly was called upon to answer everything else that the F.O.G.A. did, including blowing its nose.

Mr. Weisman: The question is not any good anyway, because it does not say so with any definiteness.

Examiner Averill: He can answer that question. Objection overruled.

A. Yes, sir, I know that.

Mr. Weisman: I offer this in evidence.

Mr. Haycraft: No objection.

Q. Mr. Bergdahl, prior to the date appearing on these advertisements, the earlier of which is July 11, 1933, and the later one of which is August 9, 1933, the same being
11261 Respondents' Exhibits Nos. 44 and 45, respectively, did you not at a meeting with the Guild officials urge upon them that they should take into their membership the $10.50 manufacturers? A. No, sir.

Q. You are certain of that? A. Yes, sir.

Q. I ask you to look at the minutes of a meeting held on and in the Garment Center Capital Club on February 17, 1933, at which were present a number of men who were from resident buying offices, including your offices, and at which there were present a number of people from the F.O.G.A. and at which you were present. A. No, it does not say that and I do not recall that I was present. I wish I had been. It was a good letter. It is good minutes.

Q. In other words, you say that these minutes do not refresh your recollection of having attended such a meet-
11262 ing? A. No, they do not.

Q. By the way, during this period—that is, the early part of 1932, or, rather, the latter part of 1932 and the early part of 1933, was Mr. Reilly, your superior, equally active as you in connection with the Guild program? A. In 1932?

Q. The latter part of 1932 and the early part of 1933. A. We were active together. I was active in the market and in the contacts with manufacturers and with the

F.O.G.A. I discussed it with him and he frequently passed on information to the store owners as I passed it on to him; but as far as market contacts were concerned, I was the most active.

Q. Referring to Respondents' Exhibit 44, I notice that it is a full page advertisement by the Dress Creators League of America, Inc., and that it is signed by, among others, Baum, Kravat & Baum, 550 Seventh Avenue——

Mr. Haycraft: I object to that. The witness said he did not see that.

Examiner Averill: I do not know whether he is going to ask him that now, as to whether he saw it, or not. The question has not been finished. The 11264
exhibit is in evidence and we will see what the basis for all of this is.

Mr. Weisman: If you will kindly refrain from interrupting me until my question is completed——

By Mr. Weisman.

Q. Do you know who Baum, Kravat & Baum of 550 Seventh Avenue were in July, 1933? A. I was familiar with them.

Q. Who were they? A. They were dress manufacturers.

Q. What price dresses did they manufacture and sell, to your knowledge? A. At that time, I think $10, $10 to $12.

Q. Do you know whether or not they had their own 11265
designing staff? A. No, sir.

Q. No? A. No, sir.

Q. When you say "No, sir," do you mean they did not have or you do not know? A. I do not know.

By Mr. Weisman.

Q. I notice from Respondents' Exhibit No. 44, that the Dress Creators League of America, Inc., advertises in the

"Women's Wear Daily", of Tuesday, July 11, and stated the following: "The members of this organization maintain extensive designing facilities and create every model presented by them. In dealing with League concerns, retailers who have signed the Guild's 'Declaration' can have absolute confidence that they are faithful to their pledge." Do you agree with that statement?

Mr. Haycraft: That is objected to.
Examiner Averill: Sustained.
Mr. Weisman: Exception.
Examiner Averill: Noted.

11267 *By Mr. Weisman.*

Q. Do you know who the members of the Dress Creators League were in July, 1933?

Mr. Haycraft: That is objected to as not proper cross-examination.

Examiner Averill: I believe I understand, counsel, that the members are shown thereon, and why do you not ask the witness to take the exhibit and ask him whether he knows whether they are the members?

Mr. Weisman: I shall be most happy to adopt your Honor's suggestion.

11268 *By Mr. Weisman.*

Q. I show you Respondents' Exhibit No. 44 and ask you to look at that, and from looking at it can you tell me, or tell us, who were the members of the Dress Creators League of America, Inc., in July, 1933? A. Every member?

Examiner Averill: As far as you know, are the names on that paper the names of the people who

at that time were members of the League—will you say?

The Witness: They were, as far as I know.

By Mr. Weisman.

Q. The members of this Dress Creators League that consisted of the following: Baum, Kravat & Baum, 550 Seventh Avenue, F. E. D. Dress Co., Inc., 1400 Broadway, Goldman Frock Co., Inc., 1384 Broadway, International Dress Co., Inc., 1400 Broadway, Jomark Dresses, Inc., 1375 Broadway, Parisian Manufacturing Co., Inc., 550 Seventh Avenue, C. H. D. Robbins Co., 1375 Broadway, New York Dress & Costume Co., Inc., 1375 Broadway, 11270
Rosen Brothers Frocks, Inc., 1400 Broadway, Sakin & Levine, Inc., 1400 Broadway, Sheila-Lynn Dresses, Inc., 525 Seventh Avenue. A. Yes.

Q. From your experience in this business, do you know who the F. E. D. Dress Company, Inc., 1400 Broadway, New York, N. Y., were, and what price dresses the F. E. D. Dress Company, Inc., were manufacturing in July, 1933?

Mr. Haycraft: I object as not proper cross-examination.

Examiner Averill: What?

Mr. Haycraft: I object as not proper cross-examination, and incompetent, immaterial and irrelevant.

Examiner Averill: I do not know anything about 11271
this thing. We have had some reference by the witness to this particular dress concern.

Mr. Haycraft: No in his direct examination.

Examiner Averil: The witness has spoken of it before. Overruled.

A. As I recall it, they made $10.75 dresses.

By Mr. Weisman.

Q. They also made cheaper dresses—they also make cheaper-priced dresses? A. I think not.

Q. Do you know what priced dresses the International Dress Company, Inc., 1400 Broadway, New York, N. Y., made in July, 1933?

Mr. Haycraft: Same objection.

Examiner Averill: Why not ask him about all of them in one question?

Mr. Weisman: Because some of them did and some of them did not. I just wanted to pick out the ones who did.

11273

Mr. Haycraft: I say that I object to all of this because I think we are going into a cross-examination now that is not based upon the direct testimony of the witness, and is incompetent, immaterial and irrelevant for any purpose whatsoever.

Mr. Weisman: It took you four and a half days to get in absolutely nothing, and it is going to only take me a short time to bring out the facts, and I do not see what you are complaining about.

Mr. Haycraft: What is that?

Mr. Weisman: It took you four and a half days to get nowhere. Why, you are the last one to complain.

Mr. Haycraft: Is that so?

11274

Examiner Averill: Proceed and get along, or none of us will get anywhere.

By Mr. Weisman.

Q. Do you not know that a lot of these dress manufacturers who were members of the Dress Creators League of America, Inc., in July, 1933, or at or about that date, or in the season ensuing shortly thereafter, made dresses that sold at less than $10.50? A. I know that they made $10.50.

Q. Now, look. Do you not know what I asked you?

Examiner Averill: Did he not answer it?

Mr. Weisman: No. He stalled and slid around the corner. I asked him whether he knew that.

Examiner Averill: He answered that he knew they made $10.50.

Mr. Weisman: Quite true, your Honor, but I asked him more than that. That does not exclude him from knowing any other fact.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. Do you know whether any of these people— A. 11276
What?

Q. First, you were divisional merchandise manager of the A.M.C.? A. Yes.

Q. An organization purchasing $50,000,000 worth of women's and misses' ready-to-wear during the year, ladies' ready-to-wear, were you not? A. Yes.

Q. Did you not acquaint yourself with the conditions of the markets? A. Yes.

Q. Did you not? A. I did.

Q. From such experience and acquaintanceship which you gathered in the line of your duty, do you know whether or not any of these firms mentioned in this Respondents' Exhibit No. 44 made, manufactured or sold dresses at less than $10.50? A. I think there was some of them that did. 11277
I am not sure, however.

Q. Why did you not tell us that before? A. You did not ask me.

Q. Tell us who you think did, as indicated by the names set forth on Respondents' Exhibit 44?

Mr. Haycraft: I object to that as immaterial.

Examiner Averill: I am sorry, but I must sustain the objection. I do not think we can go any

further because it is not proper cross-examination. I have allowed it so far, hoping something would develop, but I have not seen it yet.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Now, there were some of your member stores, Mr. Bergdahl, were there not, who felt that the policy of the Guild tending to curb style piracy was a beneficial one?

Mr. Haycraft: I object unless you make it more definite as to time.

11279

Examiner Averill: Gentlemen, there appears to have been a certain time when there were certain and substantial members who did coincide with the idea, and it appears that later there was a change in the feeling of some of them. How many, I do not know, but there was, so I think that that is a reasonable request by counsel.

By Mr. Weisman.

Q. Let me see, Mr. Bergdahl. A. Yes.

Q. Your A.M.C. has eighteen or twenty members? A. Twenty.

Q. Hutzler Brothers, Baltimore, Md., are one of these members, are they? A. Yes.

11280

Q. In your opinion, are Hutzler Brothers at this date in favor of the style protection as laid down by the Guild? A. I could not answer that "yes" or "no."

Q. Do you not know? A. No.

Q. All right, I will take that as your best answer.

By Mr. Weisman.

Q. Do you know whether or not Hutzler Brothers, Baltimore, to the best of your knowledge are to-day co-operating with the Guild?

Q. Are they members of the A.M.C.? A. They are.

Examiner Averill: Objection overruled.

(Question read.)

A. They are co-operating, as far as I know.

Q. And they are members of the A.M.C.? A. That is right.

Q. Do you know the Horne Company? A. Yes, sir.

Q. What is the full name of that company? A. Joseph Horne & Company.

Q. Of where? A. Pittsburgh, Pa.

Q. Are they members of the A.M.C.? A. They are.

Q. Do you know whether or not they are to-day co- 11282
operating with the Guild? A. As far as I know, they are co-operating.

Q. Do you know Bullock's, or is it Bullocks-Wilkshire? A. Both.

Q. One of them is Bullocks-Wilkshire at Los Angeles, and Bullock's is in Los Angeles, too? A. Both of them are. One of them is a branch of the other.

Q. And they are both in Los Angeles, Calif.? A. Yes.

Q. Do you know whether or not they are co-operating with the Guild? A. As far as I know, they are co-operating.

Q. They are also members of the A.M.C.? A. Right.

Q. Do you know the L. S. Ayres Company? A. Yes, sir.

Q. Do you know whether or not they are co-operating 11283
with the Guild? A. Yes.

Q. Are they members of the A.M.C.? A. Yes.

Q. Do you know whether or not the B. Forman & Company are members of the A.M.C.? A. Yes.

Q. Are they? A. They are.

Q. And are they co-operating with the Guild? A. As far as I know, they are.

Q. What about the Reich-Shumler Company? A. As far as I know, they are co-operating.

Q. They are members of the A.M.C.? A. Yes, sir.

Q. Have you discussed this matter with any of the executives of some of the well-known leading department stores of America? A. Yes.

Q. Have you discussed it with the Marshall Field representative, Chicago? A. No, I think not.

Q. Would you say that Marshall Field of Chicago is a department store which handles both high and low-priced merchandise?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant.

11285

Examiner Averill: He may answer that question.

A. Yes, they do, yes.

By Mr. Weisman.

Q. On your direct examination, you gave it as an answer to a hypothetical question, that you felt that a store having a basement shop and a high-priced shop above would be at some disadvantage in co-operating with the Guild program? A. Yes.

Q. If Marshall Field Company, and the executives thereof, had expressed a directly contrary opinion to that, and had stated that their experience showed it was beneficial, would that in the smallest degree change or affect your opinion? A. That would not affect my opinion in the slightest iota.

11286

By Mr. Weisman.

Q. Do you know the Powers Company, Minneapolis? A. I know of the Powers Company in Minneapolis.

Q. Do you know what business the Powers Mercantile Company is in? A. They are a department store.

Q. Where? A. Minneapolis.

Q. Minneapolis, where? A. Minnesota.

Q. They handle goods of all ranges, expensive and cheap goods, and maintain a basement department? A. I think they do. Yes.

By Mr. Weisman.

Q. Now, in or about July, 1933, you, on behalf of the A.M.C., signed a declaration of co-operation, did you not? A. The last week in June, I believe we signed such a declaration.

Q. Well, you say "we," but you did sign it on behalf of the A.M.C.? A. I signed it, yes. 11288

Q. Did you? A. Yes.

Q. Did you sign it on behalf of the A.M.C.? A. I did.

Q. Before you signed it you went over it carefully? A. Yes.

Q. You made sure, did you not, that it contained the full agreement, did you not? A. No, I did not.

Q. Did you make any changes in it? A. No, sir.

Q. You did not? Are you sure of that? A. I think not, as I recall it, but I may have.

Q. If it required any changes, would you have made them? A. No, I think not, with the understanding that I had with Mr. Rentner.

Mr. Haycraft: What is that?

Mr. Weisman: I ask this declaration of co- 11289
operation that was signed by the A.M.C., one page, be marked Respondents' Exhibit 88 for Identification.

Examiner Averill: It may be so marked.

By Mr. Weisman.

Q. I call your attention to Respondents' Exhibit 88 for Identification, and ask you whether or not this is the

declaration of co-operation signed by you and transmitted to the Guild, and, furthermore, that when you signed it, you signed it personally, or on behalf of the A.M.C.? A. That is the declaration that I signed on behalf of the A.M.C.

Q. That is your handwriting? A. It is.

Q. Below? A. It is. It states for the New York office only, however.

By Examiner Averill.

Q. Is this the paper to which you referred just a moment ago in which you stated, then, you stated, that you
11291 had signed it some time in the last week of June, 1932? A. Yes, sir; this is the one I signed some time in the last week of June, 1932.

Q. The reason I asked you that, the paper bears no date, but bears a stamp on there showing it was received July 5, but it did not give any year. A. Yes, sir.

(Whereupon, at 4 o'clock P. M., November 25, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 1, 1936.

11292

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: You may proceed, gentlemen, whenever you are ready.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Bergdahl, with regard to your statement, which is, in words or substance, that you felt that a department store handling low-priced and high-priced merchandise was somewhat at a disadvantage by reason of the Guild program, would it change your answer if you were advised that Mr. Perry Schneider, whom we have previously identified, had testified in words or substance that his store, the Powers Mercantile Corporation, found that non-co-operating competitors had no advantage over them in 11294
the sale of low-priced merchandise in the Minneapolis, Minn., market? A. It would not change my testimony.

Mr. Weisman: I think that is the point of the question.

By Mr. Weisman.

Q. I think at your last examination you chose the words, with regard to a similar question, that it would not change your testimony—you mean it would not change your opinion; is that so? A. Yes, I mean it would not change my opinion.

Q. I believe you testified that it would not change your opinion one iota; do you remember that? Do you re- 11295
member using that language? A. Yes.

Q. Would you say the same thing with regard to the lack of change of opinion to the present question, that it would not change, or that the charge would not even be to an iota? A. Well, that is making it kind of technical, but that is the way I feel about it, it would not change my opinion one iota.

Q. That is what I want to know; it would not change your opinion one iota? A. Yes.

Q. Mr. Bergdahl, in 1932 in about November, and for some time prior thereto, you had testified, I believe, that you had numerous conversations with officers of the Guild concerning their program; is that so? A. In substance, I think so.

Q. You were then in the same position as you are now? A. Yes.

Q. And to some degree did you not feel that this Guild movement was an important movement in the ladies' ready-to-wear, and one that affected the business of those stores whom you represented? A. I did at that time.

Q. Did you not, with that belief, reasonably seek to in-
11297 form yourself as to what was going on with relation to this program? A. I do not know just how to answer you on that.

Q. Answer me as best you can. A. I was working in the ladies' ready-to-wear, and I was interested in the problems incident thereto. I did not seek any outside assistance, however.

Q. I did not ask you that. A. No, but I mean—well—

Q. Did you not think it was part of your duty, as an executive, representing a lot of these stores, to learn all that you reasonably could about what was going on in relation to this program? A. Well, I do not know just how to answer you. I was interested in the program. I have told you that. You mean, did I seek any contact with the Guild to find out what was going on, and so
11298 forth?

Q. No, I do not mean that. I mean, were you not interested in knowing what the Guild was doing, and what it planned to do? A. I was not as interested about the program at that time, as I recall, as I was in 1933 when it became very pertinent and more direct as far as I was concerned.

By Mr. Weisman.

Q. What I am trying to find out from you is whether or not it had ever come to your attention that in November of 1932, at a meeting which was attended by the following: Mr. C. G. Sheffield, chairman, representing B. Altman & Company; Mr. Philip Le Bouttelier, representing Best & Company; Mr. Charles S. Hobbs, of James McCreery's; Mr. D. I. Nemerov, of Russek's; Mr. L. C. Palmer, of Lord & Taylor; Mr. George Ladd, of Abraham & Straus, over here in Brooklyn; Miss Dorothy Shaver, of Lord & Taylor; Mr. Edward Currier and Mr. E. Burnham, and the Guild executives; and that it was at that time suggested and requested of the Guild that they take 11300
into their membership manufacturers of merchandise wholesaling at the price range $10.50. A. It did not at that time.

By Mr. Weisman.

Q. When you say that it did not come to your attention at that time, did it come to your attention at a subsequent time that such request had been made to the Guild?

Q. You have not heard about it prior thereto? A. Not that I recall, I will say it that way.

Mr. Haycraft: I move to strike the last four questions and answers as irrelevant, incompetent and immaterial.

Examiner Averill: The motion is denied at the present time. I want to see where this is looking to. 11301

By Mr. Weisman.

Q. Let me ask you this— A. Yes.

Q. —you said that you do not remember having heard about it. Do you know Mr. Ladd? A. Very well.

Q. Mr. Ladd is an executive of Abraham & Straus? A. Yes.

Q. Abraham & Straus is one of the A.M.C. stores? A. Yes.

Q. Abraham & Straus is also a member of the Federated Stores; is that so? A. Yes.

Q. The Federated Stores, how many stores are together in the Federated Stores? A. Six.

Q. Six? A. Six.

Q. Those are what stores, by name? A. John Shillito Company, Cincinnati; F. & R. Lazarus Company, Columbus, Ohio; Bloomingdale Brothers, New York City, N. Y.;
11303 Abraham & Straus Company, Inc., Brooklyn, New York; R. H. White & Company, Boston, Mass. Also, Wm. Filene's Sons Company of Boston, Mass.

Q. In other words, those stores that you have named are all in one ownership; that is, in the Federated Stores? A. They are in a holding company.

Q. Yes, and— A. Which is called the Federated Department Stores.

Q. All of these Federated Department Stores are members of the A.M.C.? A. That is right.

Q. Mr. Ladd is an executive of Abraham & Straus, Inc.? A. He is.

Q. Over here in Brooklyn? A. Right.

Q. Do you know from your experience whether or not Mr. Ladd, or other representatives of Abraham & Straus,
11304 from time to time does speak for the other members of the Federated Department Stores? A. I have never heard of it.

Q. You have neard heard of it? A. I have never heard of it, not for a merchandising manager of Mr. Ladd's standing speaking for the other stores.

Q. Would you think that in November, 1933, Mr. Ladd of Abraham & Straus discussed with you, prior to making a request to the Guild, the fact that it was his desire that

the Guild take in—and when I say "his," I mean as speaking for his store and for the Federated Department Stores—that the Guild take into its membership the manufacturers of $10.50 dresses? A. I do not believe that Mr. Ladd made such a request even if he was present at the meeting, from conversations I have had with him at that time and subsequently.

Q. You do not remember Mr. Ladd ever discussing that with you? A. He discussed the subject of whether or not the $10 and lower-priced manufacturers should be in the Guild, but it was always from a negative point of view, or, rather, from the point of view of the impossibility or difficulties of doing such a thing.

11306

Q. You mean, the impossibilities of getting them in? A. Well, the difficulties involved in connection with getting them in, the impossibility as far as the retailer enforcing it rather than getting the manufacturers in.

Q. Did Mr. Ladd, in these conversations, ever say to you in words or substance that it would be a good thing if we could get all of the legitimate manufacturers of $10.50 dresses into the Guild? A. No, I do not recall that he ever said that in words or substance that way.

Q. Did he ever say it in substantially that way if he did not say it that way? A. No, not even substantially.

Q. Did he ever express to you the belief that it would be a good thing if we could get into the Guild all of the $10.50 manufacturers? A. I do not recall that he ever did; no.

11307

Q. Do you deny that he ever did? A. No, I do not deny it, but I am quite positive that he did not.

Q. In or about November, 1933, now you did have, you have testified, certain conversations with Mr. Ladd; did you not? A. Yes. As I recall it, I did.

Q. You recall that you had such conversations? A. Oh, I saw him quite often. I do not recall any particular conversations.

Q. Notwithstanding the fact that you saw Mr. Ladd quite often, and notwithstanding the fact that you had certain conversations with him, you have no recollection of his ever stating to you, either in words or substance, that at the meeting which I have just referred to this idea of taking into the Guild the $10.50 manufacturers, that this was suggested by those members at that meeting, to the Guild? A. I cannot recall that that was ever said.

By Mr. Weïsman.

Q. I understood you to testify a few moments ago that
11309 it was not until 1935 that you learned of the intention of the Guild to take in $10.50 manufacturers; that is, manufacturers who sold their garments at $10.50; that is correct? A. No, I do not say so. I do not say that.

Q. What did you say? A. My testimony had reference to the request made by the—whether I knew that the request had been made by the New York retailers, and I told you that I had not learned of it until this case had started. I had not learned of the request that you say was made.

Q. You did learn, however, that the Guild in its program was seeking to protect merchandise all the way down? You learned that at some time or another, did you not? A. Yes.

11310 Q. When did you say you first learned that? A. Why, I would say I first learned that around the first part of 1935, that they wanted to go further into the low-priced brackets than they had previously.

Q. Did you not really learn that in 1933? A. Yes, I did learn it in 1933 with the qualification I have made that there were exemptions for certain stores; that is, for our groups of stores, and for the members of the A.B.O. I knew that the Guild was planning at that time to pro-

tect their merchandise down in the low brackets, low-priced brackets, but they did give us an exemption, the exemption that I have mentioned.

Q. So that away back in 1933 you knew that it was the policy of the Guild to protect Guild merchandise all the way down to whatever cost price the copy might be made; is that a fact? A. Yes, with the definite understanding—

Q. Yes, we have heard your understanding as set forth in your previous testimony.

Mr. Haycraft: I object to the witness being interrupted. I think the witness has a right to complete his answer.

Examiner Averill: I think he is entitled to 11312
qualify his answer to that.

A. —with the definite understanding that we had arrived at in public meetings, joint meetings with Mr. Rentner.

By Mr. Weisman.

Q. That they would extend leniency? A. And for that reason we did not consider the statements there on paper very important when they made these exemptions to us, and we did not consider these very seriously; in fact, we did not consider them so very serious about their own program in the lower-priced brackets until 1935, and then we did, and——

11313

Q. Did you ever— A. —we consider them seriously.

Q. Did you ever advise, in writing, any one of your member stores of this claimed exemption? A. I did—I am not sure—I do not think I did—I am not sure but Mr. Rentner said he wanted——

Q. No, no, no. That is the answer to the question. You say you do not think that you did. A. Yes.

Q. There is no question that from 1933 the Guild was almost constantly communicating with your members, and

by way of these communications advising your members in words or in substance that it, the Guild, was protecting the merchandise of its members down into all prices in the lower brackets; that is a fact, is it; down to and including all price ranges? A. I know they wrote to members, but I do not know the contents of all of the letters.

By Mr. Weisman.

Q. Of course, you do not know the contents of all the letters, and I did not ask you for that, but you know the contents of those letters which you saw, do you not? A.
11315 Yes.

Q. As to those letters that you saw between the Guild and your members, did not the Guild in those letters that you saw advise your members that it, the Guild, intended to protect the merchandise of its members into all price ranges?

Mr. Haycraft: Same objection.

Examiner Averill: Objection sustained. I do not see how he can characterize what the Guild said in its letters.

By Mr. Weisman.

Q. You saw a lot of letters that were sent by the Guild to the members of your organization; namely, the A.M.C.?
11316 A. No, I cannot say that I saw very many before 1935.

Q. You saw some. I did not ask you whether you saw very many. You saw some? A. I do not deny that I did. I do not recall what I saw, and what I did not see at this moment sitting here.

Q. Did you see any? A. I am not sure I did, but I do not know. I cannot recall any specific letter right now in evidence.

Examiner Averill: He did not say that. Just say "yes" or "no," and you are through with it. Do not try to enlarge the answers because it does not help very much.

The Witness: I answered that I am not sure I did.

Examiner Averill: Do not enlarge the answer if you can avoid it.

By Mr. Weisman.

Q. From these letters which you saw, did you not at that time receive in your mind the mental belief that the Guild intended to protect all merchandise irrespective of 11318
prices if the copy was of originations made by one of the members of the Guild? A. No.

Q. No? A. No.

Q. You did testify, did you not, that you saw Commission's Exhibits 99-A to E, a letter dated June 16, 1933, did you not? A. I recall that such a letter was sent, but I do not recall seeing it at the time, I think.

Q. Did you not testify on direct examination that you saw it?

Mr. Haycraft: No, he testified just to the contrary.

Mr. Weisman: Very kind of you to prompt the witness. It is a good thing you are not in our Supreme Court, because they do not permit that 11319
type of practice there.

Examiner Averill: He does not deny that he saw it.

Mr. Haycraft: He said just see——

Mr. Weisman: Why not let the witness testify, if Mr. Haycraft is going to testify, let him be sworn.

Examiner Averill: Proceed with your questions, Mr. Weisman.

By Mr. Weisman.

Q. Did you not testify on your direct examination that you saw that letter on or about June, 1933?

Mr. Haycraft: I object as contrary to the testimony.

Mr. Weisman: Let the witness answer the question.

By Mr. Weisman.

11321

Q. Did you not so testify? A. I am not sure whether I did or not.

Q. And if you did so testify, do you deny that it was correct that you saw it at that time?

Q. I show you Commission's Exhibits 99-A to E. A. Yes.

Q. What is your present recollection of the time when you first saw this? A. Well, I am not sure. I may have seen that letter in 1903——

Q. 1903? A. 1933, and I may not have.

Q. What? A. I may have not.

Q. No? A. I know the subject-matter of the letter so thoroughly—I know the subject-matter of the letter was thoroughly discussed at our joint meetings.

11322

Q. When? A. June, 1933.

Q. Will you deny in June, 1933, you knew in substance the subject-matter of Commission's Exhibits 99-A to E? A. Yes, I did know in substance everything in the letter here; that is, I knew the things that are referred to in here.

Q. Is it a fact that this letter, Commission's Exhibits 99-A to E, was sent out by the Guild representatives at

your conferences with representatives of the stores, and at which conferences you were present? A. Yes.

Q. In this letter we have this statement: "This convinced the managements of those large stores that by the same method of refusing to purchase low-price copies from $10 down they would eliminate copying in these price ranges as well and encourage original designing of popular priced goods so that they would find a sufficient and plentiful market of original designs in all price lines." A. It does contain that statement.

Q. Did not that statement, contained in this letter and sent out by the Guild to your members, convey to them, or, rather, convey to your mind the idea that the Guild 11324
at that time in 1933 was desirous, as part of its program, of protecting priced merchandise of its members all the way through, from copying in all price ranges? A. No.

Q. All right. A. Definitely, no.

Q. Would you say positively? A. Definitely, no, because of the understanding we had with the Guild, and I want to put that in because that is the crux of this whole thing, at least as far as our agreement is concerned.

Q. This letter goes on further and says: "The feasibility of our plan, as a means of combatting destructive practices, has been clearly shown by the fact that the National Administration, in its Industrial Recovery Act, has sponsored procedure similar in character to that outlined by the Guild. It is evident from the Government's action that other industries, as well as ours, are suffering from 11325
what might be termed 'racketeering methods of business conduct.'" You knew that the letter contained that statement, did you not? A. Yes.

Q. You knew that the racketeering methods of business conduct therein referred to was the piracy of members of the Guild's originations? A. No, I did not.

Q. You did not know that that was what that letter referred to? A. No, I did not.

Q. You knew, did you not, that that letter, sent out on June 2, 1933, contained the memorandum of the Guild's resolution, and the statement that that was the Guild's resolution and referred to it as follows: "Memorandum of the Guild's resolution and its significance." You knew that, did you not? A. Well, I knew there were attachments, but I never read them. I never read that attachment.

Q. You never read this statement? A. No.

Q. The letter referred to the attachment, did it not? A. I did not know. Read it, and if it did, it did.

Q. You did not read it? A. I have testified that the

11327 letter contained——

Q. The letter says as follows: "Our action is expressed in the enclosed resolution, which provides that: 'All retailers who wish to have access to our showrooms and purchase our merchandise shall sign a "Declaration of Good Faith," a copy of which we are submitting herewith.'" A. I have seen that copy and that is not attached to that.

Q. As a part of the letter, there was a statement, or a copy of a Guild resolution, and the explanation of that and of its significance is attached to it, referring to "d." You did not expect to stop and read that, or, at least, you say now that you did not spend the time to read that; is that it? A. No, not that I recall, Mr. Weisman.

Q. Did you know that 99-E, the communication from the Guild, says: "You will note that this resolution

11328 plainly stipulates, in order for a retailer to have access to any Guild house he must consent to abide by the conditions set forth." The conditions set forth being in the resolution; did you read that? A. I have read it since then.

Q. No, did you read it then? A. I am quite sure I did not.

Q. This letter went, not alone to you, but went to each of your accounts, or to the stores that you represented? A. I do not think it went to me or to the A.M.C., but I think it went to our accounts.

Q. You think it went to your accounts? A. Yes.

Q. To each of them? A. Yes.

Q. And they sent it to you? A. I think so, although I am not sure, because none of the copies that I saw had any stores names on them, on which it appeared that it went to anyone.

Q. Do you not know who they came from? A. I do not know. I do not. No. They may have been furnished by the Guild, they may have sent blank copies, they may have, subsequently. I am not sure how I got them because I have none addressed to the A.M.C., and I have none that have the stores' names on them.

Q. Let me ask you, when this came to your attention in 11330
1933, did you not think that it was an important piece of communication?

Mr. Haycraft: I object to that. The witness has said that he did not know how it came to him.

Examiner Averill: He said it did come to him, and I think he can answer that question as to whether he deemed it important in the light of his knowledge at that time, whether he deemed the paper, himself, important.

A. I was so positive that we had an understanding, a workable understanding with Mr. Rentner, that this letter did not make any difference to me. I was told that it should not make any difference; that, I think, they recog- 11331
nized our problem, and not only was I told that, but others were told that, and I think they had the same idea that I had about this. It definitely would not make any difference about the letter because we were told that we might more or less ignore it, and that they would work this problem out with us, so it would not be a handicap to us.

By Mr. Weisman.

Q. So you now state the letter was unimportant? A. No, I do not say that.

Examiner Averill: He says its importance t him was governed by an arrangement which h states he had with the Guild which covered the le ter and its contents. He did not say it was, per s unimportant. It may have been important.

By Mr. Weisman.

Q. Was it important to you? A. Not to me, Mr. Wei
11333 man, for the reasons I have given.

Q. Have you ever seen John Gielgud's "Hamlet"? A. No.

Q. Did it ever strike you that you are protesting ver freely your innocence in this regard?

Mr. Haycraft: I object to dragging Hamlet int this case.

Mr. Weisman: You do not like his shad standing at your side?

Examiner Averill: I do not think it has any pa ticular bearing on the case, gentlemen. Proceed t something else.

Mr. Weisman: Very well, but I am sure you Honor sees the point.

11334 Mr. Haycraft: Undoubtedly.

By Mr. Weisman.

Q. What did you do when this came to your attention nothing? A. No, I did not do anything. I had a thoroug understanding with Mr. Rentner that there was nothin to do.

Q. Then, your answer is that you did do nothing?

Mr. Haycraft: I object. The witness shbuld be allowed to answer the question.

Examiner Averill: All right, he said he did nothing, and he told the counsel why.

Mr. Haycraft: He is entitled to make an explanation.

Mr. Weisman: He is entitled to tell the story of his life, but I hope not here.

By Mr. Weisman.

Q. In other words, you got a copy of this letter, and in so far as you were concerned, or in so far as the A.M.C. was concerned, as represented by you, you remained silent? 11336
A. Yes.

Q. Let me now read your testimony appearing at page 6137 of the record with regard to this exhibit.

Mr. Haycraft: What page?

Mr. Weisman: Page 6137.

Mr. Feldman: That is the direct testimony of the witness.

Q. Did you know that in or about June, 1933, the garment merchandise managers of the A.M.C. had a meeting with reference to the Guild program? A. We had.

Q. Or is that one of the things which you do not remember?

Mr. Haycraft: I move to strike the last part of 11337
the question.

The Witness: No.

Examiner Averill: The motion is granted. There is no reason for putting a question that way. Put the question and let us see from his answers whether he did. There is no sense in putting a question that way. The latter part of that question is different.

Mr. Weisman: All right.

A. As I recall it, we had a meeting on or about that time, a regular meeting at which undoubtedly the F.O.G.A. was discussed.

By Mr. Weisman.

Q. And at that meeting the complete agreement, or the declaration of co-operation, was before the merchandise managers? A. Eh, um——

Q. Well, the "oh, oh" and the "eh, um," does that mean you do not remember? A. It does not mean anything.

Q. Then do not do it. I am trying to find out what it means. A. It does not mean anything. You asked me if
11339 the complete minutes and what not of the F.O.G.A.——

Q. No, I did not ask you that. A. What did you say? What did you ask?

Mr. Weisman: Read the question.

(Question read.)

A. You mean all the pamphlets you have shown me here, and attachments?

By Mr. Weisman.

Q. No, no. A. Is that what you mean?

Q. No, no. I mean, you had before them, did you not, the declaration of co-operation which was being sought by the Guild from the stores? A. I would say that we did,
11340 yes.

Q. And that declaration had in it the one—the one that was before you was the one in evidence——

Mr. Weisman: What is its number, do you remember?

The Witness: 88.

Mr. Albert: 88.

Examiner Averill: Commission's?

Mr. Weisman: It is——

Examiner Averill: Or respondents'? Both have that number.

Mr. Weisman: This is respondents'.

Examiner Averill: Respondents' Exhibit 88.

By Mr. Weisman.

Q. This is in form, Respondents' Exhibit 80; is that not so?

Examiner Averill: No, Respondents' Exhibit 88.

By Mr. Weisman.

11342

Q. Respondents' Exhibit 88? A. I am quite sure we had that.

Q. Yes. In that exhibit there is no exemption set forth, is there? A. That is right.

Q. At that meeting, I show you a photostatic copy of Commission's Exhibit 697, and ask you whether or not you recall that resolution being passed at that meeting by the A.M.C. executives—not executives—A.M.C. merchandise managers? A. Yes, I recall that. I dictated it myself, so I recall.

Examiner Averill: Let me see it.

(Mr. Weisman hands exhibit to the Trial Examiner.)

Examiner Averill: All right.

11343

By Mr. Weisman.

Q. Before that meeting was held, Col. Phillip J. Reilly wrote a letter to these divisional—to all the garment merchandise managers of the A.M.C. stores, did he not? A. I think not.

Q. Well, did he write a letter to all the executives of the stores? A. I think he wrote to the general merchandise managers.

Q. He wrote to the general merchandise managers? A. Yes.

Q. Well, they are executives, are they not? A. Yes.

Q. Yes. A. There are quite a few executives in the store.

Q. Before he wrote that letter he had some conferences with you, did he not? A. Yes, he did.

Q. And, as a result of these conferences between him and you, it was decided by him and you, or by you and him—pardon me—that Mr. Reilly, your superior, should send out a letter to the merchandise managers of all of the A.M.C. stores; is that not so? A. I think so, yes, some-

11345 thing like that.

Q. Well— A. Whether I decided it, or he decided it, he sent the letter; he must have made the decision.

Q. Did you see the letter before it went out? A. I am not sure that I did, no; I am sure I saw it afterwards but I am not sure that I saw it before.

Q. And you have no doubt that Mr. Reilly was your superior, have you? A. None whatsoever.

Q. And what he did superseded anything that you could do in the same matter, did it not? A. Well, he is my superior, he can change anything, he can do anything he liked in that respect about giving me instructions, if that is what you mean, or——

Q. That is your best answer to that question?

11346 Mr. Haycraft: I object to that.

Examiner Averill: No, he may state it is his best, if he wants to, or it is not, if he wants to change it. I do not know. It is easy enough to answer one way or the other.

The Witness: I think the answer stands.

By Mr. Weisman.

Q. All right. A. The answer is specific.

Q. In this letter, Commission's Exhibit 696, which we have been talking about, Mr. Reilly wrote it on the letterhead—excuse me—make that Col. Reilly of the Associated Merchandising Corporation, Retail Research Association, Phillip J. Reilly, director—agreement with Fashion Originators Guild of America, Inc.—that referred to the agreement, Respondents' Exhibit 88; is that not so? A. Yes.

Q. And he wrote "At yesterday's meeting of their garment merchandising managers, consideration was given to the attached agreement prepared by the Fashion Originators Guild of America, which they are requesting the 11348
important department stores and women's ready-to-wear specialty stores to sign." That referred to Respondents' Exhibit 88; is that not so? A. I am quite sure it did.

Q. He further goes on and says in this letter: "Although all these garment merchandise managers were in sympathy with the objectives of the F.O.G.A. in principle"—is that true? A. I think that is——.

Mr. Haycraft: I object to that unless it is a complete sentence, Mr. Examiner.

The Witness: I think that is——

Mr. Weisman: It is a comma there, I am going on further; I cannot—that is a complete thought.

Examiner Averill: Well, he says that is so.

Mr. Weisman: Yes, that was true. 11349

By Mr. Weisman.

Q. So that in 1933 it was true that the garment merchandise managers of all of your stores were in sympathy with the objectives of the F.O.G.A. in principle? A. As I recall it.

Q. Yes. A. That is true.

Q. The letter goes on further and says: "Some of them felt that unless their competitors all agreed to sign this contract it would result in the signing stores excluding themselves from many important houses who are non-Guild members, many of whom are important in the lower-price lines, including basement." A. Yes, it reads that way.

Q. Yes. A. As I recall it.

Q. Now, that was also true at that time? A. What do you mean? Let me read it.

Q. It is this paragraph here (showing paper to witness).

(Witness examines exhibit.)

11351 Examiner Averill: Have you not been over that time and time again, that same letter, same matter?

Mr. Weisman: No, this is the first time I have been on this letter, Judge.

Examiner Averill: It is the same matter.

By Mr. Weisman.

Q. That was true, was it not? A. It does read that way; yes, sir.

Q. Not only does it read that way, but Mr. Reilly was setting forth the fact when he wrote that, was he not? A. That was his opinion, yes.

Q. Well—— A. That was——

Q. —did you differ from him? A. No, I did not.

11352 Q. All right. A. What do you want me to have, his opinions? Those are his opinions. They are not mine; they are his.

Q. Well, I want to know whether your opinions are different from his opinions, and you have said they were not. A. No, I did not say that.

Q. Now, Mr. Reilly— A. No, I did not say that.

Q. Well— A. I may have different opinions from Mr. Reilly.

Q. Have you, or have you not, on this matter? A. On many things, I have.

Q. No, on this matter—on this matter, did you have the same or a different opinion? A. I think we concurred.

Q. That is all, then; say so. A. Then you should ask that way.

Q. The letter further goes on and says: "It is agreed, however, that the A.M.C. stores and the New York offices would gain tremendous prestige in the market if they were willing to be the first as a group to sign the F.O.G.A. agreement." A. That is right.

Q. "The group therefore passed the attached resolution and asked that the matter be definitely decided one way or another at the executive meetings scheduled for next Wednesday, June 28." 11354

Mr. Haycraft: You left out the word "committee."

Mr. Weisman: "—executive committee meetings"; thank you.

By Mr. Weisman.

Q. "—scheduled for next Wednesday, June 28," A. Yes.

Q. That meeting of June 28 was held, was it not? A. Yes.

Q. And it resulted in the passage of a resolution to sign Exhibit 88-A——

Mr. Albert: 88. 11355

By Mr. Weisman.

Q. —Respondents' Exhibit 88. A. At the executive committee meeting I think they resolved that this should be an individual store matter, but that they agreed that we should go along with the program, as I had explained it to them, and as it was understood, the exemptions, and all, included, and so forth.

Q. Notwithstanding the fact that there was nothing in Mr. Reilly's letter about any of these exemptions? A. That is right, that is right, by——

Q. And notwithstanding the fact that you say you never wrote a single paper to any of your members advising them of this claimed exemption you are now telling us about? A. I think some of your exhibits show that there was an exemption.

Examiner Averill: But is not this resolution that you refer to the same resolution that is contained in Commission's Exhibit—or set forth—at least not contained, set forth in Commission's Exhibit 697, which I now see attached——

11357

The Witness: Yes.

Examiner Averill: —to a letter, Commission's Exhibit 696?

Mr. Haycraft: No, that is not it.

The Witness: No, that is not it.

Mr. Haycraft: That is something that——

The Witness: Those were prior. This resolution was prior to Mr. Reilly's letter, I believe, and subsequently the executive committee decided that this was to be an individual store matter, since a store would probably have to decide every consideration of its local conditions, whether or not it would sign up, whether its competitors equally decided, and so forth, all of those things came into it, and it was decided it was not an A.M.C. matter.

11358

Mr. Weisman: I would like to have Commission's Exhibits 696 and 697 and 698.

Examiner Averill: I think they are there.

Mr. Martin: Do you want the originals?

Mr. Haycraft: 698 is not here; 696 and 697 are here.

Mr. Weisman: What is 696?

Mr. Keller: 696 is——

Mr. Haycraft: Here it is.

Mr. Weisman: Oh, have you got it there?

Mr. Haycraft: Yes (handing paper to Mr. Weisman).

By Mr. Weisman.

Q. Mr. Bergdahl, as a matter of fact, you signed a declaration of co-operation personally, did you not? A. Yes, sir.

Q. When you signed it personally, that is, Respondents' Exhibit 88, you thought it important to put in your own handwriting the word "knowingly"? A. That is right. 11360

Q. Was that also by an agreement with Mr. Rentner? A. I do not recall.

Q. But it was important? A. I think it was discussed at the time.

Q. Notwithstanding that, you did not think it was necessary to put in here any reference to an exemption? A. No, sir; I did not.

Q. Did you have any idea in 1933 how many retailers were co-operating with the Guild? A. We were told from time to time by Mr. Rentner, and by members of the Guild, as I recall it.

Q. I am now referring to about June, 1933. A. We were told from time to time what the membership was of the Guild. I can't—I can't recall what it was in 1933. 11361 I believe that it at that time consisted—the membership consisted mostly of local Guild members, and that no declaration was signed until after this letter went out in June, 1933.

Q. Well, let me ask you this: Did you have any idea in 1933, June, about how many retailers had manifested a willingness to co-operate with the Guild in its program? A. Did I have an idea?

Q. Yes. A. I do not think that I did. I do not recall that I had an idea.

Q. Was that not ever told you? A. I don't recall any figures being set of any number of retailers, no. I recall that—I do not recall that any number was set at that time.

Q. The Guild was just starting then, was it not? A. No, it had not been—it had been in effect for some time.

Q. About a year and a half? A. Yes.

Q. It did not have its present strength, did it, in membership? A. No.

Q. No, and it did not have, at that time, the number of co-operating retailers that you now believe it to have; is

11363 that not so? A. No, it did not.

Q. Let us see—in June, 1933, you were in more or less frequent communication with the members of the Guild or their executives, were you not? A. Yes, from time to time.

Q. And they discussed with you what they believed to be their problems, did they not, with regard to the Guild? A. Yes.

Q. And, as a matter of fact, that was the time at which there were certain negotiations pending for you to become director of the Guild, instead of assistant director, or whatever you are, of the A.M.C., is that not so? A. Prior to June, yes.

Q. Yes. So, and before—and those negotiations culminated in the drawing of a proposed contract, is that not

11364 so? A. Yes, sir.

Q. And before the contract was drawn you sought to advise yourself concerning the status of the Guild, did you not? A. Not particularly, no.

Q. Well, did you not seek to find out how many members they had? A. I do not recall that I was interested in how many retail members they had.

Q. No, I say— A. Manufacturing members.

Q. I say, manufacturing members. A. We have no retail members.

Q. You have no retail members. A. All right.

Q. When I say "members," I always mean manufacturing members. A. No, no. Maybe I can clean this all up. Did you have reference to the number of the manufacturing members the Guild had before?

Q. No. A. When you started this question?

Q. No, I said retailers; I said retailers had manifested a desire to co-operate. A. I see. I did not know how many retail members they had.

Q. No, no, that is not what I asked you. A. I do not recall that I sought to find out beyond what was on their 11366
stationery, how many members they had, manufacturing members.

Q. And in all these discussions with Rentner and the other people with regard to you taking an agreement to work with or for the Guild for a period of years, you never asked them, in words or in substance, "Gentlemen, how many retailers have manifested a willingness to co-operate with you?" A. I don't recall that I did, Mr. Weisman.

Q. Let me ask you this— A. I do not recall it.

Q. The position of the Guild was a matter of common discussion in the dress markets, was it not, at that time? A. Yes.

Q. And its number of members, and its co-operating retailers, the number thereof, was more or less in this mar- 11367
ket, bandied about, spoken of, was it not? A. The number of manufacturers were, but not the number of retailers at that time. The retail membership at that time did not come up for discussion at all, as I recall it.

Q. Would you say that the retail membership at that time was very slim? A. I would say it was rather small, yes.

Q. Would you say— A. The retailers who had signed any kind of agreements with the Guild.

Q. Yes. A. Was small in number, yes.

Q. Yes. And you, on the other hand, your A.M.C., you have testified, they represented 1700 stores, did they not?

Mr. Haycraft: No.

A. The A.M.C. represented twenty stores.

By Mr. Weisman.

Q. Who represented the 1700 stores you told us about? A. The A.B.O., which was formed later in the year, was not yet formed at that time.

Q. Well, did you not tell us that this exemption was
11369 also to apply to the A.B.O. stores? A. Yes, I did.

Q. In other words, is it your statement—when was the A.B.O. formed? A. I think August of 1933.

Q. August of 1933? A. Yes.

Q. Then when the A.B.O. organization was formed, with nearly 1700 members, and your twenty-two—I will withdraw that question. By the way, what is your opinion as to the volume of retail purchases in the ladies' ready-to-wear, represented by the A.B.O.? A. I do not know.

Q. Well, you have given it as your opinion that your retail purchases in the ladies' ready-to-wear—when I say "your," I mean the A.M.C.—was about $50,000,000 per annum, have you not? A. Total ready-to-wear, yes.

Q. Yes. Would you say that the A.B.O., with its 1700
11370 stores, has a like volume of about fifty to sixty million? A. I would not know, but it might be much greater than that.

Q. Much greater. Would you say at least that? A. I would not know.

Q. I had gathered the impression from you, perhaps erroneously, that you had stated on your direct testimony, that the exemption applied not alone to the A.M.C. stores but to the A.B.O. stores also? A. I did so state, as I recall it.

Q. Oh, then, I am—I wanted to know—I thought that you did, but I wanted to clear that up. So we then have this situation: You stated that all of your stores, your twenty stores, had this claimed exemption, and the 1700 stores of the A.B.O., if, as, and when they joined the Guild, they would have a like exemption; is that correct? A. That is right.

Q. Do you know in June, or in August, rather, I will make that, instead of June, how many of these A.B.O. were already members of the Guild—were already co-operating with the Guild? A. Very few of them were.

Q. Do you know whether or not, thereafter, substantially all of them were co-operating with the Guild? A. 11372
Yes.

Q. You know that they all did co-operate with the Guild? A. They all signed declarations.

Q. Of co-operation. And did they all sign declarations of co-operation, to your knowledge, or of those that came to your knowledge, were they substantially in the same form as Respondents' Exhibit 88? A. I believe so, yes.

Examiner Averill: Let me see that.

(Mr. Weisman hands Respondents' Exhibit 88 to the Trial Examiner.)

Examiner Averill: Do not wait on me; go ahead.

Mr. Weisman: All right.

Examiner Averill: I am just reading this.

11373

By Mr. Weisman.

Q. When you got this exemption, did you tell it to your members? A. Yes, I did.

Q. It was not secret, from stores like Filene's, or White's? A. No, it was not.

Q. They knew all about it? A. Yes, they did.

Q. As a matter of fact, do you not know that in 1933, 1934 and 1935, R. H. White & Company and Filene's were

returning merchandise costing $3.75 and $4.75 and $7.75, do you not know that? A. No, I do not; I know they may have done so.

Q. I see. A. But it was not a general practice.

Q. If they did that it comes as a surprise to you? A. No, it does not, not at all.

Q. In other words, they had this exemption but they waived it? A. That is entirely possible. There was a desire——

Q. Yes. A. —to co-operate with the Guild.

Q. Yes. A. There was that definite desire.

Q. Desire. And, as a result of that desire, this secret
11375 exemption concerning which you never wrote a letter to them, was waived by them? A. Not always, no.

Q. Frequently? A. Up to 1935, there were very few returns, if any, and that was one reason why we went along so smoothly up to that time; it was after that that we got into trouble.

Q. You mean, as soon as you were asked to live up to the declaration, then you no longer wanted to co-operate? A. No, sir; then we wanted to exercise our original agreement.

Q. I see. A. As soon as we were asked to go along below $10.

Q. Well, let us see. This secret reservation concerning which you have testified— A. It was not secret. I said it was publicly arrived at. I do not say it was secret. Mr.
11376 Rentner wanted us to keep it.

Q. If it was not secret, why was it not put into writing, some place? Why did you not put it in your own declaration, if it was not secret? A. I couldn't tell you. I wish I had known that, what I now know, and it would be in there, I can tell you that for a fact. It will never happen again——

Q. Let us see— A. —any such trusting of people that I should not have any business of trusting, and it will never happen again.

Q. You say the A.M.C. is a trustful organization? A. I trusted Mr. Rentner, and I know other gentlemen that did, too.

Q. You did tell R. H. White of Boston about that, did you not? A. I am quite sure that I did; yes, sir.

Q. When? A. I am quite sure I told all of our stores about it. You mean about the exemption, is that what you mean?

Q. About your private arrangement. A. Yes.

Q. Extra signatories, and whatever you call it. A. Yes, I am quite sure we did.

Q. Now, you know, do you not, that in 1933 White returned merchandise costing $3.75? A. That is entirely 11378
possible, but I do not know it.

Q. I say, you knew that J. L. Hudson returned merchandise below—at $4.75, not below—just at $4.75? A. It is entirely possible, but I am not aware of it.

Q. You know, do you not, that Horn—that these stores that I am mentioning are all members of your A.M.C., are they not? A. Yes, they are.

Q. You know that Horn returned merchandise below $10.75 cost, do you not? A. No, I do not. It would not surprise me, if they had.

Q. Well, do you know that Strawbridge & Clothier did? A. No, I did not.

Q. Do you know Mr. Taylor of Strawbridge & Clothier? A. Quite well.

Q. Did not Mr. Taylor repeatedly write you prior to 11379
December, 1935, advising you that he was returning merchandise below $10.75? A. Prior to 1935?

Q. Yes. A. I believe the returns were so minimum that they did not come to my attention.

Q. I do not ask you whether they were minimum or maximum. A. I do not recall that that came to my attention before 1935.

Q. Do you know that Filene's in the years 1933 to December, 1935, returned merchandise costing below $10.75? A. The same answer. I do not know, but it would not surprise me if they had. They were interested in furthering this program.

Q. Well, in other words, if these people returned merchandise all the way down to $3.75 cost, your explanation thereof would be that they did it because they were interested in furthering the program of the Fashion Originators Guild; is that not so? A. I would say they were interested in co-operating.

Q. Yes. A. And furthering the program.

11381 Q. Well, they were going further than co-operating, they were doing something that co-operation in itself did not require; is that not so?

Examiner Averill: Now——

A. No.

By Mr. Weisman.

Q. How?

Examiner Averill: There is a question there—I understood the declaration of co-operation was in writing.

Mr. Weisman: Yes, but he says— Do not take this on the record.

11382 (There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Weisman.

Q. These stores, by the way, are all stock companies, are they not? A. I do not—I could not tell you.

Q. Well, none of them are privately owned, are they? You know that. A. Yes, some of them are. You mean the ones you have mentioned?

Q. The ones I have mentioned here as returning merchandise. A. Well, I am not sure about Horn's. I think the others are stock companies.

Q. Did the A.M.C. keep minutes of their meetings with reference to any executive action? A. Not the way minutes are kept here, for example, no.

Q. No, but did they keep any written record? A. No, I would not say so, not of——

Q. Well, let us see. A. —minutes were summarized by myself, as I have summarized to some extent by——

Q. And what happened to those summaries? A. Why, you have one of them.

Q. Which one do you say that I have? A. Oh, just—we were talking about one here (witness refers to an exhibit); you had it in your hand here. 11384

Q. You mean the Reilly letter? A. No, the resolution that was attached to it.

Examiner Averill: The resolution?

Mr. Weisman: The resolution.

By Mr. Weisman.

Q. Well, I do not mean that. A. Well, no other minutes were kept than just a resolution, or something like that.

Q. When you had a meeting with your various store executives, and a policy was determined upon, were there minutes kept of that? A. No, I cannot say that it was; resolutions were kept when they were passed. 11385

Q. Well, aside from the resolution that has been produced here, were there any other resolutions passed by the executive of the A.M.C., or those represented by the A.M.C., with regard to this situation? A. I have looked through and I cannot find any, any resolution——

Q. Well— A. —other than the ones that you have—this one here (referring to paper).

Q. In other words, it is your opinion that during the three years—or, rather, four years, from 1932 to 1936, the sole and only resolution of the A.M.C. that you have been able to find, has been the one introduced here in evidence as Exhibit No.——

Mr. Albert: 695.

Mr. Weisman: —695.

Mr. Albert: Or 7.

Mr. Weisman: We better get it straight.

Examiner Averill: I thought it was 6, but maybe it is not. I think it is 697.

Mr. Weisman: 697.

11387

By Mr. Weisman.

Q. Is that your statement? A. Well, no, there may be others, but I looked through, and I have not found them now; in the last year there may be some resolutions, in 1935, I think, there might have been.

Q. Well, look—where did you look? A. Well, in my own file.

Q. Is there not a record somewhere in the A.M.C. where these papers are kept?

Examiner Averill: What you want to know—does he have a regular book?

Mr. Weisman: Yes.

11388

Examiner Averill: Which is called a minute book?

The Witness: No, we do not.

Examiner Averill: In which he puts down——

The Witness: No, we do not; I said we do not.

Examiner Averill: All right, that is all.

By Mr. Weisman.

Q. Do you have anything, other than the minute book, that you keep these records some place, loose-leaf, on

papers—have you got a record of what happens, or a transcript of what you mark down as happening in 1932, I would say? A. No, I have not.

Q. In 1933? A. I have put in evidence letters that I wrote to the stores, and those are the ones that I have. I have not any others.

Q. Well, was any kept, irrespective of whether— A. No, not that I know of—I really—I am not trying to get around your question. I do not know of any that were kept. I did not keep any.

Q. When you had——

Examiner Averill: We have been all over this.

Mr. Weisman: All right. 11390

Examiner Averill: And I must state that we cannot go over this again. It has been in here twice. Counsel for the Commission went into it, and you went into it in the early stages of this cross-examination, about these minutes, and he agreed to look, and he did, and he came back and he told you.

By Mr. Weisman.

Q. What is the name of the recording secretary of the A.M.C.? A. They haven't any recording secretary.

Q. Well, have you a girl, or a secretary, whose duty it is to keep records of action arrived at? A. We have a secretary, yes, of the corporation, Miss Brooks. 11391

Q. Miss Brooks. Did you ask Miss Brooks whether she had any? A. Yes, I did.

Q. And what did she say to you? A. Well, I haven't gotten any from her.

Q. I did not ask you that. What did she say to you? A. She said she would look. I have not had a reply from her. I asked her to look carefully to see if there were any resolutions, or any of these things, at the beginning, or any

other minutes, that she could find for me, and she has not found any for the months of— This was garment merchandise manager's discussion, not store discussion, and the garment merchandise managers' minutes I personally dictated, and they are not in the minutes, because I understand it—mine was the contact with the Guild for the most part, and I had what I thought was an understanding, and there are no minutes to substantiate that, except the letters which I had put in evidence, which cover my understanding as I explained it to our stores.

Q. You have constantly referred to merchandise managers. Who is the merchandise manager of Filenes that
11393 you referred to when you say "merchandise manager"? A. I have referred to garment and general merchandise managers.

Q. Now, who is the garment manager, or garment merchandise manager, of Wm. Filene's & Son? A. Well, they have several, but Jess Drew is one who has been the most active, I think, in dresses, and items pertaining to this department, to this field of activity.

Q. Well, was he, Mr. Jess Drew, the one that was present at this meeting when you told them about this? A. I would not know. I am quite sure that he was. He generally is present at our garment merchandise meetings. I could not tell you without going to look it up to see whether he was actually there that day.

Q. Where would you look it up? A. To see if I could—
11394 when this resolution was passed, there was a copy of attendance attached to that, see?——

Q. Will you look? A. —of who was present.

Q. Why did you not give that complete copy to the Commission, then, if you have it? A. I think I did. I think he looked through everything I have. I am not sure.

Q. Have you got the list of attendance at the meeting where this resolution was passed?

Mr. Haycraft: I do not think——

Mr. Weisman: What?

Mr. Haycraft: No, I have not got it.

Mr. Weisman: How?

Mr. Haycraft: Our investigator went in there and got everything, I suppose, that he thought was important.

By Mr. Weisman:

Q. Will you look up and see who was at that meeting? A. I will.

Q. Mr. Bergdahl, you testified, did you not, that you had already communicated this exemption to the merchandise 11396
managers, or the garment merchandise managers, of your member stores? A. Yes.

Q. Did you not? A. Yes.

Q. Now, I want to know from you as to each store, the name of the man to whom you communicated the information? A. Yes.

Q. To the best of your recollection? A. Yes.

Examiner Averill: Now, wait a moment.

Mr. Weisman: Yes.

Examiner Averill: Mr. Bergdahl, when this information was communicated, it was not necessarily communicated at one meeting, because, as I understood, all of your members were not present at one meeting? 11397

The Witness: That is right, conversations——

Examiner Averill: As I understand it, at various meetings you communicated and told these people orally your understanding as to this exemption——

The Witness: That is right.

Examiner Averill: —which you had with officials of the F.O.G.A.?

The Witness: Yes.

Examiner Averill: But I did not understand you to testify that all of these managers were present at any one meeting?

The Witness: No, I did not mean to convey that; if I did, and I——

Examiner Averill: I understand.

Mr. Weisman: All right.

Examiner Averill: Now, it would be almost impossible for him to answer that question and say who was present at the different times.

Mr. Weisman: No, I do not ask him who was
11399 present. I asked him to whom he communicated.

Examiner Averill: —or to whom he communicated.

Mr. Weisman: But I am——

The Witness: I said to you, Judge, our stores, the garment merchandise men of all of our stores.

Mr. Weisman: Yes.

The Witness: And in some cases the general merchandise men.

By Mr. Weisman.

Q. In Filenes, you said your recollection was that you communicated it to Mr. Drew? A. Yes.

Q. Yes. A. And I think Mr. Wright, but Mr. Drew
11400 primarily.

Q. And to Mr. Wright? A. Yes.

Q. Did you communicate it to Mr. Wright, or did you not? A. I told you "I think," "I think."

Q. All right. Now, as to R. H. White, who do you say that you communicated it to? A. I do not recall who is the general merchandise manager at White's at that time. They have had three or four in the last four years, and I am not sure whether it was—whether it was a Mr.——

11401

Examiner Averill: He is not going to any particular time. He is going down through the whole period from the time the so-called reservations were made.

Mr. Weisman: Yes.

Examiner Averill: Down to the end of the chapter; so that you have no specific meeting——

Mr. Weisman (interposing): Wait a moment. Wait a moment. I thought we had fixed some dates, but any time.

Examiner Averill: You cannot fix dates for those kind of things. That is my point. Unless you have papers.

11402

Weisman.

hese declarations of co-operations, by your member were all signed, were they not, in 1933? A. Yes, I hey were.

ow, prior to the signature—I will withdraw that. prior to their signing or after their signing that nmunicated the exemption to them? A. Prior.

rior. So that in 1933 you communicated to the ndise managers, or the managers of your member the exemption that you believed you had obtained?

ow, as to Abraham & Straus, Inc., who did you com- te that to? A. I think George Ladd, I am not sure.

11403

ow, as to L. S. Ayres & Company, who did you com- te that to? A. I believe Cle Herman was the man- ere at the time.

s to Bloomingdale's, who did you communicate that Walter Deiches.

s to Bullocks, Los Angeles? A. I think O. B.

s to H. C. Capwell Company? A. Probably Mr. , I am not sure of that.

Q. As to the Dayton Company? A. Mr. Donovan and Mr. Phillips, I believe.

Q. As to the Emporium? A. Mr. Millburn.

Q. As to B. Forman? A. Mr. B. Forman and Eddie Forman, I think.

Q. As to Joseph Horn Company? A. Mr. Gutsche.

Q. As to J. L. Hudson Company? A. Mr. Sappington.

Q. As to Hutzler Brothers Company? A. Charlie Hutzler.

Q. As to F. & R. Lazarus Company? A. Lee Davis.

Q. As to the Reich-Cumler Company? A. I believe Paul Lundgren was there at the time; I am not sure now
11405 whether he was or not.

Q. As to the John Shillito Company? A. That—I do not—I have forgotten his name.

Q. But you could easily ascertain, could you not? A. Yes, I think I could.

Q. As to Stix, Baer & Fuller? A. That was Lieberman.

Q. As to Strawbridge & Clothier? A. I think that was Mr. Alderfoer at the time.

Q. As to William Taylor & Sons? A. Earl Miller, I believe, and probably Mr. Roth.

Q. As to the Boston Store? A. They were not members at the time, as I recall it.

Q. So you did not tell them? A. I am not sure whether they came in that year or not; I cannot recall exactly.

Q. Yes. Now, before you testified, did you speak with
11406 the examiner that the Commission sent to interview you? A. Why, yes, we spoke to them, members of the Commission.

Q. Did you tell him that you had conveyed this information to these people you have just mentioned? A. No, I do not recall that they asked me that.

Q. And you did not volunteer it? A. No.

Q. Before you saw him, did you speak to—before you saw this examiner, did you speak to Mr. Fox? A. Before I saw this examiner?

Q. You did testify that you aided and assisted in the proposed resolution that was to go into the code of fair competition for the dress industry with regard to style piracy? A. Yes, sir.

Q. You know, do you not, that that resolution was ultimately framed? A. It was.

Q. And as so ultimately framed it had no price differential or exclusions or exemptions in it, had it not? A. That is right.

Q. Mr. Bergdahl, do you know whether or not, or, have you any recollection on the subject of whether or not under the proposed resolution which was to become a part of the code of fair competition for the dress industry, such 11408
provision was in words or in substance, "style piracy is declared to be an unfair trade practice"? A. I think that was the intent of the wording to that effect that was to be in there. The intent was to make it an unfair trade practice by and if that clause was to be adopted, it would then be unfair.

Q. You think it was not unfair before then? A. Well, no, before, no laws or anything that I know of that made it unfair.

Q. Well, that is certainly a surprise. What about the ethics of it? What do you think about that? A. I do not think that such ethics as the industry originated in, and had grown from the beginning, when you consider that I do not think it could be considered entirely unfair when 11409
they all theretofore had done so.

Q. In other words, you think it is a proper thing for this industry to continue the stealing, theft, and immoral seizure of original designs from others which we know by the term "style piracy"? A. Well, I think that——

Q. "Yes" or "no." Do you think it is proper? A. I cannot answer that "yes" or "no."

Q. All right.

Examiner Averill: Is that the question complete?

Mr. Weisman: Well, I will make it complete.

By Mr. Weisman.

Q. In other words, you think it is a proper thing for this industry to continue the rampant practice of style piracy, as you understand it to be? A. As to that, I think——

Q. As to that you can certainly answer that "yes" or "no" do you think it is proper. A. No, I cannot answer that "yes" or "no."

11411

Examiner Averill: I do not think he can answer that "yes" or "no" with the word "rampant" in it. That might mean one thing to him and one thing to you.

Mr. Weisman: All right.

By Mr. Weisman.

Q. The Judge is holding with you so you had better try to carry along under his wing as far as you can before you get out in the open.

Mr. Haycraft: I object.

Mr. Weisman: Undoubtedly.

11412 *By Mr. Weisman.*

Q. Have you got different ideas on the subject of style piracy now from what you had in 1933? A. Yes, sir.

Q. In other words, I take it that in 1933 you felt that style piracy was wrong and unethical and just plain ordinary stealing? A. I felt that copying, and if you want to call it "style piracy," was—I felt that it had its bad points.

Q. And it had its good points? A. I did not say so.

Q. Well, it had no good points?

Examiner Averill: Let the witness tell what he thinks about it.

Mr. Weisman: He does not seem very anxious to do so.

A. I felt that there were disadvantages, I thought, and at the time I felt they were there, and I sincerely tried to overcome those by my attitude and by my efforts at that time.

By Mr. Weisman.

Q. And it is your opinion, then, to-day, I take it that 11414
no effort should be made in this industry to curb style piracy, or to eliminate it? A. Well, I have come to some very definite—I have come to have some very definite ideas that are quite contrary to what I had at that time, though they do not differ entirely with those, but they are quite to the contrary.

Q. Now, Mr. Bergdahl, you went along in 1933, 1934, and co-operated with the Guild? A. Yes, sir.

Q. And at that time, that is, in 1933 and 1934 and the early part of 1935, there were few, if any, $10.75 and below wholesale cost, manufacturers in the Guild? A. With the exception of the sportswear group.

Q. Did you not feel that that was, at any time, a short- 11415
coming of the Guild that ought to be remedied? A. From the Guild's point of view I did.

Q. Look, did you not at one time in 1935, in the early part, either by letter or by word of mouth, say in words or in substance to Mr. Rentner that you felt that, representing your stores, that the Guild should extend its program by taking into its membership manufacturers at $10.50 or $10.75 dresses? A. I did not say that, no. I had conversations about this thing with Mr. Post and Mr. Rentner.

Q. Did you ever write any letters on the subject? A. I do not think I ever did except those letters that are in evidence here.

Q. No, I am not referring to them. I mean, aside from those letters? A. No, I do not think I did, Mr. Rentner.

Q. I am Mr. Weisman.—A. I said Mr. Weisman.

Q. Did you ever say or write to Mr. Rentner, or to Mr. Post in or about the end of 1935, in the early part of that year: "This program may be all right for Adam Gimbel, but for our stores, if you want to make it fair you ought to take in $10.75 dress manufacturers." Does that cause you any glimmer of recollection? A. No, not in that sub-
11417 stance, no.

Q. Do you remember the conversation? A. Yes, sir.

Q. Wherein you said or referred to one "Adam Gimbel"? A. Yes, sir.

Q. When your referred to one "Adam Gimbel," you were not referring to a person but you were referring to the executive head of Saks, Fifth Avenue Store? A. To the type of store, yes.

Q. To the type of store rather than to him as an individual? A. Yes.

Q. And the type of store, such as it was? A. Yes.

Examiner Averill: That is Saks, Fifth Avenue?

Mr. Weisman: Yes. For your Honor's information, Gimbel's own Saks.

11418 Examiner Averill: Proceed.

By Mr. Weisman.

Q. That conversation, when was it, according to your recollection, that it was held now that we have identified in this record? A. In the spring of 1935.

Q. In the spring of 1935? A. Yes.

Q. Did you not in that conversation, say in words or in substance that the Guild program, as it then was with

the manufacturers' membership where it had appeared to be all right for Adam Gimbel, and the business of the Saks Fifth Avenue Store, and stores of that category—A. Yes, I said that as it was then constituted with the manufacturers then members of it, that it appeared to be all right for Adam Gimbel and the business that he was conducting at the Saks Fifth Avenue.

Q. Now, we have that pinned down. Did you not also say, in words or substance, that in order that it should not be unfairly all right for them as against your stores which had a wider price range, that the Guild ought to, or should, take into its membership manufacturers at or below $10.50? A. Of what? 11420

Q. Merchandise. A. That is not what I recall what I said to him, it was not what I said to him as I recollect it.

Q. Tell us to the best of your recollection what you said. A. One day in Mr. Post's office discussing this subject, I said to Mr. Post after he had—after—I believe—I believe it was after the time when I saw that little announcement in the paper, I thought if you were to take in $10.75, why did you not return the original declarations to all of your members, and send them new agreements which would cover this group of manufacturers and Mr. Post or Mr. Rentner also told me subsequently that that—that they did not want to do that, since their retailers or many retailers in the membership were not questioning the original contract, or what it pertained to, and that they could take in other manufacturers and price lines without consulting those original signers. 11421

Q. Look, Mr. Bergdahl— A. Yes.

Q. No, no, will you please not look at me? A. Yes, sure.

Q. Is it your statement here now, and please consider this carefully, that you did not discuss with Mr. Rentner or Mr. Post, before any announcement with regard thereto appeared in the paper, the taking into membership of the

Guild of manufacturers at $10.50 or $10.75, making merchandise in those wholesale price lines? A. Yes, we did, and I think subsequently it is in the minutes of the meeting of May 4, the May 4 meeting, and it is also in the minutes that you wanted the $10.75 manufacturers taken in. Those letters are in evidence. I did not answer your old question before regarding Adam Gimbel, and if you want me to say further about that, I can, or if you want to stop, O.K.

Q. I want to get this plain because you gave me a contrary impression a moment ago. A. O.K.

Q. Is it not a fact that before the $10.75 or the $10.50
11423 manufacturers were admitted to the Guild, the matter of their admission, or non-admission, was fully discussed with you, and with Mr. Block of Kirby, Block & Fischer, who, I think, was then president of the A.B.O.? A. It was fully discussed but we did not ask the Guild, and I do not recall that I asked the Guild to take in the $10.75 manufacturers, but the subject was discussed.

Q. It was full discussed? A. Yes, it was fully discussed.

Q. After it was fully discussed, and after the Guild had made up its mind to take in these $10.50 or $10.75 manufacturers, that determination was conveyed to you by the Guild officers, was it not? A. It was; yes, sir.

Q. After it was conveyed to you by the Guild officers,
11424 you sought to lend your aid to the Guild in getting these manufacturers to join the Guild? A. No.

Q. No? A. No.

Mr. Weisman: Well, I think this is a good place to adjourn.

The Witness: No, you are speaking about $10.75 manufacturers.

By Mr. Weisman.

Q. $10.50. A. My answer was I did not.

(Whereupon, at 1.10 o'clock P. M., December 1, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 3, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T. 11426

Before: EDWARD M. AVERILL, *Examiner.*

(SAME APPEARANCES:)

By Mr. Weisman.

Q. When we last adjourned, Mr. Bergdahl, I believe that I had asked you, in words or substance, whether or not prior to the admission in 1935 into membership of the Guild by certain $10.50 or $10.75 manufacturers, you had lent your aid in bringing about the admission of such members to the Guild, and I believe that you had said "no." A. That is right. 11427

Q. Well, tell me at that time, not to-day, or at any time subsequent, but at or about that time, of the admission of those members—was that matter not discussed with you and other representatives of retailers in your presence, by members of the Guild? A. Yes.

Q. And without seeking to give the exact words or substance—I will withdraw that. Without seeking to give the

exact words, but in an effort to paint for us the substance of what was then going on, would you not say that at that time it was generally felt that it would be for the benefit of all parties to bring into the Guild the $10.75 members?

Mr. Haycraft: By whom?

Mr. Weisman: By all those who were there present. I think that is fairly understood in the question.

The Witness: No, it was not, just in that—in the way you have stated it.

By Mr. Weisman.

11429 Q. Well, I did not—let me try to get it to you in a different way: We will first come to you. Had you not, for some time prior thereto, felt that for the benefit of your stores getting, shall we say equal, or the ultimate protection out of this program of the Guild, that it might be well to take in the $10.75 members? A. No, sir.

Q. Did you not feel at any time that something ought to be done to protect lower-priced goods—that is, goods lower than $16.75? A. Not prior to the fall of 1935.

Q. I see. Well, let me see, did you not feel that where—generally, I mean, I am not trying to give your exact position—did you not feel prior to the fall of 1935 that where a store of yours—when I say "of yours," I mean that you represented—had originals in $16.75 cost, and competing
11430 stores were showing copies of that $16.75 and $5.75 merchandise, or $4.75, or $6.75, or $10.75, that the Guild ought to do something about that situation? A. No, I did not.

Q. You did not? A. I did not think the Guild should, prior to the fall of 1935.

Q. You are giving us your best recollection? A. Certainly.

Q. I show you this paper and ask you whether or not that is your signature (handing paper to witness)? A. It is.

Q. Now, I ask you whether or not on October 19, 1934, you wrote that letter to the Fashion Originators Guild? A. I did.

Q. And I ask you whether or not this was the advertisement contained, referred to in that letter, which you enclosed? A. That is right.

Examiner Averill: No, no, you have not identified the exhibit.

Mr. Weisman: Excuse me; thank you.

(A paper was thereupon marked for identification Respondents' Exhibit 89.)

Examiner Averill: You will save a lot of time 11432
by doing so.

Mr. Weisman: I now offer the letter of October 19, 1934, on the letterhead of the Associated Merchandising Corporation, signed by H. O. Bergdahl, this witness, in evidence, as Respondents' Exhibit 89.

Examiner Averill: Show it to Mr. Haycraft.

Mr. Weisman: Yes.

(Mr. Weisman hands paper marked Respondents' Exhibit 89 to Mr. Haycraft.)

Mr. Haycraft: Where is the advertisement?

Mr. Weisman: Here it is.

Examiner Averill: Go on and show it to him.

Mr. Weisman: You may see it, no secret about 11433
anything in this case.

Examiner Averill: No, especially not an advertisement.

(Mr. Weisman hands newspaper advertisement to Mr. Haycraft.)

Mr. Haycraft: No objection.

Examiner Averill: The paper heretofore shown the witness, which he identified as being the letter

written by himself to Mr. J. M. Golby, F.O.G.A., New York City; bearing date October 19, 1934, will be received in evidence and marked Respondents' Exhibit 89, with leave to substitute a photostatic copy in lieu thereof.

(The paper heretofore marked for identification Respondents' Exhibit 89, was marked as an exhibit and received in evidence.)

(A newspaper was marked for identification Respondents' Exhibit 90.)

By Mr. Weisman.

11435 Q. Now, I show you Respondents' Exhibit 90 for Identification and ask you whether or not when you referred to the attached advertisement in Respondents' Exhibit 89, this is the attached advertisement which was attached by you to that letter? A. Yes, it is.

Mr. Weisman: I now offer this in evidence. I have already shown it to Mr. Haycraft, and he says he has no objection.

Examiner Averill: There being no objection, gentlemen, the paper heretofore marked Respondents' Exhibit 90, the same being an advertisement from the San Francisco "Shopping News," bearing date October 15, 1934, will be received in evidence,

11436 with leave to substitute a photostatic copy in lieu thereof.

(The paper heretofore marked for identification Respondents' Exhibit 90, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. In this letter, Respondents' Exhibit 89, which was written on October 19, 1934, you enclosed the advertise-

ment, Respondents' Exhibit 90, and you say there, "The attached is the advertisement to which I referred to in my conversation with you over the telephone this morning." Now, I take it that you meant so much of this advertisement as refers to new fall dresses, $6, all copies of higher-priced dresses? A. That is right.

Q. Is that so? A. Yes.

Q. And in that letter which was written on October 19, 1934, you wrote, did you not, at that time: "However, the Guild must do something to correct this situation." A. That is right.

Q. And the situation that you were therein referring to was that at prices therein shown at $6, there were being 11438
offered copies of merchandise of $16.50 or $16.75, and up; is that not so? A. Something like that.

Q. Yes. A. I recall that the word "copies" is what aggravated our store particularly.

Q. Yes. All right. A. I think the letter also shows——

Mr. Weisman: Now, just a moment. I have no further questions.

The Witness (continuing): —that there was not any exemption——

Mr. Weisman: Just a moment, just a moment.

Examiner Averill: The letter is there.

Mr. Weisman: Yes, the letter is there.

The Witness: O.K.

By Mr. Weisman. 11439

Q. In 1935, in or about July, there was admitted into membership of the Guild a number of $10.50 manufacturers? A. As I recall; yes, sir.

Q. Subsequently, there were taken into the Guild, I understand, even lower-priced manufacturers; is that true? A. Yes

Q. As to these lower-priced manufacturers, before the were taken into the Guild, the advisability of their admi sion into the Guild was discussed with you, as a repr sentative of various retailers? A. Yes, sir.

Q. And before these members were taken into the Guil you took it upon yourself, in good faith, to appear befo a large and representative body of such manufacturer and urged them to join the Guild, did you not?

Mr. Haycraft: I object to the form of the que tion.

Examiner Averill: Objection overruled.

11441 A. Yes. I think you can put it that way.

By Mr. Weisman.

Q. Not the way I want to put it—is that true? A. Tha is true.

Q. And before you did that there was, was there not, mutual understanding arrived at, to which understandin you were a party, that after the admission of these $6.7 manufacturing members into the Guild the co-operatio that would be desired from the retail stores would be more careful or more stringent one; is that so? A. Ye sir.

Q. Thereafter, these $6.75 members were admitted int the Guild?. A. Yes.

11442 Q. And I understood you to say on your direct examina tion that after the admission of these $6.75 members th Guild did require a more strict compliance with their de laration of co-operation? A. In substance.

Q. And, as a matter of fact, you felt that that did n work out so well? A. I did.

Q. Then, I understood you to testify that you spoke t some of the executives of the Guild, giving them you opinion? A. At what time?

Q. After the admission of the $6.75 manufacturing members into the Guild? A. Yes. We had talks.

Q. And they then told you in words or substance that as time went on they would expect this program of co-operation to become more and more literal; is that so? A. Yes, sir.

Q. Did they not at that time tell you that it was their opinion, whether it was a fact or not, that only by a more and more literal adherence to this program could design piracy ultimately be stamped out? A. Yes.

Q. And did they not, as a matter of fact, say to you in words or substance that unless this design piracy were stopped, or overcome, that they would have to go out of 11444
business themselves, or, to use your own words, that they would have to shut down? A. To use my words?

Q. I think those are your words that you used. Well, never mind, whether they are your words or not, is that not the substance of it? A. I think that is the substance, if they did not include the lower-priced lines that it would work poorly; that it would not work so well.

Q. Mr. Bergdahl, in or about this time—that is, the latter part of 1935, and I think it was in or about November, or thereabouts, or earlier—you suggested to the Guild that the Guild adopt a different method of adjudging style piracy; did you not? A. Yes, sir.

Q. And you suggested to the Guild that the Guild, instead of having its members take a hand in the adjudging 11445
of style piracy, that the Guild permit that whether or not a dress shall be admitted and deemed a copy of an origination should be determined by representatives of retailers rather than by representatives of manufacturers? A. I did.

Q. And the Guild adopted your suggestion? A. They did.

Q. Mr. Bergdahl, in connection with that suggestion, do you know whether or not— A. What is that?

Q. I will drop that for the moment. Did you not know that the Guild, in an effort to make such adjudgments impartial, chose a panel of retailers that were to sit on a certain day one week in advance of the day that they were to sit? A. I did not know that.

Q. Let us see whether or not we can refresh your recollection. A. O.K.

Q. You served on some of these panels? A. Yes, sir.

Q. Did you not always obtain notice a week in advance that on a certain day you were to be asked about—or, rather, to be exact, you were asked to serve on the retail committee? A. I do not recall that.

11447 Q. Were you not ever told, in words or substance, or did you not ever learn that the Guild in an effort to erradicate any charge of favoritism, or lack of impartiality in such judging, adopted the program as you suggested, but added thereto the following: "That the committee that is to sit on a certain day shall be and is to be designated one week in advance and at a time when it is not yet known what shall come before that committee"? A. No.

Mr. Haycraft: I object to the form of the question.

Examiner Averill: Overruled. He has answered that he does not know.

A. I do not recall that I learned any such thing.

11448 *By Mr. Weisman.*

Q. Were you ever told, in words or substance, or did you learn in any other way, that the Guild, further in its efforts to comply with your suggestion and to render this procedure free from any claimed favoritism, or lack of impartiality, passed a resolution by which it provided that none of the Guild members might appeal from such rulings as should be made by such retail committee, but that

any person or manufacturer, not a member of the Guild, had a right of appeal?

Mr. Haycraft: I object to the form of the question as to what was in the mind of the Guild. How can he possibly know what was in the mind of the Guild.

Mr. Weisman: I asked him if he learned that. I am only asking him for what he learned.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: Objection overruled.

By Mr. Weisman. 11450

Q. Can you answer the question? A. The question is so long I do not really recall it now.

Q. I will ask that it be read to you. A. Thank you.

Mr. Weisman: I ask that the question be read.

Examiner Averill: The question may be read.

Q. (Question again read.) A. I did not learn that, and I do not believe it worked out in practice if they did pass such a resolution.

Mr. Weisman: May I have the latter part of the answer be stricken out as not responsive.

Mr. Haycraft: I think it is properly a part of the answer. 11451

Examiner Averill: No, no, motion granted. The part of the answer which is allowed to remain is, "I did not learn that." The remainder is stricken out.

By Mr. Weisman.

Q. Did you not further learn that in connection with the hearings that were to be held by this retail committee which was to judge whether a dress was a pirated copy or

not, the Guild resolution provided that if the manufacturer was a Guild manufacturer he had to be content with the personnel of the committee, but if the manufacturer was not a Guild manufacturer, was called before the committee, he had a right, with or without cause, to object to the personnel of the committee in which event an entirely new and subsequent committee which had been appointed for the following day would sit? A. I heard something to that effect.

Q. Did you further hear that the Guild further provided that if the subsequent committee with or without cause was unsatisfactory to the non-Guild manufacturer,
11453 that then the non-Guild manufacturer could ask that the matter proceed to arbitration pursuant to the laws of the State of New York, to wit: That the Guild manufacturer would appoint one representative or arbiter; the non-Guild manufacturer would appoint one, and the two would appoint a third, and the three would, the three so designated, would constitute the board of arbitration, whose decision would be binding? A. I did not know that.

Q. You did not know that? A. No.

Q. If you had known that, or if you had known of the entire procedure as I have now outlined it, commencing with my first question with regard thereto, do you not think that that was as reasonably fair as human endeavor could devise to adjudge this situation? A. Yes.

Q. Mr. Bergdahl, on your direct examination you were
11454 asked in words or substance whether or not you ever knew of a decision on design piracy being subsequently changed, and I believe you said you know of one such instance. A. I recall it—as I recall it, I said so.

Q. You did not tell us through what mechanics that decision was changed? A. No.

Q. Do you know how it was changed, or through what mechanics it was changed? A. I have a version of it.

Q. Let us see. You remember on one occasion that a dress was adjudged a copy. Will this refresh your recollection that the initial committee adjudging a copy in connection with the dress that was made by the Puritan Dress Company—does that bring any recollection to you? A. I do have some recollection of the Boston case.

Q. Yes, Boston was where the Puritan Dress Company was located? A. Yes.

Q. As I understand it, you called up and you told Mr. Golby, or Goldston, of the Guild, that you thought the decision of the committee was unfair; did you not say that in words or in substance? A. Well, yes, but I want to make it clear that I did not testify about the Puritan 11456
case in my direct testimony. There is no reference to that in my direct testimony, as I recall it. It was not——

Q. But what case did you have reference to? A. I think I had reference to the case of Emanuel versus somebody else, I forget who it was, Emanuel Gowns, before they were members of the Guild.

Q. Mr. Bergdahl, there is no desire on my part to have you make a mistake. I say to you that I am quite certain that there was no change of decision at any time with regard to Emanuel Gowns, and the records will so show. Now, I want to see if that will not refresh your recollection. There was a change after a conversation between you and Mr. Goldston with regard to a firm in Boston. As a matter of fact, Emanuel Gowns, as you must know, 11457
are not in Boston, so they could not have been the concern you have in mind, could they? A. Mr. Weisman, I said Emanuel Gowns, and that is what I mean. I think that that Puritan case was another case in which there was some dispute, but there definitely also was one at the Guild offices in connection with the Emanuel Gowns, I believe, and somebody else.

Q. I am not talking— (Mr. Weisman confers with Mr. Post) Look, we will have to start at the beginning. I

want to clear this up. On your direct examination, Mr. Haycraft asked you whether or not you knew of a case where a decision of the piracy committee was subsequently changed, and you said you only had heard of one such case. Is that correct? A. I recall of one such case.

Q. Yes. Now, what was the one such case that you recall? A. I had reference to a piracy committee action in connection with Emanuel Gowns copying somebody in the Guild.

Q. And the original piracy committee determined that Emanuel Gowns had copied. A. The decision of the piracy committee was that the dress was not a copy.

11459 Q. Yes. A. Then as a result of conference, or as a result of some discussion with officials of the Guild, including Mr. Post, I believe, and possibly the manufacturer in the Guild, the committee changed its decision to one that it was a copy. At first the same committee——

Q. How do you know about that? A. My buyer was on the committee and so judged—so reported to me——

Q. Let me read your testimony. A. —and subsequently I talked to Mr. Goldston about it.

Q. Let me read your testimony and see whether or not you were not in error when you testified as follows, or whether or not you are in error now.

Mr. Haycraft: What page?

Mr. Weisman: 6740. Will your Honor follow this testimony, listen to what was said on the direct testimony of this witness?

11460

Mr. Martin: Where?

Mr. Weisman: At the bottom of the page. Are you following me?

Mr. Martin: No.

Mr. Weisman: I will read it carefully. (Reading.) "Q. In what instance was that? A. It was in connection with some dress company versus

somebody else; I do not think of the name just now. This particular Guild member—that was before they became members of the Guild, and it was a case in which a given committee went the other way and in which one of our buyers was a member, and the committee made the decision that the dress was a copy."

A. That is right. The second time they did.

Mr. Weisman: Wait a moment, now. Wait a moment.

Examiner Averill: Hold on.

Mr. Weisman: That is the point, you said the 11462
second time, and a minute ago it was the first.

The Witness: I——

Mr. Weisman (reading): "The manufacturer brought it to my attention, or, at least, it came to my attention, and I called up Jack Goldston, and I said, 'Jack, in your own honest opinion, is that a copy of the dress in question?' And he said, 'Well, frankly, I do not think it is.' I said, 'Very well, why do you send it out as a copy, then?' He said, 'Well, I do not know, but that is the decision of the committee.' I said, 'Well, you had better see that that is changed because obviously this is unfair, and I am going to make an issue of it because it is not right.' I think as the result of that there 11463
was some change in the decision. However, prior to that when the committee was in action they made two different decisions on that particular dress, which was subsequently brought to my attention."

The Witness: That is right.

Mr. Weisman: All right.

The Witness: So it is in there.

Mr. Weisman: I mean, the two versions can stand one against the other.

Examiner Averill: There isn't any contradiction.

Mr. Weisman: Oh, I think in my brief, your Honor, I will point out clearly that there is a contradiction.

Examiner Averill: Let us go ahead.

Mr. Weisman: All right.

By Mr. Weisman.

Q. As a matter of fact, now, do you not know that after
11465 you spoke to Mr. Goldston, and as a result of your conversation with Mr. Goldston, he said to you that if any retailer, or any manufacturer, were dissatisfied with the finding of this committee, an appeal could be taken, and that appeal was taken because of your expressed dissatisfaction, and a separate committee appointed, and then the change of decision came through the appellate committee? A. Do I recall all that?

Q. Do you not know that? A. No, sir.

Q. Substantially? A. No, sir; I do not substantially or otherwise.

Q. All right. Did you ever hear of a meeting between members of executives of the Fashion Originators Guild, Mr. Reilly, Mr. Schapp, and others, in the early part of
11466 February, 1936, at the Union League Club? A. Yes.

Q. And that was before anybody was red carded, was it not? A. I am not sure.

Q. Well— A. I think some had been red carded at that time, four or five stores.

Q. Well, you only think so. A. No, I am quite sure about it.

Q. When did you first find out of the A.M.C.'s being—certain of the stores of the A.M.C. being red carded? A. On or about February 10, I believe.

Examiner Averill: 1933, 1934?
The Witness: 1936.
Examiner Averill: 1936?
Mr. Weisman: 1936.
The Witness: February 10, 1936.

By Mr. Weisman.

Q. Did Mr. Reilly, your superior, tell you that he had a meeting at the Union League Club at which Mr. Post was present? A. Yes.

Q. And that at that meeting among others who were present was Mr. Schapp, of Bloomingdale's, Mr. Reardon, of Stern's Department Store, Mr. Petrie of James 11468
McCreery, and others; do you remember that? A. He told me of such a meeting.

Q. That meeting was in the early part of February, was it not? A. Yes.

Q. There is no doubt, now, in your mind that that meeting was prior to the time that Bloomingdale's was red carded? A. I am not sure about that; I am not sure about it. It seems to me that Bloomingdale's were red carded at the time of that meeting, and Mr. Reilly said that there was some discussion about Bloomingdale's red carding at that meeting. However, I may be wrong.

Q. Let me see. As a matter of fact, did not Mr. Reilly advise you that at that meeting of the Union League Club, he said, in words or substance, that speaking—that he and 11469
Mr. Schapp said that speaking for the A.M.C. stores, or speaking for the A.M.C. stores, that they would not cooperate under any circumstances? A. No, he did not tell me that.

Q. Let us see. A. He had just issued a letter in which he said—or, no, that is right.

Q. Let us see whether this will refresh your recollection, now. You remember the letter— What is the number of that letter that went out, that came to us?

The Witness: February 14.

Mr. Weisman: I want to get the exhibit number, the letter of February 14.

Examiner Averill: Who from, too?

Mr. Weisman: It is a letter from the A.M.C. to the——

The Witness: To the Guild.

Mr. Weisman: —to the Guild.

The Witness: Fashion Originators Guild.

Mr. Weisman: Advising us that their members would not co-operate, or something to that effect. I do not know what it was.

11471 The Witness: That is not what they advised you, and you know it.

Mr. Weisman: Listen. I know if you do not keep still when I am addressing the Court, I am going to move to have you cited for contempt, that I know.

The Witness: You are not going to quote me otherwise than what I have said.

Mr. Weisman: I am not quoting you.

Examiner Averill: Gentlemen——

Mr. Weisman: All I want you to do is to keep still.

Examiner Averill: Stop this, now.

Mr. Weisman: I mean, the witness has no right —it is bad enough if counsel constantly interrupts.

11472 Examiner Averill: Gentlemen, I am not going to listen to any more of this. This is nonsense. Please, Mr. Bergdahl, do not make remarks of that sort. It does not do any good, and that ought not to go on the record, and the witness and counsel should not argue at all.

Mr. Feldman: Certainly does not help your testimony any; it hurts it.

Examiner Averill: Off the record.

(There was a discussion off the record.)

The Witness: Your Honor, may I ask for information, something off the record?

Examiner Averill: Off the record, yes.

(There was further discussion off the record.)

Examiner Averill: On the record.

Mr. Haycraft: Here is the letter, Respondents' Exhibit 37.

Examiner Averill: All right.

Mr. Weisman: Let me see it.

Examiner Averill: I will read it. Not for the record.

(There was a discussion off the record.) 11474

Examiner Averill: On the record.

By Mr. Weisman.

Q. You remember, do you not, that you knew that prior to Mr. Reilly's attendance at that Union Club meeting Respondents' Exhibit 37 had not been sent? A. I think it had not been sent, but I am not positive about the date.

Q. I do not ask you—at the Union meeting— A. I am not exactly positive, Mr. Weisman.

Q. Do you not know as a matter of fact, and did not Mr. Reilly tell you, that he took with him to that Union League meeting a copy of this letter? A. I do not recall that he told me, no.

Q. Did he never tell you that at that Union League 11475
meeting he advised, in words or substance, Mr. Post that they would not co-operate with the Guild on its program as it then was? A. I think that he did say that, yes.

Q. And— A. —as it then was.

Q. Yes. And did not he tell you that at that time he said to Mr. Post, "I have already drawn a letter that I am going to write you"? A. I do not know that he said that to Mr. Post.

Q. And when Mr. Reilly came back from that meeting prior to the sending of the letter of February 14, did he not tell you that at that meeting, after his statement made to Mr. Post, Mr. Post said, "Well, if you fellows are not going to co-operate, we will have to call our board together and see if we want to do business any further with you"? A. He did not tell me that.

Q. He did not tell you that? A. No.

Q. And if that was said, that he kept secret from you? A. He did not tell it to me. He did not tell me everything that was said at the meeting. I am quite sure of that.

Q. Mr. Bergdahl, do you know Mr. David Moeser? A.
11477 From Boston?

Q. No, not Mr. Moeser from Boston; Mr. Moeser from Boston is not Mr. David Moeser. A. I do not know him personally, no.

Q. Well, do you know who Mr. David Moeser, M-o-e-s-e-r, is? A. I am not sure, no.

Q. Who is the president now of the N.R.D.G.A.? A. Well, Mr. Moeser is the president, yes; that is why I asked. I think he is from Boston.

Q. Oh, you think he is from Boston? A. I am not sure. I think he is.

Q. Do you know what store he is connected with? A. Well, I am not sure.

Q. Did you ever hear of Conrad & Company? A. Yes.

Q. Is he president of Conrad & Company? A. I think
11478 that is correct, yes.

Q. And he is a working retail executive? A. Yes, he is——

Q. Well informed— A. —as far as I know.

Q. As far as you know, would you say he is well informed and well qualified in the retail problem? A. In some retail problems.

Q. Well, do you think that some of the retail problems in which he is well informed and well qualified by reason

of being president of Conrad & Company and by reason of being president of the N.R.D.G.A. is upon the problem of style piracy, or do you think that is one of the cases or matters concerning which he is not well informed? A. If you will define what you mean by "well informed," I will answer you.

Q. Well, what do you understand by "well informed"?

By Mr. Weisman.

Q. Mr. Bergdahl, you remember Respondents' Exhibit 37, the Reilly letter of February 14? It was just referred to? A. Yes; yes, I do.

Q. You know that that letter was received by the Guild, 11480
do you not? A. I learned that it was, yes, sir.

Q. Did you also learn that immediately upon its receipt the Guild, in an effort to ascertain whether or not the A.M.C. was authorized to make that statement, sent a wire which is in evidence here—and I will give you the number in a moment—to each and every member store of the A.M.C.? A. I heard that was the procedure.

Redirect examination by Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 89—

Mr. Weisman: You mean Respondents', do you not?

Mr. Haycraft: Respondents'. 11481

Examiner Averill: Respondents'.

By Mr. Haycraft.

Q. —Respondents' Exhibit 89, the following language: "The White House may be privileged under its agreement with you to buy and sell copies at this price line, and to advertise in this manner." What is the White House referred to there? A. That is a store in San Francisco.

Q. Now, the language following that I have just read to you: "However, the Guild must do something to correct this situation, or other stores may be forced not to refrain from handling copies." I will ask you what you had in mind when you made that statement?

Mr. Weisman: I object to that as incompetent, irrelevant and immaterial. Here is a witness writes a perfectly plain letter. Now, he is asking him what he had in mind.

Examiner Averill: Gentlemen, I do not want any further argument in connection with this matter. The reporter will read what the witness said
11483 up to this point.

(Answer read as follows: "A. Well, it had been our intention—")

Examiner Averill: Go ahead.

A. —from the beginning to co-operate progressively—

Examiner Averill: Yes.

A. (Continuing) The exemption that we had was not intended to give us any right to just indiscriminately seek copies. It was merely a protection for us so that it would be an understanding about how much we should co-operate, and we took it for granted, as I did here, and I think the conversation that preceded this letter probably cov-
11484 ered some of that, that there may be other stores that had similar exemptions to ours, undoubtedly did, but that if stores were to persist in advertising, not only having copies in their store, but if they were to persist in advertising, as this store did, and put it in words, see——

Examiner Averill: Yes.

A. —that we did not construe as co-operating progressively. That seemed a negative form of co-operation to

me—and that I thought something ought to be done, and I am quite sure I recall saying to Mr. Post that that ought to be—that that kind of vicious unco-operation, if you could put it that way, should be eliminated, or other retailers would have to be like vicious.

Examiner Averill: Now, wait. Hand me that exhibit you are referring to.

(Witness hands paper to Trial Examiner.)

Examiner Averill: Now, in connection with Respondents' Exhibit 90, which is the exhibit, the advertisement which you had before you at this moment——

The Witness: Yes. 11486

Examiner Averill: —is the language to which you specifically refer, the words "all copies of higher-priced dresses"——

The Witness: Yes.

Examiner Averill: —referring evidently to the pictures of dresses advertised at $6.

The Witness: Yes, yes.

Examiner Averill: That is what you are referring to?

The Witness: Yes.

Examiner Averill: Those words?

The Witness: Yes, yes, sir. We have a store in that town—we had a store—called the Emporium, and the Emporium ready-to-wear manager said 14487 that it is pretty hard for him to try to co-operate even with our understanding, if this kind of advertising was to be used against him, that he would have to be like—in a like manner, unco-operative—but it was our intention to co-operate, and progressively so, but that, I think, explains my letter.

Examiner Averill: The language you used?

The Witness: Yes.

Examiner Averill: All right.

Mr. Weisman: Now, I move that the answer be stricken out.

Examiner Averill: Motion denied.

By Mr. Haycraft.

Q. Upon cross-examination you were asked numerous questions with respect to not acquainting members of your organization—that is, the A.M.C.—in writing with the terms then existing, or that you say you had with Mr. Rentner, Mr. Maurice Rentner, as to exemptions? A. Yes.

Q. I will ask you if there is an explanation to that? A.
11489 There is.

Q. What is the explanation as to why you did not acquaint the members of the A.M.C. in writing with the exemption that you say you had? A. I might say that this was a verbal agreement between Mr. Maurice Rentner and myself and some others, and that it would be better for the Guild, and for the work it was trying to do if it would not be generally broadcast that such exemptions existed, and so I agreed and did follow that understanding and not broadcast it and write it—not broadcast it in writing. I agreed to keep it verbal, and I think I did succeed in doing that.

By Examiner Averill.

11490 Q. When you say "verbal," you mean oral? A. Yes, orally; yes, orally.

By Mr. Haycraft.

Q. Your attention was directed to the fact that certain members of the A.M.C. had co-operated and continued to co-operate with the Guild. Hutzler Brothers was one of the members that was called to your attention? A. Yes.

Q. I will ask you whether or not you know why Hutzler Brothers agreed to co-operate and did co-operate?

Q. Mr. Bergdahl, if you know, tell us if you know why they continued to co-operate after the red carding of certain other A.M.C. stores? A. Because—for two reasons—because they handled better merchandise to a larger degree in their store than the average department store does, and they felt that they could not get along without the Guild.

Mr. Weisman: I object to that.

Examiner Averill: Oh, no, that is all right. He can give the reasons and then we will consider them all at one time. 11492

A. Secondarily, Mr. Charles Hutzler was, I believe, chairman or president of the local guild and felt that he understood the Guild and probably could get along with him. For those two reasons they felt, but above everything else and particularly because they had this merchandise, they had to have this merchandise of the better class, they felt that they had to go along with the Guild.

By Mr. Haycraft.

Q. You were also asked with respect to Horn & Company.

Examiner Averill: He told us that before.

11493

Q. Were the reasons you have assigned for Hutzler Brothers continuing to co-operate with the Guild the same reasons that applied to the others, or were there different reasons, and if so what were they? A. Slightly different. Yes, slightly different. Can I take them up as a group and sort of cite the thing as a whole?

Q. Yes, go ahead and give us the differences. A. The Guild red carded B. Forman and Reich-Cumler Company

along with the other A.M.C. stores on February 17, or thereabouts.

Q. What happened then? A. Those stores remained red carded until they had to have the merchandise which they had been accustomed to having, and therefore signed up with the Guild.

Q. Do you know the approximate date of that?

By Examiner Averill.

Q. When you say "signed up with the Guild," they had theretofore been signed up, and you mean that thereupon renewed because they had already been signed up and had
11495 signed declarations of co-operation, but they renewed these former declarations?

Mr. Haycraft: I do not think so.

By Mr. Haycraft.

Q. Not former declarations, but they signed up new ones, did they not? A. They signed declarations of some kind with the Guild.

Mr. Weisman: That answer shows us now very definitely just where we are not, rather than where we are. "They signed declarations of some kind with the Guild." Now, we know just what they did sign. It makes a fog look like a bright sunny day.

11496 Mr. Haycraft: Maybe to you.

Mr. Weisman: Oh, you can penetrate it?

Examiner Averill: Gentlemen. In other words, they then made satisfactory arrangements?

The Witness: Yes, sir.

Examiner Averill: By which they could now buy Guild merchandise?

The Witness: Yes, sir.

Examiner Averill: Proceed.

y Mr. Haycraft.

Q. And do they now buy Guild merchandise? A. They
).

Q. I call your attention to Respondents' Exhibit No. 86,
eing the letter from B. Forman to Mr. Rentner under
ate of December 29, 1932, which you identified on your
oss-examination. Do you recall that? A. Yes, I recall
at.

Q. Do you know anything about the firm of Sibley,
indsay & Curr Company mentioned in that letter? A.
es.

Q. What is that firm? A. Oh, they are a large depart-
ent store that handles a wide range of merchandise, both 11498
w and better-priced lines.

Q. What is the nature of the business of B. Forman in
at respect? A. They are a specialty shop and they han-
le relatively a large percentage, for their business, of
tter merchandise.

Mr. Weisman: I ask that the latter part of the answer be stricken out as being obviously not within the witness' personal knowledge as to the percentage that they handle.

Examiner Averill: I think he could know as to what class of merchandise is handled in his member stores.

Mr. Weisman: But I referred to the percentage. He is going into percentages now. Pretty soon 11499
he will tell us what the president thinks when he gets up on a rainy morning.

Examiner Averill: I suspect we all know that.

Mr. Weisman: On second thought I will withdraw the objection because the probative value to be given this witness' testimony is all the better evidenced by his readiness to answer almost any

kind of a question, and his eagerness to put in something wherever he can, to be witness and advocate at the same time.

Mr. Haycraft: I move to strike that out.

Mr. Weisman: Oh, I think it is a very proper observation and certainly justified by the action of the witness.

Examiner Averill: Proceed. That will not benefit us very much, I am afraid.

By Mr. Haycraft.

Q. I show you Respondents' Exhibit No. 874.

11501

Examiner Averill: Is it not Commission's Exhibit 874?

Mr. Haycraft: So it is.

By Mr. Haycraft.

Q. (Question read as follows: "Q. Are the rules indicated in this letter representing to be part of the by-laws those provisions which you had in your mind, or which you made reference to in your testimony; when reference was made to trade practice rules?") A. Yes, those were the trade practices, and along with others that I have had reference to in my testimony.

Q. Mr. Bergdahl, you mentioned when you first came down this morning that there were certain changes which you desired to make in your testimony. Are you prepared to indicate those at the present time?

11502

Examiner Averill: Is he referring to corrections or is he referring to typographical errors, or to changes?

Mr. Haycraft: I do not know just exactly what it is, your Honor, and I would prefer the witness to state.

Examiner Averill: Go ahead.

The Witness: On page 7034, Mr. Weisman asked if it had ever come to my attention that there was a meeting in November, 1932, that was attended by the following people, and named the people.

Examiner Averill: I think you have stated that sufficiently. Just state the line on the page.

The Witness: Line 11, and a list of names that he started to read on line 15, and then that was the question to which my answer appears on page 7035.

Mr. Haycraft: Line 25 at the bottom of the 11504
page?

The Witness: Line 25. I said it did not at that time. I have refreshed my memory and find that I did know about those meetings—this meeting in particular, and others at that time.

(There was a discussion off the record.)

Mr. Weisman: I suppose you now refer to page 7039, commencing with the question at line 17, "Did Mr. Ladd in these conversations ever say to you," and do you desire to make a statement about that?

The Witness: It begins on page 7039, and there is only one thing that I wish to change there——

Mr. Weisman: Yes.

The Witness: —and that is in connection with 11505
where I had stated that I had learned about it since this case began.

By Mr. Haycraft:

Q. Learned what? A. I made a statement that I had learned that since this case had begun, and by that I inferred that I had learned through testimony that had been given here that the New York retailers did ask that the

$10.50 manufacturers came into the Guild. That was my impression I had received, and then I reviewed what I had read—that is the impression that I thought I had gotten out of the evidence contained in exhibits for the Commission, I believe, being Commission's Exhibit 18 in which one when I read it I thought I noticed that, but now that I have read it again I find that they did not attempt—that they did not ask that the $10.75 manufacturers become members of the Guild, and therefore I want to call the Commission's attention and the Examiner's attention to the second page of Exhibit 18, and to point out——

11507 Mr. Weisman: This is not a correction, this is argument with the Court, and I do not want this to go on the record. He says he wants to correct his testimony and his testimony was when did you learn about it. He testified that he learned about it during this trial. I submit that if he wants to correct it he should say that it is not correct, or in what respects it is not correct, and not try to argue the case with the Commission as he seems only too anxious to do.

Examiner Averill: I think that is a fair objection to the testimony. Just state the correction you desire to make.

11508 The Witness: I thought I had learned from my reading of the exhibits here when this case was in New York earlier in this proceeding, when these exhibits were introduced, that the New York retailers had asked the $10.75—did ask the Guild to take in the $10.75 manufacturers, but I find on refreshing my memory that I had not learned any such thing, in fact, that they did not.

Mr. Weisman: I object to that, because now he is trying to argue the A.M.C.'s side of the case.

Examiner Averill: He said that he learned differently.

The Witness: I learned just the opposite, or differently.

Mr. Weisman: I think that is enough on that.

Mr. Haycraft: Except, Mr. Examiner, I do want to ask counsel for the respondents if he has finished with the exhibits which were marked for identification during the testimony, with respect to the estimated volume of business.

Mr. Weisman: We find in the first place that we have not been able to fully complete our own check against it, and in the second place we find it is completely erroneous in so far as our figures are concerned so far.

11510

Examiner Averill: I remember that exhibit quite well. It was a tabulation. If it is found necessary later on when you gentlemen get together on the figures in order to meet any difference that you may have had in connection with the same, why, we are right here in New York and you can go over this matter with Mr. Bergdahl, we can call him over and we can ask Mr. Bergdahl to come up here and explain any discrepancy, if there be any, and then he can testify further in that regard only, if it is necessary to do so, to see whether it is admissible or not.

Mr. Weisman: We have all come to the conclusion heretofore that it was not admissible. The thing would have to be introduced over objection, if at all.

11511

Examiner Averill: Then it can be settled without that difficulty when we come to it. We will not attempt to meet anything until we come to it.

Mr. Weisman: I want this to appear at this point on the record: I respectfully again move to strike out all of this witness' opinion testimony with regard to the reasons why the various

enumeraled persons continued to do business with us after the red carding of certain other A.M.C. stores. In that connection, I particularly call to the Court's attention, and to the Commission's attention, to whom I believe this record will ultimately go, that the fact that Hutzler Brothers and Horn Stores, the Commission has had before them, and that the attorney for the Commission knew at the time that he had them before him that these people were co-operating with the Guild right down to the date of the trial; that, therefore, his studied avoidance of asking them the question directly as

11513 to their reasons, and, rather, seeking to rely upon an obviously hostile witness' statement of opinion, being certainly opinion evidence with regard thereto is highly improper and prejudicial to the substantive rights of the respondent.

Examiner Averill: Gentlemen, if anything in the issues could be materially related, altered, or affected, or changed by any of this testimony in connection with the specific people co-operating at the time, it might be another thing, but it is so clearly evident that it is immaterial for any worth while purpose in connection with this case, and on the further ground that I could not attempt to strike all of the evidence in there that might be

11514 hearsay without going over it line by line, and, further, that we also have to consider the thousands of exceptions to the hearsay rule that are in use to-day, as it may be brought out by consideration, for instance, of our good friend Mr. Wigmore, who has very successfully brought in so many exceptions to the hearsay rule which we should not have dreamed of except for his learned treatises on the subject, and I think for the last forty years the tendency has been to disregard the hearsay rule almost entirely.

Mr. Weisman: I think that we may have been whittling it away.

Mr. Feldman: By a sort of tweedle-dee, tweedle-dum process.

Examiner Averill: That I am compelled to deny the motion.

Mr. Haycraft: Nothing further.

Recross-examination by Mr. Weisman.

Q. On your redirect examination, you gave us an explanation as to what was in your mind when in response to Exhibit 89 you said, "If the Guild"——

11516

Examiner Averill: Referring to both of them? They are both tied together.

Mr. Weisman: I beg your pardon?

Examiner Averill: Referring to Respondents' Exhibits 89 and 90? They are so intimately connected that you cannot separate them.

By Mr. Weisman.

Q. You said two things: "If the Guild must do something to correct this situation," and you said two things further—you said first that you understood that retailers were to co-operate progressively; do you remember using the word "progressively"? A. Yes.

Q. When you said "progressively co-operate," I take it you meant that the co-operation as time went on was to be given closer and closer adherence to; closer and closer adherence to the declaration of co-operation, as written; is that what you mean when you said "progressively"? A. With the exceptions and explanations that I have already given.

11517

Q. Yes, I understand. You now also state that when you read this letter, Respondents' Exhibit 89, and which

includes Respondents' Exhibit 90, and which was dated 1934, you used the words that the advertising of copies unco-operating. Do you remember using that word? Yes.

Q. I understand, correctly, do I, that by the term "co-operating" you meant something that goes beyond lack of co-operation, and something that was definit detrimental and harmful and affirmatively so; is that y idea, and was your idea when you said "unco-operativ A. It was not within the understanding that we had,

Q. That understanding which you had, and which have described as "progressively" was for all of y

11519 A.M.C. stores? A. Yes.

Q. Let me show you this little advertisement——

Mr. Weisman: First, I will ask to have t marked for identification.

(An advertisement was marked for identificat Respondents' Exhibit 91.)

By Mr. Weisman.

Q. I show you Respondents' Exhibit 91, which was advertisement on March 10, 1935, by Abraham & Stra Brooklyn, N. Y. and ask you if that was ever called to y attention?

Examiner Averill: "Yes" or "no."

11520 The Witness: Yes, the subject matter was, ye

Mr. Weisman: I offer the paper in evidence.

Mr. Haycraft: I object as incompetent, imm rial and irrelevant and not a proper part of recr examination.

(The advertisement heretofore marked for id tification Respondents' Exhibit 91, was marked an exhibit and received in evidence.)

By Mr. Weisman:

Q. I call your attention to the fact that Respondents' Exhibit 91, of Abraham & Straus, refers to dresses—in fact, it is the direct advertisement of dresses, and it says, "Both these dresses were outstanding successes at Miami this year. They sold from $18 to $25. These are identical copies at $5.98." In your opinion, was that also uncooperative? A. I have so testified, I think.

Q. Was it? A. It was.

Q. This was called to your attention? A. Yes.

Q. Was the subject matter of this transaction taken up and explained to you? A. I have so testified.

Q. I do not care whether you have so testified or not. 11522
Was it or was it not?

Examiner Averill: Just answer "yes" or "no."

A. Yes.

By Mr. Weisman.

Q. Did you ever have any occasion in March, 1935, when—or do you remember the occasion, I will put it that way—do you remember the occasion in March, 1935, when the substance of this advertisement was called to your attention by the Guild officers? A. Yes.

Q. At that time did you make a thorough investigation into this concern, or into the facts, rather, concerning the placing of this advertisement? 11523

Examiner Averill: "Yes" or "no."

A. No.

By Mr. Weisman:

Q. Did you pay any attention to it? A. To the placing of the order for that advertisement?

Q. The order for the goods. A. No.

Q. Did you take any step to remedy this situation? A. Yes.

Q. What did you do? A. I told my buyers that in so far as they were one of those which—this merchandise being in Abraham & Straus in so far as they were—I do not know to what extent they were guilty of anything, but if they were that this practice should be avoided since we were trying to do along with the Guild.

Q. What did you do about this when it was called to your attention? A. I called Mr. Post.

Q. Mr. Post was in the Guild, not in Abraham & Straus.

Examiner Averill: Oh, no. He may have called
11525 up and asked him something about it. I do not know. But he is entitled to say that.

Mr. Haycraft: I object and insist that he be allowed to finish his answer.

By Mr. Weisman.

Q. Have you finished your answer? A. No.

Mr. Haycraft: I think we ought to confine it first as to who called it to his attention and then we can go into the question in an orderly way if we are going into it.

By Mr. Weisman.

11526 Q. Go ahead. A. When it was called to my attention I called up Mr. Post and I talked to him about that.

Q. Is that all you did? A. And I told my buyers that I did not want them to buy goods—to buy copies whenever possible.

Examiner Averill: To buy copies?

The Witness: Yes.

Examiner Averill: You mean at any time that they had been copied?

The Witness: No, to buy—I did not want them to buy copies wherever possible.

Examiner Averill: I do not understand.

The Witness: He asked me what I did. I called Mr. Post and I talked to Mr. Post and I called my buyers and instructed my buyers—this is my recollection of the matter—I told them in so far as they had bought copies, I did not know that they had, but I gave them instructions that I did not want them intentionally to try to buy copies.

Examiner Averill: I do not understand yet. You mean to say that when the advertisement of any concern comes out in the paper that your buyers go to that place and look at the garments and buy copies of them? 11528

The Witness: No. This advertisement has reference to copies of dresses. This is the advertisement in which it says that these are copies of some other dresses.

Examiner Averill: Yes.

The Witness: I gave my buyers instructions that they would not intentionally buy copies; that it was our intent to progressively co-operate with the Guild, and in so far as possible they should avoid any attempt to buy copies of dresses which were copies of Guild merchandise sold—do you see?

Examiner Averill: No, I do not see. I do not see what the effect of that can possibly have upon this advertisement. 11529

The Witness: I agree with you, Judge. I do not, either.

Examiner Averill: You say that you felt that this is an advertisement which you thought indicated that they were not co-operating?

The Witness: He asked me what I did when I saw the advertisement and I told him what I did.

Examiner Averill: Apparently you did not have anything to do in connection with the advertisement.

The Witness: No, sir; it is not. I did not. It was called to my attention.

Examiner Averill: Because your buyer had to buy copies does not mean that she had anything to do with this advertisement?

(There was a discussion off the record.)

11531 *By Mr. Weisman.*

Q. Did you ever tell Abraham & Straus that in order to co-operate that in your opinion they should withdraw this merchandise from sale? A. No, I do not recall that I did.

Q. Did you ever tell Mr. Post in words or substance that if the Guild took any action against Abraham & Straus by reason of this advertisement that the A.M.C. stores as a body would refuse to purchase merchandise from the Guild houses? A. No, sir.

Q. Did you ever, when you spoke to your buyers, talk to Miss Dean about this situation? A. I did.

Q. What did you tell Miss Dean about this? A. I have just finished telling you that I have told my buyers, which is Miss Dean in this case, to avoid buying copies whenever she knew the dress was a copy.

11532 Q. (Resumed) When this advertisement was called to your attention, was it not first called to your attention by a Mr. Rothschild of Abraham & Straus? A. No.

Q. Did not Mr. Rothschild of Abraham & Straus call you up and tell you, in words or substance, that the Guild had complained to it, or to him, or to his department store, Abraham & Straus, concerning the subject matter of this ad? A. No.

Q. Did not Mr. Rothschild, or anyone else, of Abraham & Straus, state to you, in words or substance, that the purchase of this merchandise, and its offer for sale by A. & S., was due to some activity of Miss Dean of your A.M.C.? A. It is two questions in there.

Mr. Haycraft: Double question, Mr. Examiner.

Examiner Averill: Ask it singly, then, please.

Mr. Feldman: He understands it.

Examiner Averill: Just cut it in two, if necessary.

Mr. Weisman: We will have it read.

(Question read.)

11534

By Mr. Weisman.

Q. Did not Mr. Rothschild, or anyone else, of Abraham & Straus, say to you, in words or substance, that the purchase of this merchandise by A. & S. was due to some activity of Miss Dean of your A.M.C.?

Examiner Averill: I do not understand—all of you are guilty, not guilty, but afflicted, but really I do not see what difference it makes. Let us get at it, whether the buyers, to his knowledge, bought these dresses advertised in this advertisement, Respondents' Exhibit 91.

Mr. Weisman: All right.

By Mr. Weisman. 11535

Q. Will you give us an answer to that question as propounded by the Court? A. To my knowledge, they did not.

Examiner Averill: Now, you may ask about this other matter.

By Mr. Weisman.

Q. Let me ask you, when you say "to your knowledge, they did not," did you answer that question in that fashion because it is your practice, or Miss Dean's practice, to get the merchandise aside, show it to A. & S., and then have A. & S. place an order on merchandise that she has collected? Is that the reason you answered the Court in that studied fashion? A. No.

Q. Well, now, let me ask you——

Examiner Averill: Let him ask what the transaction was.

11537 *By Mr. Weisman.*

Q. Tell us just what the transaction was in connection with the acquisition by Abraham & Straus of the dresses shown on Respondents' Exhibit 91?

Examiner Averill: If he knows.

By Mr. Weisman.

Q. If you know. A. I don't know the exact details of the acquisition.

Q. I do not want the exact details. I want to know what you know, without hiding behind your lack of knowledge of exact details.

11538 Mr. Haycraft: I object to that question, to the form of it, Mr. Examiner. The last part of that question has no place there.

Examiner Averill: I think it has. I think that question is perfectly proper, Mr. Haycraft.

A. I know that Abraham & Straus purchased the dresses, and advertised them, and that the subject matter was brought to my attention after Mr. Post had called Abraham & Straus on this ad.

Examiner Averill: But do you not know one way or another what all this is about Miss Dean, prior to the insertion of the advertisement, do you know whether Miss Dean, or any buyer of the A.M.C., induced Abraham & Straus to buy the copies which are advertised in that advertisement, Respondents' Exhibit 91?

The Witness: No, I do not know.

Examiner Averill: You do not know?

The Witness: That she did.

By Mr. Weisman.

11540 Q. Did Mr. George Ladd, of Abraham & Straus, ever tell you that she did? A. No.

Q. Did anybody from Abraham & Straus ever tell you that Miss Dean was responsible for Abraham & Straus getting these copies of originals? A. I——

Examiner Averill: Did anyone tell you now, he is asking you? He is not asking you whether that is a fact or not. He is asking you whether anyone ever told you.

The Witness: I was told that she assisted.

Examiner Averill: Yes.

Mr. Feldman: That is the answer.

By Mr. Weisman.

11541 Q. Who told you she assisted? A. Miss Carpel, I believe.

Q. And who is Miss Carpel? A. She was divisional merchandise manager of the store at the time.

Q. At A. & S.'s? A. Yes.

Q. When Miss Carpel told you that, did you ask Miss Dean as to what part she had played in this? A. Not at that time.

Q. When you say "not at that time," what do you mean by the words "that time"? A. Well, later.

Q. How much later? A. Oh, within the week.

Q. What did you tell Miss Dean about this within the week? A. I told her that if she was responsible for this merchandise being in Abraham & Straus's in any way, in copies, that is, in this form, copied dresses of some other dresses, and that she knowingly did this, that she should stop it.

Q. Well, did you ask her whether she knowingly did it? A. Yes, I think I did.

Q. And did she not tell you, as a matter of fact, that
11543 not only did she knowingly buy them, but she had them knowingly made up? That is, she ordered, or caused some one to order the merchandise, to copy somebody else's dresses? A. No, sir; she did not.

Q. She never said that to you? A. No.

Q. Did you ever say, in words or substance, to Mr. Post, that you would not cause or aid in the withdrawal of this merchandise from sale by reason of the fact that Miss Dean had placed orders for the linen with the houses, and had ordered, and that the linen was a special kind of linen and had been made up specially for the making of these copies, and, therefore, it would be too great a loss? A. No.

Q. Did you ever hear anything about that? A. No.

Q. Concerning special linen? A. Mr. Post has told
11544 me subsequently that that was his idea of the transaction, I believe, and I told him, I think, that it was not.

Q. Did you ever ask Miss Dean whether that was? A. Yes.

Q. Did she ever tell you? A. She said no.

Q. What did she tell you about this transaction? A. Well, she said that she did not buy the linen, or the piece goods, or we did not buy them. I know that we did not buy the linen.

Q. No, that is not— A. And——

Q. I do not want to know what she told you she did not do. I want to know what she told you she did do, her entire connection with this transaction.

Q. Now, just tell us in your own words what she told you? I assume you spoke with her within a week after this came to your attention, and I want to know at that time what she told you she had to do with regard to the dresses shown on Respondents' Exhibit 91? A. As I recall it, she told me if two buyers bought those—the Abraham & Straus buyer, and herself, worked together, and when these dresses were purchased—as to the details I do not recall that she told me anything they did about 11546
the linens, or anything else.

Examiner Averill: Not talking about that, not interested in the linens, but what I am interested in really is knowing what Miss Dean knew in regard to those copies, if she told you. Of course, unless she told you you would not know—in regard to those dresses which Abraham & Straus advertised in that Respondents' Exhibit 91—what she told you was her connection with that matter. She evidently had some connection. Just tell us what it was.

The Witness: I have told your Honor that they bought the dresses together, as I recall it.

Examiner Averill: What do you mean, bought 11547
them together.

The Witness: The two buyers, I think, worked together; they consult each other over the telephone, and they work——

Examiner Averill: What were the dresses?

The Witness: I do not know, your Honor, I think they bought them in the manufacturers' room.

Examiner Averill: In the showroom?

The Witness: In the manufacturers' showrooms.

Examiner Averill: In the manufacturers' showrooms?

The Witness: I think so. They may have bought them in our office, but I do not know.

Examiner Averill: Did Miss Dean, in the course of her conversation with you, ever tell you as to her knowledge of the fact that the dresses she was cooperating with the other buyer in obtaining were dresses which she knew were copies of dresses which, according to this advertisement, were outstanding successes at Miami this year, and were

11549 sold from $18 to $25, "our identical copies $5.98"? Did she tell you anything about that? Do you have any knowledge of that state of affairs?

The Witness: No.

Examiner Averill: That is what I want to know.

The Witness: I do not recall that she did.

Examiner Averill: Do you not see that is the point in this thing?

The Witness: Yes, I know, but I do not recall that we had any conversation about the origin of these styles.

Examiner Averill: You see, it is evident from the advertisement that certainly Abraham & Straus had some idea of it.

11550 The Witness: Yes.

Examiner Averill: Because they could not have imagined it.

The Witness: Yes, yes, but I did not write the ad, and I did not discuss how it was written, or anything else.

Examiner Averill: I did not ask you that. I asked you whether Miss Dean told you anything about that.

By Mr. Weisman.

Q. Let me ask you whether or not this is a fact: Shortly before March 10, 1935, do you remember that Miss Dean took a holiday and went down to Miami? A. I do not recall.

Q. Do you not know that she did? A. I do not recall if she did.

Q. Look— A. I know she has had holidays, but whether she——

Q. I direct your attention, my good friend, to this ad. Now, directing your attention to that ad, and trying to conjure up all the memory you have, see whether or not you cannot remember now that shortly before that time 11552
Miss Dean—who works under you, by the way, does she not? A. Yes.

Q. —was on a vacation in Miami Beach, Florida? A. I know that she took a boat ride down to Bermuda, or some place, but I am not sure that she went to Miami Beach.

Q. Well, what makes you think it was Bermuda? A. Because I know that she took a boat ride.

Q. About this time? A. It was about two years ago; I am not sure of the exact date.

Q. Well, as a matter of fact, let us see whether you recall any of these copies at $5.95, identical copies at $5.95, of dresses which were outstanding successes in Miami, and sold from $18 to $25, were any of these dresses at that 11553
time—that is, any of the copies purchased by other members of the A.M.C.? A. Yes, I think they were.

Q. Now, now, who purchased them for the other members of the A.M.C. at about that time? A. I believe, for the most part, the buyers purchased them themselves, but I think also Miss Dean may have placed some of the orders.

Q. Well, did Miss Dean tell you that? A. I found it out subsequently.

Q. Why did you not tell us about it of your own volition, a few moments ago? A. You did not ask me——

Q. I see. A. —whether we placed orders for our other stores.

Q. I see. A. I am not——

Q. I see. It is all right. I am asking you now——

Examiner Averill: The great question, and that is all he ought to be directed to now——

Mr. Weisman: What is that?

Examiner Averill: The great question now is whether at the time of this transaction, when he said other buyers did place orders—they knew that

11555 they were copies.

Mr. Weisman: Yes.

Examiner Averill: That is the only thing that I am trying to find out.

Mr. Feldman: That is right.

Examiner Averill: As to whether Miss Dean, or any other A.M.C. buyer, knew that the dresses which they were buying outright for their account, for the account of other stores—whether it was all done by the co-operation of the buyers of other stores, that assisted in buying—whether they knew at the time that they were copies. I am not trying to find out what the other buyer for the store may have known, but what Miss Dean knew. That is all

11556 that I would like to know.

By Mr. Weisman.

Q. Look, Mr. Bergdahl, when Miss Dean—Miss Dean is a well-informed person, is she not, in the general ready-to-wear market? A. In the low end.

Q. And she was such in the fall of 1935? A. I should say so, yes.

Q. When you spoke to Miss Dean, did you tell her that she must not buy copies of higher-priced merchandise just as was shown in this ad? A. I told—in substance—yes.

Q. Yes. Did you ask her, in substance, whether or not when she purchased the dresses shown by Respondents' Exhibit 91, she knew they were copies of higher-priced merchandise? A. I may have.

Q. Well, as a matter of fact, do you not know that they were purchased because they were copies? A. No, I do not.

Q. Did she not ever tell you that? A. I cannot say that she did, no.

Q. From your experience in this business, from your 11558
knowledge that you have gained as merchandise manager for the A.M.C., do you not now know that the buyer purchasing these dresses, in the line of the buyer's duty, bought them so they could be sold as copies of the dresses of which they were copies? Do you not know that? A. I think that is right, yes, definitely so.

Q. So that, in effect—I mean, now, there is no quarrel about this: That when Miss Dean bought those dresses, she, of course, knew they were copies? A. Well, if you want to say so, go ahead.

Q. Yes. A. But do not put it in my mouth.

Q. But do you not know that, also? A. No, I do not know it.

Examiner Averill: I am going to ask this—gen- 11559
tlemen, you have heard all of this, and here is the only thing that is involved: Ask the witness if he can explain why in 1934 he objected to the Guild to an advertisement of White's store in San Francisco, Respondents' Exhibit 90.

Mr. Feldman: 89.

Examiner Averill: 90, Respondents' Exhibit 90, in a letter which is Respondents' Exhibit 89, and

which advertisement refers to, and specifically states, that the dresses advertised are copies of higher-priced dresses, and whether in 1935 when practically the same thing occurs in an advertisement of a member store, why he did not take some action, and if he did take any action, what was the action. He has told us about that, but I want to see why there was no objection made by them about 1935 when they did object about 1934, that is all—style of advertising.

The Witness: Shall I answer that?

Examiner Averill: Yes, sir; please.

11561 The Witness: As I recall it, the Guild was not able to do very much in connection with stopping the practice of the White House in San Francisco.

Examiner Averill: Yes.

The Witness: And I think Mr. Post wrote letters out there in which he said that not much could be done without shoppers.

Examiner Averill: Yes, that is all in.

The Witness: And that there were towns where there were no shoppers, and this practice went on. At least the suggestion that I had made in a letter was not accomplished, that is, effectively; other retailers were not being stopped from handling copies. So, when in March of 1935, one of our own stores

11562 did this, and I think the management did not like it, and said so, and I told Mr. Post at the time that I thought it was unfortunate, but, nevertheless, it was done, and it could not be helped. We had the money invested in the merchandise, and we did have exemptions in emergencies, to handle the merchandise. It had never been revoked, so we would handle it. And he said at the time that in that case—I never protested or said or condoned the practice when our store did it, I did not. I said it was un-

fortunate, but that the Guild was not yet controlling low end merchandise, and he said in that case, as I have testified previously, in that case I will return your declaration. It was that precipitate action that I objected to, and not the fact that the ad was run as it was.

Examiner Averill: All right.

The Witness: I think the ad was wrong, and I think the store said it was wrong, and they did not like it, and we did not like it.

Examiner Averill: I now understand; thank you.

By Mr. Weisman: 11564

Q. Well, as a matter of fact, was it not that the store called up and said that it was wrong, and the store wanted to return the goods, because they felt that they were not properly co-operating, and it was you that prevented them, and said no, you would not let them return the goods? A. That is not right.

Q. We will have Mr. Ladd here. A. You can have him here.

Q. To see whether it is right. A. He is the wrong man to get, though, because he was not in the transaction.

Examiner Averill: Now, now, just do not——

By Mr. Weisman.

Q. In an effort to justify yourself in your explanation 11565
to the Court, you said that nothing was done, or was able to be done, about the San Francisco transaction, and that the Guild could accomplish nothing because it did not have shoppers at that time.

Examiner Averill: He said it could accomplish little.

Mr. Weisman: Little.

By Mr. Weisman.

Q. I ask you whether or not you remember receiving this letter from the Guild in reference to your letter, Respondents' Exhibit 89? A. Yes, I recall getting that letter.

(The paper heretofore marked for Identification Respondents' Exhibit 92, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. By Respondents' Exhibit 89, you wrote to the Fashion Originators Guild——

11567 Examiner Averill: Now, gentlemen, the papers speak for themselves.

Mr. Weisman: I just have one question.

By Mr. Weisman.

Q. —that the Guild must do something to correct the situation. The Guild did write you that the offending store had thanked the Guild for calling the transaction to their attention, did they not? A. Yes, as I recall it.

Q. And the Guild, further, advised you that they had received assurances that such a thing would never happen again, did they not?

Mr. Haycraft: I object, the exhibit is there, it is purely argumentative.

11568 Examiner Averill: It is all in the letter, it is just arguing over again.

Mr. Weisman: Because he said to your Honor that they did very little.

Examiner Averill: There is the letter.

By Mr. Weisman.

Q. Those things are your ideas of being able to do very little to correct such abuse? A. That does not mean that it was an accomplished fact.

Q. No, no, that is your opinion? A. Yes.

Q. You volunteered the information to me that if I got Mr. George Ladd of Abraham & Straus to testify concerning this transaction, I would have the wrong man. Who is the right man? A. I told you Miss Carpel, I think, handled this transaction.

Q. Do you know whether Miss Carpel is still with Abraham & Straus? A. I think she is not, in the same capacity, but I think she is there.

Q. All right. A. Unless she has retired.

11570

AFTERNOON SESSION—3 P. M.

JOHN BLOCK was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name? A. John Block.

Q. Where do you live? A. 187 Fifth Avenue, New Rochelle, New York.

Q. What is your occupation? A. Resident buyer.

Q. In what industry? A. We buy for out-of-town department stores and specialty stores throughout the country, all lines of merchandise. 11571

Q. All lines of merchandise? A. Yes, all lines of merchandise handled by department stores.

Q. What is the name of the firm you are associated with? A. Kirby, Block & Company.

Q. What position do you hold in that firm? A. General manager.

Q. Where does it have its place of business? A. 128 West 31st Street, New York City, New York.

Q. Will you briefly describe, for the record, the service that you render for the stores, the outlying departmen stores that you buy for? A. We represent these stores i the New York market and help to fill their orders fo merchandise; sometimes, when their buyers, when the buy ers for those stores are in the city and when the buyer are not here, we go out and fill their requests, we also kee our stores posted as to market trends, style changes, and so forth. We also give them space where they can inspec samples, receive visiting salesmen and so forth. O course, there are other incidental duties, but those, I think are the salient features of our work.

11573 Q. Do you have buyers of your own employed by you own organization? A. Yes, sir, we have.

Q. Approximately, how many? A. I should judge abou seventy-five or eighty buyers, including the assistan buyers.

Q. How long have you been in this business? A. Per sonally, I have been in this business since 1907.

Q. In New York City all of the time? A. In New Yor City all of the time, yes, sir. My firm has been in exist ence since 1916, the winter of 1916.

Q. Have you kept and occupied somewhat the same po sition in that period of time, since 1916, that you occup to-day, or has there been a change? A. Well, the positio has been the same, except when the firm was smaller I di actual buying in addition to looking after those affairs o

11574 the company in a general way, whereas, to-day there ar others who have supplanted me in the buying of merchan dise.

Q. Approximately how many accounts, or how many re tail stores, do you buy for? A. Oh, I should say, betwee 125 and 150.

Q. They are located all over the United States? A. Al over the country, from coast to coast.

Q. And you buy for any particular chains or groups of department stores or are they all individual stores? A. As far as I know they are individual stores, although sometimes a store will have a branch—they will have a main store in a larger city and some branches in smaller cities, but I would not call them a chain, because usually——

Mr. Albert (interposing): If your Honor please, I object and move to strike out the latter part of the answer. As to what the witness will not call a chain, if he will not call it a chain, we are satisfied with the answer. We are not interested in his reasons for not wanting to call anything anything or not. 11576

Examiner Averill: Yes, just say in your opinion it is a chain or it is not. That is what he is asking you.

A. Well, may I say this, that in my opinion a chain of stores is one where the merchandise in all stores is of a like nature, but where the stores differ as to quality and grade of merchandise handled and where some of the stores have departments and others have not, then it hardly fits in as a "chain."

By Mr. Haycraft.

Q. Among other articles of merchandise does your organization buy ladies' ready-to-wear apparel for the stores it represents? A. It does. 11577

Q. Has that been true all through these years? A. Yes, sir.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. When did you first learn of the existence of that organization? A. Well, I cannot say as to the exact date, but I think it was some time in 1933. We had some meet-

ings and there were some letters sent out, but I do no recall the exact dates right now.

Q. Do you recall how the Guild came to your attention the circumstances under which it came to your attentio Mr. Block? A. We had a meeting with Mr. Rentner an some other gentlemen in the manufacturing business whos I do not recall now, whether or not—that is, I do no recall now whether or not that meeting was prior to general notice that was sent out concerning the aims o the F.O.G.A. or after that notice was sent out.

Q. I show you Commission's Exhibit No. 14, which a the minutes of the meeting held at the Garment Cente
11579 Capital Club, on February 17, 1933, attended by repre sentatives of a number of resident buying offices, inclu ing Kirby, Block & Company—was that the name of you firm at that time or did your firm then go under the nam of Kirby, Block & Company? A. Well, I do not kno whether it was 1933 or 1932 that the style of the nam was changed.

Q. Do you recall attending a meeting on or about tha date which was attended by members of the Fashio Originators Guild of America? A. Can I see that?

Q. Yes.

(Commission's Exhibit 14 was handed to the wi ness.)

Mr. Albert: What was the question?

11580 (The question was read by the reporter.)

A. I am not sure that I was present. Somebody prob ably from our firm was there.

Mr. Albert: I ask that the latter part of the a swer be stricken out. The question is a very simpl one and it can be answered directly.

Examiner Averill: And I think the answer i also simple. The motion is denied.

Mr. Albert: Exception.
Examiner Averill: Noted.

By Mr. Haycraft.

Q. Calling your attention to the last paragraph of these minutes, Commission's Exhibit No. 14-B, as it says here, it says that: "On motion made by Mr. Felix Lilienthal and seconded by Mr. Weill that a committee be appointed from the resident buying offices to meet with a committee of the Fashion Originators Guild to propose plans whereby the buying offices and manufacturers could co-ordinate their efforts in fighting piracy, and that after this committee had a policy formulated, to call another meeting of 11582
the resident buyers. The motion was carried and the following committee of resident buyers was appointed." Then there appears a list of names and on this list of names appears, among others, Mr. John Block, of Kirby, Block & Fischer. Does that refresh your recollection as to a joint meeting of resident office buyers and members of the Fashion Originators Guild of America shortly after February 17, 1933? A. No. That does not refresh my recollection. I am not sure whether I was there or whether it was one of my associates. I know somebody was present, but I am not sure.

Q. All right. Subsequent, now, to February, 1933, when did you next hear, or did you hear anything further from the Fashion Originators Guild of America, or of its 11583
activities? A. Yes, sir, we read articles in the trade papers and also saw some letters that had been transmitted to our retailers. We also had a meeting, I recall, at Miss Glemby's office, Miss Rose Glemby of the Mutual Buying Syndicate.

Q. Who is she? A. She is the head of the Mutual Buying Syndicate or association—Mutual Buying, I think it is Association.

Q. Is that another buying office? A. That is a buying office similar to our own.

Q. I show you Commission's Exhibit No. 99-A to E, both inclusive, over the signature of Maurice Rentner, with certain attachments, memoranda and Guild resolutions, and also a copy of the declaration in regard to anti-piracy, and ask you if you have seen this paper or papers comparable to that exhibit which letter is dated June 16, 1933? A. I recall such a letter. Whether this is an exact copy of it, or, whether this is the exact letter or not, it would be hard for me to say, but I recall a letter being sent to retailers to which was attached the F.O.G.A. declaration of acceptance—the declaration of co-operation.

11585

Q. Well, at the meeting that you refer to, later on, in Miss Glemby's office, do you recall who, besides yourself, was present at that meeting?

Mr. Albert: May I ask that you fix a time?

Examiner Averill: Yes.

By Mr. Haycraft.

Q. And when it was? A. The meeting was held some time just about the time when we first started to hear about the Fashion Originators Guild of America, but I do not recall the exact date except to say that it was in the earlier part of 1933. Whether it was in April, May or June, I do not know. I do not remember at this time.

11586

Q. Was it before or after you have or had seen this letter that I have now called your attention to, dated June 16, 1933? A. I will say that it was a little before, but I cannot swear to it. My recollection was that it was slightly before.

Q. Who was present at that meeting besides yourself? A. There was present for the manufacturers Mr. Maurice Rentner and Mr. Herbert Sondheim, and Mr. Golby was present and Mr. Louis Brenner, and perhaps one or two

ther manufacturers, I do not remember their names. And for the buying offices there was present Miss Glemby at whose office the meeting was held, Mr. Bergdahl, Mr. Greenebaum and, I am not sure but I think, Mr. Lilienthal, Mr. Greenebaum's associate, was also there and somebody was present from Wile & Hartmann, I am not sure whether it was Mr. Wile or Mr. Gaynor, and Mr. Swinney, I believe, was there and I think Mr. Arthur Lippmann was there and perhaps one or two others that I do not recall now.

Q. Do you know who called the meeting? A. Why, I do not remember whether the meeting was called at the instigation of Mr. Rentner, or at the instigation of Mr. 11588
Bergdahl, or at the instigation of myself, I am not sure. It was called by agreement between the two groups, however.

Q. What was the subject-matter of discussion at this meeting? A. The matter under discussion was the question of co-operation of buying offices with the plan of the Fashion Originators Guild of America. Mr. Rentner, also, gave us an outline of the Fashion Originators Guild of America and what it stood for and what it meant to accomplish.

Q. What did he say with respect to that? A. Well, he told us the hardships suffered by the manufacturers of better dresses through the copying of their styles promiscuously and the selling of such styles throughout the country and he said that they meant to—the Fashion 11589
Originators Guild of America meant to curb that evil and that they hoped to get the co-operation of retailers throughout the country and the buying offices representing such retailers, as well. Briefly, that was the theme.

Q. Did he say anything about what he expected the retailers to do in that co-operation? A. Yes, sir. He expected that they would refrain from buying copies of original models.

Q. Anything else? A. Well, as I said, that is briefly, I do not know what other——

Q. Well, to refresh your recollection——

Mr. Albert (interposing): Well, if it please the Court, I object to Mr. Haycraft refreshing the witness' recollection through Mr. Haycraft's statements of anything he thinks may have occurred. I think the witness is perfectly capable of telling us what he remembers of what occurred there.

Examiner Averill: All right, I do not think there is any objection to him seeking to refresh——

11591 *By Mr. Haycraft.*

Q. Was there anything said about the retail dealer returning to manufacturers copies of merchandise of Guild garments, of garments manufactured by Guild members? A. Well, as part of the program, it was stated that retailers would be expected to return such copies, not to buy copies, and if they were discovered to be copies then they were expected to return them to the manufacturers of those copies.

Q. Did anyone speak for the retail dealers present with respect to this program? A. Yes, I believe a number of us spoke, including myself. We asked Mr. Rentner how he would protect the retailers who were sympathetic with the F.O.G.A. idea, as regards to lower-price garments
11592 that were copies, were handled by chain stores, who might not be signatories to the F.O.G.A. agreement, and who would sell these garments by the thousands, where the other type of retailer, our type of retailer, for instance, was proscribed from selling that same merchandise, and then followed a long discussion in which some of the manufacturers, as well as Mr. Rentner, took part, and representatives of buying offices, and, oh, it must have been

after, about two or three hours, we finally came to this agreement that——

Mr. Albert (interposing): I object to any conclusion of the witness, if it please the Court, as to what agreement there was, and ask that the witness be restricted to telling us what was said.

A. Mr. Rentner said any dress or dresses costing $6.75 and under would not be considered a copy of a Guild—of any Guild design. The buyers present agreed that that would be satisfactory. That is the agreement I refer to.

Mr. Feldman: This was in 1933, Mr. Block?
The Witness: Yes, sir. 11594

By Mr. Haycraft.

Q. At that time, now, what price lines were the members of the Guild manufacturing, cost price lines? A. Well, at that time, the Guild members were making dresses costing $22.75 and upwards; a few were selling as low as $16.75; not many.

Q. After this meeting, did you communicate the understanding that you had arrived at with Mr. Rentner to the store that you represented, or did you make any recommendation to the stores? A. I believe we did get out a circular type of a letter, but I have no copy of it, because we do not save those; after a few months we destroy them. We get out so much of this mimeographed literature we cannot save it. 11595

Q. Were you asked by the stores that you represented for an opinion or a recommendation as to their signing the so-called "Declaration of Co-operation" to which I directed your attention and which you referred to in your testimony a moment ago, Commission's Exhibit 99? A. We were asked by a good many stores, and we recommended that they sign, and where they asked us what

would happen on lower-priced dresses we assured them that they would have no trouble, and we thought that the principle as a whole was good, and that they should sign, and, in fact, we obtained such signatures right in our place on the blanks furnished to us by the F.O.G.A., and then we would send on those signed acceptances of declarations to the F.O.G.A.

Q. Did you as a buying office sign any such declaration of co-operation? A. Yes, sir; we did.

Q. Subsequent to June, 1933, did you co-operate with the F.O.G.A. in its program as you understood it at that time? A. Yes, sir.

11597 Q. Did you ever learn, or was your attention directed to an occasion when the membership of the F.O.G.A. was to be expanded or enlarged to include $10.75 cost manufacturers? A. Yes, sir.

Q. When did you first learn of that? A. I do not know the date, but I remember the occasion. There was such an occasion.

Q. I now show you Commission's Exhibit 862, which is a letter from H. I. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Maurice Rentner, chairman, Fashion Originators Guild of America, dated March 30, 1935, and ask if that will refresh your recollection as to when you first learned that the $10.75 manufacturers were to become members of the Guild? A. I remember that; yes, sir.

11598 Q. Does this letter refresh your recollection as to the time when you first learned that the $10.75 group of manufacturers— A. Yes, I believe it was about that time.

Q. —were to go in the Guild? A. Yes, it was about that time, I believe.

Q. Would you say it was around or about March, 1935? A. Judging from the date of that letter; yes, sir.

Q. This letter, the Association of Buying Offices, Inc.—do you hold any position in that organization, or have

you held any position in that organization? A. I was president of it until recently.

Q. How long a period were you president of it? A. Three years—that is, from its inception until, I think, October of this year.

Q. When was it organized? A. It was organized in the fall of 1933.

Q. Will you briefly describe, just briefly, the nature of that organization, what it consists of?

Mr. Albert: Are you talking of the A.B.O.?

Mr. Haycraft: A.B.O., yes.

A. This organization was formed about the time that so 11600
many questions arose as to what was right and what was wrong under the N.R.A. rulings, and we thought rather than have spasmodic meetings at luncheon tables and so on, that it would be a good thing to form this organization and go along with the N.R.A., because we felt that sooner or later we would be called upon to draft our own rules of fair trade practices, and so on. So we thought that was the opportune time to form this organization, and exchange views and ideas, so on and so forth. Now, the purposes of the organization—although that was the cause of its organizing, I would say that the purposes are mainly for an exchange of ideas and views, concerning matters having to do with buying office activities.

Q. Who belonged to it? A. About twenty-five buying 11601
offices of New York City.

Q. Are they the leading ones, would you say? A. I would say that they compose practically all the leading offices.

Q. The Associated Merchandising Corporation with which Col. Reilly and Mr. Bergdahl are associated, did they ever join your organization? A. They joined, but they told us that it must be understood that full member-

ship would be subject to the approval of their board. They contributed to the cause, which was a hundred dollars per annum, for the upkeep and running of the organization, and I do not believe that up until now they have had that board consent, but in spirit they are with us.

Q. They have never taken any formal action? A. No, but they were very active at all our meetings. They were attended by either Mr. Bergdahl, or Mr. Chambers, sometimes by Mr. Kelly, when it had to do with other lines of merchandise, sometimes by Mr. Reilly.

Q. This exhibit that I have called your attention to, referred to Mr. Kleinhaus. Who was H. I. Kleinhaus? What firm was he connected with? A. Mr. Kleinhaus 11603 acted as executive secretary for the Association of Buying Offices.

Examiner Averill: What is the number of the exhibit you speak of, please?

Mr. Haycraft: 862.

Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Did Mr. Kleinhaus discuss with you, or show you this letter before or after it was written to Mr. Post (handing witness Commission's Exhibit 862)? A. Let me see, March 30, 1934. Yes, that was discused at a meeting of the Association of Buying Offices.

11604 Q. Was this letter authorized by that meeting? A. Yes, that was authorized.

Q. I call your attention to Comission's Exhibit 862: "We take it for granted that 'invitation' to style registration on the basis offered to $10.75 manufacturers is not synonymous with membership in the F.O.G.A. and, therefore, is only optional or binding on retailers who have signed agreements with you. In connection with this subject also we should like to call to your attention that the

agreement now in effect with retailers is not binding below $7.75 cost either by a stipulation so written in the original contracts with many retailers or by a verbal understanding between the A.B.O. and the F.O.G.A. to which you openly agreed at one of our joint meetings. This mutual agreement has never been changed.

"We do not wish to be misunderstood. We are and have always been in sympathy with your purpose of style protection. As a practical matter, however, we feel it is unwise for you to attempt, at this time, to assure style protection to signatory retailers or to your members against merchandise costing below $7.75 cost since there are many retailers dealing almost exclusively in low end goods who 11606
have not signed with you and over whose purchases you have as yet devised no means of control. We refer particularly to mail orders concerns and specialty apparel chain stores." I call your attention to the $7.75 cost mentioned in that quotation. A. Does it say below $7.75?

Q. Yes. A. Well, that would mean $6.75 and under, because there is no cost in between the two.

Q. Well, at the time that—in June, you see this was in 1935. A. Yes.

Q. In June, 1933, were there any $7.75 cost manufacturers, to any extent, in this market? A. As I recall, the price line would jump from $6.75 wholesale to $6.75. If there were any made at $7.75 or $8.75, they must have been mighty few at that time.

Q. Did they come in more numerous later? A. Yes, 11607
to-day there are a great many of them.

Q. Yes. Were meetings held, joint meetings with the A.B.O. and representatives of the Fashion Originators Guild subsequent to March 30, 1935, to your knowledge? A. I believe so; yes, sir.

Q. Did you attend any of those meetings? A. I attended some, and others were taken care of by a committee that was appointed to deal with F.O.G.A. matters.

Q. Who constituted that committee—that is, who made it up? A. There was Mr. Bergdahl, Mr. Greenebaum, and I think Mr. Sweeney. I believe that was all.

Mr. Albert: Would you mind repeating those, Mr. Block?

The Witness: Mr. Bergdahl, Mr. Greenebaum and Mr. Sweeney.

Mr. Albert: They represented the A.B.O.?

The Witness: They represented the A.B.O.

Mr. Feldman: A committee appointed to deal with F.O.G.A. matters.

11609 *By Mr. Haycraft.*

Q. Was Mr. Kleinhaus also on that committee? A. He might have been ex officio.

Q. That was on account of his office as secretary— A. Yes, that is, to taking records, and so on.

Q. I now show you Commission's Exhibit 866, which is a carbon copy of a letter from Mr. Kleinhaus, as executive secretary, to the Association of Buying Offices, Inc., addressed to Mr. Maurice Rentner, chairman of the Fashion Originators Guild of America, dated April 27, 1935, and ask if you can identify that in any way, or whether you have seen it or known anything about it (handing exhibit to witness)?. A. Yes, that seems to be in line with what was being discussed at those meetings.

11610 Q. Did you see the original of this letter before it was mailed? A. Possibly, I am not sure. Sometimes he would send me the letters for my O.K. and sometimes he would just tell me what was in it, briefly.

Q. Do you have an independent recollection of the subject-matter of the letter? A. Oh, yes, yes, sir.

Examiner Averill: Is that Exhibit 861?

Mr. Albert: 866.

Mr. Haycraft: Commission's Exhibit 866.

By Mr. Haycraft.

Q. I now show you Commission's Exhibit 871, which is a carbon copy of a letter from Mr. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Mr. Bertram Reinitz?— A. R-e-i-n-i-t-z.

Q. —151 West Fortieth Street, dated May 13, 1935 and ask you if you can identify that in any way? A. Yes, I know that that subject was discussed and that seems to be in line with the discussion.

Q. You mean that is— A. That had to do with some period of leniency, mostly.

Q. Mr. Block, I call your attention to this statement appearing in Commission's Exhibit No. 862, to which I 11612
directed your attention a moment ago, being the letter of March 30, 1935: "In connection with this subject also we should like to call to your attention that the agreement now in effect with retailers is not binding below $7.75 cost either by a stipulation so written in the original contracts with many retailers, or by a verbal understanding between the A.B.O. and the F.O.G.A. to which you openly agreed at one of our joint meetings. This mutual agreement has never been changed." Now, I ask you, Mr. Block, whether there was any change in the agreement or understanding as a result of the discussions which you had, or your representatives had with this F.O.G.A. committee and A.B.O. and officers of the Guild subsequent to March, 1935?

Mr. Albert: Same objection. 11613

Examiner Averill: Overruled.

The Witness: You say subsequent to March, 1935?

By Mr. Haycraft.

Q. Yes.

Examiner Averill: Was there any change subsequent to that time?

The Witness: Was there any change of what?

By Mr. Haycraft.

Q. In the agreement or the terms of the agreement.

Mr. Feldman: He has never testified that that was an agreement. How can he testify that it was changed?

Examiner Averill: This is in the letter which is clearly before us and which he has read and now he is testifying as to whether there was any change in it.

Mr. Feldman: He has not stated that they arrived at any agreement.

Examiner Averill: He read it.

11615

The Witness: There was no change as far as the —as far as the price limit was concerned; that is $6.75 or any other, except that some time after Mr. Post was made managing director of the Fashion Originators Guild the question came up as to modifying the understanding that we had had up to then as to copies, and so forth, in the lower priced ranges. The A.B.O. and particularly Mr. Bergdahl, as I recall, was willing to work along the F.O.G.A. provided that in doing so some solution might be arrived at whereby neither the retailer nor the manufacturers—that is, neither the retailers who signed with the F.O.G.A., nor the manufacturers of the F.O.G.A., or their affiliates in the

11616

$10.75 group, would suffer. It was a very difficult problem, I will admit, and I think everybody else will, and we have not solved the question yet.

By Mr. Haycraft.

Q. Was there— A. What?

Q. When did the $10.75 manufacturers become members of the Guild, if you recall? A. Well, I do not know as

they became members of the Guild proper. I think that their Association affiliated, as an association, with the Guild. In other words, the $10.75 manufacturers, as I understand it, the single manufacturer, is not an out and out member of the F.O.G.A. as an individual manufacturer.

Q. That is, they are members of the Dress Creators' League? A. They are members of the Dress Creators' League.

Q. When they became associated with the Guild in any way, that is the only time— A. I did not understand you.

Q. When did they become associated with the Guild—that is, when did they set up, as far as registration was concerned of their garments— A. Well—— 11618

Q. If you recall. A. I do not understand just what you mean.

Q. Some time subsequent to this date. A. The records would show for themselves. There are records, newspaper records, and so forth. I do not know. I believe it was in 1935 some time, if I understand your question.

Mr. Albert: I do not understand the question at all.

Examiner Averill: I do not, either, but apparently the witness does.

By Mr. Haycraft.

Q. Referring again to Commission's Exhibit No. 871, to the paragraph reading as follows: "We should like to have 11619 you, as representing the $10.75 dress manufacturers, and Mr. Post of the Fashion Originators Guild, approve the following slightly amended understanding as drafted from the minutes of the May 4 meeting, and acted upon by our members at their meeting on Friday, May 10, 1935:

"The Guild's plan to extend style piracy protection to the $10.75 dress manufacturers was discussed with the aim of developing a practical procedure.

"It was agreed that it could hardly be expected, for some months at least, that the low priced market would be able to adjust itself to style origination. For this reason, it was decided that during the period which would be required to develop the production of a sufficient volume of goods in the lower price field made from original designs, and so long as non-signers were still buying copies in considerable volume, the Guild would be lenient with respect to their requirements, that copied merchandise be returned." My first question is: What price was included in this group of lower-priced manufacturers, or in the lower-priced field? A. $6.75 and under at wholesale.

11621 Q. My second question is: What was the contemplated period of leniency? A. This expression "period of leniency" really was originated between Mr. Bergdahl and Mr. Post, and I did not know how long a period that would be. It would only be a guess on my part.

Examiner Averill: Do not venture a guess.

The Witness: I could not state.

By Mr. Haycraft.

Q. The last part of this letter that you suggested be sent reads as follows: "Accordingly, the committee agreed that the Guild should extend protection to the $10.75 dress manufacturers, and that the conclusions contained in the minutes shall be put forth in a letter to be sent by the

11622 Guild to all retailers." Do you recall the particular phrase that I have just called your attention to? A. I recall that that happened and we agreed to it.

Q. Going back just for a moment to 1933, Mr. Block, did your buyers contact regularly the manufacturers in this area that were members of the Guild? A. Yes, sir.

Q. In June, the latter part of June, 1933, did they make any reports to you with respect to their ability to be allowed in the showrooms of the Guild manufacturers? A.

Well, they told me that the buyers of the cheap merchandise—that is, merchandise costing $10.75 and under that was known at that time as the "cheaper merchandise," would not be permitted in the Guild showrooms. Whether that was a permanent thing or not I do not know, but that was the report that no buyers whose firms had not signed with the Guild would be permitted in the F.O.G.A. showrooms, and I assured them that they had nothing to worry about, that we would go along with whatever our retailers wanted to do, and that if the large majority of our retailers wanted to follow along with the Guild, why, I would go along, which we did. So, after these discussions, and so forth, we signed with the Guild and the buyers bought 11624
the merchandise then, and thereafter at the Fashion Originators Guild of America showrooms.

Q. To your knowledge, have any of the stores for which you buy in this market been red carded by the F.O.G.A.? A. Not—any of our stores?

Q. Yes. A. To my best knowledge, none of them have been red carded, none of our stores.

Q. Have any of them been shopped by shoppers of the Fashion Originators Guild of America? A. Yes, sir; lots of them.

Q. Do you know, just in a general way, which ones, by city, say? A. Oh, Baltimore, Washington, Houston, Texas; some in the Middle West, some out as far as the Pacific Coast; I do not recall all the names; I would say that 11625
in the medium and larger cities they were pretty well shopped.

Q. Do any of your stores have what is known as basement stores? A. Yes, sir; quite a few of them.

Q. Approximately how many would you say? A. Well, I would say approximately fifty.

Q. Do you know whether or not those basements are being shopped by Guild shoppers? A. Those basements are shopped, and upstairs' stores are shopped also.

Q. What is the general division in a group of stores as to price line of garments sold in basements as compared with upstairs' stores?

Mr. Albert: What is the question?

Q. (Question read.) A. There is no general division as to cost. The better store may sell dresses retailing at $10.95 and under in the basement; the cheaper store might not sell dresses retailing over $4.95 in the basement, maybe $3.95 and under. It all depends on the type of store. Some department stores will sell $5.95 dresses on their main floors; some of them have budget shops on their main
11627 floors, which they term "budget shops," which sell popular priced dresses, and some of them have on their main floors shops which they call college shops, or campus shops, and so forth. It all depends on the type of store as to what price marks the beginning of the basement dresses.

By Mr. Haycraft.

Q. Do your stores which operate basement stores, and which have been shopped by shoppers of the Guild, been required to return garments cost price below $6.75 to the manufacturers when adjudged copies? A. Sometimes yes, sir; sometimes.

(The paper heretofore marked for identification
11628 Commission's Exhibit 943, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

(The paper heretofore marked for identification Commission's Exhibit 944, was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 945, was marked as an exhibit and received in evidence.)

(Whereupon, at 4.30 o'clock P. M., December 3, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 4, 1936.

11630

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Proceed.

Mr. Haycraft: Mr. Block, if you will resume the stand.

JOHN BLOCK resumed the stand and testified further as follows:

11631

Direct examination (continued) by Mr. Haycraft.

Q. Do you have any recollection, Mr. Block, of discussing with officials of the F.O.G.A. the matter of certain trade practices that they had agreed to discontinue during the year 1935? A. There were some discussions with some of the officials of the Guild on account of the propriety of trade practices entering into the Guild activities.

There seemed to be doubt as to whether or not fair trade practices had anything to do with the Guild which many of these buyers believed had been formed in the interest of style protection only.

Q. Do you have a recollection of when these discussions took place? A. I think it was in the summer of 1935.

Q. Do you have any recollection of who attended the meetings that you referred to, and the discussions? A. No, I do not know that I can say exactly now unless I saw some minutes or something of that kind.

Q. Referring to Commission's Exhibit 34, minutes of the meeting which took place on Friday, June 21, 1935, I
11633 will ask you whether or not that refreshes your recollection as to when the meeting was held, and who attended it? A. Yes, I remember the meeting. This seems to be approximately correct. This is a report of the meeting.

Q. Does that coincide with the list of manufacturers—A. As far as I remember, yes.

Q. —and their representatives who were present? A. Yes.

Q. Do you have any recollection as to who—do you have any recollection as to what were the so-called unfair trade practices that were discussed at that meeting? A. Well, the question of discounts, the question of submitting merchandise to group showings and some other items that I do not remember were discussed, and Mr. Rentner tried to
11634 point out to us that what they had in contemplation was for the good of the industry, and at the same time, I believe, he assured us that nothing would be done without giving the retailers a chance to state—to sit in at the open hearings when any further trade practices were under discussion, fair trade practices.

Q. To refresh your recollection on this matter, of what constituted unfair trade practices from the Guild's standpoint, I will ask you whether or not the practice of selling— A. What?

Q. —of selling garments on consignment was mentioned or discussed? A. Probably.

Q. Do you have any recollection of it? A. I think it was. This seems to be—that is one of the subjects that come up regularly when fair trade practices were discussed with them, or any other organization.

Q. I will also call to your attention the practice of making exchanges of merchandise and/or returns? A. Well, I mentioned returns before, or intended to. I think the showing of garments by manufacturers at retail functions—that is, at retail stores, or in retail offices, particularly New York, was also discussed.

Q. What was that practice? A. What? 11636

Q. What was that practice? A. Well, for many years some manufacturers would send out merchandise to retail stores enabling them to gather their customers at a so-called fashion store. This would help retailers to sell more merchandise from the samples shown on live manikins.

Mr. Feldman: What is the date of these meetings?

A. And incidentally, would create a certain amount of prestige for the store by reason of the fashion side of the show. That is one of the trade practices that were discussed as to the Guild which they wanted discontinued, and had passed a ruling to the effect that that should be discontinued. And the other fair trade practice regarding 11637 showings of merchandise to retailers' representatives—that was a subject which was discussed, another subject which was discussed. At such a showing usually a number of out-of-town retail buyers gathered to get a bird's eye view of the new fashions on the market. They could get a good cross-section as to what is being shown with the least possible loss of time. Manufacturers of the Guild argued that that did not help their business, but rather retarded it, and so forth, and that was another so-called

fair trade practice that was included in the program for discontinuance.

Mr. Albert: May I ask the indulgence of the Court to ask that the answer be read back, because it was given so jerkily and so rapidly that it was rather difficult to follow it.

Examiner Averill: Read the answer back.

(Answer read.)

Examiner Averill: I notice that the witness said "another so-called fair trade practice." Did you mean that?

Mr. Albert: That is what he said, as I recall it.

11639 The Witness: Yes, but that was my error, it should be unfair trade practice, I meant that it was something that was to be the subject of fair trade practice regulation.

By Mr. Haycraft.

Q. What was the position of the retailers with respect to these so-called unfair trade practices that you have just referred to? A. Well, the representatives of the retailers present at that meeting seemed to be of the opinion that those matters, or at least a great many of them, were not unfair trade practices, but were fair trade practices that could very well be continued without detriment to the Fashion Originators Guild of America.

11640 Mr. Albert: I ask the answer be stricken out as not responsive and it being a conclusion rather than a recitation what was said by the various people there.

Examiner Averill: Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Was any expression made as to whether or not these practices were advantageous to the retail dealers? A. I thought I answered that.

Examiner Averill: Is that not included in the answer already given?

The Witness: That is just what I said. I said they thought that it was a fair trade practice.

Examiner Averill: No, no.

The Witness: Excuse me.

By Mr. Haycraft. 11642

Q. Subsequent to that meeting, did the Guild submit to the retail dealers various resolutions that had been passed by the F.O.G.A. with respect to so-called unfair trade practices discussed at that meeting? A. I believe so; yes, sir.

Q. I show you Commission's Exhibit No. 540-A and 540-B, a two page letter from Mr. Post, this is numbered, to Mr. Ralph T. Friedman, being a mimeographed letter dated July 1, 1935, and ask if this is such a letter as you have in mind? A. Yes, I think I remember that.

Q. Since that time, since July 1, 1935, have you had any further discussions with the officials of the Guild with respect to the enforcement of these rules and regulations with respect to so-called unfair trade practices?

Mr. Albert: I did not hear the question. 11643

Examiner Averill: Read it.

(Question read.)

Mr. Albert: Thank you.

By Mr. Haycraft.

Q. Answer the question. A. Now, just what is the question?

Mr. Haycraft: I ask that the question be read.
Examiner Averill: Read it.

Q. (Question read.) A. I do not know as I had, personally, any discussions with the Guild, but these matters were in the hands of the committee acting for the Association of Buying Offices. This committee was the F.O.G.A. trade relations committee which we spoke of at yesterday's hearing.

By Mr. Haycraft.

Q. Of which Mr. Bergdahl was chairman? A. He was
11645 chairman, yes.

Q. Did the committee report to you from time to time as to the discussions that they had with the Guild on these matters? A. Yes, sir; but as to the dates and the exact items I do not remember at this time.

Q. Do you know, as a matter of fact, whether or not these rules and regulations have been enforced by the Guild since that time? A. I would like to have them again—I would like to see them again if I might.

Q. Here they are. A. I think substantially they have been enforced; possibly in some instances they might not have been.

Q. Has there been any discussion, to your knowledge, of the enforcement of these rules and regulations between
11646 this committee, that you referred to, and officials of the Guild, or has the enforcement of these rules been a matter of discussion between the committee and members of the Guild? A. There has been discussions, as I said before, but I am a little hazy as to the dates and items discussed.

Q. In your testimony yesterday, you referred to the extension of the Guild program to include the $10.75 cost manufacturers. A. Yes.

Q. I will ask you whether or not you recall any further extension of the Guild program to include the $6.75 and

the $7.75 and the $8.75 cost manufacturers, respectively? A. Yes, that did happen.

Q. It did happen? A. Yes.

Q. Do you recall when that took place? A. Subsequent to the time that the $10.75 affiliates was joined up with the Guild.

Q. Can you give us any better date than that? I am afraid not unless I have some records to go by.

Mr. Albert: We will probably furnish them for you, Mr. Block, for your convenience.

The Witness: That will be nice.

By Mr. Haycraft. 11648

Q. I show you Commission's Exhibits 528-A and B, being a letter from Mr. Post to Mandel Brothers, Chicago—no, New York City, dated November 6, 1935, and ask if that will refresh your recollection as to the date of the inclusion of the $6.75, $7.75 and $8.75 manufacturers in the Guild program in or under the general title of Protective Affiliates? A. That is probably about the time, November 6, 1935, as I recall it, Mr. Haycraft.

Q. About the first of November, 1935? A. I believe so; yes, sir.

Q. Or immediately prior thereto? A. That is probably correct.

Q. To your knowledge, was the F.O.G.A. committee of the Association of Buying Offices consulted with respect to 11649
this expansion of the Guild program to include the $6.75, $7.75 and $8.75 manufacturers? A. I believe they did have some conversations on that subject; I do not know whether or not they consulted them before they decided on this move or not, but there was some conversation on it.

Q. Do you recall at or about that same time that there was also an attempt made by the Guild to take in the $4.75 garment manufacturers? A. I believe there was, later on.

Q. Later on? A. Yes, sir.

Q. Was that attempt successful—that is, did the $4.75 manufacturers affiliate themselves with the Guild? A. I believe not.

Q. Do you have any recollection of any discussions that you personally had in the fall of 1935, as representing your firm and the organizations that you buy for, with officials of the Guild, with respect to the policy of the Guild in requiring returns on the part of retail dealers whom you represented, of garments that were judged to be copies of Guild merchandise? A. I don't remember any particular discussion. We always maintained that the retailer who had signed up with the Guild and was trying to live up to
11651 his agreements and obligations under that agreement, was at a handicap, because of the fact that stores that had not signed up, particularly the popular-priced chain stores, had on outlet for thousands of dollars, probably millions of dollars of merchandise, which the retailers who had signed with the Guild were proscribed from receiving or selling.

By Mr. Haycraft.

Q. Well, you say you maintained that. Did you mean you maintained that to the officials of the Guild? Did you tell them about that? A. Well, we always maintained that our retailers who had signed had not—I would say were not in a favorable position as far as the selling of the
11652 cheaper merchandise was concerned, in spite of the fact that we, representing our retailers, and we know that most of our retailers were in sympathy with the Guild plan, in principle, if it could be worked out equitably, as far as the retailer is concerned.

Q. Well, now, after the $6.75, $7.75 and the $8.75 cost manufacturers became affiliated with the Guild, and participated in their program, was there any modification made, or change made, in the understanding and/or agree-

ent that you referred to yesterday in your testimony as exemption for $6.75 merchandise from the returned—om the requirement to be returned?

Examiner Averill: From the requirement?

Mr. Haycraft: From the requirement on the part of the Guild.

Examiner Averill: From the requirement of returns?

Mr. Haycraft: Yes.

A. There was some modification, but I do not know whether that letter had any bearing on modification, or whether that letter caused the modification. There was 11654
ome modification later.

Examiner Averill: When the witness says "that letter," he refers to Commission's Exhibit 525?

Mr. Albert: 528.

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. What was the modification? A. Well, the question rose as to whether some retailers were not suffering too severely by reason of returns being ordered by Mr. Post, or his assistant, Mr. Goldston, and two or three of us alled on Mr. Post one day on that subject, and he told us hat it would be agreeable in the case of retailers who were 11655
ubjected to unusually large returns, thereby hurting their usiness to a great extent, to limit those returns so that hey would not go beyond a fixed percentage of the total umber of garments carried in their dress departments.

Q. What was that fixed percentage that he mentioned? A. As I remember it, the percentage of returns need not xceed 3 per cent. of the entire dress department; that is, he higher and lower price, or not to exceed 5 per cent. of he popular priced department.

Q. By "popular priced," you mean lower brackets? A. Lower brackets. Well, I believe we agreed also not to make this public, the reason being given by Mr. Post that lower-priced manufacturers should not take undue advantage of the situation, and also that retailers should not take too much advantage of it; but it was sort of a gentleman's understanding, and we treated it as such.

Q. Was anything said at that conference with respect to the formal agreement, or understanding, that you had with Mr. Rentner as to— A. Well, we always referred to that agreement right along, but, of course, as far as Mr. Post was concerned, he disclaimed all knowledge of that be-
11657 cause he was not connected with the institution at that time, and was not present at that meeting—that is, the meeting that I referred to in 1933 at yesterday's hearing.

Q. Did Mr. Rentner ever repudiate the agreement or understanding that you had with him in that respect? A. He never did, so far as I know.

Q. How long a period of time did this last gentleman's arrangement or agreement that is referred to that you had with Mr. Post continue? A. I do not know exactly how long, but I do remember that some time afterwards, it might have been a matter of months, in recalling to Mr. Goldston this 3 and 5 per cent. agreement, or understanding, that we had with Mr. Post, he told me that was off.

Examiner Averill: Who told you that?

11658 The Witness: Mr. Goldston.

Mr. Haycraft: Mr. Goldston.

Examiner Averill: Yes.

By Mr. Haycraft.

Q. It is not in effect, then, at the present time? A. As far as I know, it is not.

Q. Have you had any——

Examiner Averill: One moment, please, first, let us find out, if you do not mind, whether this conversation with—Mr. Goldston?

The Witness: Mr. Goldston, Jack Goldston.

Examiner Averill: Whether that was prior to the red carding of the A.M.C. stores, which has already been testified to, or if it was subsequent to that.

Mr. Haycraft: I will be glad to have that question asked.

Examiner Averill: I want to fix the time, and he did not give it. This conversation that you speak of with Mr. Goldston? 11660

Mr. Haycraft: All right.

Examiner Averill: You have heard of the red carding of certain A.M.C. stores, have you not?

The Witness: Yes, sir.

Examiner Averill: And you know approximately what that time was? If not, I can have your recollection refreshed as to that date.

The Witness: I would like to know the date.

Examiner Averill: Let me see those exhibits.

Mr. Haycraft: February 17.

Mr. Martin: February 17, 1936.

Mr. Haycraft: That is when the formal notice went out. There were a couple before that.

Examiner Averill: Now, then, was this conversation with Mr. Goldston prior to that, or after that? 11661

The Witness: After.

Examiner Averill: After that red carding?

The Witness: Yes.

Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Mr. Block, have you had any discussion with either Mr. Post or Mr. Goldston since November, 1935, aside from the one that you have referred to a moment ago, with respect to the returns that the stores that you represent are required to make under the rules, in co-operating with the Guild? A. As far as I recall in the last several months, that is during 1936, I have had very few discussions, except where we received notices of a general nature, the regular bulletins, asking us to inquire of our buyers if certain alleged copies had been purchased from certain manufacturers, and, if so, to advise the Guild, and
11663 also to notify our retailers to return those copies immediately. That was generally the type of discussion on matters pertaining to these bulletins. If there were any others, I do not recall them at this time.

Q. Have you received any instructions from officials of the Guild with respect to certain manufacturers you have designated as confirmed copyists? A. Yes.

Q. When did you receive such instructions? A. We received these bulletins from time to time. They were in the shape of illustrations, description of garments, names of the manufacturer who was the alleged copyist, the name of the manufacturer that originated the style, and usually accompanied by a letter advising us what to do.

Mr. Albert: Now, if it please the Court, I move
11664 that the answer of the witness be stricken out as not responsive to the question. The question was a very simple one, "When was the time you received them?" The answer would have been, since he cannot give a specific time, "From time to time." Then I could have make an objection to the next question of Mr. Haycraft, which Mr. Haycraft might have put, as to the substance of that, and the bulletins would have been the best evidence of

what was received by this man. He is volunteering this information without even a question put by Mr. Haycraft, precluding me from objecting to the question on the ground that the information is not the best evidence. I move that everything be stricken out after the answer "From time to time."

Examiner Averill: Read the question and the answer.

(Last question and answer read.)

Examiner Averill: The objection is overruled; exception noted.

Mr. Albert: Exception.

11666

By Mr. Haycraft.

Q. Did you ever receive any instructions from officials of the Guild referring to certain manufacturers that were not to be bought from because they were confirmed copyists?

Mr. Albert: Now, if it please the Court, as a result of this witness volunteering information not in response to a question, I have got to object to preliminary questions which are forming the foundation for what Mr. Haycraft wants to get at.

Examiner Averill: All right.

Mr. Albert: I must object to the question on the ground it calls for a conclusion of the witness as to whether or not certain instructions given him 11667
were instructions; further, on the ground the best evidence is the person giving it, or, if it is in writing, the instruments bearing the instructions, or the information, whatever it is that Mr. Haycraft wants. I do not know, but I cannot take any chances any further that this witness is going to give proper answers to questions, and answer "yes" or "no" to foundation questions, and I am going to have to object to everything Mr. Haycraft asks.

Examiner Averill: All right, if you do just make your objections and then we will make a ruling and go on; but so far as this question here is concerned I have so little notion in my mind as to the word "instructions" that I would like to ask the witness to state if these—whatever he received—if it was in the form of instructions, or was it just in the form of information, or was it reporting actions that had been officially taken by the Guild, or its representatives. That is what I am trying to find out.

11669 A. Well, I suppose the right word would be "requests," requests. We were asked to do it that way.

By Examiner Averill.

Q. That would be the general form in which these things, whatever they were, took? A. Yes, sir. That would be the general form in which these things took.

Q. They stated certain people had done certain things, and then you were requested to do certain things, or not to do certain things? A. Yes, sir.

Q. Is that the general nature of these things? A. Yes, sir.

Q. Or policies? A. Yes, sir.

11670 Examiner Averill: With that understanding as to what the witness means as to the word, I think we can proceed.

Mr. Albert: I renew my motion to strike the answer on the ground that it calls for the conclusion of the witness and the proper basis has not been laid for that.

Examiner Averill: Overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

Mr. Albert: Thank you.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I think the witness can answer that question with the modification.

Mr. Haycraft: I will ask, with the modification, that the witness answer the question.

A. I would say that they received such requests—that we received such requests from Mr. Goldston at times.

By Mr. Haycraft.

Q. Do you have any recollection as to the names of the manufacturers? A. No, I do not remember them at this time. 11672

Q. Did you comply with the requests that Mr. Goldston made in that respect? A. I would call my buyers into the office and read the letter to them and ask them as near as possible to comply. There were times when it was not within their jurisdiction because some of the store buyers would go in themselves and buy these goods without asking us.

Q. So far as your buyers were concerned, I mean? A. We tried very hard to hold to the Guild so far as it was signed by us, the policy.

Q. Did you also comply with their request with respect to buying from manufacturers that were designated or referred to as confirmed copyists and were attested to thereby by members of the Guild? A. I just answered that, I believe. 11673

Q. Would your answer be "yes," as you explained so far as you know your buyers—so far as your own buyers were concerned, I mean? A. So far as our own buyers are concerned; yes, sir.

Q. To refresh your recollection, I will ask you whether or not you were ever asked by Mr. Goldston, or requested

by Mr. Goldston, to not buy from Harris Dress Company because they were presumed to be copyists? A. I could not say definitely as to the Harris Dress Company.

Q. I will ask you the same question with reference to Feinberg & Weisen? A. Any one particular—in one particular instance, yes, I remember now.

Q. What is that? A. In one particular instance, yes.

Q. Do you remember when that was? A. A short time ago one of our retailers was requested to make return of a number of garments to Feinberg & Weisen on the ground that they were copies. The retailer did so. The manufacturer refused to accept the garments. The retailer notified
11675 the Guild asking the Guild what to do with the merchandise. The manufacturer would not receive it and the retailer could not sell it, and what was to be done. It was finally agreed that the retailer could sell this merchandise on condition that he would refrain from buying any more of this merchandise—any more merchandise from this manufacturer. This one time that I remember that this manufacturer's name was brought in in connection with this subject—this is one time.

Q. This is Feinberg & Weisen—they were a manufacturer, you said? A. Oh, yes, they were. Of course, we have had other complaints about the same manufacturer, Weinberg & Weisen—Feinberg & Weisen, in times past by the Guild, but I mean as to where one of my retailers was buying and now will not buy from that manufacturer
11676 again, that is the only one that I can recall.

Q. Do your buyers now buy from Feinberg & Weisen? A. I could not say whether they buy now or whether they bought last week or the week before.

Q. What? A. I could not say whether they buy now or whether they bought last week or the week before that.

Q. I mean since before or within the past year, we will say. A. Oh, in the past year I would say they probably did; yes, sir.

Q. You do not know whether they do at the present time, subsequent to this incident to which you refer buy from them? A. No, I do not.

Q. Mr. Block, based upon your experience and knowledge of the industry, and of the retail dealers, and based on the retail dealers I mean in the women's and misses' ready-to-wear garments, and in your experience as a buyer for such retail dealers, and taking into consideration the facts that you have related in this proceeding as to the operations of the F.O.G.A., particularly as to curbing so-called style piracy, please state your opinion of the effect of that program upon retail dealers of women's and misses' ready-to-wear garments from the standpoint of their ability to sell that merchandise in competition with other retailers in the industry—referring in my question to those retailers that are co-operating with the Guild? 11678

Mr. Albert: Are you finished with the question?

Mr. Haycraft: Yes.

Mr. Albert: That is objected to, if the Court please, as no proper foundation has been laid for the conclusion of the witness and asking for an opinion upon matters which I do not think any man in the industry is capable of knowing an opinion upon, if he has any respect not only for his own knowledge but for the knowledge of anybody else in the industry, and certainly in the light of the testimony that has been taken throughout the country with the various figures that have been produced in evidence here, and that have been presented, I say that this is incompetent at the present time, and immaterial and irrelevant and improper. 11679

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: Objection overruled, and the witness may answer the question if he can. If he cannot he can say so.

Mr. Albert: Exception.

Examiner Averill: Exception noted. Answer the question, please.

Mr. Haycraft: Do you understand the question?

The Witness: What is the question?

Q. (Question read.) A. Those retailers, in my opinion, who have to compete with non-signers—or non-signing re-
11681 tailers, are handicapped. On the other hand, those retailers who handle merchandise only in the higher brackets, of course, they are not concerned with the stores that sell lower-priced ready-to-wear exclusively. They are not in competition with the better type of specialty stores or high type department stores. And I would say——

By Mr. Haycraft.

Q. Mr. Block, what have you to say as to why is the dealer that has to compete with non-signers, non-signing retailers, in the lower brackets handicapped? A. They are handicapped because they are prevented from selling good looking garments although they may be copies, but which non-signers with the Guild nevertheless sell in large
11682 quantities.

Mr. Haycraft: That is all.

(There was a short recess taken.)

Cross-examination by Mr. Albert.

Q. Mr. Block, you have testified with respect to a certain transaction involving the firm of Feinberg & Weisen. Can you tell us something further about that? A. Perhaps.

Q. You stated that that transaction took place a short time ago. A. Yes.

Q. When was that? A. Two or three weeks ago.

Q. In November of 1936? A. Yes, sir.

Q. Who was the retailer that was involved in that transaction? A. Foley Brothers Dry Goods Company, Houston, Texas.

Q. Did you say that you saw, or have a copy of the communications between Foley Brothers and the F.O.G.A., or did you ever see them? A. What I had was a letter from Foley Brothers on this subject.

Q. Have you that letter? A. No, sir; not with me.

Q. Could you produce it? A. I could if you want it. It 11684
is in the files, I suppose.

Q. Did you discuss the matter in any way with anyone in the F.O.G.A.? A. With Mr. Goldston.

Q. What was the subject or substance of the discussion, rather? A. What is that?

Q. What was the substance of the discussion? A. Why, I related to him that Foley Brothers set forth that they returned the goods in accordance with the instructions of the shopper for the Guild and the manufacturer had refused to accept them and returned them to Foley Brothers. Foley Brothers did not know how to dispose of that merchandise. I said to him, "Now, what are you going to do about it? These people cannot take a loss; they cannot throw these goods away." After some discus- 11685
sion, he finally said, "Well, let them write us a letter that they will not do any more business, and that they will not buy any more goods from that manufacturer and we will make an exception and let them dispose of that goods at retail on their premises." I said, "All right, I will write them that way." And I did so.

Q. What was the reply of Foley Brothers? A. I have not had any reply.

Q. Is that the way the matter stands at the present time? A. Yes, sir.

Q. You do not know what action was taken by Foley Brothers on it? A. I do not.

Q. You are familiar, are you not, with the warranty clause? A. Yes.

Q. In use by the co-operating retailers? A. Yes, sir.

Q. I assume that Foley Brothers, as a co-operating retailer, had on its orders this warranty clause? A. I believe so.

Q. Pursuant to that warranty clause, is it a fact that Foley Brothers had the right to insist that Feinberg &
11687 Weisen accept back the goods that had been adjudged copies? A. Retailers generally, I believe, felt that this rubber stamp, or the wording contained in that rubber stamp provided by the F.O.G.A. gave them the right to return goods to the manufacturer of those goods.

Q. As a matter of fact, from your wide knowledge of this industry to which you have testified, do not manufacturers who accept orders with this rubber stamp on them, accept back dresses which have been adjudged copies, and which are returned by retailers?

Mr. Haycraft: I object.

Examiner Averill: Overruled, obviously.

A. To a great extent; yes, sir. Occasionally we have
11688 trouble with some of them that will not take them back.

By Mr. Albert.

Q. As a matter of fact, is that very seldom, Mr. Block? A. I would say that applies to the minority of the cases, the small minority.

Q. A very small minority? A. A very small minority.

Q. Do Foley Brothers, or had Foley Brothers acquiesced in Feinberg & Weisen's refusal to accept back the

dresses which have been adjudged copies? Foley Brothers, if they had taken those goods off sale, would have assumed the entire loss thereof, would they? A. Yes.

Q. Now, in addition to the warranty clause as contained on the order as given by your stores, there are other printed conditions on those order blanks, are there not? A. There usually are other clauses having to do with the shipment of goods, terms, and the basis under which they buy the goods, in general.

Q. Those clauses are placed on their orders by your member stores as a condition precedent to their doing business with the manufacturers; is that so?

Mr. Haycraft: That is objected to. 11690
Examiner Averill: Overruled.

A. Yes, they are usually printed on some part of the order.

By Mr. Albert.

Q. Those provisions that are printed on these orders for the most part are things which these retailers believe to be necessary for their protection in doing business with manufacturers; is that so?

Mr. Haycraft: I object.
Examiner Averill: Overruled.

By Mr. Albert. 11691

Q. In connection with this, now, then, is it a fact that what Mr. Goldston told you was that it was up to Foley Brothers to decide whether or not they wanted to continue to do business with the manufacturer who refused to accept the conditions which the retailer thought was necessary for his protection? A. That might be one way of looking at it.

Q. Is that not the only way of looking at it, Mr. Block? A. There are two ways of looking at it.

Q. What is the other way? A. That way is one way, and the other is that the Fashion Originators Guild of America if they were successful in eliminating these copyists, one by one, naturally it would be to the advantage of the Fashion Originators Guild of America.

Q. Do you know whether or not your other member stores were requested to cease doing business with Feinberg & Weisen? A. I do not know.

Q. Have you any knowledge of it one way or the other? A. No.

11693 Q. Certainly if such a request had been made it would have come to your knowledge; is that so? A. Well, it might have—it might have been presented to the buyers directly, but the probability is that they would have called my attention to it.

Q. Undoubtedly? A. Probably, I would say.

Q. Probably? A. Probably.

Q. To your knowledge, in all the time that you have been—shall I loosely say, acquainted with the Fashion Originators Guild of America, have the officials of the F.O.G.A. ever met with the buyers of your member stores? A. Do you mean with the buyers who work in the retail stores?

Q. That is right. A. Not connected with our offices, directly?

11694 Q. That is right. A. They might have, I do not know.

Q. Would any relationship between your member stores and the F.O.G.A. be discussed with your knowing of it? A. Possibly.

Q. Are you not the liaison officer between your member stores and the Fashion Originators Guild of America who are all mostly out of towners? A. Right.

Q. When you had this conversation with Mr. Goldston did you thereafter have any conversation with Mr. Post with respect to the matter? A. No, sir.

Q. Did you get any written communication or statement from Mr. Goldston with respect to the matter? A. No, sir.

Q. Is it not a fact that your member stores, when any particular manufacturer refuses to accept an order in the form that it is printed by your member, your member refuses to place an order with such a manufacturer? A. I do not know what the member store, itself, might do. My guess would be that it would refuse to place such an order, but I cannot swear to that because I do not know just what each of them might be.

Q. But in the ordinary course of events, except in the exceptional cases, if a manufacturer refused to accept an order as it was desired to be placed by the member store, 11696 that member store would refuse to place the order with that manufacturer; is that so?

Mr. Haycraft: I object.

A. That is correct.

Examiner Averill: Overruled.

By Mr. Albert.

Q. Your office, as distinguished from your member stores, places orders for the member stores; does it not? A. Yes, sir.

Q. When, in your capacity as a local representative of these stores, the manufacturer refuses to accept the order in the printed and stamped form used by your members, do 11697 you refuse to place such an order with him?

Examiner Averill: That order has already been acted upon, I think you need to reframe the question.

Q. As a matter of fact, Mr. Block, is not the greatest protection that is afforded to a retailer in his attempt to

return adjudged copies to a manufacturer, the warranty stamp placed upon the order?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant.

Examiner Averill: Overruled.

A. I would say yes.

By Mr. Albert.

Q. As a matter of fact, is not that the only manner in which the retailer can insist in the ordinary course of business that the manufacturer accept back adjudged

11699 copies?

Mr. Haycraft: I object to that.

A. I think so.

By Mr. Albert.

Q. Mr. Block, is it not a fact that what was indicated to you was that it was up to Foley Brothers to decide whether or not they wished to do business with the manufacturer who would refuse to abide by the conditions which were incorporated in the Foley Brothers' orders? A. Yes.

Q. Does Foley Brothers, to your knowledge, Mr. Block,

11700 take over the whole output of Feinberg & Weisen? A. What do you mean by whole output?

Q. Does Foley Brothers take the entire production of Feinberg & Weisen? A. No, sir.

Q. As a matter of fact, they probably take a very small part of the production of Feinberg & Weisen? A. That is right.

Q. In order to eliminate Feinberg & Weisen in the light of the remark made by Mr. Haycraft, it would be necessary

for a great many retailers to refuse to do business at all with Feinberg & Weisen: is that so? A. Yes.

Q. Mr. Block, Foley Brothers is a co-operating retailer; is it not? A. Co-operating with the Guild, yes.

Q. As such co-operating retailer, and in an endeavor to co-operate with the policies of the Guild, it affixes to those orders a warranty clause stamp, does it not? A. No doubt.

Mr. Martin: I object as already having been answered.

Examiner Averill: It has already been answered, but he is undoubtedly leading up to something else, and the question just cannot start right off from nowhere. 11702

By Mr. Albert.

Q. If Foley Brothers did not place this warranty stamp upon its orders, and if a manufacturer sold dresses to Foley Brothers which were adjudged copies, in what manner except by taking the loss on those dresses could Foley Brothers get redress for the sale to it of dresses which were adjudged copies?

Mr. Haycraft: Objected to as calling for a legal conclusion.

Examiner Averill: Overruled.

A. They could not get any redress unless they could show that there had always been that understanding that the manufacturer was not to ship them copies; unless they could prove that I doubt if they could get any redress unless the manufacturer voluntarily took the dresses back, which is unlikely. 11703

Mr. Haycraft: I move to strike the answer as being incompetent. This witness is no lawyer.

Examiner Averill: He is giving the answer from his viewpoint. Motion denied.

By Mr. Albert.

Q. Was there any such custom, Mr. Block, in the industry prior to the formation of the Fashion Originators Guild of America? A. No.

Q. No? A. No

Q. Is there any such custom in the industry to-day between retailers and manufacturers that retailers—where retailers do not use the warranty clause, I mean? A. No, without them using the warranty clause.

11705 Q. In other words, if they do not use the warranty clause there is no such custom, is there? A. No.

Examiner Averill: He means retailers who are not affiliated with the Guild in any way, but who order, in the ordinary and in the general course of business, from manufacturers certain types of dresses and things, is there any custom there in connection with the return of copies?

A. Let me get this.

By Mr. Albert.

Q. Yes. A. The retailer who is not affiliated with and is not a signatory to the Fashion Originators Guild of
11706 America plan, I would say he is not concerned very much as to whether they are copies or not.

By Examiner Averill.

Q. There is no custom that you know of that exists for retailers who are not affiliated with the Guild to put any such clause as that in their orders? A. No, sir. That is right.

Examiner Averill: I think that is sufficiently clear.

By Mr. Albert.

Q. I think I want to go just one step further, Mr. Block. A. Yes.

Q. In the absence of any such clause is there any custom in the industry by which the manufacturer will accept back dresses which have been adjudged copies? A. I think not.

Q. So that if Foley Brothers desired to co-operate with the Guild in its policy of anti-style piracy, it can only make possible the return of goods, the return of goods of 11708 adjudged copies, by the use of this warranty, is that so? A. I think so.

Q. So that unless Foley Brothers insist that Feinberg & Weisen recognize that warranty clause, it could not be co-operating with the Guild, could it? A. I would say that is a sign of co-operation, yes, sir.

Q. I do not believe that is an answer to the question. Will you please answer the question?

Examiner Averill: Let the question and the answer be read.

(The question and answer were read.)

Examiner Averill: Mr. Block, by your answer you mean that the act of insistence upon, by Foley Brothers, of the manufacturer taking back the ad- 11709 judged copies, that that would be upon Foley Brothers' part, upon their part an act of co-operation as instanced by the taking back of the goods?

A. It would be their act of co-operation, either an act of co-operation or an act of self-preservation, it could be taken either way. Here is a man trying to get his money

back for goods he cannot sell. He is taking care of his own interests. The Guild may think he is taking care of the Guild interests.

By Mr. Albert.

Q. They are both taking care of their respective interests? A. They are, both.

Q. Foley Brothers is a member of the Guild? A. Yes.

Q. And they would be protecting their respective interests, the interests of Foley Brothers and the interests of the Guild? A. Yes, I have no doubt.

Q. You have no doubt? A. No doubt at all.

11711 Q. Referring to this particular action in connection with Feinberg & Weisen, their refusal to recognize the warranty, it was an act of self-preservation on the part of Foley Brothers to refuse to do business with Feinberg & Weisen, unless they agreed to recognize the warranty stamp, is that not so? A. I think so.

By Examiner Averill.

Q. Mr. Block, you are acquainted with these situations from your long and wide experience in the industry and therefore I want to ask you this: In view of that experience and based upon that experience, in the event that Foley Brothers had returned the goods to the manufacturer, the adjudged copies to the manufacturer, and the

11712 manufacturer refused to take them back and the goods had been thrown back on Foley Brothers, and they had paid for them—I am not talking about suing—what action would have been usual and customarily taken on the part of the Guild to assist Foley Brothers? A. That is up to the Guild to answer. I do not know.

Q. I thought maybe you had had instances of that and knew. A. No; when I first talked to Mr. Goldston about

it, he said, "It is their problem." I said, "Well, you have got to do something to help them out." So that is what he told me.

Q. I thought perhaps you knew of other instances as to what was done. A. I do not believe so.

By Mr. Albert.

Q. What happened in any instances that you are familiar with? A. You are asking me about other instances?

Q. Yes. A. Well, it sometimes happens that there are disputes as to whether a manufacturer should take goods back or not and as a rule we iron them out. We go to the manufacturer and say, "Now, go on, you are only wasting 11714
time and you know very well you are not going to court about this, so pick them up." So he picks them up, as a rule, but sometimes there is a case like this when we run up against a stubborn case and there is nothing to be done.

Q. You do not understand, or do not understand by Mr. Post's statement——

Examiner Averill (interposing): Just one moment please. I want to finish this inquiry.

Mr. Albert: Surely.

Examiner Averill: In such a case as you spoke of, in such a case where they have been clearly adjudged that the dresses in question were copies, then is it so or is it not the custom of the Guild to 11715
advise all of their members and affiliates of the fact that such and such a manufacturer has refused to abide by the warranty clause and take back goods, or that such and such facts are the case so that such members may take such action as they may see fit in connection with dealing with that manufacturer in the future—is not a bulletin sent out, or something?

The Witness: You say members, you mean retail members?

Examiner Averill: Yes, know of any such.

The Witness: I do not know of any such letters.

Mr. Albert: It is not the fact there, Judge. I can explain it fully, if you want.

Examiner Averill: I just wanted to find out about that particular point.

By Mr. Albert.

Q. As a matter of fact, Mr. Block, is it not true that nothing concerning the Foley Brothers matter was ever
11717 made the subject of any request to you or instructions to you or advices to you with respect to all of the other stores represented by you? A. That is right. It was an individual case.

Q. A specific, individual case? A. That is right.

Q. When you stated a moment ago that Mr. Post told you that this was your problem— A. Mr. Goldston, not Mr. Post.

Q. When Mr. Goldston told you that that was your problem— A. Yes.

Q. —of course, you used the word "theirs"? A. I meant Foley Brothers' problem.

Q. When Mr. Goldston told you that it was Foley Brothers' problem, did you not understand from your
11718 knowledge of the Guild policy in anti-style piracy that that meant it was up to Foley Brothers to decide whether or not they wished to co-operate with the Guild and do an act of self-preservation by refusing to do business with the manufacturer, Feinberg & Weisen, who had refused to accept their conditions placed upon their order? A. No, I simply understood him to mean that that is something that Foley Brothers had to worry about.

Q. There were no instructions of any kind by the Guild, were there, if such was something to worry about by Foley

Brothers only? A. Well, that came later, after he said that—why, we kept on talking about this matter and he finally said, "Well, I will tell you what we will do. We will allow them to sell the dresses, provided he writes us that he will not do any more business with this same manufacturer." I said, "I will write him so" and I did and after that I do not know what happened.

Q. Wrote who? A. Wrote our client, Foley Brothers.

Examiner Averill: Foley Brothers?

The Witness: Foley Brothers.

By Mr. Albert.

Q. What did you write Foley Brothers? A. I wrote 11720
them what Mr. Goldston had told me.

Q. Would you mind giving us the substance of the letter that you wrote, as nearly in the exact language as possible? A. I wrote them that they will be permitted to sell the dresses, provided they wrote to the Fashion Originators Guild of America advising them that they will not purchase any more garments from that manufacturer.

Q. Did you write to Foley Brothers the additional phrase, "Unless Feinberg & Weisen were willing to accept and recognize the warranty clause"? A. No, I did not.

Q. Then, as a matter of fact, do you not know that by reason of the relationship between Foley Brothers and the Guild, and your offices to the Guild, that that was a commonly accepted non-co-operation? A. I do not get what 11721
you are driving at.

Q. I will put it this way: As a matter of actual fact, Mr. Block, did you not know that by reason of the relationship which existed between the firm of Foley Brothers and the Fashion Originators Guild of America, and your offices of Kirby, Block & Fischer and the Fashion Originators Guild of America, that that was the commonly accepted and known interpretation of what was meant by what you claimed to be the words of Mr. Goldston?

Mr. Haycraft: I object to anything of that kind as vague and indefinite and unintelligible.

Examiner Averill: We have had this thing in so many times. I do not know whether the witness understands it or not.

The Witness: I understand it. My answer would be "Yes."

Mr. Haycraft: I must insist upon my objection because this is repetitious and the witness has answered this several times already.

Examiner Averill: It is already answered. Let's go to something else.

11723 *By Mr. Albert.*

Q. Mr. Block, is it a fact that Foley Brothers advised that it has ceased doing business with Feinberg & Weisen by reason of Feinberg & Weisen's refusal to adhere to the provisions of the warranty clause; that they had merchandise on hand which they had purchased from Feinberg & Weisen and that unless it was permitted Foley Brothers to sell that merchandise it would suffer the complete loss on that item and Foley Brothers stated that since they were not going to do business with Feinberg & Weisen and in order not to lose money on that transaction they believed that the fair and equitable thing to do would be to permit them in that one case to sell these goods?

11724 Mr. Haycraft: I object to any further questions on this particular matter.

Examiner Averill: I will allow this particular question and answer and I think that should be sufficient.

Mr. Haycraft: That is contrary to the facts in the case.

Mr. Feldman: Mr. Haycraft has not seen the correspondence, I believe. How could he possibly know what the facts are in the case?

Mr. Albert: How does Mr. Haycraft know that it is contrary to the facts? Has he had some access to these papers of which we have no knowledge? If so, he must know it is in accord with the facts.

Examiner Averill: Overruled. Answer the question.

A. No, that is not the way the letter read.

By Mr. Albert.

Q. Aside from what is contained in any letter that was written, Mr. Block, is it not a fact, as I have stated it? A. 11726
No.

Q. That is all I want to know. A. All right. You have it.

Q. Mr. Block, I believe you testified that the first contact that you had with the fair trade practice policies of the Guild was in June, 1935, is that correct? A. No. I do not know if that was the first contact. I testified that there was such a meeting.

Q. That is you referred in your testimony to the fact that there was a specific meeting upon that point? A. Yes, sir.

Q. You do not mean to indicate that that was the first time that you heard about fair trade practice provisions, do you? A. Well, that meeting was called especially for 11727
the discussion of those provisions, and also, I presume, that that was the first time that the matter as a whole had been brought to our attention.

Q. To the best of your recollection, is that the first time that it had come to your attention that the Guild was desirous of extending, let us say, its policy to include certain fair trade practice provisions? A. I believe so.

AFTERNOON SESSION—2 P. M.

SIDNEY ROSENZWEIG was thereupon called as a witness for the Commission and, being first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name? A. Sidney Rosenzweig.

Q. How do you spell it? A. S-i-d-n-e-y R-o-s-e-n-z-w-e-i-g.

Q. Will you state your residence? A. 3150.

Q. What? A. Rochambeau Avenue.

Q. Where? A. Bronx.

11729 Q. What is your occupation, Mr. Rosenzweig? A. Assistant dress buyer.

Q. With whom, Mr. Rosenzweig? A. A.M.C.

Q. A.M.C.? A. A.M.C.

Q. How long have you been with the A.M.C.? A. Well, I should say I have been with them a little over a year, although I had been connected with them before, but a little over a year this last time.

Q. Mr. Rosenzweig, were you connected with the A.M.C. in March of 1936? A. I was.

Q. In what capacity, Mr. Rosenzweig? A. I was on the A.M.C. payroll assigned to service for John Shillito Company, and F. & R. Lazarus Company service in a minor capacity, I might say.

11730 Q. Mr. Rosenzweig, do you happen to know Mr. Irving Plaut of the John Shillito Company? A. I do.

Q. Do you have any recollection of seeing Mr. Plaut in March of 1936? A. I have.

Q. Mr. Rosenzweig, can you relate, please, just what were the circumstances under which you saw Mr. Plaut at that time? A. Well, on the morning of March, 1936—

Q. Mr. Rosenzweig, on the morning of March of what date? A. March 4th, I am sorry, 1936, I was told by Miss

Simon, Mr. Bergdahl's secretary, that Mr. Plaut would be in the office that morning and that I was to accompany him in the market. Mr. Plaut reported at the office and we left together with Mr. Fishel.

Q. How do you spell Fishel? A. F-i-s-h-e-l.

Q. Who is Mr. Fishel, Mr. Rosenzweig? A. He is a dress buyer for John Shillito Company. We went around the market and visited dress concerns with the object in mind of finding out more or less what was going to be done with our orders that had been placed on order prior to that time.

Q. Mr. Rosenzweig, by that do you mean the orders to the John Shillito Company? A. That is right. 11732

Q. Do you know a firm of manufacturers, Mr. Rosenzweig, in New York City, by the name of C. H. D. Robbins? A. I do.

Q. Have you visited that firm, Mr. Rosenzweig? A. I have.

Q. Did you on that day visit that firm? A. I did.

Q. Whom did you see there? A. Well, I recall that I have a memorandum—I have a memorandum here of what transpired if I am permitted to use it.

Q. Certainly, Mr. Rosenzweig.

Mr. Albert: If your Honor please, I object to the witness using the memorandum or reading from any memorandum unless he first testifies that he cannot remember the transactions without its aid, 11733 and, furthermore, that testimony in regard to the circumstances under which he made the memorandum.

Examiner Averill: Yes, it is essential first that he give us some idea as to whether or not he can testify without the use of the memorandum, and the circumstances under which the memorandum was made and who made it.

By Mr. Martin.

Q. Did you make any memorandum, Mr. Rosenzweig, of the visit to C. H. D. Robbins? A. I did.

Q. When was the memorandum made, Mr. Rosenzweig? A. You mean where was it made?

Q. Well, I will state that, where was it made? A. It was made in the showroom.

Q. When was it reduced to writing? A. That same day.

Q. Is that the memorandum to which you wish to refer to refresh your recollection? A. That is the memorandum.

11735 Q. All right, sir, will you refer to that memorandum—

Mr. Feldman: I did not think that it has been shown that his recollection needs to be refreshed, and I do not think it has been shown that this is, in fact, the memorandum that he made.

Examiner Averill: Let us have a full question and then we will proceed from that.

Mr. Martin: All right, sir.

By Mr. Martin.

Q. Will you tell me this: Whom you saw at C. H. D. Robbins and what transpired there on the occasion of March 4 when you visited them with Mr. Irving Plaut, tell us from your own recollection if you can, and if you

11736 cannot from your own recollection refer to any notes that you may have. A. Well, I recall the names of the gentlemen that were present, but I do not recall the exact conversation verbatim, although I do have it here in the notes.

Q. Which notes were made at that time? A. Which notes were made at that time.

Q. By you, Mr. Rosenzweig? A. And they were made by me and transcribed that night, by me that night.

Q. Is that the notes? A. This is a copy of the notes that were made; in other words, there was——

Q. Did you dictate them? A. I dictated them personally.

Q. This is a copy of what was written by the stenographer? A. This is a copy of the record as it was taken by the stenographer and given to me.

Q. As dictated, and have they been checked by you as correct? A. Yes. From my own recollection; I remember that Mr. Plaut and Mr. Fishel and myself were there, and Mr. Joe—Mr. Joe Lakwitz—I spelled his name that way the first time in my notes, but that is wrong, but on subsequent information I know his name to be Mr. 11738
Lackritz, together with a Mr. Hayman.

By Mr. Martin.

Q. How do you spell that? A. H-a-y-m-a-n.

Q. Proceed. A. Both of whom are connected with the firm of John Shillito & Company at the present time.

By Examiner Averill.

Q. C. H. D. Robbins, that was one of the dress manufacturers? A. Yes, sir.

Q. And Mr. Plaut, I think, is the gentleman who previously testified on the witness stand to that effect? A. I do not know about that.

11739

Mr. Martin: That is correct.

By Examiner Averill.

Q. Tell us what you know about the interview with C. H. D. Robbins. You went there? A. I went there with the other two gentlemen, and Mr. Plaut asked Mr. Lackritz about the orders that had been placed, and asked him whether or not they were to be shipped. I cannot recall the exact details of the conversation.

Q. What did Mr. Lackritz say? A. Well, he said that they had not been shipped.

By Mr. Martin.

Q. Did he say that they would be shipped? A. No, he said they would not be shipped.

Q. Did you make any effort to see any goods in C. H. D. Robbins' place of business? A. Well, as I recall it, a model came over to where we were sitting, and she was told not to show us any merchandise.

Mr. Albert: Do you recall who said that?

11741 The Witness: Mr. Lackritz, if I remember correctly, but I am not certain of that.

By Mr. Martin.

Q. Was there any request made of C. H. D. Robbins to ship goods on order at that time? A. Well, to the best of my recollection, Mr. Plaut asked him if he was going to ship the merchandise, and he said he was not going to unless Shillito Company complied with the Guild's request to sign a declaration of co-operation, or something of that sort.

Q. Was there any discussion relative to White's store, have you any recollection? A. I do recall mention was made about R. H. White Company to the effect that R. H.

11742 White Company was red carded, and I believe that Mr. Plaut mentioned something to the effect that Shillito Company had nothing to do with R. H. White, that Shillito Company had not been red carded. I do not recall the balance of that conversation very clearly.

Q. Do you recall whether or not anything was said about any other stores in Cincinnati? A. If I remember correctly, there was mention made, or, rather, I should say that Mr. Plaut asked if any of the merchandise that we had bought, or, rather, some types had been shipped

to—the same type of merchandise had been shipped to any other Cincinnati stores, and I believe the answer by Mr. Lackritz was that merchandise had been bought and shipped to other stores in Cincinnati.

Q. Was anything said about signing a new declaration?

Examiner Averill: He told you——

A. I believe there was, although I can't remember——

Examiner Averill: He has told us that.

A. —all of those details.

By Mr. Martin. 11744

Q. Was there any discussion as to the effect of the Guild program on Shillito's as compared with chain stores? A. Well, I believe that Mr. Plaut mentioned something in that connection to the effect that were we not to have the cheaper copies, we would be more or less chasing our customers into the chain outfits, who are not subject to the Guild restrictions, and who did feature copies of higher-priced merchandise.

Q. Do you recall what Lakritz' reply was as to that? A. I believe he said something to the effect that Shillito's and the other stores of similar nature were to co-operate with the Guild, they could by their joint action stop the chain outfits from competing with us in that respect. I do not know that those are the exact words, and I do not 11745 know if that is the exact details, but I recall something about it.

Q. Do you have any recollection as to whether anything was said about the fact that the goods in question which you were seeking to get had or had not been ordered prior to red carding? A. Yes, I know definitely that that merchandise had been ordered prior to the red carding——

Examiner Averill: No, wait, wait.

Mr. Martin: Wait a moment.

Examiner Averill: He did not ask you what you thought; he asked you was there anything said about it.

By Mr. Martin.

Q. Was there anything said about it? A. Yes, there was something mentioned.

Q. Do you recall what was mentioned? A. I believe, as I remembered it, Mr. Plaut brought out the fact to Mr. Lackritz that the orders had been placed prior to the red
11747 carding of Shillito by the Guild, and he said that inasmuch as the order had been so placed, that the subsequent red carding should have no effect on those orders.

Q. Did Lackritz say anything about why he was not shipping the goods? A. Well, he mentioned something to the effect that the Guild—inasmuch as the Guild had started to red card the A.M.C. stores, he would not ship any merchandise, inasmuch as he had been so notified, but——

Q. Well, what did you do then? A. I don't remember, I don't remember whether that was the full extent of the conversation or not.

Q. When you left Robbins', did you make any notes? A. No, I made these notes in Robbins' showroom as the
11748 conversation took place.

Q. Do you know whether or not Lackritz is a member of the firm of Robbins, C. H. D. Robbins? A. To the best of my knowledge, he is.

Q. Now, after you left C. H. D. Robbins, did you go to any other manufacturer? A. We did.

Q. Do you know a firm in New York by the name of Witlin & Schneider? A. I do.

Q. Did you go to see them? A. We did.

Q. Do you recall who you saw there? A. If I remember correctly, when we went up there we saw a Mr. Marx —Marx, I believe the name was, in the showroom there.

Q. Did you see anybody else? A. I don't recall.

Q. And who was with you? A. Mr. Fishel and Mr. Plaut.

Q. Well, can you tell me in substance what happened there? A. Why, as I remember it, when we went—called on the showroom there, they were busy waiting on other buyers, and we sat down in one of the booths. Several of the models that were displaying dresses approached our booth, and I believe—no—they were not told not to show to us, but they continued to display these dresses in the 11750
course of their showing, and we took several notations, and I think subsequently Mr. Marx approached Mr. Plaut, and he said something to him aside, and Mr. Plaut told us that we were going to leave, and we walked out, and he mentioned something to the effect that Mr. Witlin was busy, and that he would return that afternoon and speak to Mr. Witlin himself. That was about all I remember of that.

Q. Was any effort made at that meeting to obtain shipment of goods? A. I don't recall.

Q. Can you refer to your notes and refresh your recollection in any way? A. If I would be permitted to refer to the notes I could refresh my recollection.

Mr. Martin: If your Honor please, I think——

Examiner Averill: Let me see the note about the 11751
Witlin & Schneider matter.

(The witness hands paper to the Trial Examiner.)

Mr. Martin: I think it is wholly competent.

Mr. Feldman: Is that the same note?

Mr. Martin: It is an original copy.

Examiner Averill: Now, as I understand from what you have stated, you went there in the morning and had this conversation, or part of the conversation?

The Witness: I believe it was in the morning.

Examiner Averill: Then did you go back again in the afternoon?

The Witness: I did not go back in the afternoon.

Examiner Averill: You did not?

The Witness: No.

By Mr. Martin.

Q. Do you recall whether anybody went back in the afternoon? A. Yes, I recall Mr. Plaut went—that is, he told me he went back.

Q. Did he report to you what transpired when he went
11753 back that afternoon? Answer "yes" or "no."

Examiner Averill: Can you answer that that way?

The Witness: Yes.

By Mr. Martin.

Q. Did you make any memorandum of what he told you? A. Yes, yes, I did.

Q. Did you dictate a statement of what he told you to your stenographer, and did she write it up? A. No, Mr. Plaut told me the sum and substance.

Examiner Averill: Do not tell us what Mr. Plaut told you.

11754

By Mr. Martin.

Q. Do not tell us what he told you. A. No, I am not going to tell you what he told me, but I do say he told me the sum and substance of what his visit was, and I jotted it down in longhand, and subsequently dictated the entire report.

Q. And the stenographer wrote it up? A. That is right.

Q. Did you then submit that report to Mr. Plaut for his inspection to see whether that was as he related it to you? A. Well, Mr. Plaut and I went over the entire report and we compared not only his recollection, and also mine, to the notes, and at the same time we compared my verbatim notes to the dictated copy to make sure that everything was in order.

Q. And is this dictated copy which you have the result of that collaboration? A. That is right.

Q. And you are satisfied that it is a correct account of what took place on the occasion of these interviews? A. I am.

Q. Do you recall visiting a firm by the name of Louise 11756
Mulligan? A. Yes.

Q. Who did you see there? A. I don't remember the name of the gentleman.

Mr. Albert: I do not have any objection if you suggest the names of them.

By Mr. Martin.

Q. Did you see a Mr. John Irwin there? Do you recall that name? A. I recall a Mr. John Irwin, but I do not recall whether he was connected with that firm or with other firms, inasmuch as I had been to several of the resources, but if my notes state the name Irwin was the gentleman at Louise Mulligan, that is the gentleman that we saw. 11757

Q. Do you recall Louise Mulligan is a New York firm? A. No, I think Louise Mulligan is a Chicago firm, a showroom at the New Yorker Hotel. That is, they use one of the rooms there several times a week, as I remember it.

Q. Was any effort made to obtain goods on order with Louise Mulligan at that time? A. Yes, something—Mr. Plaut asked Mr. Irwin whether or not we were going to get the goods on order.

Q. Well, do you recall what Mr. Irwin said? A. No, I do not recall what Mr. Irwin said.

Examiner Averill: You do not recall?

The Witness: I do not recall that, your Honor. You see, those New York—that is, the firms located in the New Yorker Hotel were a lot of firms I had never been to before, and they are not as clear in my mind as some of the other resources with whom I had come in daily contact, so I cannot even picture the man that we had spoken of.

By Mr. Martin.

11759

Q. Do you recall whether or not you saw any goods there? A. I do not remember.

Q. Do you recall whether Mr. Irwin made any statement about shipping goods or not, which were on back order? A. There were two or three firms in the New Yorker Hotel that we visited, and I cannot at the present time, without refreshing my memory a little bit, recall the details of the conversations. I do know that we spoke to most of the men. That is, we spoke to the representatives of these various firms down there, and I knew that one of them mentioned something about having shipped certain orders up until a certain time, but I cannot distinguish which said which, and what they said.

11760 Q. Do you recall whether or not Mr. Irwin made any statement about instructions he might have received?

Examiner Averill: How?

Mr. Martin: Read the question.

(Question read.)

A. Yes, I do recall that.

By Mr. Martin.

Q. Do you recall what? A. I do recall this: In order to clarify what I said before, as I said, we visited several firms there. We spoke to their representatives, and I do know that almost every one of them mentioned something about instructions having been received from Chicago, but I cannot remember the conversation as they gave it to us, because I cannot distinctly pick out each individual man; in other words, I can give you the sum and substance of each one, of each conversation, but I may be getting the firms twisted up a little bit.

Mr. Feldman: Just a little bit? 11762

By Mr. Albert.

Q. Mr. Rosenzweig, as regards the remainder of the manufacturers whom you visited on March 4, 1936, is it your testimony that you have no concrete specific memory of any particular transaction with any particular manufacturer on that date? A. No, I won't say that. I have a memory as to what took place subsequently, but my memory is not clear with regard to certain things.

Q. So that you cannot isolate your memory and say that a certain thing occurred at a certain manufacturer's? A. No, you see——

Examiner Averill: Gentlemen, we understand that. Just say no—— 11763

The Witness: But I want to say——

Examiner Averill: I understand all that, but I am not going to fill up the record with all of this explanation. Just say "yes" or "no."

The Witness: May I hear the question again?

By Mr. Martin.

Q. Do you recall going to see Joanne Junior? A. I do.

Q. Do you recall who you saw there? A. Mr. Martin Zinn.

Q. To the best of your recollection, tell me what transpired there. A. As I recall it, Mr. Plaut asked Mr. Zinn about the merchandise that he had on order, and Mr. Zinn replied that he could not ship what had been already purchased, inasmuch as the Guild had refused to permit him to do so. In other words, the red carding of the A.M.C. stores automatically prevented him, and, if I remember correctly, Mr. Plaut asked him why he could not ship the
11765 merchandise despite the Guild restrictions, and Mr. Zinn replied to the effect that it was not only the $5,000 fine to which he would be subjected by the Guild if he were to ship this merchandise that bothered him so much, as the fact that the Guild could prevent him from securing silks from the Silk Guild, which would, in sum and substance, put him out of business.

Examiner Averill: I see.

A. (Resumed) While we were there, there was some merchandise displayed around, and Mr. Plaut looked at one of the garments there and mentioned the fact that he would like to purchase about fifty-odd pieces of them, and Mr. Zinn replied that he had no doubt but that he
11766 could book an order for at least 300 pieces from the A.M.C. if he were permitted to show them up there. He also mentioned the fact that he was at his wit's end as to the outcome of this, because of the fact that he had always co-operated with the A.M.C. since the inception of his business, and that he did not know how he was going to meet expenses, and, as I recall it, he mentioned something about going down to see some person down at the Guild, Mr. Gol—or——

Mr. Albert: Golby?

The Witness: —Golby, that is it. He went down to see Mr. Golby, and Mr. Golby had repeatedly stalled him off and never given him any concrete answer as to how to thrash this affair out, and that he wished to have that disposed of, or could be disposed of, inasmuch as he did not know how he could replace the A.M.C. business. That, more or less, was the sum of my recollection. 11767

By Mr. Martin.

Q. Do you know a firm in New York by the name of Junior Guild? A. Junior Guild is not a New York firm, it is a Chicago firm, if I am correct, and their office was one of those in the New Yorker Hotel whom I got—whom I am all hazy about, in connection with the other—Louise Mulligan, also mentioned there. 11768

Well, Mr. Plaut spoke to Mr. Harry Cohn, and asked him about the merchandise that we had on order, and Mr. Cohn mentioned something to the effect that they had shipped all back orders, and also a certain number of subsequent re-orders of merchandise which we had purchased prior to this red carding business, but he said he could no longer do so because of the fact that he received a telegram from Chicago, from a Mr. Gilbert, whom I understand is the head of the Junior Guild organization, to the effect that they could not accept any more business from any so-called red carded stores. 11769

I saw that telegram, and I copied it down verbatim. Mr. Cohn did mention that at the beginning of the controversy between the A.M.C. and the Guild, the Chicago manufacturers had a conference with their attorneys to decide what was to be done in so far as re-orders were concerned.

Examiner Averill: Now, then——

The Witness (resumed): In so far as back orders was concerned, I mean, and that they had decided to continue to ship all back orders despite the red carding.

Examiner Averill: I see.

The Witness: But they were not to accept any future orders, and Mr. Cohn mentioned that they had continued to ship the back orders, but that they had been notified that they were not to do so, and that, therefore, they were not going to ship them anything further, and he also stated the fact that

11771 this general controversy had severely affected the amount of business which they were getting out of their New York showroom, but that he felt it would be settled very shortly thereafter, and, therefore, inasmuch as the Junior Guild operates on the basis of confining the merchandise to one resource in a town, they were not soliciting any further business in the A.M.C. towns with this expectation in mind, and I believe that was about all that was said there.

By Mr. Martin.

Q. Now, do you have any recollection of going to see Frank Starr-Friedlander? A. Yes, I know we went to

11772 Frank Starr-Friedlander.

Q. Yes.

Examiner Averill: Is that S-t-a-r-r?.

The Witness: That is right.

By Mr. Martin.

Q. After refreshing your recollection, tell me who was present there and what transpired. A. Mr. Starr and Mr. Friedlander were present, and they entered into a dis-

cussion with Mr. Plaut. Mr. Plaut asked them the usual question; that is, the question we had put—he had put to every manufacturer, about the merchandise we had on back order, and either Mr. Starr or Mr. Friedlander answered to the effect that they were not shipping any merchandise to us, and they stated the reason they were not doing so was because they were subject to a fine or some sort of punishment by the Guild if they were not to abide by its decision red carding A.M.C. stores, and Mr. Plaut mentioned something to the effect that the orders had been placed prior to the inception of this controversy, and either Mr. Starr or Mr. Friedlander stated that that might be the fact, but they could not do a thing.

11774

He also mentioned the fact that in his opinion the one mistake that the Guild made was in not permitting manufacturers to ship all the merchandise that had been bought prior to the inception of this controversy, and then prevented, or advised their manufacturers, not to show or ship any more merchandise, but he did say that as matters stood at the present time—that is, at the time we were there—they were not going to ship any merchandise to us until they were permitted to do so by word from the Guild.

Q. Well, now, after refreshing your recollection, tell me what transpired at Lewis-Cohn's—who you saw there, and what happened. A. We saw a Miss Corelli, at Lewis-Cohn's, and Mr. Plaut asked her about the merchandise on order from her. She said she was sorry, but she 11775
couldn't do a thing about it, and she said the red card prevented her firm from shipping any merchandise to Shillito. She also mentioned something to the effect that it was too bad that they could not ship us any merchandise, because their line was stronger then than a good many seasons prior to that, and, anyhow, she would not show us—she stated she could not show us anything because of the restrictions. And Mr. Plaut stated, or called

to her attention the fact the orders had been placed prior to the—to this controversy arising, and he also mentioned that after all a contract is a contract, and it was accepted in good faith. She says, "Yes," but she blamed it more on the A.M.C. for not receiving—for Shillito not receiving the back orders, and she mentioned something to the effect that it had been called to her attention that the A.M.C. had threatened to make a football of the merchandise that was shipped by some of these Guild houses. I don't remember much else that took place there.

Q. All right. Will you refer to your notes and tell me who you saw at Raich & Goldfarb, and what transpired
11777 there?

Examiner Averill: What is the name of these people?

The Witness: Raich-Goldfarb, R-a-i-c-h G-o-l-d-f-a-r-b.

Examiner Averill: Thank you.

A. Mr. Raich and Mr. Goldfarb, and a Mr. Grettinger, were present, together with Mr. Plaut and myself.

Mr. Plaut asked them what about the goods on order, and they said they were sorry, but inasmuch as they had received instructions from the Guild not to ship us any merchandise, they could not very well do so.

They also mentioned the fact that it was not only the
11778 $5,000 fine that they were afraid of, but it was also the fact that they stood a good chance of not being able to secure any piece goods if the Guild saw to it that the Silk Guild would not give them any merchandise.

They also mentioned the fact that they had resigned from the Guild prior to the start of this controversy, and that the speaker very sincerely regretted the fact that he permitted them to talk them back into the organization again.

Mr. Albert: What manufacturer was this, Mr. Rosenzweig?

The Witness: Raich & Goldfarb.

By Mr. Martin.

Q. Raich & Goldfarb? A. And that he would be very happy to find some way to get out of the thing. He said he only wished that he had stayed out when he was out.

Q. Did they show you any garments there? A. No, they did not show us any merchandise.

Q. Did you go to see any of the other manufacturers, Mr. Rosenzweig? A. Well, may I be——

Examiner Averill: Do you remember the names 11780
of any more? Oh, you do not recall them?

The Witness: I do not recall.

By Mr. Martin.

Q. Now, after making these interviews in company with Mr. Plaut, what did you do then, Mr. Rosenzweig? A. Well, I went back to my office and waited until Mr. Plaut returned, and after he gave me the results of his afternoon——

Examiner Averill (interposing): You have told us that.

A. —of his conference with Witlin & Schneider—— 11781

Examiner Averill: Wait—do not tell us again about how you prepared the notes; you have told us all that.

By Mr. Martin.

Q. After these——

Examiner Averill: If you had conversation with him about something else that may be pertinent,

I do not know, but let us not go into that other again.

By Mr. Martin.

Q. After these notes were dictated by you to the stenographer, and written up by the stenographer, did you give a copy of them to Mr. Plaut? A. I did.

Q. Did you give a copy of them to——

Mr. Albert (interposing): Mr. Bergdahl.

By Mr. Martin.

11783 Q. —Mr. Bergdahl? A. I did not.

Q. Did you ever discuss this with Mr. Bergdahl in any way? A. I never discussed this with Mr. Bergdahl.

Q. Do you know whether or not any of these goods that were on order with these manufacturers, and concerning which you have been talking, were ever, in fact, shipped?

Examiner Averill: You mean to Shillito?

Mr. Martin: To John Shillito Company.

A. To the best of my knowledge, they were not shipped.

(The paper heretofore marked for identification Respondents' Exhibit 93 was marked as an exhibit and received in evidence.)

11784 *Cross-examination by Mr. Albert.*

Q. Mr. Rosenzweig, there is no doubt in your mind, is there, that when you were testifying from memory, without having refreshed your recollection from these notes, that what you have told us actually occurred at the various places of business of these manufacturers? A. To the best of my recollection, they are exactly what happened.

Q. And by the same token, the notes that you made at these places of business were also exactly what you heard; is that not so? A. That is right.

Q. Tell me, how did you make these notes? Do you write shorthand? A. I do not.

Q. Would you mind describing briefly the exact mechanics of how these notes were made? A. They were made on a sheet of paper, penciled as the conversation took place.

Q. And it was made in the presence of the various people who were conversing? A. That is right.

Q. What did you do, usually sit at a table, or something? A. I sat right there and took them. 11786

Q. In your lap, or did you sit at a table? A. At a desk, if we were seated at a desk.

Q. At a desk. Did you take down what was said by question and answer? A. I did.

Q. As each question and answer was put? A. Yes.

Q. And you got, I suppose, substantially everything that was said? A. Substantially; I may not have heard every word.

Q. Yes. A. But——

Q. But the substance of each sentence, and the important parts of each sentence you certainly put down; is that not so? A. I did.

Q. Now, coming back to when your left the office with Mr. Plaut. This was a rather unusual thing that he was asking you to do, was it not? A. It was. 11787

Q. Not in the usual course of your business, was it? A. It was not.

Q. Did you make any inquiry of him as to the purpose of what you were required to do? A. I did not. He roughly told me on our way out. It was not unusual for me to accompany one of the buyers around the market.

Q. But you did not take notes every time you went around, did you? A. No. When we left the office he told me what was going to be done.

Q. Did he tell you— A. So that I knew what was going on.

Q. What did he tell you that made you know what was going on? A. Well, he told me we were going to visit the various resources with w om Shillito had placed orders, and we were going to take notes as to the conversations as to why—why these orders were not shipped.

Q. Well, did you ask him what is the necessity for making these notes? A. I was not an executive of Shillito, and inasmuch as I was told to go along by my superior, I went along without asking too many questions. I surmised——

11789 Q. Well, what were the questions that you did ask? A. What were the questions?

Q. Yes. A. Well, he told me we were going along to take these notes, and I had known of this controversy going on, and so I just went along with him; that is all.

Q. Well, look, Mr. Rosenzweig: Did not Mr. Plaut tell you, or did you not ask him, in words or substance, "Look, what are we going to take these notes for?" A. No, I did not, because Mr. Plaut told me what we were going to take these notes for.

Q. All right, what did he tell you? A. That we were just going to go around to these manufacturers and take notes as to their reasons for refusing to ship merchandise which we had on back order with them.

11790 Q. Well, that was obvious from the mere fact that he asked you to take the notes; is that not so? A. That is so.

Q. Now, I am asking you why—withdraw that. I am asking you what reason he gave you for the taking of those notes, and you said that he gave you a reason? A. No.

Q. I want to know the fact. A. I beg your pardon—I did not say he gave me a reason. It was not within my power to question Mr. Plaut as to why I was to go along with him.

Q. Where is the A.M.C. office? A. 1440 Broadway.

Q. Where is C. H. D. Robbins? A. 1375 Broadway.

Q. About how many blocks is that? A. Two blocks.

Q. Two blocks. While you were walking along with him— A. Yes.

Q. —you know Mr. Plaut very well, do you not? A. I know him quite well.

Q. You are rather friendly with him, are you not? A. Friendly?

Q. Yes, in a business sense. A. Well, certainly, in so far as a business acquaintance would be.

Q. I mean— A. After all, he is an executive and I am not, so we do not usually get too familiar. 11792

Q. No, I do not mean that, familiar in the social sense, but certainly you discuss with him business policies and business principles, did you not? A. No, I won't say that I did. At that time I was in a very minor capacity and Mr. Plaut would have no reason to discuss business principles with me.

Q. Then you were coming along as an errand boy to follow instructions? A. I was coming along——

Q. To follow instructions? A. To follow instructions implicitly, and to record what was taking place, and for no other reason.

Q. And naturally being there to follow instructions, and having no initiative or discretion of your own, you, of course, in taking down these notes, did not exercise any discretion to leave anything out, did you? A. No, I did not. 11793

Q. And you took down every single thing that was said? A. I put down what we considered, or what I considered at that time was the most important and pertinent facts in the conversation.

Q. Then you did use discretion in what you took down? A. I did.

Q. A moment ago— A. As far as that——

Q. —you told me you did not. A. —was concerned.

Q. What is the fact? A. That fact is, that I knew what I was going around for, and if the conversation did not pertain to what we were there for, I did not put it down.

Q. What were you there for? A. We were there to find out why our merchandise had not been shipped, and whether or not it was going to be shipped.

Q. Now, you have been mentioning a controversy that was existent at that time; what was that controversy, do you know? A. Well, it was some sort of an argument, or—some difference between the AM.C. stores and the
11795 Guild.

Q. Do you know what that difference was?

Mr. Martin: Objected to——

A. Oh——

Mr. Martin: —as immaterial and irrelevant.

Examiner Averill: He can answer the question "yes" or "no." Do not tell us what it was. He asked you if it was—read the question.

(Last question read.)

Examiner Averill: You may answer "yes" or "no" to that question.

A. Well, I——

11796

Examiner Averill: "Yes" or "no."

A: I have a notion as to what it was.

Q. Give us briefly what your notion of it was. A. Well, the Guild claimed that we had not co-operated with their policies, or, in accordance with certain declarations.

Q. Yes. A. And that unless we complied with them, why, we were not going to be shown or shipped any merchandise from their members.

Q. And you have used the term "red card." A. Yes, that is right.

Q. You know what that means, do you not? A. Well, it is a prohibition to their members, so far as shipping merchandise to our stores is concerned.

Q. And at the time that you went out with Mr. Plaut, had Shillito's been red carded? A. Shillito's had been red carded.

Q. And you knew of it? A. Yes, I knew of it.

Q. And, of course, Mr Plaut knew of it, also? A Of course he did.

Q. Now, Mr. Rosenzweig, you testified that in his conversation at C. H. D. Robbins, Mr. Plaut mentioned the 11798
fact and complained because the orders which were not being filled had been placed prior to the red carding; is that not so? A. That is right.

Q. You are quite certain that Mr. Plaut made that remark at C. H. D. Robbins? A. I don't remember whether or not he mentioned, then, orders; I know the implication was there, because the orders had been placed prior to this.

By Mr. Albert.

Q. Let me understand you perfectly, Mr. Rosenzweig: Do you say now that you cannot recall whether or not Mr. Plaut said that at C, H. D. Robbins? A. I said I don't recall whether that exact question was put at C. H. D. 11799
Robbins.

Q. No, you misunderstand. Let me start over again.

Examiner Averill: Do show him the paper and let him refresh his recollection from it.

Mr. Albert: Your Honor please, may I ask the indulgence of the Court? This is rather an important point, especially in the light of Mr. Plaut's

testimony. All I want to know from Mr. Rosenzweig is this:

By Mr. Albert.

Q. Do you recall Mr. Plaut saying at C. H. D. Robbin or complaining, or making a statement, in substance, that the goods which C. H. D. Robbins refused to ship had been placed before the red carding?

Mr. Martin: If your Honor please——

Examiner Averill: One moment.

A. I don't remember whether he said that or not.

11801

By Mr. Albert.

Q. You do not remember that now. Is your memory worse now than it was fifteen minutes ago on direct examination when you affirmatively testified that he did say that? A. I don't know whether he said—he exactly did say that question; I do know this, that every one of the words we were questioning had of necessity been placed before the red carding.

Q. I am not asking you that. A. And therefore had to do——

Q. We all know that. We are trying to find out what happened there. You testified on direct examination that Mr. Plaut said to one of the Robbins that the goods

11802 which had been ordered were ordered prior to the red carding. A. I did not say that Mr. Plaut said that; I said Mr. Plaut asked one of the people up there.

Q. Yes, he asked one of the people what? A. No, I say I did not say it the way you did.

Q. What is it— A. I don't recall whether he mentioned that question or not that you put.

Q. What is it you now recall about that particular language? A. I don't remember.

Q. You don't remember it at all? A. I don't remember whether or not that specific question had been asked at Robbins'.

Q. Did you testify on direct examination while sitting there in response to a question from Mr. Martin, that Mr. Plaut while at C. H. D. Robbins said that the orders which C. H. D. Robbins had accepted had been given prior to the red carding?

By Mr. Albert.

Q. You do not recall? A. I don't recall having been asked that.

Q. What you testified to in answer to Mr. Martin's 11804
question? A. I don't recall Mr. Martin's question.

Q. Mr. Witness, will you examine Respondents' Exhibit 93 and point out if there is anything in there to the effect that Mr. Plaut made a statement that the orders which had been placed were placed prior to the red carding?

Mr. Martin: Just a moment, your Honor please, the exhibit is in evidence and will speak for itself. That is the best evidence. There it is in the exhibit.

Examiner Averill: Refer to the record, please, sir, of the interview at C. H. D. Robbins, read over what they say, and then answer his question as to whether you find anything there or not. 11805

The Witness: My answer is "Yes."

Examiner Averill: All right.

By Mr. Albert.

Q. Your answer is "Yes"? A. Not only by Mr. Plaut but by Mr. Fishel.

Q. What statement are you referring to?

(Witness refers to Respondents' Exhibit 93.)

A. "Mr. Plaut: 'How are our orders coming along?'" Inasmuch as no orders had been accepted by any firms after the red carding, these orders must of necessity have been placed prior to the red carding. Further on down in the visit Mr. Fishel asks a question, or made a statement that: "Neither we"—meaning Shillito's—"nor you"—meaning C. H. D. Robbins—"knew anything about this matter turning up at the time the purchases were made, so I cannot see how you can make it retroactive to apply to back orders." In other words, the red carding had to take place after the placing of the orders.

Q. Then, let me ask you this: Did Mr. Plaut at any
11807 time while at C. H. D. Robbins make a statement to the effect that Shillito's had not been red carded? A. That Shillito's had not been red carded?

Q. Yes. A. Oh, now——

Mr. Martin: At what time? With reference to what time?

Mr. Albert: At the time that he was there.

A. No, I don't believe so. If I remember correctly, he made some sort of a statement to the effect that—or in response to a question—or in response to a statement that Mr. Lackritz made to the effect that White's had been red carded in connection with mentioning our orders, he made some statement with reference to White's
11808 or Shillito's. I do not recall anything exactly to the effect that Shillito's had not been red carded.

Q. Yes. Reading from Respondents' Exhibit 93, I ask you if Mr. Lackritz said this: "That's right, but you knew at that time that we were not showing or shipping to White's?" Did Mr. Lackritz say that?

Mr. Martin: Hand him the exhibit and let him see.

A. I don't know. He may have—that may have—I know that is the subsequent——

By Mr. Albert.

Q. You have no recollection? A. Yes, I have an inkling as to the remark he made.

Q. Was that the remark he made? A. It may not be the exact words as given there.

Q. In substance? A. But that in substance is right.

Q. Did Mr. Plaut say this: "What has White got to do with Shillito?" A. Right.

Q. Did he say that? A. In substance?

Q. Did he in substance say this: "We weren't red 11810
carded and the order was placed by us and accepted by you in good faith"? A. Sure, he may have said that.

Q. And— A. But what does that "we weren't red carded" refer to?

Q. What is it referring to? A. It refers to the fact at the time the orders were placed we had not been red carded.

Q. And that is what Mr. Plaut was referring to? A. Well, naturally we were trying to find out if our orders could be shipped.

Q. Yes. A. Mr. Plaut was referring to our orders during all of this conversation. The only orders we could have had placed there were those that were placed before the red carding of Shillito's.

Q. And in explanation of that you say that what Mr. 11811
Plaut meant at that time was not that he was not red carded on March 4, but that he had not been red carded at the time the order was placed? A. That is right.

Q. That is all that I wanted to know. Where are the original memoranda that you made, Mr. Rosenzweig? A. I believe I destroyed them.

Q. Are you not certain whether you destroyed them or not? A. I did destroy them.

Q. Then you mean you destroyed them? A. I destroyed them.

Q. Not that you believe you destroyed them? A. Yes.

Q. In what department are you the assistant buyer? A. Inexpensive dresses.

Q. How long have you been in that position? A. In that department?

Q. Yes. A. In that position or in that department?

Q. In that position of assistant buyer? A. A few months.

Q. Are you familiar with the declaration of co-operation?

11813 Mr. Martin: Objected to——

A. I am not.

Examiner Averill: Gentlemen, I sustain the objection, and I grant the motion to strike the answer if the witness answered. I did not hear him.

Mr. Martin: I did not hear him either.

Examiner Averill: But if there is a motion to strike it is sustained.

Mr. Albert: Exception.

Q. —when you heard any of the parties whom you visited on that day mention that they would pay—or would be required to pay—a fine of $5,000 if they did ship goods, did that sound important to you?

11814

Mr. Martin: I object.

Examiner Averill: Do not answer it—the objection is sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. When you were present at Joanne Junior's, you testified you had a conversation with Mr. Zinn, did you not? A. I did.

Q. You also testified that Mr. Zinn stated that he felt it would be necessary for him to pay a $5,000 fine, if he shipped you goods, did you not?

Examiner Averill: No, he did not.

A. I don't think I testified to that.

Examiner Averill: He did not say it would be necessary for him to do it.

By Mr. Albert.

Q. Did you not testify that Martin Zinn stated, in words or substance, that he might be fined $5,000?

11816

Mr. Martin: I object.

A. Well, I did not——

Mr. Martin: That is an entirely different question.

Q. Did you not? A. I testified that Mr. Zinn remarked that he would be subject to a fine of $5,000 together with a possible penalty of not being able to secure silks from the Silk Guild, and I did not say he feared the penalty, because I don't know.

Q. Did you at the time you heard him make those remarks think that this statement of a $5,000 fine was important?

11817

Mr. Martin: I object.

Examiner Averill: Objection sustained, and I shall ask Counsel to ask no further questions in connection with the $5,000. It is absolutely immaterial, and nothing is to be gained by it. I think it has been gone into sufficiently now to cover the matter completely as may be necessary.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Will you look at Respondents' Exhibit 93, at your notes on Joanne Junior, and tell us whether or not you from your present recollection would say that you put down there—from your present recollection what you put down there as having transpired is an accurate transcription of everything that transpired at that time? A. I will not say that these were the only things that were said during the course of our visit there, no.

Q. You notice that there is nothing about any $5,000 there? A. I do not notice anything about it there.

Q. Will you look and see? A. Yes. There is no mention 11819 here of $5,000.

Mr. Martin: That is in connection with the Joanne Junior feature only?

The Witness: Yes.

Examiner Averill: In Respondents' Exhibit 93: that is what he said just now. I understood him to testify that it is not in there. That is what he said. I have not read it.

Mr. Martin: He is calling attention only to Joanne Junior.

The Witness: He is talking about Joanne Junior. He is not talking about the rest of it, as I understand it.

Mr. Martin: It is important and I want to make 11820 it clear that it is somewhere else in the exhibit.

Examiner Averill: But he was asked about this particular thing. The witness has confined his testimony to that part of it.

Mr. Martin: I understand that, but I just wanted to make certain that what Mr. Albert is referring to.

By Examiner Averill.

Q. Let us get this clear now: You were referring to Joanne Junior in your testimony, were you not? A. That

is what I had in mind. There is no mention here of $5,000 in the Joanne Junior interview.

Mr. Albert: That is what I had reference to, Mr. Examiner.

Examiner Averill: You say you cannot find anything in the exhibit in connection with the Joanne Junior interview with regard to $5,000?

The Witness: That is correct.

By Mr. Albert.

Q. Did you discuss at all with Mr. Plaut, Mr. Rosenzweig, who it was that asked you to do this, did it come up as a subject of conversation? 11822

Mr. Martin: I object as incompetent, immaterial, and irrelevant.

Examiner Averill: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. When you came back, Mr. Rosenzweig, did you discuss the matter with Mr. Bergdahl? A. No.

Q. Mr. Bergdahl is your immediate superior, is he not? A. Mr. Bergdahl is my superior.

Q. You were gone all day? A. I was gone all day.

Q. When you came back did he ask you where you had been? A. He did not.

Q. Is not part of your duties—or does the type of work that you do permit of you to leave the A.M.C. offices without accounting for the loss of time? 11823

Mr. Martin: I object to that question as not being in conformity with what has already been testified to. He gave full and complete testimony in regard to that matter.

Examiner Averill: I think on cross-examination that would be within its proper purview.

Mr. Martin: I am only objecting to save time. Go ahead.

A. The nature of my job is to be out of the A.M.C. offices all day.

By Mr. Albert:

Q. The nature of your job is to assist in buying, is it? A. At the present time. It was not then.

Q. At that time it was not? A. No.

11825 Q. When you were going around with Mr. Plaut? A. No.

Q. What was it then? A. I said I was on the A.M.C. payroll assigned to F. & R. Lazarus and John Shillito Company in a very minor capacity.

Q. What was that very minor capacity? A. That of following up orders to see to it that they were shipped on time.

Q. And seeing to it that orders were shipped on time necessitated your being out of the office? A. Yes, certainly, I had to see that they shipped the orders, and I had to see that they shipped the orders, and I had to visit the various manufacturers. You do not sit in the office on a job of that kind.

11826 Q. This particular work you did, that was not in the ordinary and usual course of your duties? A. No.

Q. No? A. No.

Q. But Mr. Plaut gave you those orders? A. What orders?

Q. To come around with him? A. No, Miss Simone told me.

Q. What? A. Miss Simon.

Q. Who is Miss Simon? A. Miss Simon is the secretary of Mr. Plaut, and as secretary of Mr. Plaut she told me that permission had been given.

Q. Have you—who gave you the permission? A. I do not know and I do not care. I did not ask.

Q. Mr. Rosenzweig, at that time it was your duty to see that orders were shipped out on time; is that correct? A. Yes.

Q. In the course of your duties, therefore, it was encumbent upon you to look at the orders; is that so?

Mr. Martin: I object as incompetent, immaterial, and irrelevant, and improper cross-examination. This witness was asked one line of questions, and one line of questions only, and that was he was asked if he accompanied Mr. Plaut to see these manufacturers and what took place there, and he has 11828
testified to that, and that is all he has testified to.

Examiner Averill: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert:

Q. Do you know whether or not the warranty clause was contained in the orders that were placed by the John Shillito Company with these various manufacturers?

Mr. Martin: I object as incompetent, immaterial, and irrelevant, and improper cross-examination.

Examiner Averill: Sustained.

Examiner Averill: Gentlemen, we will adjourn to reconvene on Monday morning, December 7, 1936, at 10 A. M. 11829

(Whereupon, at 3:50 o'clock P. M., December 4, 1936, the hearing was adjourned.)

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Vol. VI

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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INDEX.

	PAGE
Petition for Review	1a
Certification of Record	1
Complaint	3
Answer of Respondent Fashion Originators Guild of America, Inc.	26
Answer of Mandel Brothers, Inc.	48
Exhibit A—Declaration of Co-operation in Anti-Piracy between Mandel Brothers, Inc., and the Fashion Originators Guild of America, Inc.	51
Answer of National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt	52
Exhibit A—Notice, dated December 17, 1935, by The Industrial Design Registration Bureau to the Trade	64
Exhibit B—Notice, dated December 17, 1935, by The Industrial Design Registration Bureau to the Trade	66
Exhibit C—Advertisement in Women's Wear Daily, Monday, December 23, 1935	68
Motion and Answer of J. L. Hudson Company	70
Exhibit A—Declaration of Co-operation in Anti-Piracy between J. L. Hudson Company and the Fashion Originators Guild of America, Inc.	78
Order Appointing Examiner and Fixing Time and Place for Taking Testimony	79
Substitute Order Appointing Examiner, etc.	81
Substitute Order Appointing Examiner, etc.	82
Motion to Dismiss by the National Federation of Textiles, Inc., and Its Officers	105
Findings of Fact and Conclusions of Law	107
Order to Cease and Desist	135

PAGE

Order Deleting Portion of Order to Cease and Desist. 149
Testimony Before Examiner. 151
Order as to Exhibits. 4639
Stipulation Waiving Printing of Exhibits. 4640
Stipulation as to Omissions from Record. 4641

TESTIMONY BEFORE EXAMINER.

For Commission.

Albert M. Post:
Direct. 165
Direct (resumed). 4149
Austin M. De Lisser:
Direct. 256
Cross (voir dire). 261
Direct (resumed). 265
Cross. 298
Redirect. 348
Recross. 352
Ben B. Hirsch:
Direct. 353
Cross. 391
Redirect. 518
Recross. 526
Saul Lieber:
Direct. 534
Cross. 562
Murray Lifshey:
Direct. 626
Cross. 657
Direct (resumed). 757
Cross. 758
Redirect. 759
Recross. 769

	PAGE
Godfrey H. Conze:	
Direct	746
Cross	755
Charles Ballon:	
Direct	789
S. M. Seegal:	
Direct	798
Cross	831
Redirect	960
Recross	979
Mathilde Kimball:	
Direct	993
Cross on Voir Dire	1002
Direct (resumed)	1003
Cross	1014
Anna Goldstein:	
Direct	1047
Cross	1069
Herbert J. Tily:	
Direct	1107
Cross	1128
Redirect	1196
Recross	1205
Redirect	1232
Recalled—Redirect	1586
Recross	1588
Charles T. Taylor:	
Direct	1234
Samuel J. Chance:	
Direct	1275
Cross	1342
Redirect	1558
Recross	1569
Kenneth March:	
Direct	1590
Cross	1591
Redirect	1693
Recross	1701

	PAGE
Louis Weinstein:	
Direct	1707
Cross	1717
Hugo C. Gutsche:	
Direct	1740
W. E. Miller:	
Direct	1759
Cross	1784
Redirect	1971
Louis B. Sappington:	
Direct	1975
Direct (resumed)	2080
Cross	2132
Redirect	2281
Recross	2289
Recalled—Redirect	2369
Recross	2377
Garfield R. MacDonald:	
Direct	2029
Cross	2036
Redirect	2075
Recross	2076
Walter E. Simmons:	
Direct	2293
Cross	2319
Redirect	2350
Recross	2358
David Saul Touff:	
Direct	2387
Cross	2415
Redirect	2487
Recross	2491
Henry N. Wyzanski:	
Direct	2494
Cross	2522
Redirect	2588
Recross	2590

	PAGE
Ralph T. Friedmann:	
Direct	2593
Louis Liberman:	
Direct	2617
Cross	2661
Redirect	2720
Recross	2723
Walter L. Rowse:	
Direct	2731
Direct (resumed)	2757
Cross	2763
R. E. Vogt:	
Direct	2755
Direct (resumed)	2778
Direct (resumed)	2822
Floyd C. Dillon:	
Direct	2766
Direct (resumed)	2781
Cross	2789
Frances Malsh:	
Direct	2823
Direct (resumed)	3167
Cross	3182
Roy H. Bjorkman:	
Direct	2828
Cross	2868
Redirect	2870
Recross	2872
Charles J. Larson:	
Direct	2886
Cross	2911
Perry W. Snyder:	
Direct	2932
Cross	2943

	PAGE
Dayne Donovan:	
Direct	2944
Cross	3013
Redirect	3082
Recross	3088
Virginia C. McDonald:	
Direct	3091
Cross	3100
Cross (resumed)	3152
Redirect	3157
Recross	3164
Helen Cofield:	
Direct	3101
Cross	3113
Nellie D. Johnstone:	
Direct	3128
Cross	3140
Florence W. Hertz:	
Direct	3195
Cross	3204
Edward A. Fletcher:	
Direct	3211
Direct (resumed)	3226
Cross	3266
A. E. Levitt:	
Direct	3222
Louis E. Klein:	
Direct	3268
Cross	3279
Redirect	3291
Alexander H. Marshall:	
Direct	3291
Cross	3302
Edgar Leighty:	
Direct	3302
Cross	3310
Redirect	3318

PAGE

Charles F. Roycroft:
Direct. 3319
Cross. 3406
Redirect. 3415

Charles J. Hutzler:
Direct. 3423
Cross. 3443

Herbert L. Bergdahl:
Direct. 3444
Direct (resumed). 3593
Cross. 3650
Redirect. 3827
Recross. 3839

Irving E. Plaut:
Direct. 3515
Cross. 3533
Redirect. 3587
Recross. 3590

John Block:
Direct. 3857
Cross. 3894
Cross (resumed). 3945
Redirect. 3966
Recross. 3978

Sidney Rosenzweig:
Direct. 3910
Cross. 3928

John B. Swinney:
Direct. 3989
Cross. 4017
Redirect. 4031
Recross. 4035

PAGE

Milton J. Greenebaum:
Direct. . . . 4038
Cross. . . . 4069
Redirect. . . . 4089
Recross. . . . 4097

David Rosenthal:
Direct. . . . 4098
Cross. . . . 4133

Aaron Rosenstein:
Direct. . . . 4145
Direct (resumed). . . . 4162

Albert M. Post:
Direct. . . . 4149
Direct (resumed). . . . 4170

Dr. Lazare Teper:
Direct. . . . 4258

Herbert O. Bergdahl:
Direct. . . . 4275
Cross. . . . 4279

For Respondents.

Albert M. Post:
Direct. . . . 4307
Cross. . . . 4432
Redirect. . . . 4445

Melvin A. Albert:
Direct. . . . 4446

COMMISSION'S EXHIBITS

	Offered or Admitted Folio	Printed Page
1-A to 1-T—Constitution and By-Laws of Fashion Originators Guild of America, Inc.	496	4452
2-A and 2-B—List of Members of Fashion Originators Guild of America, Inc.	506	4452
3-A, 3-B, 3-C, 3-D and 3-E—Declarations of Co-operation in use in various forms	532	4452
4-A to 4-F—Contract, Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.	557	4452
5-A to 5-F—Contract, Michigan Ave. Guild of Chicago and Fashion Originators Guild of America, Inc.	557	4452
6-A to 6-E—Contract, The Ladies' Ready to Wear Guild of Baltimore and Fashion Originators Guild of America, Inc.	557	4452
7-A to 7-E—Speech by Maurice Rentner to National Retail Dry Goods Association Convention	572	4452
8—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 20, 1932	....	4453
9—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 6, 1932	....	4453
10-A to 10-C—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Oct. 31, 1932	....	4453
11-A to 11-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 14, 1932	....	4453
12-A to 12-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 28, 1932	....	4453

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
13-A to 13-D—Minutes of Membership Meeting of Fashion Originators Guild of America, Inc., of Jan. 26, 1933.....	2387	4453
14-A to 14-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 17, 1933.....	2387	4454
15—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 23, 1933.....	2387	4454
16—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 8, 1933.....	2387	4454
17—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 22, 1933.....	2387	4454
18—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 5, 1933.....	2387	4454
19-A and 19-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 12, 1933.....	2387	4454
20—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 28, 1933.....	2387	4455
21-A and 21-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 31, 1933.....	2387	4455
22—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Sept. 4, 1933.....	2387	4455
23—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Oct. 25, 1933.....	2387	4455

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
24-A and 24-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Nov. 6, 1933	2387	4455
25—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 1, 1933	2387	4455
26-A and 26-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 28, 1933	2387	4456
27—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Apr. 3, 1934	2387	4456
28—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 23, 1934	2387	4456
29—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 16, 1934	2387	4456
30—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Jan. 2, 1935	2387	4456
31-A and 31-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 2, 1935	2387	4456
32—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 4, 1935	2387	4457
33—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 10, 1935	2387	4457
34-A to 34-C—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 21, 1935	2387	4457

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
35-A and 35-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 29, 1932	2387	4457
36—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 3, 1935	2387	4457
37-A and 37-B—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Dec. 3, 1935	2387	4457
38-A to 38-D—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 17, 1936	2387	4458
39—Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of Feb. 19, 1936	2387	4458
40—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Mar. 3, 1932	2387	4458
41-A and 41-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 17, 1933	2387	4458
42—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 16, 1933	2387	4458
43—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 15, 1933	2387	4458
44—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Aug. 4, 1933	2387	4459
45-A and 45-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 13, 1933	2387	4459

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
46—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 18, 1933.....	2387	4459
47—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 11, 1933.....	2387	4459
48—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 17, 1933.....	2387	4459
49—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Nov. 4, 1933.....	2387	4459
50—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Jan. 31, 1934.....	2387	4460
51-A and 51-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 22, 1934.....	2387	4460
52—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 11, 1934.....	2387	4460
53—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 18, 1934.....	2387	4460
54—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 3, 1934.....	2387	4460
55—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 21, 1934.....	2387	4460
56—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 13, 1934.....	2387	4461

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
57-A to 57-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Aug. 28, 1934	2387	4461
58—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 17, 1934	2387	4461
59—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Nov. 22, 1934	2387	4461
60-A to 60-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., on Jan. 24, 1935	2387	4461
61—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Mar. 20, 1935	2387	4461
62—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 8, 1935	2387	4462
63-A and 63-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Apr. 30, 1935	2387	4462
64-A and 64-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 4, 1935	2387	4462
65-A to 65-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Sept. 16, 1935	2387	4462

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
66-A to 66-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Oct. 21, 1935	2387	4462
67-A and 67-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Dec. 3, 1935.	2387	4462
68-A to 68-C—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 13, 1936	2387	4463
69-A and 69-B—Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of Feb. 18, 1936	2387	4463
70—Minutes of a Meeting of the Executive Committee on Piracy, held on Aug. 16, 1933	2387	4463
71—Minutes of Meeting of Grievance Committee of July 27, 1934	2387	4463
72—Minutes of Meeting of Grievance Committee of Sept. 7, 1934	2387	4463
73—Minutes of Meeting of Grievance Committee of Sept. 24, 1934	2387	4463
74—Minutes of Meeting of Grievance Committee of Dec. 20, 1934	2387	4464
75—Minutes of Meeting of Grievance Committee of Jan. 7, 1935	2387	4464
76—Report of Grievance Committee of Jan. 12, 1935	2387	4464
77—Minutes of Meeting of Grievance Committee held on Jan. 23, 1935	2387	4464
78—Minutes of Meeting of Grievance Committee of Jan. 28, 1935	2387	4464

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
79—Minutes of Meeting of Grievance Committee of Mar. 21, 1935	2387	4464
80-A and 80-B—Minutes of Meeting of Grievance Committee of Mar. 29, 1935	2387	4465
81-A to 81-C—Minutes of Meeting of Grievance Committee of June 20, 1935	2387	4465
82-A and 82-B—Minutes of Meeting of Grievance Committee of July 31, 1935	2387	4465
83-A and 83-B—Minutes of Meeting of Grievance Committee of Sept. 25, 1935	2387	4465
84—Minutes of Meeting of Grievance Committee of Oct. 29, 1935	2387	4465
85-A and 85-B—Minutes of Meeting of Grievance Committee of Dec. 20, 1935	2387	4465
86—Minutes of Meeting of Grievance Committee of Jan. 2, 1936	2387	4466
87-A and 87-B—Minutes of Meeting of Grievance Committee of Jan. 27, 1936	2387	4466
88—List of Non-Guild Manufacturers	665	4466
89-A to 89-C—List of Red Carded Retailers as of July 6, 1936	670	4466
90-A—Procedure on Style Piracy adopted at Membership Meeting of Dec. 3, 1935	....	4466
90-B—Minutes of Meeting of Executive Committee on Style Piracy of Dec. 3, 1935	....	4466
91-A to 91-C—List of Members and their price ranges as shown on applications as of Apr. 16, 1936	....	4466
92—Resident Office Declarations of Co-operation	....	4466
93-A and 93-B—List of Resident Offices signed on regular and special Declarations of Co-operation as of Apr. 16, 1935	....	4467

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
94-A to 94-I—Recapitulation of Red Cards as of Mar. 20, 1936	....	4467
95—List of Officers and Directors of Fashion Originators Guild of America, Inc., as of Apr. 16, 1936	....	4467
96-A to 96-F—Instructions to Shoppers	....	4467
96-G—Declaration of Co-operation by Retail Store	....	4467
97-A to 97-N—Correspondence and report on complaint against P & R Shop of Brooklyn	686	4467
98-A to 98-M—Transaction clearing through Guild office, November, 1935	729	4467
99-A and 99-B—Circular Letter of June 16, 1933, and Memo	734	4467
99-C and 99-D—Resolution and its significance	734	4468
99-E—Form of Declaration of Co-operation enclosed in Exhibits 99-A and 99-B	734	4468
100-A and 100-B—Letters re evasion, circular letter of Apr. 9, 1936	738	4468
101-A and 101-B—Agreement between Protective Affiliates and the Fashion Originators Guild of America, Inc.	742	4468
102-A to 102-X—Monthly reports on returns, Nov., 1935, Dec., 1935, and Jan., 1936	748	4468
103—Letter, C. F. Roycroft to J. M. Golby, Sept. 4, 1935	....	4468
104-A and 104-B—Letter, J. M. Golby to C. F. Roycroft, Oct. 1, 1935	....	4468
105—Letter, Hochshild, Kohn & Co. to A. M. Post, Oct. 1, 1935	....	4439
106—Letter, Wolf, Cohn, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
107—Letter, Monroe-Michel, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469
108—Memorandum of A. M. Post to J. M. Golby, Oct. 1, 1935	....	4469
109—Memo. by A. M. Post re telephone conversation with Mr. Engel of Jane Engel and Chez Rosette, Oct. 1, 1935	....	4469
110-A and 110-B—Letter, A. M. Post to C. F. Roycroft, Oct. 1, 1935	....	4469
111—Telegram, Mary McLean, Inc., to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4469
112—Telegram, The Clothes Line to Fashion Originators Guild of America, Inc., Oct. 1, 1935	....	4470
113—Telegram, C. F. Roycroft to A. M. Post, Oct. 1, 1935	....	4470
114—Letter, C. F. Roycroft to A. M. Post, Oct. 2, 1935	....	4470
115—Reply to Commission's Exhibit 114, A. M. Post to C. F. Roycroft, Oct. 4, 1935.	....	4470
116—Letter, J. M. Golby to C. F. Roycroft, Nov. 4, 1935	....	4470
117—Letter, C. F. Roycroft to J. M. Golby of Fashion Originators Guild of America, Inc., Dec. 19, 1935	....	4470
118—Letter, J. M. Golby to C. F. Roycroft, Dec. 24, 1935	....	4470
119—Letter, J. M. Golby to C. F. Roycroft, Oct. 21, 1935	....	4471
120—Letter, J. M. Golby to C. F. Roycroft, Jan. 14, 1935	....	4471
121—Letter, J. M. Golby to Rose E. Phillips, Jan. 14, 1935	759	4471

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
122—Declaration of Co-operation of Rose E. Phillips, Jan. 14, 1935	....	4471
123—Letter, J. M. Golby to C. F. Roycroft, Jan. 22, 1935	....	4471
124—Letter, C. F. Roycroft to J. M. Golby, Feb. 1, 1935	....	4471
125—Letter, J. M. Golby to C. F. Roycroft, Feb. 1, 1935	....	4471
126—Letter, C. F. Roycroft to J. M. Golby, Feb. 6, 1935	....	4472
127—Letter, J. M. Golby to Rose E. Phillips, Mar. 12, 1935	....	4472
128—Letter, J. M. Golby to Lee's, Inc., Mar. 11, 1935	....	4472
129—Letter, J. M. Golby to Sloan-Strobel, Mar. 11, 1935	....	4472
130—Letter, J. M. Golby to C. F. Roycroft, Mar. 11, 1935	....	4472
131—Letter, J. M. Golby to C. F. Roycroft, Mar. 27, 1935	....	4472
132—Letter, C. F. Roycroft to J. M. Golby, Mar. 28, 1935	....	4473
133—Letter, J. M. Golby to C. F. Roycroft, Mar. 29, 1935	....	4473
134—Letter, J. M. Golby to C. F. Roycroft, Apr. 5, 1935	....	4473
135—Letter, C. F. Roycroft to J. M. Golby, Apr. 13, 1935	....	4473
136—Letter, C. F. Roycroft to J. M. Golby, Apr. 30, 1935	....	4473
137—Letter, J. M. Golby to C. F. Roycroft, May 1, 1935	....	4473
138—Letter, C. F. Roycroft to J. M. Golby, May 3, 1935	....	4474

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
139—Letter, C. F. Roycroft to J. M. Golby, July 5, 1935	....	4474
140—Letter, J. M. Golby to C. F. Roycroft, July 8, 1935	....	4474
141-A to 141-C—Letter, A. M. Post to Allan Metzger, Aug. 1, 1935	....	4474
142—Letter, C. F. Roycroft to J. Goldston, May 22, 1935	....	4474
143—Letter, J. M. Golby to C. F. Roycroft, Aug. 23, 1935	....	4475
144—Letter, J. M. Golby to C. F. Roycroft, Aug. 27, 1935	....	4475
145—Letter, C. F. Roycroft to J. M. Golby, Aug. 28, 1935	....	4475
146—Letter, C. F. Roycroft to J. M. Golby, Aug. 27, 1935	....	4475
147—Letter, J. M. Golby to C. F. Roycroft, Aug. 28, 1935	....	4475
148—Letter, C. F. Roycroft to J. M. Golby, Aug. 29, 1935	....	4475
149—Letter, C. F. Roycroft to J. M. Golby, Oct. 25, 1935	....	4475
150—Letter, J. M. Golby to C. F. Roycroft, Oct. 29, 1935	....	4476
151—Letter, C. F. Roycroft to J. M. Golby, Oct. 30, 1935	....	4476
154—Letter, C. F. Roycroft to J. M. Golby, Nov. 5, 1935	....	4476
155—Letter, J. M. Golby to C. F. Roycroft, Nov. 6, 1935	....	4476
156—Letter, C. F. Roycroft to J. M. Golby, Nov. 9, 1935	....	4476
157—Letter, J. M. Golby to C. F. Roycroft, Nov. 11, 1935	....	4477

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
158—Letter, C. F. Roycroft to J. M. Golby, Nov. 25, 1935	....	4477
159—Letter, J. M. Golby to Weinstein & Co., Nov. 27, 1935	....	4477
160—Letter, J. M. Golby to Bertram S. Rice, Nov. 27, 1935	....	4477
161—Letter, J. M. Golby to C. F. Roycroft, Dec. 10, 1935	....	4477
164—Letter, J. M. Golby to C. F. Roycroft, Dec. 24, 1935	....	4478
165—Letter, J. M. Golby to C. F. Roycroft, Jan. 27, 1936	....	4478
166—Letter, C. F. Roycroft to J. M. Golby, Jan. 29, 1936	....	4478
167—Telegram, A. M. Post to Roy H. Bjorkman, Inc., June 26, 1935	....	4478
168—Letter, Roy H. Bjorkman to J. M. Golby, June 27, 1935	....	4478
169—Day Letter Telegram, A. M. Post to Roy H. Bjorkman, June 27, 1935	....	4478
170—Day Letter Telegram, A. M. Post to Roy H. Bjorkman, June 28, 1935	....	4479
171—Letter, Roy H. Bjorkman to A. M. Post, June 28, 1935	....	4479
172-A and 172-B—Letter, Roy H. Bjorkman to A. M. Post, Aug. 19, 1935	....	4479
173-A to 173-D—Letter, A. M. Post to Roy H. Bjorkman, Aug. 21, 1935	....	4479
174—Letter, A. M. Post to Roy H. Bjorkman, Sept. 12, 1935	....	4479
175—Letter, J. M. Golby to Roy H. Bjorkman, Oct. 21, 1935	....	4479
176—Letter, R. H. Bjorkman to A. M. Post, Oct. 29, 1935	....	4480
177—Letter, J. M. Golby to R. Bjorkman, Oct. 31, 1935	....	4480

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
178—Letter, J. M. Golby to Ed. A. Fletcher, Apr. 15, 1935	9727	4480
179—Letter, Herbert & Cooper, Inc., to George Gleason, Apr. 17, 1935	....	4480
180—Letter, Myron Herbert to Clare Weinberger, Apr. 2, 1935	....	4480
181—Letter, Ed. Fletcher to J. M. Golby, May 1, 1935	9731	4480
182—Letter, Ed. Fletcher to Mrs. Emma R. Beatie, Apr. 5, 1935	9731	4480
183—Letter, Mrs. Emma Beatie to Ed. Fletcher, Apr. 3, 1935	9731	4481
184—Letter, J. M. Golby to Ed. Fletcher, Aug. 15, 1935	9779	4481
185—Letter, Ed. Fletcher to J. M. Golby, July 23, 1935	9779	4481
186—Letter, J. M. Golby to Ed. Fletcher, July 19, 1935	9779	4481
187—Letter, J. M. Golby to Ed. Fletcher, July 17, 1935	9779	4481
188—Letter, Ed. Fletcher to J. M. Golby, July 16, 1935	9779	4481
189—Letter, J. M. Golby to Ed. Fletcher, August 19, 1935	9979	4482
190—Letter, Ed. Fletcher to J. M. Golby, Aug. 15, 1935	9779	4482
191—Letter, Ed. Fletcher to J. M. Golby, Oct. 19, 1935	9779	4482
192—Letter, Ed. Fletcher to J. M. Golby, May 20, 1935	9779	4482
193—Letter, Ed. Fletcher to Clare Weinberger, May 8, 1935	9779	4482
194—Letter, Clare Weinberger to Ed. Fletcher, May 4, 1935	9779	4482

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
195—Telegram, George M. Gleason to J. M. Golby, May 2, 1935	9779	4482
196—Letter, Ed. Fletcher to Clare Weinberger, May 2, 1935	....	4483
197—Resignation of Clare Anne Shop from Michigan Avenue Guild, May 1, 1935.	.....	4483
198—Letter, Ed. Fletcher to J. M. Golby, Nov. 11, 1935	9779	4483
199—Letter, J. M. Golby to Ed. Fletcher, Nov. 8, 1935	9779	4483
200—Letter, Ed. Fletcher to Mr. J. M. Fahey, Nov. 2, 1935	9779	4483
201—Letter, The Embassy to Ed. Fletcher, Nov. 1, 1935	9779	4483
202—Letter, Ed. Fletcher to J. M. Golby, Oct. 15, 1935	9779	4483
203—Letter, J. M. Golby to Ed. Fletcher, Oct. 11, 1935	9779	4484
204—Letter, Harriet Stein Studio to Ed. Fletcher, Jan. 14, 1935	9779	4484
205—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9779	4484
206—Letter, Ed. Fletcher to Miss Harriet Stein, Jan. 3, 1935	9779	4484
207—Letter, Ed. Fletcher to Miss Harriet Stein, Dec. 31, 1934	9779	4484
208—Letter, Ed. Fletcher to J. M. Golby, Jan. 17, 1935	9779	4484
209—Letter, J. M. Golby to Ed. Fletcher, Jan. 11, 1935	9779	4484
210—First page of letter of J. M. Golby to George Gleason, May 21, 1935	9776	4485
211—Second page of Commission's Exhibit 210	9776	4485

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
212—Letter, J. M. Golby to Ed. Fletcher, Jan. 11, 1935	9776	4485
213—Letter, Fred A. Block to J. M. Golby, Jan. 9, 1935	9776	4485
214—Letter, J. M. Golby to Ed. Fletcher, Jan. 7, 1935	9776	4485
215—Letter, Ed. Fletcher of Michigan Avenue Guild to J. M. Golby, Jan. 4, 1935	9776	4485
216—Letter, Ed. Fletcher to Fred A. Block, Dec. 31, 1934	9776	4485
217—Letter, J. M. Golby to Ed. Fletcher, Nov. 14, 1934	9776	4486
218—Letter, Ed. Fletcher to J. M. Golby, Nov. 12, 1934	9776	4486
219—Letter, J. M. Golby to Ed. Fletcher, Oct. 4, 1935	9776	4486
220—Letter, J. M. Golby to Miss Helen Kindler, Oct. 4, 1935	9776	4486
221—Letter, Ed. Fletcher to J. M. Golby, Oct. 1, 1935	9776	4486
222—Letter, Miss Kindler to J. M. Golby, Oct. 2, 1935	9776	4486
223—Letter, Secretary of Michigan Avenue Guild to George Gleason, Apr. 22, 1935	9782	4487
224—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9709	4487
225—Application of Mrs. Frances Malsh to Michigan Avenue Guild, Dec. 21, 1934.	9511	4487
226—Reply Letter, Ed. Fletcher to Mrs. Frances Malsh, Jan. 24, 1935	9514	4487
227—Letter, Ed. Fletcher of Michigan Avenue Guild to J. M. Golby, Dec. 21, 1934	9709	4487

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
228—Letter, J. M. Golby to Ed. Fletcher, Dec. 18, 1934	9709	4487
229—Letter, J. M. Golby to Ed. Fletcher, Aug. 23, 1934	9709	4487
230—Letter, Ed. Fletcher to J. M. Golby, Aug. 22, 1934	9709	4488
231—Letter, J. M. Golby to Ed. Fletcher, Jan. 8, 1935	9709	4488
232—Letter, Ed. Fletcher to J. M. Golby, Jan. 4, 1935	9709	4488
233—Application for Membership of Emily Naser to Michigan Avenue Guild, Dec. 8, 1934	9755	4488
234—Letter, J. M. Golby to Ed. Fletcher, Nov. 10, 1934	9761	4488
235—Letter, Ed. Fletcher to John T. Shayne & Co., June 17, 1935	9747	4488
236—Letter, A. H. Marshall to A. M. Post, June 13, 1935	9747	4488
237—Letter, A. M. Post to T. J. Considine, undated	9747	4489
238—Letter, A. M. Post to Ed. Fletcher, May 21, 1935	9747	4489
239—Letter, Ed. Fletcher to A. M. Post, May 14, 1935	9747	4489
241—Letter, J. M. Golby to T. J. Considine, Jan. 11, 1935	9747	4489
242—Letter, J. M. Golby to George M. Gleason, Jan. 11, 1935	9747	4489
243-A to 243-J—Resolutions embodying regulations binding upon members of Textile Division of Fashion Originators Guild of America, Inc.	791	4489
245—Letter, A. M. DeLisser to Mr. Grossleight, Jan. 27, 1936	865	4490

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
246-A—Minutes of Meeting of June 16, 1933, of Textile Members of Fashion Originators Guild of America, Inc.	869	4490
246-B—Minutes of Meeting of Oct. 18, 1933.	869	4490
246-C—Minutes of Meeting of Nov. 7, 1934.	869	4490
246-D—Minutes of Meeting of Jan. 8, 1935.	869	4490
246-E—Minutes of Special Meeting of Jan. 25, 1935.	869	4490
246-F—Minutes of Special Meeting of Feb. 11, 1935, of Textile Members.	869	4491
246-G—Minutes of Special Meeting of Feb. 20, 1935, of Textile Members.	869	4491
246-H—Minutes of Regular Meeting of Mar. 5, 1935, of Textile Members.	869	4491
246-I—First page of Minutes, Meeting of Mar. 19, 1935, of Textile Members.	869	4491
246-J—Second page of Minutes, Meeting of Mar. 19, 1935, of Textile Members.	869	4491
246-K—First page of Minutes, Meeting of Apr. 18, 1935, of Textile Members.	869	4491
246-L—Second page of Minutes, Meeting of Apr. 18, 1935, of Textile Members.	869	4492
246-M—Minutes of Meeting of May 8, 1935, of Textile Members.	869	4492
246-N—First page of Minutes, Meeting of June 6, 1935, of Textile Members.	869	4492
246-O—Second page of Minutes, Meeting of June 6, 1935, of Textile Members.	869	4492
246-P—Minutes of Meeting of June 25, 1935, of Textile Members.	869	4492
246-Q—Minutes of Meeting of July 16, 1935, of Textile Members.	869	4492
246-R—First page of Minutes, Meeting of July 23, 1935, of Textile Members.	869	4492
246-S—Second page of Minutes, Meeting of July 23, 1935.	869	4493

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
246-T—Third page of Minutes, Meeting of July 23, 1935	869	4493
246-U—Fourth page of Minutes, Meeting of July 23, 1935	869	4493
246-V—Fifth page of Minutes, Meeting of July 23, 1935	869	4493
246-W—Minutes of Meeting of Aug. 21, 1935, of Textile Associates Committee	869	4493
246-X—First page of Minutes, Meeting of Sept. 28, 1935, of Textile Members	869	4493
246-Y—Second page of Minutes, Meeting of Sept. 28, 1935	869	4494
246-Z—First page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-AA—Second page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-BB—Third page of Minutes, Meeting of Nov. 18, 1935	869	4494
246-CC—Minutes of Meeting of Jan. 20, 1936, of Embroidery Group	869	4494
246-DD—First page of Minutes of Meeting of Jan. 22, 1936, of Embroidery Group.	869	4494
246-EE—Second page of Minutes of Meeting of Jan. 22, 1936, of Embroidery Group.	869	4495
247—Minutes of Meeting of February 3, 1936, of Embroidery Group	872	4495
248-A and 248-B—Minutes of Meeting of Feb. 21, 1936, of Textile Division	873	4495
249-A and 249-B—Minutes of Meeting of Feb. 3, 1936, of Screen Print Group	875	4495
250—Form of Declaration of Co-operation in use by Textile Division of Fashion Originators Guild of America, Inc.	854	4495
251—Telegram, J. M. Golby to George Gleason, May 2, 1935	....	4495

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
252—Letter to Members of Michigan Avenue Guild, May 4, 1935, by George Gleason.	....	4496
253-A and 253-B—Letter, J. M. Golby to George Gleason, May 31, 1935.....	....	4496
254-A—Letter, Michigan Avenue Guild to A. M. Post, May 24, 1935.....	....	4496
254-B—List of Non-Guild Manufacturers annexed to 254-A.....	....	4496
255—Letter, A. H. Marshall to George Gleason, May 25, 1935.....	....	4496
256-A and 256-B—Two-page letter of A. M. Post to A. H. Marshall, May 27, 1935..	....	4496
257-A to 257-C—Memorandum to Board of Governors of Fashion Originators Guild of America, Inc., signed by A. M. Post.	....	4496
258—Letter, Ed. Fletcher to J. M. Golby, June 10, 1935.....	....	4497
259—Letter, J. M. Golby to Ed. Fletcher, June 13, 1935.....	....	4497
260—Letter, Ed. Fletcher to J. M. Golby, June 17, 1935.....	....	4497
261—Declaration of Co-operation of Morris B. Sacks to Fashion Originators Guild of America, Inc., June 20, 1935.....	....	4497
262—Letter, J. M. Golby to Ed. Fletcher, June 21, 1935.....	....	4497
263-A and 263-B—Letter, A. H. Marshall to A. M. Post, June 25, 1935.....	....	4497
264—Letter, Ed. Fletcher to J. M. Golby, June 27, 1935.....	....	4497
265-A and 265-B—Letter, J. M. Golby to A. H. Marshall, June 27, 1935.....	....	4498
266—Letter, A. H. Marshall to J. M. Golby, July 1, 1935.....	....	4498

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
267—Letter, A. M. Post to A. H. Marshall, July 3, 1935	....	4498
268—Letter, A. H. Marshall to A. M. Post, July 6, 1935	....	4498
269—Letter, A. M. Post to A. H. Marshall, July 8, 1935	....	4498
270—Letter, J. M. Golby to Ed. Fletcher, July 11, 1935	....	4498
271—Letter, Marshall to A. M. Post, July 16, 1935	....	4498
272—Letter, A. M. Post to A. H. Marshall, July 26, 1935	....	4499
273—Letter, Marshall to A. M. Post, July 26, 1935	....	4499
274—Letter, J. M. Golby to Ed. Fletcher, Aug. 2, 1935	....	4499
275—Letter, Ed. Fletcher to J. M. Golby, Aug. 6, 1935	....	4499
276—Letter, Ed. Fletcher to J. M. Golby, Aug. 6, 1935	....	4499
277-A—Letter, J. M. Golby to Ed. Fletcher, Aug. 13, 1935	....	4499
277-B to 277-F—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Aug. 12, 1935.	....	4499
278—Letter, Ed. Fletcher to J. M. Golby, Aug. 15, 1935	....	4500
279—Letter, J. M. Golby to Ed. Fletcher, Aug. 19, 1935	....	4500
280—Letter, Ed. Fletcher to J. M. Golby, Sept. 7, 1935	....	4500
281-A and 281-B—Report for Feb., 1936, "Manufacturers and Number of Complaints Handled for Them"	....	4500

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
282-A and 282-B—Report for Mar., 1936, "Manufacturers and Number of Complaints Handled for Them"		4500
283—Advertisement in Women's Wear, Jan. 6, 1936, inserted by Textile Division	883	4500
284—Advertisement in Women's Wear, Dec. 23, 1935, by Industrial Design Registration Bureau of National Federation of Textiles, Inc.	891	4500
285-A to 285-E—List of dress manufacturers who signed Declaration of Co-operation	888	4501
286—Return invoice, "The Palace," Sept. 27, 1935	1092	4501
287—Credit return invoice of Jordan, Marsh & Co., Oct. 9, 1935	1095	4501
288—Post card, return goods notice, Marshall Field to Melba Dress, Oct. 10, 1935	1099	4501
289—Return goods notice of Kresge to Melba Dress, Oct. 17, 1935	1099	4501
290—Return goods notice of Marshall Field to Melba Dress, Oct. 10, 1935	1099	4501
291—Credit charge of Marshall Field to Melba Dress, Oct. 19, 1935	1101	4501
292—Letter, Melba Dress to Marshall Field, Oct. 8, 1935	1105	4502
293—Letter, Marshall Field to Melba Dress, Oct. 10, 1935	1105	4502
295—Return invoice of Snellenberg, Oct. 19, 1935	1113	4502
296—Letter, Klines to Melba Dress, Oct. 11, 1935	1115	4502
297—Receipt for return of Klines, Sept. 27, 1935	1119	4502
298—Receipt for return of Klines, Sept. 23, 1935	1119	4502

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
299—Letter, Carson, Pirie, Scott & Co. to Melba Dress, Aug. 4, 1935	1121	4502
300—Return invoice, Carson, Pirie, Scott & Co. to Melba Dress, Oct. 18, 1935	1123	4503
301-A—Letter, The Palace Clothing Co. to Melba Dress, Oct. 25, 1935	1125	4503
301-B—Credit memo, The Palace to Melba Dress	1125	4503
302—Letter, Leah Rubinstein to Melba Dress, Oct. 28, 1935	1127	4503
303-A—Order, Frank & Seder to Melba Dress, Aug. 10, 1935	1139	4503
303-B—Letter, Frank & Seder to Melba Dress, Nov. 1, 1935	1139	4503
303-C—Letter, Melba Dress to Frank & Seder, Nov. 2, 1935	1139	4503
304—Order, Philip Sapadin to Samuel Hoffman, Inc., Aug. 29, 1935	1146	4504
306—Order, Gimbel Bros. to Noxall Co., Sept. 17, 1935	1621	4504
307—Return memo. of R. H. White to Noxall Co., Oct. 30, 1935	1639	4504
308—Letter, Noxall Co. to R. H. White, Nov. 1, 1935	1639	4504
309—Letter, R. H. White to Noxall Co., Nov. 11, 1935	1639	4504
310—Return invoices, Kaufmann's to Noxall Co., Oct. 5, 1935	1646	4504
311—Return invoices, Kaufmann's to Noxall Co., Oct. 8, 1935	1648	4504
312—Return invoices from Kaufmann's to Noxall Co., Oct. 12, 1935	1648	4505
313—Letter, Kaufmann's to Noxall Co., Oct. 5, 1935	1646	4505

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
314—Letter, Noxall Co. to Kaufmann's, Oct. 14, 1935	1647	4505
315—Letter, Kaufmann's to Noxall Co., Oct. 15, 1935	1646	4505
316—Letter, Joseph Horne Co. to Noxall Co., Oct. 4, 1935	1658	4505
317—Letter, Noxall Co. to Joseph Horne & Co., Oct. 5, 1935	1658	4505
318—Return invoice, Lurie's to Noxall Co., Oct. 9, 1935	1661	4505
319—Letter, Lurie's to Noxall Co., Oct. 9, 1935	1661	4506
320—Letter, Noxall Co. to Lurie's, Oct. 14, 1935	1661	4506
321—Return slip, Schunemans & Manheimers to Noxall Co., Feb. 10, 1936	1671	4506
322—Letter, Noxall Co. to Schunemans & Manheimers, Feb. 13, 1936	1671	4506
323—Express Notice to Noxall Co. that goods returned were in New York, Mar. 14, 1936	1671	4506
324—Letter, Schunemans & Manheimers to Noxall Co., Mar. 16, 1936	1671	4506
325—Letter, Noxall Co. to Schunemans & Manheimers, Mar. 18, 1936	1671	4506
326—Letter, Schunemans & Manheimers to Noxall Co., Apr. 11, 1936	1671	4507
327—Letter, Noxall Co. to Railway Express, Apr. 14, 1936	1671	4507
328—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 14, 1936	1671	4507
329—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 19, 1936	1671	4507
330—Letter, Noxall Co. to Schunemans & Manheimers, Apr. 28, 1936	1671	4507

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
331—Letter, Kaufmann Department Stores to Trussel Dress Co., Oct. 9, 1935	1914	4507
332—Letter, The Jones Store to Trussel Dress Co., Oct. 26, 1935	1934	4507
333—Letter, Trussel Dress Co. to The Jones Store, Oct. 30, 1935	1934	4508
334—Letter, John Wanamaker, Philadelphia, to Trussel Dress Co., Nov. 8, 1935	1939	4508
335—Letter, Fashion Originators Guild of America, Inc., to Trussel Dress Co., June 24, 1936	1950	4508
336-A—Letter, Wm. Filene's Sons Co. to Excellent Dress Co., Nov. 6, 1935	....	4508
336-B—Letter, Excellent Dress Co. to Wm. Filene's Sons Co., Nov. 6, 1935	....	4508
349—Invoice credit from Wm. Filene's Sons Co. to Excellent Dress, Nov. 8, 1935	3000	4508
352-B—Letter, Lombardy Frocks, Inc., to Wm. Filene's Sons Co., Oct. 15, 1935	2996	4508
352-C—Notice of return from Wm. Filene's Sons Co. to Lombardy Frocks, Inc., undated	2991	4509
352-D—Notice of return from Wm. Filene's Sons Co. to Lombardy Frocks, Inc., undated	2991	4509
357—List of Guild houses with whom Wm. Filene's Sons Co. did business during 1935-1936	2439	4509
358—Letter to Guild manufacturers as to Filene's injunction action, Mar. 9, 1936	2820	4509
359—Fashion Originators Guild of America, Inc., notice to Wm. Filene's Sons Co., Nov. 23, 1935	3017	4509
360—List of dresses returned to manufacturers by R. H. White from Sept. 25, 1935, to Jan. 31, 1936	3169	4509

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
361-A—Letter, Fashion Originators Guild of America, Inc., to R. H. White, Nov. 7, 1935.	3190	4509
361-B—Letter, Fashion Originators Guild of America, Inc., to R. H. White, Nov. 7, 1935.	3190	4510
362—Strawbridge & Clothier Declaration of Co-operation, June 30, 1933	3337	4510
363—Letter, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 30, 1933		4510
364—Letter, Strawbridge & Clothier to A. M. Post, Feb. 6, 1936	3443	4510
366—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Feb. 4, 1936	3590	4510
367-A—New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store	3594	4510
367-B—New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store	3594	4510
368—Letter, Roth, Jackson & Immerman to Strawbridge & Clothier, June 29, 1933.	3727	4510
369—Letter, Bender & Hamburger to Strawbridge & Clothier, June 29, 1933	3727	4511
370—Form Letter, Myron Herbert & Charles Cooper to Strawbridge & Clothier, June 27, 1933	3727	4511
371—Form Letter, Kaliman & Cohn, Inc., to Strawbridge & Clothier, June 29, 1933.	3727	4511
372—Form Letter, Cohn & Holt to Strawbridge & Clothier, June 29, 1933	3727	4511
373—Form Letter, Milgrim to Strawbridge & Clothier, June 29, 1933	3727	4511

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
374—Form Letter, Edward Gerrick Co., Inc., to Strawbridge & Clothier, June 28, 1933	3727	4511
375—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 24, 1934	3743	4511
376—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 25, 1934	3743	4511
377-A—Sketch enclosed in Exhibit 377-B	3746	4512
377-B—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, June 18, 1934	3746	4512
378-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, June 21, 1934	3746	4512
378-B—Letter, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 23, 1934	3746	4512
379—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, July 1, 1934	3750	4512
380-A—Letter, J. M. Golby to Strawbridge & Clothier, July 28, 1934	3750	4512
380-B—Reply, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., Aug. 14, 1934	3750	4512
381-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Jan. 24, 1935	3750	4512
381-B—Reply, Strawbridge & Clothier to Fashion Originators Guild of America, Inc., Feb. 1, 1935	3750	4513

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
382-A—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Sept. 14, 1935	3768	4513
382-B—Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Sept. 13, 1935	3768	4513
382-C—Sketches attached to Exhibit 382-B	3768	4513
382-D—Sketches attached to Exhibit 382-B	3768	4513
382-E—Sketches attached to Exhibit 382-B	3768	4513
383—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier—Bon Ray Dance Frock, Oct. 10, 1935	3768	4513
384—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, undated—LaRue Dresses, Inc.	3768	4513
385—Form Letter, Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, Oct. 29, 1935—Spectator Sports	3768	4514
386—Letter, A. M. Post to Charles Taylor of Strawbridge & Clothier, Nov. 8, 1935	....	4514
387-A—Letter, A. M. Post to Charles Taylor, Nov. 23, 1935	....	4514
387-B—Letter, A. M. Post to Charles Taylor, Nov. 23, 1935	....	4514
388—Letter, A. M. Post to Charles Taylor, Nov. 25, 1935	....	4514
389—Letter, Charles Taylor to A. M. Post, Nov. 29, 1935	....	4514
390—Letter, A. M. Post to Charles Taylor, Dec. 2, 1935	....	4514
391—Letter, Fashion Originators Guild of America, Inc., to Charles Taylor, Dec. 16, 1935	....	4515

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
392-A—Letter, A. M. Post to Charles Taylor, Dec. 26, 1935	....	4515
392-B—Reply Letter, Charles Taylor to A. M. Post, Dec. 28, 1935	....	4515
393-A—Letter, A. M. Post to Charles Taylor, Jan. 13, 1936	....	4515
393-B—Reply Letter, Charles Taylor to A. M. Post, Jan. 17, 1936	....	4515
394-A and 394-B—Letter, A. M. Post to Charles Taylor, Jan. 18, 1936	....	4515
395—Letter, Charles Taylor to A. M. Post, Jan. 20, 1936	....	4515
396-A and 396-B—Letter, A. M. Post to Charles Taylor, Jan. 18, 1936	....	4516
397—Letter, A. M. Post to Charles Taylor, Jan. 27, 1936	....	4516
398-A and 398-B—Letter, A. M. Post to Charles Taylor, Jan. 29, 1936	....	4516
398-C and 398-D—Form letter re piracy from A. M. Post to retail stores, Nov. 5, 1935	....	4516
398-E and 398-F—Letter, A. M. Post to H. O. Bergdahl, Nov. 21, 1935	....	4516
399-A and 399-B—List of manufacturers, members of the Fashion Originators Guild of America, Inc., Spring, 1935	3820	4516
400—Table of orders, Feb. 15, 1936, to Mar. 5, 1936, date placed, where and amounts, Department 331 of Strawbridge & Clothier	3884	4516
401—Table of cost of goods that Strawbridge & Clothier couldn't get from Jan. 18, 1936, to Jan. 31, 1936	3919	4517

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
402—Comparative increase or decrease for Department 350 of Strawbridge & Clothier—1936 as against 1935—in percentages	3948	4517
403—Retail price line comparison, 1935 vs. 1936—Department 350 of Strawbridge & Clothier	3949	4517
410—List of F. O. G. of A. manufacturers and amount of business transacted—Feb. 1, 1935, to Jan. 31, 1936—with Strawbridge & Clothier	3979	4517
411—Price line comparison—Feb.-June, 1935-1936—Department 331 of Strawbridge & Clothier	3983	4517
412—Retail price line comparison—Feb.-June, 1935-1936—Department 338 of Strawbridge & Clothier	3983	4517
413—Retail price line comparison—Feb.-June, 1935-1936—Department 358 of Strawbridge & Clothier	3983	4517
414—Retail price line comparison—Feb.-June, 1935-1936—Department 371 of Strawbridge & Clothier	3983	4518
415—Figures on loss of business, Feb.-June, 1935-1936, of Strawbridge & Clothier	3983	4518
416—Letter, Strawbridge & Clothier to C. H. D. Robbins, Mar. 5, 1936	4020	4518
417—Letter, Strawbridge & Clothier to Herman Biespeil, Mar. 5, 1936	4022	4518
418—Letter, Strawbridge & Clothier to Frank-Starr Friedlander, Mar. 5, 1936	4022	4518
419—Letter, Strawbridge & Clothier to Robinson Brothers, Mar. 5, 1936	4022	4518

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
420—Letter, Strawbridge & Clothier to Harry Frank, Mar. 5, 1936	4022	4518
421—Letter, Strawbridge & Clothier to Henry Gans, Mar. 5, 1936	4022	4519
422—Letter, Strawbridge & Clothier to Goldstein & Entin, Mar. 5, 1936	4022	4519
423—Letter, Strawbridge & Clothier to Gardner Schwartz, Mar. 5, 1936	4022	4519
434—Recapitulation of returns, Department 491 of Strawbridge & Clothier, Aug. 12, 1935, to Jan. 16, 1936	5096	4519
435—Return invoice, Strawbridge & Clothier to Brenner & Weinstein, Dec. 23, 1935.	5096	4519
436—Return invoice, Strawbridge & Clothier to Tobia Dress, Dec. 16, 1935	5096	4519
437—Return invoice, Strawbridge & Clothier to Jomax Frocks, Dec. 16, 1935	5096	4519
438—Return invoice, Strawbridge & Clothier to Palma Frocks, Sept. 11, 1935	5096	4520
439—Return invoice, Strawbridge & Clothier to New Emporium Dress, Dec. 5, 1935.	5096	4520
440—Return invoice, Strawbridge & Clothier to Apex Dress, Jan. 16, 1936	5096	4520
441—Return invoice, Strawbridge & Clothier to Silver-Pom Dress, Aug. 12, 1935	5096	4520
442—Return invoice, Strawbridge & Clothier to Lucky Style, Oct. 16, 1935	5096	4520
443—Return invoice, Strawbridge & Clothier to Puritan Dress, Nov. 26, 1935	5096	4520
444—Return invoice, Strawbridge & Clothier to Feinberg & Weisen, Sept. 11, 1935.	5096	4520
445—Return invoice, Strawbridge & Clothier to Tiljane Costume, Sept. 11, 1935	5096	4521

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
446—Return invoice, Strawbridge & Clothier to Gladdy True Size, Sept. 11, 1935....	5096	4521
450-A to 450-P—Sixteen pages constituting a list of resources sent to Strawbridge & Clothier by the American Merchandising Corporation.....	5101	4521
451-A and 451-B—Form Letter, Maurice Rentner to A. H. Burchfield of Joseph Horne Co., Mar. 23, 1932.....	5231	4521
452—Reply to 451, A. E. Oxenreiter of Joseph Horne Co. to Fashion Originators Guild of America, Inc., Mar. 29, 1932.....	5233	4521
453—Answer to 452, Fashion Originators Guild of America, Inc., to A. E. Oxenreiter.....	5233	4521
454-A to 454-M—Letter, Maurice Rentner to H. C. Gutsche of Joseph Horne Co. with form of agreement annexed, Dec. 16, 1932.....	5236	4521
455-A and 455-B—Letter, Fashion Originators Guild of America, Inc., to H. C. Gutsche, June 19, 1933.....	5239	4522
456-A and 456-B—Memorandum of Guild's resolution adopted at Fashion Originators Guild of America, Inc., meeting on June 12, 1933.....	....	4522
457—Declaration of Co-operation of Joseph Horne Co. signed by W. H. Burchfield, Vice-President.....	5245	4522
458—Letter, Joseph Horne Co. to Fashion Originators Guild of America, Inc., June 27, 1933.....	5246	4522
460—List of returns from Feb. 21, 1935, to June 23, 1936, of Joseph Horne Co...	5261	4522

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
470—List of houses from whom purchases were made in 1935 and 1936 by William Taylor Son & Co.	5295	4522
471—List of purchases of Guild houses by William Taylor Son & Co.	5297	4522
472—Amount of orders outstanding at time of red card by William Taylor Son & Co.	5300	4523
473—Figures showing loss and effect of red card on the business, 1936 or 1935, of William Taylor Son & Co.	5317	4523
474—Telegram to Fashion Originators Guild of America, Inc., from The Bailey Co., The Lindner Co., The Halle Bros. Co., William Taylor Son & Co., The Higbee Co., The May Co. of Cleveland, Ohio.	5341	4523
475—Declaration of Co-operation from J. L. Hudson Co. to Fashion Originators Guild of America, Inc., June 22, 1933.	5932	4523
476—Letter, Fashion Originators Guild of America, Inc., to J. L. Hudson Co., Feb. 14, 1936	5947	4523
477-A—Registered letter of J. L. Hudson Co. to Fashion Originators Guild of America, Feb. 27, 1936	5941	4523
477-B—Return receipt for the registered letter (477-A)	5941	4523
478-A—List of Guild houses from whom J. L. Hudson Co. bought dresses during fiscal year 1935 (to Jan. 31, 1936)	5966	4524
478-B—List of suit Guild houses as 478-A.	5968	4524
478-C—List of Guild houses used in better coats and evening wraps as 478-A	....	4524

COMMISSION'S EXHIBITS (continued)	Offered or Admitted. Folio	Printed Page
479-A—J. L. Hudson Co. list of outstanding orders with Fashion Originators Guild of America, Inc., members as of Feb. 15, 1936	5974	4524
479-B and 479-C—List of merchandise on order with Guild houses at time of red carding as of Feb. 15, 1936, by J. L. Hudson Co.	5974	4524
480-A and 480-B—Letter, Maurice Rentner to L. B. Sappington, June 16, 1933	6005	4524
480-C and 480-D—Memorandum on Guild's Resolution adopted June 12, 1933	6005	4524
481—Memorandum from Tauff to Sappington, analysis of Department 338 of J. L. Hudson Co., Aug. 3, 1936	6025	4524
482-A and 482-B—Memorandum from Tauff to Sappington—analysis of Department 351, J. L. Hudson Co. (only figures)	6035	4525
483-A and 483-B—Effect of red carding in Jr. Miss Department of J. L. Hudson Co. Memorandum from Dunham to Sappington, dated Aug. 1, 1936 (only figures)	6040	4525
484—Net price sales in dress departments of J. L. Hudson Co. for year 1935	6044	4525
485—Comparative study of Fashion Originators Guild of America, Inc., affected departments showing percentages	6044	4525
486—Telegram, June 17, 1933, H. O. Bergdahl to J. L. Hudson Co.	6059	4525
487—Letter, L. B. Sappington to J. Goldston, Jan. 31, 1935	6064	4525
488-A and 488-B—Letter, A. M. Post to L. B. Sappington, Feb. 4, 1936	6066	4526

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
489—Telegram, L. B. Sappington to H. O. Bergdahl, May 8, 1935	6070	4526
490—Telegram, H. O. Bergdahl to L. B. Sappington, May 8, 1935	6072	4526
491-A and 491-B—Letter, L. B. Sappington to H. O. Bergdahl, May 9, 1935	....	4526
492-A to 492-C—Letter, A. M. Post to M. F. Dowley, Nov. 18, 1935	6074	4526
493-A and 493-B—Memorandum, G. R. McDonald to M. F. Dowley, Nov. 16, 1935.	6118	4526
494-A and 494-B—Letter, Oscar Webber to H. O. Bergdahl, Dec. 5, 1935	6080	4526
495—Request for return slip from Fashion Originators Guild of America, Inc., to J. L. Hudson Co., No. 2330	6083	4527
496 for Iden.—Letter, H. L. Bergdahl to L. B. Sappington, Apr. 10, 1935	6245	4527
497-A to 497-C for Iden.—Letter, H. L. Bergdahl to Oscar Webber, Dec. 4, 1935	6255	4527
498-A to 498-E—Copies of order blanks of J. L. Hudson Co.	6263	4527
499-A to 499-C—Letter, A. M. Post to Oscar Webber, Feb. 11, 1936	6294	4527
500—Telegram, Fashion Originators Guild of America, Inc., to Mr. Wilton	6294	4527
501-A and 501-B—Letter, L. B. Sappington to A. M. Post, Feb. 8, 1936	6294	4527
502—Telegram, A. M. Post to L. B. Sappington, Feb. 10, 1936	6294	4528
503—Telegram, Oscar Webber to A. M. Post, Feb. 10, 1936	6294	4528
504—Analysis of piece sales at various prices for Department 358 of J. L. Hudson Co. for 1935	6309	4528

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
505—Analysis of piece sales at various prices for Department 369 of J. L. Hudson Co. for 1935	6313	4528
506—Analysis of piece sales at various prices for Department 338 of J. L. Hudson Co. for 1935	6317	4528
507—Analysis of piece sales for Department 369 at various prices for the years 1935 and 1936	6321	4528
508—Net piece sales for all departments of J. L. Hudson Co. for the spring of 1935.	6324	4528
509—Net piece sales for all departments of J. L. Hudson Co. for the spring of 1936.	6324	4529
510—List of Fashion Originators Guild of America, Inc., houses with whom Department 371 Junior Miss Department of J. L. Hudson Co. did business in 1935	6850	4529
511—Telegram, W. E. Simmons to Bernard Appel, Inc., Mar. 4, 1935	7064	4529
512—Telegram, Bernard Appel, Inc., to W. E. Simmons, Mar. 5, 1935	7064	4529
513—Letter, W. E. Simmons to Bernard Appel, Inc., Mar. 14, 1935	7064	4529
514—Letter, Bernard Appel, Inc., to W. E. Simmons, Mar. 15, 1935	7064	4529
515-A and 515-B—Letter, Bernard Appel, Inc., to W. E. Simmons, Mar. 27, 1935	7064	4530
517-A and 517-B—Letter, J. Goldston to L. B. Sappington, Mar. 16, 1935	7115	4530
518—Letter, L. B. Sappington to J. Goldston	7115	4530
519—Letter, J. Goldston to L. B. Sappington, Mar. 25, 1935	7115	4530

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
520-A and 520-B—Letter, A. M. Post to L. B. Sappington, Apr. 2, 1935	7115	4530
521—Letter, A. M. Post to L. B. Sappington, Apr. 3, 1935	7115	4530
522—Report of arbitrators that Appel garment is copy of creation by Townley Frocks, Inc.	7115	4531
523—List of manufacturers who make better dresses, taken from Fairchild's Directory for fall of 1936 by type and price lines	7223	4531
525—List of $10.75 dress houses taken from Fairchild's Directory for fall of 1936	7241	4531
526—Letter, A. M. Post to Ernest Kern & Co., Feb. 7, 1936	....	4531
527-A—Declaration of Co-operation in Anti-Piracy between Mandel Bros. and the Fashion Originators Guild of America, Inc.	7498	4531
527-B—Letter, Mandel Bros. to Fashion Originators Guild of America, Inc., June 23, 1933	7498	4531
528-A and 528-B—Letter, A. M. Post to Mandel Bros., Nov. 6, 1935	7616	4532
529—Letter, Henry Wyzanski of Mandel Bros. to A. M. Post, Sept. 13, 1935	7520	4532
530-A to 530-B—Letter, A. M. Post to Henry Wyzanski, Sept. 18, 1935	7522	4532
531-A and 531-B—Telegram, Henry Wyzanski to A. M. Post, June 12, 1936	7550	4532
536—Letter, Ed. Schuster & Co., Inc., to Fashion Originators Guild of America, Inc., July 8, 1933	7795	4532

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
537—Postcard to Mr. Ralph T. Friedmann, c/o Ed. Schuster & Co., Inc., July 21, 1933, from J. M. Golby, Executive Secretary	7795	4532
538—Letter, Mar. 21, 1935, to Mr. Al. Post, signed Ralph T. Friedmann	7818	4533
539-A, 539-B and 539-C—Letter, Mar. 23, 1935, to Mr. Ralph T. Friedmann from Albert M. Post	7826	4533
539-D—Card form, date line blank, addressed to Fashion Originators Guild of America, Inc.	7826	4533
539-E and 539-F—Two-page mimeographed form letter	7826	4533
540-A and 540-B—Letter, July 1, 1935, to Mr. Ralph T. Friedmann by Albert M. Post	7832	4533
542—Tabulation headed "Returns of dresses to vendors because Guild stated dresses were copies"	7861	4534
543-A, 543-B and 543-C—Letter, Sept. 5, 1935, to Mr. Louis Libman, Ed. Schuster & Co., Inc., signed Albert M. Post	7870	4534
544—Letter, Sept. 17, 1935, to Mr. Albert M. Post, signed Louis Liberman	7872	4534
545-A and 545-B—Letter to Mr. Louis Leiberman, signed by Albert M. Post	7880	4534
546—Letter, Jan. 20, 1936, to Mr. Albert M. Post, signed Louis Liberman	7882	4534
547-A, 547-B and 547-C—Letter to Mr. Louis Liberman, Jan. 23, 1936, signed Albert M. Post	7896	4535
548—Telegram, Feb. 5, 1936, to Louis Liberman, from Albert M. Post	7898	4535

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
549—Newspaper clippings, one "Dress Guild Cancels 3 Store Agreements," from "N. Y. Times—2/12/36"; the other, "Urges Further Study by Critics of FOGA," from "Women's Wear."	7901	4535
550-A—Letter, Feb. 11, 1936, to Ed. Schuster & Co., signed Albert M. Post	7909	4535
550-B—Form headed "Declaration of Co-operation in Anti-Piracy Between (blank) and The Fashion Originators Guild of America, Inc."	7909	4535
551—Tabulation, "Exhibit C. Orders for dresses which were outstanding as of February 11, 1936, from Guild members," etc.	7913	4536
552—Tabulation, "Summary of dresses on hand in six retail price lines February 10 to July 6, 1935, and 1936, combined for Departments 57 and 63"	7934	4536
553-A—Letter, Sheila-Lynn, Inc., July 31, 1936, to Ed. Schuster Co.	7937	4536
553-B—Blank form of Declaration of Co-operation in Anti-Piracy between Retail Store and Fashion Originators Guild of America, Inc.	7937	4536
555-A and 555-B—Two sheets entitled "List of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63—Misses Dresses"	7974	4537
557—Declaration of Co-operation in Anti-Piracy between Boston Store and The Fashion Originators Guild of America, signed by W. L. Rowse	8194	4537

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
558—"Return Made by Boston Store to Vendors'. Dresses Alleged to be Copies from Sept. 1935 to Feb. 1936"	8217	4537
560—Letter of Associated Merchandising Corporation Retail Research Association, Apr. 10, 1935, to Mr. W. L. Rowse.	8251	4537
561—Letter of Associated Merchandising Corporation Retail Research Association, Apr. 15, 1935, to The Boston Store	8251	4537
562-A and 562-B—Letter, May 13, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
563-A and 563-B—Letter, July 3, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
564—Letter, October 4, 1935, to Mr. N. B. Goldstein, Boston Store, signed H. O. Bergdahl	8251	4538
565-A and 565-B—Letter, November 19, 1935, to Mr. Vactor Chambers, signed Albert M. Post	8251	4538
566—Letter, Nov. 25, 1935, to Mr. W. L. Rowse, signed H. O. Bergdahl	8251	4538
567-A—Mimeographed letter, Nov. 27, 1935, to Mr. W. L. Rowse, Boston Store, signed H. O. B.	8251	4538
567-B, 567-C, 567-D and 567-E—Mimeographed pages headed "F.O.G.A. Questions and Replies"	8251	4538
568—Mimeographed letter, Jan. 6, 1936, to Boston Store, signed Jack Goldston	8257	4539
572—Letter, June 17, 1935, to Mr. W. L. Rowse, signed J. M. Golby	8257	4539

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
573-A and 573-B—List of members of the Fashion Originators Guild of America, Inc., from whom purchases have been made during the period Feb. 1, 1935 to July 31, 1936	8269	4539
575—Page 12, The Milwaukee Journal of Wednesday, Aug. 21, 1935, containing advertisement of Boston Store	8284	4539
576—Page 20, The Milwaukee Journal, Sept. 19, 1935, containing advertisement of Boston Store	8284	4540
577—Page 5, The Milwaukee Sentinel, Oct. 5, 1935, containing advertisement of Boston Store	8284	4540
578—Page 2, The Milwaukee Journal, Oct. 18, 1935, containing advertisement of Boston Store	8284	4540
579—Page numbered in upper left-hand corner "VII," Sunday, Oct. 2, 1935, containing advertisement of Boston Store.	8284	4540
580—Page 8, Milwaukee Sentinel, Nov. 2, 1935, containing advertisement of Boston Store	8284	4540
581—Page 7, Milwaukee Sentinel, Dec. 25, 1935, containing advertisement of Boston Store	8284	4540
582—Page 9, The Milwaukee Journal, Dec. 27, 1935, containing advertisement of Boston Store	8284	4541
583—Page of The Milwaukee Journal, Jan. 31, 1936, containing advertisement of Boston Store	8284	4541
584—E-page 3, Milwaukee Sentinel, Mar. 1, 1936, containing advertisement of Boston Store	8284	4541

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
585—Page 21, The Milwaukee Journal, Mar. 20, 1936, containing advertisement of Boston Store	8284	4541
586—Page 15, The Milwaukee Journal, Mar. 15, 1936, containing advertisement of Boston Store	8284	4541
587—Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936"	8341	4541
588—Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936"	8341	4541
589—Letter, Aug. 14, 1936, to Mr. Barney Gisnet, signed The Herzfeld-Phillipson Co.	8366	4542
590—Letter of Louise Mulligan, Inc., Aug. 15, 1936, to The Herzfeld-Phillipson Company	8366	4542
591—Report, "Louise Mulligan Dress Sales, Department 374," dated Aug. 22, 1936	8468	4542
592—Letter, R. H. Bjorkman to J. M. Golby, Dec. 28, 1932	8498	4542
593—Letter, R. H. Bjorkman to J. M. Golby, Dec. 30, 1932	8510	4542
594—Letter, J. M. Golby to R. H. Bjorkman, Jan. 2, 1933	8515	4542
595—Telegram to Fashion Originators Guild of America, Inc., from R. H. Bjorkman, Jan. 7, 1933	8518	4543
597—Letter, Dec. 24, 1932, J. M. Golby to R. H. Bjorkman	8523	4543
598-A to 598-H—Letter, J. M. Golby to R. H. Bjorkman with Uptown Retail Guild, minutes enclosed	8530	4543

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
599-A—Letter, Perry Snyder of Powers Mercantile Co. to R. H. Bjorkman, Jan. 17, 1933	8550	4543
600—Certificate of Organization of Minneapolis Retail Fashion Guild	8562	4543
601-A and 601-B—Declaration of Co-operation between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.	8571	4543
602—Letter from members of Minneapolis Ready to Wear Association to Fashion Originators Guild of America, Inc., Feb. 1, 1933	....	4544
603—Letter, R. H. Bjorkman to J. M. Golby, Feb. 1, 1933	....	4544
604—Letter, D. J. Larson of Dayton Company to R. H. Bjorkman, Jan. 25, 1933	....	4544
605—Letter, Dayton Company to Fashion Originators Guild of America, Inc., Jan. 24, 1933	....	4544
606—Letter, J. M. Golby to R. H. Bjorkman, Feb. 6, 1933	....	4544
607-A and 607-B—Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, Feb. 2, 1933	....	4544
608-A and 608-B—Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, Feb. 4, 1933	....	4545
609—Letter, J. M. Golby to R. H. Bjorkman, Feb. 7, 1933	....	4545
610—Telegram, Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Mar. 1, 1933	....	4545

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
611—Letter, R. H. Bjorkman to Fashion Originators Guild of America, Inc., June 21, 1933	....	4545
612—Letter, R. H. Bjorkman to J. M. Golby, July 29, 1933	....	4545
613-A and 613-B—Letter, J. M. Golby to R. H. Bjorkman, Aug. 3, 1933	....	4545
614—Letter, J. M. Golby to R. H. Bjorkman, Aug. 4, 1933	....	4545
615-A and 615-B—Letter, R. H. Bjorkman to J. M. Golby, Aug. 7, 1933	.....	4546
616—Letter, R. H. Bjorkman to J. M. Golby, Aug. 9, 1933	....	4546
617—Letter, J. M. Golby to R. H. Bjorkman, Aug. 9, 1933	.....	4546
618—Letter, Louis Mallas, Chairman Junior Miss Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Oct. 25, 1933	....	4546
619—Telegram, J. M. Golby of Uptown Retail Guild Annex of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Nov. 13, 1933	....	4546
620—Letter, R. H. Bjorkman to J. M. Golby, Nov. 14, 1933	....	4546
621-A to 621-G—Letter, J. M. Golby to R. H. Bjorkman, Jan. 5, 1934, with resolutions	....	4546
622-A to 622-C—Letter, J. M. Golby to R. H. Bjorkman, Feb. 2, 1934, with copies of minutes enclosed	....	4547
624—Resolution of Uptown Retail Guild, Feb. 17, 1934	....	4547
625-A and 625-B—Letter, R. H. Bjorkman to J. M. Golby, June 5, 1934	....	4547

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
626—Letter, J. M. Golby to R. H. Bjorkman, June 7, 1934	....	4547
627-B and 627-C—Letter, J. M. Golby to R. H. Bjorkman, June 7, 1934	....	4547
627-D—List of Names of Manufacturers submitted to Uptown Retail Guild	....	4547
627-E and 627-F—Minutes of Meeting of Board of Governors of Uptown Retail Guild, June 5, 1934	....	4547
628—Letter, Fashion Originators Guild of America, Inc., Miss Herschman to R. H. Bjorkman, June 11, 1934	....	4548
629—Letter, R. H. Bjorkman to Fashion Originators Guild of America, Inc., June 14, 1934	....	4548
630-A and 630-B—Letter, Chairman of Minneapolis Fashion Guild to J. M. Golby, June 23, 1934	....	4548
631—Letter, J. M. Golby to R. H. Bjorkman, June 25, 1934	....	4548
632—Letter, Sam Dietsch, Chairman, Coat Division, to R. H. Bjorkman, June 29, 1934	....	4548
633-A and 633-B—Letter, R. H. Bjorkman to J. M. Golby, July 31, 1934	....	4548
634—Letter, J. M. Golby to R. H. Bjorkman, July 27, 1934	....	4548
635—Fashion Show Resolutions, July 31, 1934	....	4549
636—Telegram, Fashion Originators Guild of America, Inc., to R. H. Bjorkman, Aug. 6, 1934	....	4549
637—Letter, J. M. Golby to R. H. Bjorkman, Aug. 16, 1934	....	4549

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
638-A and 638-B—Letter, R. H. Bjorkman to J. M. Golby, Aug. 18, 1934	....	4549
639—Letter, J. M. Golby to R. H. Bjorkman, Aug. 21, 1934	....	4549
640—Letter, R. H. Bjorkman to J. M. Golby, Aug. 23, 1934	....	4549
641—Letter, J. M. Golby to R. H. Bjorkman, Aug. 27, 1934	....	4549
642—Letter, J. M. Golby to R. H. Bjorkman, Aug. 27, 1934	....	4550
643—Letter, R. H. Bjorkman to J. M. Golby, Nov. 12, 1934	....	4550
644—Letter, J. M. Golby to R. H. Bjorkman, Jan. 31, 1935	....	4550
645—Letter, J. M. Golby to R. H. Bjorkman, Feb. 1, 1935	....	4550
647-A and 647-B—Letter, J. M. Golby to R. H. Bjorkman, Feb. 15, 1935	....	4550
650—Letter, J. M. Golby to R. H. Bjorkman, Feb. 28, 1935	....	4550
653-A to 653-C—Letter, R. H. Bjorkman to J. M. Golby, Mar. 21, 1935	....	4550
654-A to 654-C—Letter, J. M. Golby to R. H. Bjorkman, Mar. 26, 1935	....	4551
657—Letter, R. H. Bjorkman to J. M. Golby, Apr. 18, 1935	....	4551
658—Letter, R. H. Bjorkman to J. M. Golby, Apr. 16, 1935	....	4551
660—Letter, J. M. Golby to R. H. Bjorkman, Apr. 22, 1935	....	4551
665—Letter, J. M. Golby to R. H. Bjorkman, June 22, 1935	....	4551
666-A and 666-B—Telegram, A. M. Post to R. H. Bjorkman, June 27, 1935	....	4551

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
667—Letter, J. M. Golby to R. H. Bjorkman, June 27, 1935	....	4551
669—Telegram, R. H. Bjorkman to A. M. Post, June 28, 1935	....	4552
672-A to 672-D—Proposed Declaration of Cooperation in Anti-Piracy between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc., dated day of , 1935	....	4552
674-A and 674-B—Letter, J. M. Golby to R. H. Bjorkman, July 3, 1935	....	4552
675—Letter, R. H. Bjorkman to J. M. Golby, July 6, 1935	....	4552
676—Letter, J. M. Golby to R. H. Bjorkman, July 11, 1935	....	4552
677—Letter, A. M. Post to R. H. Bjorkman, July 12, 1935	....	4552
678-A and 678-B—Letter, A. M. Post to R. H. Bjorkman, July 19, 1935	....	4552
682-A and 682-B—Letter, A. M. Post to R. H. Bjorkman, Sept. 12, 1935	....	4553
683—List of Minneapolis stores signed with Fashion Originators Guild of America, Inc., Sept. 12, 1935	.....	4553
685-A and 685-B—Registered letter from J. M. Golby to R. H. Bjorkman, Sept. 16, 1935	....	4553
686-A and 686-B—Letter, R. H. Bjorkman to A. M. Post, Sept. 18, 1935	....	4553
687—Letter, J. M. Golby to R. H. Bjorkman, Sept. 21, 1935	....	4553
688—Letter, J. Jesse Hyman to R. H. Bjorkman, Sept. 24, 1935	....	4553
689—Letter, J. Jesse Hyman to J. M. Golby, Sept. 27, 1935	....	4553

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
690—Letter, J. M. Golby to R. H. Bjorkman, Oct. 21, 1935	....	4554
691—Letter, R. H. Bjorkman to A. M. Post, Oct. 29, 1935	....	4554
692—Letter, A. M. Post to Virginia C. McDonald, May 16, 1936	....	4554
693—Letter, A. M. Post to R. H. Bjorkman, May 16, 1936	....	4554
694-A and 694-B—Letter, R. H. Bjorkman to A. M. Post, June 2, 1936	....	4554
695-A to 695-E—Signed Agreement of Minneapolis Fashion Guild with Fashion Originators Guild of America, Inc., Aug. 26, 1935	....	4554
696—Letter, P. J. Reilly of Associated Merchandising Corporation to The Dayton Co., June 21, 1933, enclosing Guild Agreement	8678	4554
697—Resolution of American Merchandising Corporation Garment Merchandising Managers concerning Anti-Piracy Agreement with Fashion Originators Guild of America, Inc.	8678	4555
701—Letter, C. J. Larson of The Dayton Co. to Fashion Originators Guild of America, Inc., July 1, 1933	8688	4555
702-A and 702-B—Letter, Fashion Originators Guild of America, Inc., to The Dayton Co., Aug. 3, 1933	8693	4555
703-A and 703-B—Proposed Agreement between Fashion Originators Guild of America, Inc., and Minneapolis Guild of Fashion Retailers	8710	4555

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
705-A, 705-B and 705-C—Letter, A. M. Post to D. Donovan of The Dayton Co., May 3, 1935	8881	4555
706—Letter, D. Donovan to A. M. Post, May 8, 1935	8881	4555
707—Telegram, D. Donovan to C. J. Larsen of The Dayton Co., May 13, 1935	9177	4556
708—Letter, Maurice Rentner to The Dayton Co., Feb. 21, 1936	8972	4556
709—Letter, Milton Altmark, Inc., to The Dayton Co., Feb. 18, 1936	8972	4556
710—Letter, N. E Friedland of Associated Merchandising Corporation to The Dayton Co., Feb. 18, 1936	8972	4556
711—Letter, Fred A. Block, Inc., to The Dayton Co., Aug. 27, 1936	8972	4556
712—Letter, Grace Ashley to The Dayton Co., Aug. 29, 1936	8972	4556
713—Junior Dresses (Subdeb Dept.), Spring, 1935-1936—Comparison of Unit Sales (Dept. 371) of The Dayton Co	8992	4556
714—Record of estimated loss in traveling expense and time, Spring, 1936	9015	4557
715—Booklet, "Quality Street," Fall, 1935, with imprint of The Dayton Co	9022	4557
716—Ad, Minneapolis Journal, July 16, 1935, of The Dayton Co	9024	4557
717—Ad, Minneapolis Journal, Aug. 2, 1935, of The Dayton Co	9026	4557
718—Ad. Minneapolis Journal, Aug. 21, 1935, of The Dayton Co	9027	4557
719—Ad, Minneapolis Journal, Aug. 30, 1935, of The Dayton Co	9027	4557
720—Ad, Minneapolis Journal, Aug. 23, 1935, of The Dayton Co	9027	4557

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
724—Ad, Minneapolis Tribune, Oct. 3, 1935, of The Dayton Co.	9027	4558
725—Ad, Minneapolis Journal, Oct. 18, 1935, of The Dayton Co.	9027	4558
726—Ad, Minneapolis Tribune, Oct. 22, 1935, of The Dayton Co.	9027	4558
727—Ad, Minneapolis Journal, Nov. 8, 1935, of The Dayton Co.	9027	4558
728—Ad, Minneapolis Journal, Nov. 22, 1935, of The Dayton Co.	9027	4558
729—Ad, Minneapolis Journal, Dec. 11, 1935, of The Dayton Co.	9027	4558
739—Ad, Minneapolis Journal, Dec. 19, 1935, of The Dayton Co.	9027	4558
731—Ad, Minneapolis Tribune, Dec. 25, 1935, of The Dayton Co.	9027	4559
732—Ad, Minneapolis Tribune, Dec. 25, 1935, of The Dayton Co.	9027	4559
733—Ad, Minneapolis Journal, Feb. 26, 1936, of The Dayton Co.	9027	4559
734—Article, Aug., 1936, issue of "Golfer & Sportsman," by Virginia McDonald, entitled "Fashions for Fashionables"	9296	4559
735—Letter, Aug. 20, 1934, to Frances Malsh, signed by J. M. Golby	9509	4559
736—Order to David Crystal, Inc., Dec. 12, 1934, signed by Frances Malsh	9517	4559
737—Letter of David Crystal, Inc., Dec. 19, 1934, to Frances Malsh	9520	4560
738—Letter of David Crystal, Inc., Dec. 27, 1934, to Frances Malsh	9524	4560
739—Order on Feigenbaum & Adelson, Inc., Aug. 1, 1935, ship to Frances Malsh	9526	4560
740—Letter of Feigenbaum & Adelson, Inc., Aug. 2, 1935, to Frances Malsh	9528	4560

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
741-A and 741-B—Letter of Frances Malsh, Aug. 7, 1935, to Fashion Originators Guild of America, Inc.	9531	4560
742-A and 742-B—Letter of Fashion Originators Guild of America, Inc., Aug. 12, 1935, to Mrs. Frances Malsh	9532	4561
743—Letter of Sport-Craft, Inc., Jan. 15, 1936, to Florence Hertz and Hazel Lang	9599	4561
744-A to 744-H—By-Laws of Michigan Avenue Guild of Chicago (adopted Mar. 2, 1933; amended Nov. 7, 1933, Oct. 24, 1934, and Dec. 17, 1935)	9646	4561
745—Paper, headed "Michigan Avenue Guild of Chicago, Inc.," being list of officers, directors, committees, etc.	9648	4561
746-A and 746-B—Rules and Regulations of the Michigan Avenue Guild of Chicago, Inc., in force as of Jan. 2, 1936	9651	4561
747-A to 747-E—Minutes of the Meeting of the Michigan Avenue Guild, Dec. 17, 1932	9660	4562
748-A and 748-B—Minutes of the Meeting of the Michigan Avenue Guild, Dec. 23, 1932	9660	4562
749-A and 749-B—Minutes of Meeting of the Michigan Avenue Guild, Dec. 30, 1932.	9661	4562
750-A and 750-B—Minutes of Meeting of the Michigan Avenue Guild, Jan. 5, 1933.	9661	4562
751-A and 751-B—Minutes of Meeting of the Michigan Avenue Guild, Feb. 3, 1933.	9661	4563
752-A and 752-B—Minutes of the Meeting of the Michigan Avenue Guild, Feb. 10, 1933	9661	4563

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
753-A to 753-C—Minutes of Meeting of the Michigan Avenue Guild, Feb. 21, 1933.	9661	4563
754-A, 754-B and 754-C—Minutes of Meeting of the Michigan Avenue Guild, Mar. 2, 1932.	9661	4563
755—Minutes of Meeting of the Michigan Avenue Guild, Mar. 16, 1933	9661	4563
756-A and 756-B—Minutes of Meeting of the Michigan Avenue Guild, Apr. 1, 1933.	9661	4563
757-A and 757-B—Minutes of Meeting of the Michigan Avenue Guild, Apr. 29, 1933.	9661	4564
758-A and 758-B—Minutes of Meeting of Members of the Michigan Avenue Guild, May 23, 1933	9661	4564
759-A and 759-B—Minutes of Meeting of Members and Prospective Members of the Michigan Avenue Guild, June 24, 1933.	661	4564
760—Minutes of Meeting of Directors of Michigan Avenue Guild, July 6, 1933.	9661	4564
761-A and 761-B—Minutes of Meeting of Directors of Michigan Avenue Guild, Aug. 24, 1933.	9661	4564
762-A and 762-B—Minutes of Meeting of the Directors of Michigan Avenue Guild, Sept. 12, 1933.	9661	4565
763-A, 763-B and 763-C—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 2, 1933	9661	4565
764-A, 764-B and 764-C—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 11, 1933	9661	4565
765-A to 765-B—Minutes of Meeting of the Directors of the Michigan Avenue Guild, Oct. 21, 1933	9661	4565

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
766-A to 766-E—Minutes of Meeting of Members of Michigan Avenue Guild, Oct. 23, 1933	9661	4565
767-A to 767-D—Minutes of Meeting of Directors of Michigan Avenue Guild, Nov. 7, 1933	9661	4566
768-A and 768-B—Minutes of Meeting of the Directors of Michigan Avenue Guild, Nov. 14, 1933	9661	4566
769-A to 769-C—Minutes of Meeting of Directors of Michigan Avenue Guild, Nov. 28, 1933	9661	4566
770-A to 770-C—Minutes of Meeting of Directors of Michigan Avenue Guild, Dec. 5, 1933	9661	4566
771—Minutes of the Meeting of the Executive Committee of the Michigan Avenue Guild	9661	4566
772-A to 772-C—Minutes of Meeting of the Michigan Avenue Guild, Dec. 27, 1933	9661	4567
773-A to 773-D—Minutes of Annual Meeting of the Michigan Avenue Guild, Dec. 29, 1933	9661	4567
774-A to 774-B—President's Annual Report, Dec. 29, 1933	9661	4567
775-A to 775-E—Minutes of Directors' Meeting of the Michigan Avenue Guild, Dec. 29, 1933	9661	4567
776-A to 776-D—Minutes of Meeting of Board of Directors of Michigan Avenue Guild, Feb. 20, 1934	9661	4567
777-A and 777-B—Minutes of Special Meeting of Board of Directors of Michigan Avenue Guild, Feb. 28, 1934	9661	4568

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
778-A, 778-B and 778-C—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Mar. 3, 1934	9661	4568
779-A to 779-C—Minutes of Meeting of Board of Directors and Advisory Board of Michigan Avenue Guild, Mar. 22, 1934.	9661	4568
780-A and 780-B—Minutes of General Meeting of all Members of the Michigan Avenue Guild, Apr. 9, 1934	9661	4568
781-A to 781-C—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, Apr. 14, 1934	9661	4568
782-A to 782-C—Minutes of Special Meeting of Executive Committee, Apr. 20, 1934.	9661	4569
783-A to 783-D—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, Apr. 27, 1934	9661	4569
784-A and 784-B—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Apr. 30, 1934	9661	4569
785-A to 785-C—Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, May 1, 1934	9661	4569
786-A to 786-E—Minutes of a Joint Meeting of the Board of Directors and the Executive Committee of the Michigan Avenue Guild, May 7, 1934	9661	4570
X-786-A to X-786-C—Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, May 11, 1934	9661	4570

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
787-A to 787-D—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, May 29, 1934	9661	4570
788-A to 788-D—Minutes of a Joint Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild, June 28, 1934	9661	4570
789-A to 789-C—Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, July 31, 1934	9661	4571
790-A to 790-F—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Aug. 24, 1934	9661	4571
791-A and 791-B—Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, Aug. 31, 1934	9661	4571
792-A and 792-B—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Sept. 18, 1934	9661	4571
793-A and 793-B—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Sept. 24, 1934	9661	4571
794-A to 794-C—Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild, Oct. 5, 1934	9661	4572
795-A to 795-F—Minutes of Meeting of the Board of Directors of the Michigan Avenue Guild, Oct. 24, 1934	9661	4572
796-A to 796-I—Minutes of General Meeting of the Michigan Avenue Guild, Oct. 24, 1934	9661	4572

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
797-A to 797-E—Minutes of Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild, Dec. 5, 1934.	9661	4572
798-A to 798-I—Minutes of Meeting of Members of the Michigan Avenue Guild, Dec. 28, 1934.	9661	4572
799-A to 799-C—Minutes of Annual Meeting of the Board of Directors of the Michigan Avenue Guild, Dec. 28, 1934.	9661	4573
800-A to 800-E—Minutes of Meeting of Executive Committee, Jan. 4, 1935.	9661	4573
801-A to 801-F—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Jan. 29, 1935.	9661	4573
802-A to 802-D—Minutes of Special Meeting of the Board of Directors of the Michigan Avenue Guild, Feb. 19, 1935.	9661	4573
803-A and 803-B—Letter to Mr. George M. Gleason, Feb. 15, 1935, signed by J. M. Golby.	9661	4573
804-A to 804-D—Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, Apr. 8, 1935.	9661	4574
805-A to 805-D—Minutes of Meeting of Board of Directors and Executive Meeting of the Michigan Avenue Guild, Apr. 17, 1935.	9661	4574
806—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members.	9661	4574
807—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members.	9661	4574

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
808—Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members	9661	4574
809-A to 809-G—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, May 3, 1935	9661	4575
810-A to 810-L—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, Friday, May 10, 1935	9661	4575
811-A to 811-F—Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild, Friday, June 14, 1935	9661	4575
812-A to 812-D—Minutes of Meeting of Executive Committee, June 24, 1935	9661	4575
813-A to 813-D—Minutes of Joint Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild, July 30, 1935	9661	4575
814-A to 814-E—Minutes of Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild, Oct. 4, 1935	9661	4576
815-A and 815-B—Statistics on Copied Merchandise Returned to Manufacturer who copies—During Month of September	9661	4576
816—Mimeographed Letter of Michigan Avenue Guild, Jan. 14, 1935, "To All Members"	9661	4576
817—Mimeographed Letter of Michigan Avenue Guild, Jan. 14, 1935, addressed "To All Members"	9686	4576

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
818—Mimeographed Letter of Michigan Avenue Guild, Feb. 1, 1934, addressed "Dear Member"	9686	4576
819—Mimeographed Letter of Michigan Avenue Guild, Feb. 11, 1935, addressed "All Members"	9686	4577
820-A and 820-B—Mimeographed Letter of Michigan Avenue Guild, Feb. 19, 1935, addressed "To All Members"	9686	4577
821—Mimeographed Letter of Michigan Avenue Guild, June 15, 1935, addressed "To All Members"	9686	4577
822—Mimeographed Letter of Michigan Avenue Guild, June 29, 1935, addressed "To All Members"	9686	4577
823—Mimeographed Letter of Michigan Avenue Guild, Oct. 29, 1935, addressed "To All Members"	9686	4577
824—Mimeographed Copy of Letter of Michigan Avenue Guild, Nov. 4, 1935, addressed "Gentlemen"	9686	4578
825—Mimeographed Letter of Michigan Avenue Guild, Nov. 13, 1935, addressed "To All Members"	9686	4578
826—Letter of Michigan Avenue Guild, Sept. 10, 1935, to Mr. H. W. Rieger, Secretary, State Street Council	9693	4578
828—Letter, May 17, 1934, to Mr. Alexander H. Marshall, signed "Michigan Avenue Guild"	9785	4578
829-A to 829-J—Agreement between the Michigan Avenue Guild and the Fashion Originators Guild of America, Inc., Dec. 17, 1932	9788	4579

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
830-A and 830-B—Letter to L. E. Klein, signed by A. M. Post, Executive Director	9820	4579
831—Letter of Klein's, Peoria, Illinois, Apr. 27, 1935, to Fashion Originators Guild of America, Inc.	9820	4579
832-A and 832-B—Letter, Apr. 29, 1935, to Klein's, signed by J. M. Golby, Executive Secretary	9820	4579
833—Declaration of Co-operation in antipiracy between Klein's and the Fashion Originators Guild of America, Inc.	9820	4579
834—Letter of Affiliated Buying Corporation, May 6, 1935, to Mr. Louis Klein	9830	4580
835—Letter of Klein's, May 8, 1935, to Fashion Originators Guild of America, Inc.	9830	4580
836—Letter of Fashion Originators Guild of America, Inc., June 27, 1935, to The D. W. Klein Company, Peoria, Illinois	9834	4580
837—Letter of Affiliated Buying Corporation, July 9, 1935, to Mr. L. E. Klein	9834	4580
838—Letter of Affiliated Buying Corporation, July 29, 1935, to Mr. H. W. Lund, Klein's, Peoria, Illinois	9834	4580
839—Letter of Fashion Originators Guild of America, Inc., July 30, 1935, to Klein's, Peoria, Illinois	9834	4581
840—Telegram, Feb. 17, 1936, to A. M. Post, Executive Director, signed by Mandel Brothers and others	9915	4581
841—Letter, Neil Petree, President, Retail Dry Goods Association of New York, Feb. 17, 1936, to Mr. A. M. Post	9915	4581
842—Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, Sept. 11, 1933	9982	4581

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
843-A to 843-G—Agreement of Ladies Ready-to-Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., Sept. 27, 1933	9985	4581
844—Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, Sept. 18, 1933	9985	4582
845-A and 845-B—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Nov. 17, 1933	9998	4582
846-A to 846-C—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Jan. 25, 1934	10002	4582
847-A to 847-D—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Apr. 9, 1934	10008	4582
848-A and 848-B—Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, June 16, 1934	10012	4582
849-A and 849-B—Minutes of Membership of Ladies Ready-to-Wear Guild of Baltimore, Feb. 25, 1935	10013	4582
850-A to 850-C—Minutes of Meeting of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, Aug. 5, 1935	10015	4582
851-A to 851-C—By-Laws, Rules, Regulations and Agreements of Ladies Ready-to-Wear Guild of Baltimore	10019	4582
852-A to 852-G—Minutes of Membership Meeting, Sept. 30, 1935	10022	4583
853-A and 853-B—Letter, Nov. 15, 1933, J. M. Golby to Chas. E. Hutzler of Hutzler Bros. & Co.	....	4583
854—Letter, Jan. 20, 1934, J. M. Golby to C. F. Roycroft of Ladies Ready-to-Wear Guild of Baltimore	10027	4583

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
855-A and 855-B—Form Letter signed Coat & Suit Division of Fashion Originators Guild of America, Inc., Mar. 29, 1934	....	4583
856-A and 856-B—Letter, Feb. 15, 1935, J. M. Golby to Maison Annette	....	4583
857-A—Letter, Oct. 12, 1935, Roycroft to Baltimore Guild	....	4583
857-B—Copy of Letter, Roycroft to A. M. Post, Oct. 14, 1935	....	4583
858-A and 858-B—Minutes, Oct. 12, 1935, of Ladies Ready-to-Wear Guild of Baltimore	....	4584
859-A to 859-H—Articles of Constitution, Rules and Regulations and Agreement with Fashion Originators Guild of America, Inc., of Ladies Ready-to-Wear Guild of Baltimore	10063	4584
860—List of member shares of Associated Merchandising Corp.	....	4584
861-A and 861-B—Letter, Maurice Rentner to B. Foreman, Dec. 6, 1932	10382	4584
862—Letter, H. I. Kleinhaus, Association of Buying Offices, Inc., to M. Rentner, Mar. 30, 1935	10468	4584
863—Letter, H. I. Kleinhaus to M. Rentner, Apr. 5, 1935	10476	4584
864—Circular Letter, "Developments in Fashion Originators Guild of America, Inc.," by H. O. Bergdahl, to Associated Merchandising Corp. Managers, Apr. 10, 1935	10480	4584
865—Letter, A. M. Post to Association of Buying Offices, Inc., Apr. 23, 1935	10484	4585
866—Letter, H. I. Kleinhaus to M. Rentner, Apr. 27, 1935	10492	4585

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
867—Minutes of Meeting, Special Committee of Association of Buying Offices, Inc., May 4, 1935	10496	4585
869—Letter, May 9, 1935, Reinitz to Association of Buying Offices, Inc.	....	4585
870—Proposed letter to be mailed to all retailers by Mr. Reinitz	10508	4585
871—Letter, H. I. Kleinhaus to Bertram Reinitz, May 13, 1935	10514	4585
872—Memo, H. O. Bergdahl to Garment Merchandise Managers, Associated Merchandising Corp., May 13, 1935	10517	4585
873—Letter, A. M. Post to Association of Buying Offices, Inc., June 21, 1935	....	4586
874—Letter, July 1, 1935, from A. M. Post to H. O. Bergdahl	10522	4586
875—Letter, July 3, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.	10523	4586
876—Letter to H. O. Bergdahl from A. M. Post, July 22, 1935	10531	4586
877—Letter from H. O. Bergdahl to A. M. Post, July 22, 1935	10535	4586
878—Letter from A. M. Post to H. O. Bergdahl, Aug. 2, 1935	10533	4586
879—Letter from A. M. Post to H. O. Bergdahl, Aug. 12, 1935	....	4586
880—Letter from A. M. Post to C. S. Goshen, c/o Buliock's Wilshire	....	4587
881—Letter from A. M. Post to Mr. Milburn, The Emporium, Aug. 12, 1935	....	4587
882—Letter, A. M. Post to H. O. Bergdahl, Aug. 21, 1935	....	4587

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
883—Letter, A. M. Post to Taylor of Strawbridge & Clothier, Aug. 21, 1935		4587
884—Letter, Chas. C. Taylor of Strawbridge & Clothier to A. M. Post, Aug. 28, 1935		4587
886—Telegram, John Shillito Co. to Starr-Friedlander, Mar. 3, 1936	10542	4587
887—Telegram, Frank Starr-Friedlander, Inc., to John Shillito Co., May 3, 1936		4587
888—Telegram, Mar. 12, 1936, Louise Mulligan, Inc., to John Shillito Co	10768	4588
889—Letter, P. J. Reilly to Louis Hutzler, June 28, 1933		4588
890—Letter, Mr. L. Hutzler to P. J. Reilly, June 26, 1933		4588
891—Letter, Theodore B. Griffith of L. S. Ayres & Co. to P. J. Reilly, June 24, 1933		4588
893—Letter, W. H. Burchfield of Jos. Horne & Co. to P. J. Reilly, June 24, 1933		4588
894—Original Declaration of Co-operation from Hutzler Bros. to Fashion Originators Guild of America, Inc., June 30, 1933		4588
895—Declaration of Co-operation from Stix, Baer & Fuller to Fashion Originators Guild of America, Inc., July 10, 1933		4588
896—Letter, A. M. Post to H. O. Bergdahl, Nov. 23, 1935		4589
897—Blank form of Declaration of Co-operation between Retailer and Fashion Originators Guild of America, Inc		4589
898—Letter, J. M. Golby to H. O. Bergdahl, Aug. 14, 1934		4589

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
899—Newspaper clipping, Women's Wear, Mar. 21, 1935	....	4589
900—Letter, Association of Buying Offices, Inc., to A. M. Post, Aug. 3, 1935	10780	4589
901—Letter, Aug. 8, 1935, H. O. Bergdahl to A. M. Post	....	4589
902—Letter, July 25, 1935, Floyd C. Dillon of The Emporium to H. O. Bergdahl	....	4589
903—Letter, July 29, 1935, M. Knee of Bullocks to H. O. Bergdahl	....	4590
904—Letter, Aug. 9, 1935, A. M. Post to H. O. Bergdahl	....	4590
905—Letter, Sept. 21, 1935, A. M. Post to F. & R. Lazarus, Inc.	....	4590
906—Memo, Oct. 4, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.	10814	4590
907—Letter A. M. Post to H. O. Bergdahl, Oct. 8, 1935	10821	4590
908—Letter, A. M. Post to H. O. Bergdahl, Oct. 9, 1935	10821	4590
909—List headed $6.75, $7.75 and $8.75 firms applying for membership in Fashion Originators Guild of America, Inc., Oct. 4, 1935	10821	4590
910—Letter, A. M. Post to H. O. Bergdahl, Oct. 25, 1935	....	4591
911—Letter, A. M. Post to H. O. Bergdahl, Oct. 31, 1935	....	4591
912—Letter to A. M. Post from H. O. Bergdahl, Nov. 16, 1935	....	4591
913—Letter, A. M. Post to H. O. Bergdahl, Nov. 19, 1935	....	4591

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
914—Letter, A. M. Post to H. O. Bergdahl, Nov. 21, 1935	....	4591
915—Letter, H. O. Bergdahl to A. M. Post, Nov. 18, 1935	....	4591
916—Letter, H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., Nov. 27, 1935	....	4591
918—Letter, H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., Dec. 5, 1935	....	4592
920—Letter, H. O. Bergdahl to Oscar Webber of J. L. Hudson Co., Dec. 4, 1935	....	4592
924—Letter, P. J. Reilly to A. M. Post, Feb. 14, 1936	....	4592
925—Letter, A. M. Post to Reilly, Feb. 17, 1936	....	4592
926—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re F. & R. Lazarus	....	4592
927—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Associated Merchandising Corp.	....	4592
928—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Rike-Kumler Co.	....	4592
929—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re John Shillito Co.	....	4593
930—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Herzfeld-Phillipson Co.	....	4593

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
931—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Bloomingdale Bros., Inc.	....	4593
932—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Abraham & Straus.	....	4593
933—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Emporium	....	4593
934—Notification of Members of non-cooperation with Fashion Originators Guild of America, Inc., re Wm. Filene's Sons Company.	....	4593
935—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re J. L. Hudson Co.	....	4594
936—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re H. C. Capwell Co.	....	4594
937—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Dayton Co.	....	4594
938—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Stix, Baer & Fuller.	....	4594
939—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Philadelphia, Pa.	....	4594
940—Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Ardmore, Pa.	....	4594

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
941—Comparative Dollar Volume for 1935 of Fashion Originators Guild of America, and Affiliates as against entire Industry	10833	4595
942-A—Dollar Volume for 1935 of Junior Miss Members of Fashion Originators Guild of America, Inc.	10833	4595
942-B—1935 Recapitulation Sheet Members, Affiliates and Protective Affiliates	10833	4595
942-C—1935 Dress Volume—Protective Affiliates	10833	4595
942-D, 942-E, 942-F, 942-G and 942-H—1935 Dollar Volume of Dress Members	10833	4595
942-I and 942-J—1935 Dollar Volume of Sportswear Members	10833	4595
943—Letter, A. M. Post to John Block, Jan. 10, 1936	11627	4595
944—Letter, John Block to A. M. Post, Jan. 13, 1936	10628	4595
945—Letter, A. M. Post to John Block, Jan. 15, 1936	10629	4596
946—Letter, John B. Swinney to Jack Goldston, July 3, 1936	12085	4596
947—Letter, J. Goldston to J. B. Swinney, July 2, 1936	12086	4596
948—Letter, I. Himelhoch of Himelhoch Bros. & Co. to J. B. Swinney, June 29, 1936	12087	4596
949—Telegram, J. B. Swinney to Himelhoch Bros. & Co., June 29, 1936	12088	4596
950—Letter, J. B. Swinney to Himelhoch Bros. & Co., June 27, 1936	12089	4596
951—Letter, Jack Goldston to J. B. Swinney, June 24, 1936	12091	4596

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
952—Memo from J. B. Swinney to Buyer of Junior Dresses	12094	4596
953—Telegram, Himelhoch Bros. & Co. to Specialty Stores Association, June 26, 1936	12095	4597
954—Notification to Shoppers by J. Goldston, undated, re Style No. 826 of Harris Dress Co	12097	4597
955—Notification to Shoppers by J. Goldston, undated, re Style No. 829 of Harris Dress Co	12098	4597
956—Seven-page list entitled "Recapitulation of Red Cards Issued," Oct. 22, 1935	....	4597
959—Letter, Nov. 7, 1935, J. M. Golby to Protective Affiliates in $6.76, $7.75 and $8.75 price range	12341	4597
960—Sample form of letter, manufacturers to retailers who have not signed Declaration	....	12341
961—Letter, J. M. Golby to David Rosenthal of Rosenthal & Kalman, Nov. 26, 1935	12342	4597
962—Minutes of Meeting of Fashion Originators Guild of America, Inc., Dec. 3, 1935	12342	4598
964—Piracy Report, Jan. 24, 1936, by J. Goldston	12347	4598
965—Sketch No. 175, Jan. 30, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598
966—Piracy Report, Feb. 4, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598
967—Additional Piracy Report, Feb. 4, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
968—Advertisement of The Emporium in San Francisco Shopping News	12347	4598
969—Piracy Report, Feb. 14, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4598
970—Letter, J. Goldston to Rosenthal & Kalman, Feb. 26, 1936	12347	4599
971—Piracy Report, Mar. 2, 1936, re Style No. 415 of Rosenthal & Kalman	12347	4599
972—Letter, J. M. Golby to Protective Affiliates, Feb. 13, 1936	12352	4599
973—Telegram, A. M. Post to Rosenthal & Kalman, Feb. 17, 1936	12352	4599
974—Letter, J. M. Golby to Members of Fashion Originators Guild of America, Inc., Feb. 17, 1936	12352	4599
975—Letter, J. M. Golby "To Members & Affiliates," re Blue Cards, Feb. 18, 1936	12352	4599
976—Form of Declaration of Co-operation	12352	4599
977—Agreement between Fashion Originators Guild of America, Inc., and Protective Affiliates in $6.75, $7.75 and $8.75 price range	12378	4600
978—Telegram, Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, Feb. 28, 1936	12380	4600
979—Telegram, Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, Mar. 2, 1936	12386	4600
980—Letter, J. M. Golby to Rosenthal & Kalman, Mar. 16, 1936	12387	4600
981—Piracy Report, Dec. 24, 1935, re Style No. 410 of Rosenthal & Kalman	12389	4600
982—Letter, Jack Goldston to Rosenthal & Kalman, Feb. 17, 1936	12389	4600

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
983—Piracy Report, re Style No. 409 of Rosenthal & Kalman, Mar. 2, 1936....	12389	4600
984—Piracy Report, re Style No. 391 of Rosenthal & Kalman, Mar. 2, 1936, and numbered 837.....	12389	4601
985—Letter, J. Goldston to Rosenthal & Kalman, Feb. 25, 1936.....	12389	4601
986—Piracy Report, re Style No. 409 of Rosenthal & Kalman, Feb. 1, 1936.....	12389	4601
987—Piracy Report, re Style No. 415 of Rosenthal & Kalman, Feb. 28, 1936...	12389	4601
988—Letter, J. Goldston to Rosenthal & Kalman, Feb. 20, 1936.....	12389	4601
989—Letter, Feb. 19, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12390	4601
990—Letter, Feb. 22, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12390	4601
991—Letter, Feb. 29, 1936, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc....	12391	4602
992—Letter, undated, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.....	12391	4602
993—Notification to members re showing B. Foreman or Dayton Company.....	12391	4602
994—Letter, J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc., May 11, 1936.....	12391	4602
995—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Nov. 4, 1935.....	12396	4602
996—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Nov. 13, 1935.....	12396	4602

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
997—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Dec. 3, 1935.....	12396	4603
998—Letter, A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., Feb. 11, 1936.....	12396	4603
999—Letter entitled "First Letter with Declaration on Names" sent in by Fashion Originators Guild of America, Inc., signed by J. M. Golby.....	12448	4603
1000—Follow-up letter on names sent in by Dress Creators League Members and Affiliates, undated.....	12452	4603
1001—Form letter to retailers by J. M. Golby, undated.....	12465	4603
1002-A to 1002-L—Correspondence and file on Goodwins.....	....	4603
1002-A—Authorization for "red card" of Goodwins and Davidson Bros., Jan. 7, 1936.....	....	4603
1002-B—Letter, A. M. Post to Goodwins, Jan. 7, 1936.....	....	4604
1002-C—Report of refusal or failure to cooperate from Detroit Shopper re Goodwins, Jan. 2, 1936.....	....	4604
1002-D—Letter, J. Goldston to Mrs. Miller, Detroit Shopper of Fashion Originators Guild of America, Inc., Dec. 26, 1936.....	....	4604
1002-E—Report of refusal or failure to cooperate from Detroit Shopper re Goodwins, Dec. 26, 1935.....	....	4604
1002-F—Letter, J. M. Golby to Mrs. Miller, Dec. 5, 1935.....	....	4604

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1002-G—Letter, Davidson Bros. (Goodwins) to Fashion Originators Guild of America, Inc., Dec. 5, 1935	....	4604
1002-H—Letter, J. M. Golby to Mrs. Miller, Nov. 25, 1935	....	4604
1002-I—Authorization for red card notice of non-cooperation re Davidson Bros.	....	4605
1002-J—Letter, J. M. Golby to Goodwins, Sept. 6, 1935	....	4605
1002-K—Letter, Mrs. Miller to J. Goldston, July 9, 1935	....	4605
1002-L—Declaration of Co-operation with Fashion Originators Guild of America, Inc., of Goodwins, July 30, 1935	.....	4605
1003-A—Letter, J. H. Green, Secretary, Retail Merchants Association of Pittsburgh, Pa., to J. M. Golby, Mar. 24, 1934	12479	4605
1003-B—Reply, J. M. Golby to J. H. Green, Mar. 26, 1934	12479	4605
1004—Letter, Irene Blunt, Director, Industrial Design Registration Bureau to the Trade, Dec. 17, 1935	12503	4605
1005-A—Letter, Miss Lapidus to Jack Goldston, Nov. 1, 1935	12520	4606
1005-B—Letter, J. M. Golby to I. J. Shearer & Bro., Nov. 6, 1935	12520	4606
1006-A and 1006-B—Letter, J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., Aug. 8, 1935	12526	4606
1006-C—Letter, J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., Aug. 21, 1935	12526	4606
1006-D—Letter, J. A. Leavell of Marie Leavell to J. M. Golby, Aug. 24, 1935	12526	4606

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1006-E—Letter, J. M. Golby to J. A. Leavell, Aug. 26, 1935	12523	4606
1006-F—Letter, J. M. Golby to Herbert Nurse of Dreyfuss & Sons, Aug. 26, 1935	12526	4606
1006-G—Letter, J. M. Golby to Ben Wittenberg of La Mode Co., Aug. 26, 1935	12526	4607
1006-H—Letter, J. M. Golby to Herman Phillipson of Phillipsons, Inc., Aug. 26, 1935	12526	4607
1006-I—Letter, J. M. Golby to E. P. Simmons of Sanger Bros., Aug. 26, 1935	12626	4607
1006-J—Letter, B. H. Wittenberg to J. M. Golby, Aug. 29, 1935	12526	4607
1006-K—Letter, E. P. Simmons of Sanger Bros. to J. M. Golby, Aug. 29, 1935	12526	4607
1006-L and 1006-M—Letter, J. M. Golby to H. Stanley Marcus, Sept. 3, 1935	12526	4607
1007—Report of refusal or failure to cooperate re Ed. Schuster Co. by Dorothy Horowitz, Shopper, Jan. 10, 1936	12527	4607
1008-A—Letter, E. Bell of Esterlene Frocks to Fashion Originators Guild of America, Inc., Jan. 27, 1936	12532	4608
1008-B—Letter, J. M. Golby to Herbert S. Keller, Jan. 31, 1936	12532	4608
1008-C and 1008-D—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Feb. 1, 1936	12532	4608
1008-E—Letter, Fashion Originators Guild of America, Inc., to Esterlene Frocks, Feb. 4, 1936	12532	4608
1009-A—Letter, Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., Jan. 24, 1936	12566	4608

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1009-B and 1009-C—Letter, Weisman, Quinn, Allan & Spett to Florence Hertz, Jan. 24, 1936	12566	4608
1009-D—Letter, Fashion Originators Guild of America, Inc., to Herbert S. Keller, Jan. 22, 1936	12566	4608
1009-E—Letter, Sportcraft, Inc., to Fashion Originators Guild of America, Inc., Jan. 21, 1936	12566	4609
1009-F—Letter, Hertz-Lang to Sportcraft, Inc., Jan. 18, 1936	12566	4609
1009-G—Letter, Sportcraft, Inc., to Fashion Originators Guild of America, Inc., Jan. 20, 1936	12566	4609
1009-H—Letter, Hertz-Lang to Sportcraft, Inc., undated	12566	4609
1009-I—Authorization for red card of Hertz-Lang, Jan. 8, 1936	12566	4609
1009-J—Letter, E. A. Fletcher of Michigan Avenue Guild to Fashion Originators Guild of America, Inc., Jan. 6, 1936	12566	4609
1010—Letter, A. M. Post to Ernst Kern Co., Feb. 7, 1936	12586	4609
1011-A—Report on refusal or failure to co-operate, Feb. 7, 1936, re J. L. Hudson & Co., by Mrs. Miller, Shopper	12598	4610
1011-B—Letter, Fashion Originators Guild of America, Inc., to Shopper, Feb. 8, 1936	12598	4610
1011-C—Letter, Fashion Originators Guild of America, Inc., to Shopper, Feb. 10, 1936	12598	4610
1011-D—Letter, Shopper to J. Goldston, Feb. 10, 1936	12598	4610

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1011-E and 1011-F—Letter, Shopper to A. M. Post, Feb. 12, 1936	12598	4610
1011-G—Authorization for red card, Feb. 13, 1936, of J. L. Hudson & Co.	12598	4610
1012-A—Telegram, Miss Brady, Shopper, to J. Goldston, re R. H. White, undated	12601	4610
1012-B—Memorandum, Miss Brady, Shopper, to A. M. Post and J. Goldston, Feb. 4, 1936	12601	4611
1012-C—Telegram, Miss Brady to Fashion Originators Guild of America, Inc., Feb. 4, 1936	12601	4611
1012-D—Memorandum, A. M. Post to Miss Brady, Feb. 5, 1936	12601	4611
1012-E and 1012-F—Report on refusal of R. H. White to co-operate, Feb. 6, 1936	12601	4611
1012-G—Letter, Feb. 6, 1936, Weisman, Quinn, Allan & Spett to A. M. Post	12601	4611
1012-H—Letter, Feb. 6, 1936, J. M. Golby to B. F. Raphael of R. H. White Co.	12601	4611
1012-I—Authorization for red card, Feb. 6, 1936, of R. H. White Co.	12601	4611
1013-A—Report on refusal to co-operate, Jan. 2, 1936, of The Boston Store, by Dorothy Horowitz, Shopper	12608	4612
1013-B—Letter, Bender & Hamburger, Inc., to Fashion Originators Guild of America, Inc., Jan. 4, 1936	12608	4612
1013-C—Letter, Fashion Originators Guild of America, Inc., to The Boston Store, Jan. 6, 1936	12608	4612
1013-D—Letter, Fashion Originators Guild of America, Inc., to The Boston Store, Jan. 13, 1936	12608	4612

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1013-E—Letter, Herzfeld-Phillipson & Co. to Fashion Originators Guild of America, Inc., Jan. 15, 1936	12608	4612
1013-F—Letter, A. M. Post to The Boston Store, Jan. 17, 1936	12608	4612
1013-G—Report on refusal to co-operate, Feb. 17, 1936, of Herzfeld-Phillipson Co., by Dorothy Horowitz	12608	4612
1014-A—Report on Refusal to Co-operate, Nov. 7, 1935, The Dayton Co., by Virginia McDonald, Shopper	12612	4613
1014-B—Memorandum, Fashion Originators Guild of America, Inc., to Miss McDonald, Shopper, Nov. 11, 1935	12612	4613
1014-C—Report on Refusal to Co-operate, Nov. 22, 1935, re The Dayton Co.	12612	4613
1014-D—Letter, A. M. Post to Miss McDonald, Shopper, Nov. 23, 1935	12612	4613
1014-E—Report on Refusal to Co-operate, Nov. 26, 1935, re The Dayton Co.	12612	4613
1014-F and 1014-G—Letter, Fashion Originators Guild of America, Inc., to Mrs. Chase of The Dayton Co., Dec. 2, 1935	12612	4613
1015-A and 1015-B—Letter, Grace Sinclair, Shopper, re Stix, Baer & Fuller, to J. Goldston, Nov. 18, 1935	12642	4613
1015-C—Report on Refusal to Co-operate, Nov. 18, 1935, of Stix, Baer & Fuller.	12642	4614
1015-D—Memorandum, Fashion Originators Guild of America, Inc., to Miss Sinclair, Shopper, Nov. 19, 1935	12642	4614
1016—Declaration of Co-operation of McGlenn's of Minneapolis	12645	4614

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1017—Declaration of Co-operation of Carolellan's of Salt Lake City	12646	4614
1018-A—Telegram, H. C. Capwell Co. to Fashion Originators Guild of America, Inc., Oct. 23, 1935	12655	4614
1018-B—Telegram to H. C. Capwell Co. from A. M. Post, Oct. 22, 1935	12655	4614
1018-C and 1018-D—Letter, A. M. Post to Mr. Dinklespiel of H. C. Capwell Co., Oct. 12, 1935	12655	4614
1018-E—Letter, A. M. Post to H. O. Bergdahl, Oct. 12, 1935	12655	4615
1019-A and 1019-B—Letter to Mrs. A. M. Levy of John Shillito & Co. from A. M. Post, Jan. 11, 1936	12660	4615
1019-C—Letter, Mrs. A. M. Levy to A. M. Post, Jan. 9, 1936	12660	4615
1020-A to 1020-D—Letter, A. M. Post to Ben Raphael of R. H. White Co., Oct. 25, 1935	12661	4615
1020-E—Letter, B. Raphael to A. M. Post, Oct. 30, 1935	12661	4615
1021-A—Letter, Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., Nov. 9, 1935	12661	4615
1021-B—Letter, Wm. Filene's Sons Co. to Constantine Dress Co. of Boston, Nov. 7, 1935	12661	4615
1021-C—Letter, J. Goldston to A. Wright of Wm. Filene's Sons Co., Dec. 5, 1935	12661	4615
1021-D—Letter, Wright of Wm. Filene's Sons Co. to A. M. Post, Dec. 3, 1935	12661	4616
1021-E and 1021-F—Letter, A. M. Post to A. Wright of Wm. Filene's Sons Co., Nov. 27, 1935	12661	4616

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1021-G—Letter, A. M. Post to Miss Brady, Shopper, Nov. 27, 1935	12661	4616
1021-H—Letter, A. M. Post to A. Wright of Wm. Filene's Sons Co., Dec. 12, 1935.	12661	4616
1021-I—Memorandum, A. M. Post for the file, Jan. 29, 1936	12661	4616
1022-A—Letter, J. Goldston to Earl Miller of Wm. Taylor Son & Co., Mar. 21, 1935.	12661	4616
1022-B—Letter, Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., Mar. 23, 1935	12661	4616
1022-C and 1022-D—Letter draft, A. M. Post to Richard G. Roth of Wm. Taylor Son & Co., July 24, 1935	12662	4617
1022-E—Telegram, J. Goldston to E. Miller of Wm. Taylor Son & Co., Sept. 5, 1935	12662	4617
1022-F—Letter of Mrs. Joseph, Shopper, to J. Goldston, Sept. 5, 1935	12662	4617
1022-G—Letter, E. Miller to J. Goldston, Sept. 5, 1935	12662	4617
1022-H—Letter, J. M. Golby to W. E. Miller, Oct. 3, 1935	12662	4617
1022-I—Letter, W. E. Miller to J. Goldston, Oct. 2, 1935	12662	4617
1022-J—Letter, Fashion Originators Guild of America, Inc., to W. E. Miller, Jan. 21, 1936	12662	4617
1022-K—Letter, Mrs. Joseph to J. Goldston, Jan. 20, 1936	12662	4618
1022-L—Letter, Broadway Dance Frocks, Inc., to Wm. Taylor Sons & Co., Jan. 16, 1936	12662	4618
1023-A—Authorization for red card re Strawbridge & Clothier, Feb. 6, 1936	12662	4618

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1023-B—Letter, Miss Joyce, Shopper, to J. Goldston, Feb. 8, 1936	12662	4618
1023-C—Memorandum of phone conversation by A. M. Post re Strawbridge & Clothier, Feb. 10, 1936	12662	4618
1023-D—Memorandum, Fashion Originators Guild of America, Inc., to Miss Joyce, Feb. 5, 1936, re Strawbridge & Clothier	12662	4618
1023-E—Return receipt for registered letter to Strawbridge & Clothier	12662	4618
1023-F—Report of refusal or failure to co-operate by Strawbridge & Clothier, Feb. 3, 1936	12662	4618
1023-G—Letter, Miss Joyce to J. Goldston, Feb. 7, 1936	12662	4619
1023-H—Summary of a few of the 11,000 stores which have indicated their desire to co-operate with Fashion Originators Guild of America, Inc	12662	4619
1023-I—Letter, A. M. Post to H. J. Tiley of Strawbridge & Clothier, Feb. 7, 1936	12662	4619
1023-J—Letter, Miss Joyce to A. M. Post, Jan. 30, 1936	12662	4619
1023-K—Letter, Miss Joyce to A. M. Post, Jan. 24, 1936	12662	4619
1023-L—Letter, Miss Joyce to A. M. Post, Jan. 17, 1936	12662	4619
1023-M—Letter, J. Goldston to Miss Joyce, May 21, 1935	12662	4619
1023-N—Letter, Miss Joyce to J. Goldston, May 20, 1935	12662	4620
1023-O—Letter, J. Goldston to Miss Joyce, Sept. 4, 1935	12662	4620

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1023-P—Letter, J. Goldston to Miss Joyce, Aug. 28, 1935	12662	4620
1023-Q—Letter, Miss Joyce to J. Goldston, Aug. 27, 1935	12662	4620
1023-R—Letter, Fashion Originators Guild of America, Inc., to Miss Joyce, Nov. 14, 1935	12662	4620
1023-S—Letter, Miss Joyce to J. Goldston, Nov. 13, 1935	12662	4620
1023-T—Telegram, A. M. Post to Miss Joyce, Nov. 13, 1935	12662	4620
1023-U—Memorandum, J. Goldston to Miss Joyce, Oct. 11, 1935	12662	4621
1023-V—Memorandum, J. Goldston to Miss Joyce, Nov. 7, 1935	12662	4621
1024-A—Letter, Miss Lapedus to J. Goldston, Sept. 3, 1935	12662	4621
1024-B—Telegram, A. M. Post to Hutzler Bros., Sept. 4, 1935	12662	4621
1024-C to 1024-H—Letter to Chas. Hutzler from A. M. Post, Sept. 7, 1935	12662	4621
1024-I—Letter, Chas. Hutzler to A. M. Post, Sept. 4, 1935	12662	4621
1024-J—Telegram, A. M. Post to Chas. Hutzler, Sept. 4, 1935	12662	4621
1024-K and 1024-L—Letter, A. M. Post to Chas. Hutzler, Sept. 30, 1935	12662	4621
1024-M—Letter, A. M. Post to Miss Lapedus, undated	12662	4622
1024-N—Letter, A. M. Post to Chas. Hutzler, Oct. 3, 1935	12662	4622
1024-O—Letter, A. M. Post to L. R. Bonwit, Oct. 3, 1935	12662	4622
1024-P—Letter, Miss Lapedus to J. Goldston, Oct. 21, 1935	12662	4622

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1024-Q—Letter memorandum from J. Goldston to Miss Lapedus, Sept. 23, 1936..	12662	4622
1024-R—Letter, Miss Lapedus to J. Goldston, Aug. 22, 1936.....	12662	4622
1025-A—Letter, J. Goldston to Miss Lapedus, Jan. 6, 1936.....	12745	4622
1025-B—Letter, Miss Lapedus to J. Goldston, Jan. 3, 1936.....	12745	4623
1026—Letter memorandum from Miss Tuttle of Fashion Originators Guild of America, Inc., to Miss Lapedus.....	12745	4623
1027-A—Letter, Fashion Originators Guild of America, Inc., to The Gaxton Co., attention S. Lampell, Jan. 30, 1934...	12746	4623
1027-B—Letter, Miss Lampell of The Gaxton Co. to Fashion Originators Guild of America, Inc., J. M. Golby, Jan. 20, 1934.....	12746	4623
1027-C—Letter, Fashion Originators Guild of America, Inc., J. M. Golby, to Miss Lampell of The Gaxton Co., Jan. 23, 1934.....	12746	4623
1028-A—Letter, Fashion Originators Guild of America, Inc., to Martin B. Kohn of Hochshild-Kohn, Inc., Mar. 19, 1934.....	12746	4623
1028-B—Letter, Fashion Originators Guild of America, Inc., to Hochshild-Kohn, Inc., Mar. 14, 1934.....	12746	4623
1029—Letter, J. Goldston to The Hub Co. of Baltimore.....	12753	4624
1030—Dollar volume of business of Dress Industry of United States for 1934, compiled by Research Department of Dress Joint Board.....	....	4624

Commission's Exhibits (continued)	Offered or Admitted Folio	Printed Page
1031—Dollar volume of business of Dress Industry of United States for 1935, compiled by Research Department of Dress Joint Board	....	4624
1032—Recapitulation of card files, Apr. 1, 1936	....	4624
1033—Recapitulation of registration of styles of members of Fashion Originators Guild of America, Inc., from June, 1935, to December 17, 1936	12763	4624
1034—Application of Rosenthal & Kalman, Inc., for protection against style piracy	12763	4624
1035—Declaration of Co-operation of Ernst Kern Co., June 18, 1936	12763	4624
1036—Declaration of Co-operation of Holman's Department Store, Pacific Grove, Apr. 8, 1936	12763	4625
1037—Letter, Holman's Department Store to Weinberg, Weinberg & Alpern, Dec. 28, 1935	12764	4625
1038—Letter to Holman's Department Store from Weinberg, Weinberg & Alpern, Jan. 2, 1936	12764	4625
1039—Letter, Weinberg, Weinberg & Alpern to Fashion Originators Guild of America, Inc., Jan. 2, 1936	12764	4625
1040—Letter, J. M. Golby of Fashion Originators Guild of America, Inc., to W. R. Holman, Jan. 3, 1936	12764	4625

COMMISSION'S EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
1050—Total sales volume of 162 dress manufacturers who were during 1935 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business"	10914	4625
1051—Total sales volume of seventy-eight dress manufacturers who were during 1934 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business"	13148	4626
1052—Total sales volume of sixty-two dress manufacturers who were during 1933 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business"	13148	4626

RESPONDENTS' EXHIBITS.

4—Order of R. H. Whiteon Noxall Co., Sept. 9, 1935	1753	4626
5—Order of Kaufmann's on Noxall Co., Sept. 18, 1935	1753	4626
6—Order of Joseph Horne on Noxall Co., Sept. 13, 1935	1788	4626
7—Order credit memorandum of Noxall Co. to Luries, Sept. 24, 1935	1809	4626
8—Original letter of co-operation, Wm. Filene's Sons Co., June 29, 1933	2612	4627
9—Letter, Fashion Originators Guild of America, Inc., to Mr. Wright of Wm. Filene's Sons Co.	2613	4627

Respondents' Exhibits (continued)	Offered or Admitted Folio	Printed Page
10—Letter from Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., July 5, 1933	2613	4627
11—Letter, Fashion Originators Guild of America, Inc., to A. W. Wright, July 7, 1933	2613	4627
12-A—Letter, A. W. Wright to Fashion Originators Guild of America, Inc., Aug. 9, 1933	2613	4627
12-B—Instructions to Dress Buyers by A. W. Wright, Aug. 8, 1933, enclosed in Respondents' Exhibit 12-A	....	4627
12-C—Letter, A. W. Wright to Fashion Originators Guild of America, Inc., Aug. 8, 1933	2613	4627
12-D and 12-E—Letter of J. M. Golby to trade, Aug. 3, 1933	2613	4627
17—Letter, H. J. Tily of Strawbridge & Clothier to A. M. Post, Feb. 8, 1936	3443	4628
18-A—Letter, A. M. Post to H. J. Tily, Feb. 7, 1936	3444	4628
18-B—Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild of America, Inc.	3445	4628
19—Notification re refusal to co-operate of Strawbridge & Clothier, Feb. 6, 1936	3620	4628
20—Copy of warranty stamp suggested by Fashion Originators Guild of America, Inc., to be used by retailers	4043	4628
24—Letter of W. E. Miller of Wm. Taylor & Son to Fashion Originators Guild of America, Inc., listing outstanding orders, Mar. 11, 1936	5420	4628

Respondents' Exhibits (continued)	Offered or Admitted Folio	Printed Page
25—Letter, W. E. Miller to J. M. Golby, Mar. 21, 1936	5460	4629
26—Letter, W. E. Miller to J. M. Golby, Mar. 16, 1936	5462	4629
27—Letter, W. E. Miller to J. M. Golby, Mar. 23, 1936	5464	4629
28—Telegram, W. E. Miller to A. M. Post, Mar. 13, 1936	5465	4629
29—Telegram, W. E. Miller to A. M. Post, Mar. 12, 1936	5467	4629
30—Letter, J. M. Golby to W. E. Miller, Mar. 19, 1936	5468	4629
31—Telegram, A. M. Post to W. E. Miller, Mar. 12, 1936	5470	4629
32—Telegram, A. M. Post to W. E. Miller, Mar. 13, 1936	5471	4630
33—Letter, Wm. Taylor & Son to J. Goldston, Mar. 4, 1935	5791	4630
34—Declaration of Co-operation, signed by Wm. Taylor & Son, June 30, 1933	5793	4630
35—Letter, W. E. Miller to J. M. Golby, Aug. 9, 1933	5796	4630
37—Letter, P. J. Reilly to A. M. Post, Feb. 14, 1936	5800	4630
38-A—Telegram, Wm. Taylor & Son to Fashion Originators Guild of America, Inc., Feb. 17, 1936	5804	4630
38-B—Night Letter, Fashion Originators Guild of America, Inc., to Wm. Taylor Son & Co., Feb. 16, 1936	5804	4630
39—Letter, R. G. Roth of Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., Feb. 21, 1936	5814	4631
40-A and 40-B—Letter to R. G. Roth from A. M. Post, Feb. 26, 1936	5819	4631

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
41—Advertisement by Fashion Originators Guild of America, Inc., in Women's Wear Daily, Feb. 24, 1936.....	5828	4631
43-A and 43-B—Letter, A. M. Post to Mr. McDonald of J. L. Hudson Co., Nov. 12, 1936.....	6163	4631
44—Advertisement in Women's Wear Daily, inserted by Dress Creators League of America.....	11260	4631
45—Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, Aug. 9, 1933.....	6703	4631
46—Letter of Associated Buying Offices signed by special committee to Fashion Originators Guild of America, Inc., Aug. 3, 1935.....	6833	4632
52—Telegram, Wyzanski to Mandel Bros. of Chicago to New York office, May 14, 1936.....	7673	4632
53—Telegram, P. J. Reilly to Stanley Stone of The Boston Store, Mar. 10, 1936....	8374	4632
54—Telegram, L. C. Dillon of The Boston Store to A. M. Post, Mar. 12, 1936....	8374	4632
55—Telegram, A. M. Post to L. C. Dillon of The Boston Store, Mar. 12, 1936.....	8374	4632
56—Telegram, L. C. Dillon to A. M. Post, Mar. 12, 1936.....	8374	4632
57—Telegram, A. M. Post to L. C. Dillon, Mar. 13, 1936.....	8374	4632
58—Letter, Roy H. Bjorkman to J. M. Golby, July 2, 1935.....	8612	4633
59—Letter, Roy H. Bjorkman to A. Sapero of Shapiro & Baer, July 2, 1935.....	8612	4633
60-A and 60-B—Declaration of Co-operation with Fashion Originators Guild of America, Inc., signed by Minneapolis Guild of Fashion Retailers, Roy H. Bjorkman, Chairman.....	8612	4633

Respondents' Exhibits (continued)	Offered or Admitted Folio	Printed Page
62—Letter, D. Donovan of The Dayton Co. to J. M. Golby, June 7, 1934	9194	4633
63—Letter, D. Donovan of The Dayton Co. to H. O. Bergdahl, July 12, 1935	9198	4633
64-A and 64-B—Letter, H. O. Bergdahl to D. Donovan, Aug. 28, 1936	9267	4633
65—Blank form for Piracy Committee Report	9459	4633
66—Blank form of report of refusal or failure to co-operate	9461	4634
67-A, 67-B and 67-C—Removal slips from old form of Shoppers' Return Book	9463	4634
68-A, 68-B and 68-C—Sample forms for shopper's report on shopping	9457	4634
69—General letter from J. Goldston to shoppers, Apr. 2, 1936	9468	4634
70—Sample sketch of copy and notification to shopper of dress of Feinberg & Weisen	9493	4634
71—Sample sketch of copy and notification to shopper, No. 1020, Worthmore Co.	9493	4634
72—Report on refusal or failure to co-operate of The Dayton Co. by Virginia McDonald, Nov. 7, 1935	9493	4634
73—Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, Nov. 20, 1935	9493	4635
74—Letter, H. W. Lund, Controller of Klein's of Peoria, Illinois, to Federal Trade Commission, Chicago office, Dec. 16, 1935	9842	4635
75—Letter, J. M. Golby to C. F. Roycroft of Ladies' Ready to Wear Guild of Baltimore, Oct. 31, 1935	10217	4635

Respondents' Exhibits (continued)	Offered or Admitted Folio	Printed Page
76—Minutes of Board of Control of Ladies' Ready to Wear Guild of Baltimore, Sept. 23, 1933	10225	4635
77—Declaration of Co-operation in form of a letter of John Shillito & Co., July 1, 1933	10665	4635
78—Letter, L. R. Minster of John Shillito & Co. to Fashion Originators Guild of America, Inc., Feb. 29, 1936	10682	4635
79—Letter, A. M. Post to Irving Plaut of John Shillito & Co., May 21, 1935	10690	4635
80—Telegram, Fashion Originators Guild of America, Inc., to L. R. Minster, Mar. 12, 1936	10717	4636
81—Telegram, L. R. Minster to Fashion Originators Guild of America, Inc., Mar. 12, 1936	10717	4636
82—Advertisement of John Shillito & Co. in Cincinnati Enquirer, Nov. 6, 1935	....	4636
86—Letter to M. Rentner from B. Foreman of B. Foreman Co., Dec. 29, 1932	11217	4636
88—Declaration of Co-operation of the Associated Merchandising Corporation signed by H. O. Bergdahl, July 5, 1933	11289	4636
89—Letter, H. O. Bergdahl to J. M. Golby, Oct. 19, 1934	11431	4636
90—Advertisement of Raphael Weill & Co., "The White House," in the San Francisco Shopping News, Oct. 15, 1934	11436	4637
91—Advertisement of Abraham & Straus in New York Herald-Tribune, Mar. 10, 1935	11520	4637
92—Letter, J. M. Golby to H. O. Bergdahl of Associated Merchandising Corporation, Oct. 29, 1935	11566	4637

RESPONDENTS' EXHIBITS (continued)	Offered or Admitted Folio	Printed Page
93—Report and notes of Mr. Rosensweig of Associated Merchandising Corporation, Assistant Buyer, Mar. 4, 1936.....	11783	4637
97—First application of Rosenthal & Kalman to Fashion Originators Guild of America, Inc., for protection against style piracy.....	12416	4637
98-A and 98-B—Certificate of Incorporation of Fashion Originators Guild of America, Inc.....	13055	4637
100—Letter, H. J. Tily, of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., June 30, 1933.....	13123	4637
101—Declaration of Co-operation of Associated Merchandising Corporation on behalf of Bullocks, signed by H. O. Bergdahl, received July 5, 1933.....	13123	4638
102—Declaration of Co-operation in form of letter from C. J. Larsen of The Dayton Co. to Fashion Originators Guild of America, Inc., July 1, 1933.....	13123	4638
122—Card catalogue of Dress Manufacturers, 1934.....	13179	4638
123—Recapitulation of available resources, 1934, taken from Official Records of Dress Code Authority, N.R.A.....	13188	4638
124—Card catalogue of Dress Manufacturers, 1935.....	13190	4638
125—List of non-Guild manufacturers and their dollar volume from credit agencies making merchandise $16.75 and up, wholesale.....	13197	4638
126—Names of firms appearing on Commission's Exhibit 450-H making merchandise, wholesale cost, under $16.50 per garment as well, and their dollar volume derived from credit agencies..	13207	4638

BLANK PAGE

	Page
Proceedings in U. S. C. C. A., Second Circuit	4671
Opinion, Hand, J.	4671
Petition for rehearing	4679
Orders denying petition for rehearing	4682
Notice of proposed decree	4683
Decree	4684
Clerk's certificate	4695
Order allowing certiorari	4696

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Room 901, 45 Broadway,
New York, N. Y.,
December 7, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, you may proceed.

11834

JOHN BLOCK resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Albert.

Q. Mr. Block, you have testified, I believe, that the A.M.C., while not technically a member of the A.B.O., was present at substantially all its conferences and represented and took an actual part in its activities? A. There was a representative of the A.M.C. present I would say at most of our meetings and conferences.

By Mr. Albert. 11835

Q. Was that representative usually Mr. Bergdahl? A. I would say in most cases, sometimes others.

Q. By reason of Mr. Bergdahl being present at those A.B.O. conferences, or, I might say, at those at which you were also present, was it not true that you had many discussions with him with reference to the activities of the Fashion Originators' Guild of America, Inc.? A. Yes, sir.

Q. Is not that also true particularly from the first time that you heard of the Fashion Originators' Guild of America? A. I do not understand the question.

Q. Is it not also true practically from the first time that you heard of the Fashion Originators' Guild of America? A. That is right.

Q. I believe, Mr. Block, that you testified that you first heard of the inclusion of the $10.75 dress manufacturers, loosely speaking, in the Guild, in June of 1935.

Mr. Haycraft: I object to that. The witness identified exhibits as early as March.

11837 A. I cannot say as to the dates, but the records will show.

Examiner Averill: The witness' answer clarifies the situation. Proceed.

By Mr. Albert.

Q. Well, in the light of Mr. Haycraft's remark, would you say that the first time that you had heard of the inclusion of the $10.75 manufacturers was in March, 1935? A. I do not know. The first time I heard about it when was the $10.75 dress manufacturers formed the $10.75 dress guild, and announced it either in "Women's Wear," or some similar publication. I believe it was "Women's Wear." And, just around the same time, just about the
11838 same time, it was taken up with us—that is, the A.B.O.—by Mr. Post and Mr. Reinitz at a meeting.

Q. Are you distinguishing, in your remarks, between the time when the $10.75 dress manufacturers were technically admitted to the Guild, and the time when the first inclusion of the $10.75 dress manufacturers was first discussed—do you understand the question? A. Yes, I understand the question. Yes, I believe that is the point you

asked me, if I understood when I first heard of this $10.75 guild and its proposed affiliation with the Fashion Originators' Guild of America?

Q. Well, let me put the question this way: When was the inclusion of the $10.75 dress manufacturers first discussed, to your knowledge, or suggested? A. Do you mean as far as the A.B.O. is concerned?

Q. And as far as the Fashion Originators' Guild of America is concerned, rather. A. I do not remember whether my first knowledge came from an advertisement in "Women's Wear," or whether it was brought out at a regular A.B.O. meeting. I do not know which was first.

Q. Did you have anything to do with the suggestion, let me say, of taking in the $10.75 manufacturers? 11840

Mr. Hayeraft: That is objected to. There is no foundation laid for that question. There is nothing to show that there was any suggestion ever made.

Examiner Averill: The witness can say so. Objection overruled.

Mr. Hayeraft: Exception.

Examiner Averill: Noted.

A. I would like to hear the question.

Examiner Averill: Read the question.

(Question read.)

A. Whose suggestion? The Guild's suggestion? 11841

By Mr. Albert.

Q. Let me put the question this way: Did you at any time advocate the taking into the Guild of the $10.75 manufacturers prior to their actual inclusion? A. Possibly.

Q. In other words, you do not recall? A. I am not certain.

Q. Let me refresh your recollection. A. Yes.

By Mr. Albert.

Q. Did you ever make the following statement in January, 1934: "The Fashion Originators' Guild of America is expected by retailers to broaden the base of membership so that manufacturers of more popular priced lines of dresses and goods be included, and this should be accompanied by taking in various associations down as low as the $10.75 market." A. Yes. Possibly I did.

Q. Well, now, do you not recall as a matter of fact that you did make such a statement, Mr. Block? A. I do not know. How can I definitely recall it? I see you are reading from something. Tell me about it.

11843 Q. This is an interview to a representative of "Women's Wear," and appears in "Women's Wear" for January 17, 1934. That is what I read to you from. A. I would like to see it.

Q. I would be glad to show it to you.

(Counsel shows document to the witness.)

Q. You may recollect that you were shown that before you went on the stand——

Mr. Haycraft: By Counsel for the Respondent?

Mr. Albert: If you will just let me finish.

By Mr. Albert.

11844 Q. —by Counsel for the Respondent. Have you got the place there, Mr. Block? A. I just want to see what the occasion was.

Q. This point here. A. Yes.

Q. And this is another reference here. A. Yes.

Q. All right. A. Yes, but that was not made to a reporter for "Women's Wear." That was at an association of the Retail Dry Goods Association.

Q. But you did make that statement, did you not? A. Yes, sir.

Q. That was made to a group of representatives of the N.R.D.G.A. A. The N.R.D.G.A., at which Mr——

Q. Did you also at that time make the following statement: "If the above recommendations would be incorporated and carried through in the program of the Fashion Originators' Guild of America, then the Guild would undoubtedly have a still more enthusiastic and active support from every retailer in the country."? A. Read that again, please.

Q. "If the above recommendations would be incorporated and carried through in the program of the Fashion Originators' Guild of America, then the Guild would undoubtedly have a still more enthusiastic and active support from every retailer in the country." A. Possibly. I do not know whether those are my exact words. 11846

Q. Is that not the substance of what you stated? A. I cannot be certain. It is reported that way, and possibly I said exactly that, or possibly it was a little different. I do not remember now.

Q. Did you also say the following— A. Excuse me, but these hearings—at these hearings there was a stenotypist present, and why do you not refer to his records, that would give you the exact words.

Q. As a matter of fact, Mr. Block, is that stenotypic record of what was said given to a "Women's Wear" reporter? A. I do not know whether the "Women's Wear" reporter gets it or not. The "Women's Wear" reporter is there himself. 11847

Q. Yes. A. What I told the "Women's Wear" reporter—that is, whether the "Women's Wear" reporter took it down himself, the "Women's Wear" reporter is there at the meeting and they may take their own notes.

Q. From this, did you ever disavow—that is, from that time down until today—did you ever disavow the statements that appeared in "Women's Wear"? A. Not to my knowledge.

Q. Did you also say the following: "There is no question that the ruthless copying of style has been greatly reduced. My guess is that it has been reduced by almost 70 per cent, which is good considering that the Guild agreements for the most part were only signed last season."? A. I probably did.

Q. Did you also say this: "These store executives"—or, rather, referring to a conversation that you had with the store executives which is reported above, but which is not quite material here—"These store executives advise me that the mark-downs in his store"—just let me get this straight now: "This same executive advise me that the
11849 mark-downs in his store on dresses from $16.95 to $39.75 are 25 per cent. less than for the same 5 months' period of the year before—by 25 per cent."? A. That is quite likely.

Q. Mr. Block, in order that we may fully understand each other, and so that it may be apparent for the record what I am going to ask you in my subsequent questions, and why I am going to ask you these subsequent questions, let me ask you this: You have no fault to find, have you, with the F.O.G.A. plan to eliminate style piracy in so far as it applies to the medium priced and better priced dresses, have you? A. No, I believe their aim is a very worthy one, but it has to be made practical in order to be effective, and in order that retailers as a whole agree on its points so as to have an accord——

Q. Will you be good enough, please, to answer my ques-
11850 tion? A. I am trying. I thought you wanted me to tell you what was in my mind.

Q. I will get that out. A. All right.

Q. Is the reason for your acquiescence in the F.O.G.A. plan in the medium priced and lower priced dresses the fact that you believe that style piracy is unethical? A. Yes, sir.

Q. And of course the business and policies of Kirby, Block & Company and its members is predicated on doing an ethical business, is it not? A. Correct.

Q. And the obtaining of a profit unethically is something that Kirby, Block & Company and its members have no interest in at all; is that so? A. I would like to qualify my answer.

Q. Answer it any way you please. A. That answer is yes, providing you do not set up an advantage for the other fellow which will act as a boomerang against yourself; in other words, the retailers want to be ethical, but he does not want a club to be handed to the other retailer to hit him with.

11852

Q. May I interpret, or do I understand your answer as meaning that Kirby, Block & Company and its members are satisfied to resort to what they believe to be unethical practices if they are used by others? A. That is not my answer.

Q. Would you be good enough to clarify it, please? A. Just read my answer.

Q. Does your language mean, or am I to understand if your competitor uses a club, you want to use a club also, do you? A. No, we just do not want—the retailer just does not want to be clubbed and have nothing to say about it.

By Mr. Albert.

11853

Q. I will repeat my question to you: You say in your letter of January 13, 1936, being Commission's Exhibit No. 944: "If the last mentioned group was under complete control there probably would be very little to worry about." In referring to "control," do you mean that "control" attempted to be exercised by the Guild in the medium priced field and the better priced lines?

Examiner Averill: I do not think there is any objection to that.

A. If I might have the letter I probably might be able to tell you better what it means. He is just taking out a little part of it, and I do not know just what it refers to.

Examiner Averill: Show the witness the letter.

(The witness was shown the letter.)

Examiner Averill: The letter to which Counsel has just referred, and from which he is quoting, is a letter in evidence as Commission's Exhibit 944.

A. That is right. I was referring to the chain stores, as the paragraph above shows.

11855 *By Mr. Albert.*

Q. What did you mean by "control"? What type of control were you referring to, or what mechanics of control were you referring to? A. Chain store control.

Q. What type of control over chain stores did you think would be complete when you wrote that in your letter? A. The Fashion Originators' Guild of America has stated at various times that eventually they would control the chain store buying of popular priced merchandise in so far as copying styles were concerned.

Q. Yes. A. That is the control I referred to.

Q. Well, now, let me see if I can put it in a different way.

Mr. Haycraft: What is the matter with that?

11856 Mr. Albert: Please, Mr. Haycraft.

Examiner Averill: Go ahead.

By Mr. Albert.

Q. Since you differentiate in your letter between retailers generally and those who are in the chain store business, is it your testimony that retailers other than those in the chain store business are under control in so far as anti-style piracy is concerned? A. Not exactly.

Q. Are you in favor of the control presently exercised by the Fashion Originators' Guild of America, Inc., over such retailers? A. Which retailers?

Q. Other than chain stores. A. Provided they also get in the chains, yes.

Q. What investigation have you made, Mr. Block, of the number of copies of F.O.G.A. members' originals sold by these chain stores, if any, to warrant that opinion?

Mr. Haycraft: I object to the use of the word "originals"; has not been defined in this case.

Examiner Averill: I think it is clear. Objection overruled if the witness knows.

11858

A. One does not have to make any special or specific investigations if one just goes around to the manufacturers' showrooms—I refer to those that are generally known as copyists, and he will find that a great number of their best garments are sold to and a great part of their business comes from chain stores; that is exactly what the chain store is selling.

Q. Is it not a matter of fact that there is practically only one large chain store organization whose competition you are referring to? A. No.

Q. What are the others? Name some of them. A. Yes, I will name some of them.

Q. All right. A. In addition to Lerner's shops.

Q. That is one that I was referring to mentally, and you were able to answer it without my saying it? A. I presume. I do not know. You should have been. 11859

Q. Quite right, and I was, yes. A. In addition to the Lerner's shops, there are Grayson's, Wilbur Rogers, Zucca's Stores, Sally Shops, Darling Shops and many others that I can mention the names of if you want me to, but I do not recall them.

Q. Would you be surprised to learn, Mr. Block, that these chain stores sell a very small percentage of copies in your stores with comparison to the total stock of their stores? A. I would.

Q. You would? A. Indeed.

Q. Do I understand you correctly to state that you have made no actual investigation of the number of copies sold in chain stores? A. Right.

Q. Speaking of the functions of Kirby, Block & Company, one of the functions of Kirby, Block & Company is to increase the potential profits of its member stores; is that so? A. Well, maintain or increase them as the
11861 case might be.

Q. In the performance of its duties, Kirby, Block & Company signed the declaration of co-operation with the Fashion Originators Guild of America, did they not? A. It did.

Q. No one of the members of Kirby, Block & Company that signed a declaration of co-operation with the Fashion Originators Guild of America have withdrawn that co-operation at any time, have they? A. So far as I know, no.

Q. Are not the advantages obtained by a retailer in handling originals purchased by him protected greater than any claimed disadvantage testified to by you in the competition of chain stores in the lower-priced brackets?
A. It all depends on the type of retailer and the type
11862 of store that he has. In the case of a store like Bergdoff-Goodman and Sachs Fifth Avenue, the answer would be yes. In the case of a store like Macy's or Gimbel's, or Arnold Constable, the answer will be no.

Q. Will you be good enough to answer my question in the light of your experience with Kirby, Block & Fischer, and not in an assumed criticism of Bergdoff-Goodman's and Sachs Fifth Avenue and Macy's, Gimbel's, or Arnold

Constable's with whose businesses you cannot know from the inside as you know your own in the light of your contact with them in the industry?

Mr. Haycraft: I object. That is improper.

Examiner Averill: Obviously sustained.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Directing your attention specifically to the members of Kirby, Block & Company, will you be good enough to answer the question? A. The answer will be no, taken as an average, taking the stores as an average. 11864

Q. In the medium and be ter-priced dress lines, are your stores, your member stores, under any disadvantage in co-operating with the Guild? Referring to and leaving aside for the moment the question of the low-end dresses? A. No.

Q. Is not the program of anti-style piracy a benefit to your member stores in the medium and better-priced dresses? Again leaving aside for the moment the question of low-end dresses. A. Yes.

Q. You said that in broadening the base, using language, of the Guild plan against anti-style piracy, the co-operating dealers are at a disadvantage in the low-end merchandise with their chain store competition; is that so? A. Right. 11865

Q. Does not the benefit received by your co-operating retailers exceed the disadvantages, if any, that you say they are under in the low-priced end?

Mr. Haycraft: That is objected to as already having been answered.

The Witness: I would like to answer the question.

Examiner Averill: I will let the witness answer it. The witness says he wants to.

A. In the large majority of cases, no; in a few cases, yes.

By Mr. Albert.

Q. Upon what do you predicate that opinion? A. It depends upon the type of store. If a store handles only fine merchandise, the answer is yes; if they handle medium and lower grade merchandise, the answer is no.

Q. If they handle only fine and better class merchandise,
11867 there is no problem for them in so far as low-end merchandise is concerned; is that so? A. There is, too, because occasionally they have budget shops and so forth even though it is a fine store, and those budget shops, while it may be a small part of the business as a whole, it is essential, nevertheless.

Q. Earlier in the morning, I called, and in fact quoted to you a statement that the percentage of mark-downs in a particular store of dresses $16.95 had decreased in the first five months of the Guild's plan approximately 25 per cent. A. Yes.

Q. I believe, if I am not wrong, and if I am in error correct me, I believe that you stated that that was correct? A. I stated that I was so told.

11868 Q. From your experience in Kirby, Block & Company, and with your member stores, have you found that the percentage of mark-downs has substantially decreased in your medium-priced and better-priced dresses since the inception of the Fashion Originators Guild of America plan against the style piracy? A. I believe it has decreased somewhat, how substantially, I do not know.

Q. Have you compiled any statistics whatsoever to show how much that decrease has been? A. I have not.

Q. Have any of your member stores done so? A. Possibly.

Q. Have you received a report on it? A. No, sir.

Q. Have you any records whatsoever in your offices showing the amount of the decrease? A. No, sir.

Q. Have you compiled any statistics whatsoever to show the amount of loss, if any, sustained by co-operating retailers in being not permitted to sell a copy of a dress in the low-end price lines? A. I have no statistics on that subject.

Q. You, of course, recognize, Mr. Block, that the curbing of style piracy in the low-end field would be a benefit to the industry, do you not? A. Only providing that it applied to all stores and not to any special groups.

Q. Yes. So that if the Guild program of anti-style 11870
piracy could be extended to and applied in the low-end field in the same way as it is in the medium-priced and popular-priced—in the medium and better-priced field, you would be in hearty accord therewith? A. Do you refer to retailers or manufacturers when you speak of fields?

Q. Both. A. Yes.

Q. Mr. Block, I think, in giving the list of chain stores from whose competition your members suffered from the fact that they were not co-operating, you mentioned Wilbur Rogers? A. Yes, sir.

Q. You mentioned the Sally Shops? A. Yes.

Q. You mentioned the Darling Shops? A. Yes.

Q. What others did you mention? A. It is on the 11871
record.

Q. Would you mind mentioning one or two others, if you can. A. Read my answer. That will give you the names. Why should I tax my memory?

Q. Has your memory been severely taxed thus far?

Examiner Averill: Gentlemen, let us go on. The state of his memory will be shown by his answers.

11872 *John Block—For Commission—Resumed—Cross.*

By Mr. Albert.

Q. Mr. Block, did you not as a matter of fact say, or do you not as a matter of fact, know, rather— A. What is that?

Q. Mr. Block, do you not as a matter of fact know that the Sally Stores are co-operating retailers? A. I do not.

Q. Do you not know, as a matter of fact, that the Darling Stores are co-operating retailers?

Mr. Haycraft: I object as not being a fact of record.

Examiner Averill: He is asking him if he knows, and if he does not know he can say so.

11873

A. I do not know.

By Mr. Albert.

Q. Yet, despite the fact that you obviously, since you do not know that the Sally Stores and the Darling Stores are co-operating retailers, that you obviously have made, Mr. Block, have made no investigation of what chain stores are or are not co-operating retailers of whom you say you are hampered by their competition in the low-end field? A. When we speak on that subject you must remember that there are thousands of stores that handle cheaper merchandise who are not in chains, and who do not sign up or have not signed up with the Guild, and who

11874

do not handle the better type of dresses, and those stores are also in competition with our stores.

Q. Those stores cannot get better-priced merchandise, can they? A. No.

Q. They cannot get medium-priced merchandise, can they? A. I do not know what you mean by medium-priced. Do you mean $10 and $16?

Q. Yes. A. They can get some.

Q. But not enough to warrant them being considered as real competitors? A. For their needs, they can, because that is the smaller part of their business.

By Examiner Averill.

Q. When you say they cannot get that merchandise, was that because they cannot get the merchandise, or because of the range of their business? A. No, I presume the attorney means that these manufacturers being members of the $10.75 or $16.75 Guilds, these retailers cannot get that merchandise, but there are some who are not in the guilds and they can get some.

Q. I thought you were talking about those who are not 11876
in the Guild. A. Yes. Retailers that handled popular-priced merchandise.

Q. They cannot get the higher-priced goods? A. No, not from Guild members.

Examiner Averill: The way the answer read, it was not clear.

Mr. Haycraft: That is just the point, Mr. Examiner.

Examiner Averill: I want to know why they cannot.

Mr. Haycraft: He answered that they were not members of the Guild and therefore could not get it.

11877

By Mr. Albert.

Q. Mr. Block, you have particularly enumerated, previously, certain chain stores and specialty shops—in answer to a question of mine—who were not bound by the rules of the Fashion Originators Guild of America, and whose competition you found to be a disadvantage to your member stores, and to further identify those stores they are the ones to which you said you did not wish to fur-

ther tax your memory, or why should you tax your memory; now, have you made any specific investigation whatsoever to determine whether or not these named stores are or are not co-operating with the Guild? A. These main stores?

Q. No, these named stores are or are not co-operating with the Guild?

Examiner Averill: Now, to just what stores do you refer in that question?

Mr. Albert: The ones that he specifically named before.

Examiner Averill: I know that, but I wanted to
11879 show that they are chain stores because this is too far back. That is all I wanted to do, establish the nature of the stores that he is referring to, whether they are chain stores, specialty shops, or what not?

A. If you are asking me not to mention names, I will tell you generally that is the opinion in the market—the opinion in the market is that they are not.

By Mr. Albert.

Q. Aside from the opinion in the market, you have no other knowledge of whether or not they are co-operating with the Guild? A. Correct.

Q. Based upon that type of research and investigation,
11880 it is that you predicate your opinion that their competition is disadvantage to you in the lower-priced market? A. It is upon that type of testimony; namely, what I got from the wholesale market, plus the testimony that I got from retailers that I am contact with.

Q. Mr. Block, in your capacity with Kirby, Block & Company, have you any knowledge, roughly speaking—I am not seeking to impugn any specific, technical knowledge to you—have you any rough knowledge of the per-

centage of profit that the low-end manufacturers make upon their dresses? A. It depends on the year, they have some bad years and some good years, sometimes.

Q. Now, you have testified, Mr. Block, that for a certain period of time it was understood that in the low-end merchandise, in the enforcement of the Guild plan of anti-style piracy, retail co-operating stores were under conditions to return not more than 3 per cent. of the copies found in their basements and under certain conditions not more than 5 per cent.; is that correct? A. Not exactly. I said, I spoke of 5 per cent. for the basement or 3 per cent. for the dress department, as a whole.

Q. From your knowledge of the industry, would you not 11882
say that if in addition to the normal returns for other reasons that the manufacturer gets for the dresses that he sells, there are in addition to that 5 per cent. of his total sales returned to him than that return of 5 per cent. would mean the difference to him of a profit or a loss upon his sales? A. It would undoubtedly affect his profits, but I am not prepared to state right now to what extent.

Q. Very well, Mr. Block. State the fact, Mr. Block, as to when you first learned of the Fashion Originators Guild of America and first had your conferences with Mr. Rentner, and specifically calling your attention to the discussions that then arose as to the inclusion or non-inclusion of the low-end merchandise in the Guild plan? Will you be good enough to tell us what it is in substance with Mr. Rentner said? A. Well, the discussion took some time. 11883

Q. I believe you said two or three hours? A. Probably two or three hours. At the conclusion of the meeting, and, in fact, the statement made by Mr. Rentner was the statement that brought the conclusion was substantially this —that we will not regard dresses costing $6.75 and under as copies.

Q. Well, can you more particularly, rather than giving us the conclusion, tell us what was said by Mr. Rentner?

Do you understand the difference that I am trying to make? A. Yes. You want to know what?

Q. You have told us just what your conclusion is from what Mr. Rentner said. Now, can you tell us what it was that Mr. Rentner said? A. Well, he said a lot.

Q. Yes. A. I do not remember just all the things he said, but the whole meeting seemed to revolve around or on the question as to what the position the average retailer, the average independently owned store would be in if the lower-priced dresses—namely, $6.75 and under—and they were so-called copies—would be available only to chains and cheaper stores and not to those who subscribed
11885 to the Guild plan. That was the entire argument of the afternoon.

Q. Well, at that time there were not as many manufacturing members of the Guild as there are to-day, were there? A. That is correct.

Q. At that time when the Guild was first formed, most of the members of the Guild manufactured dresses at $22.75 and up, perhaps a few at $16.75; is that so? A. That is correct.

Q. At that time the bulk of the copying of the Guild dresses was done at a price range from $10.75 to $16.75 retail price; is that so? A. Well, to be exact, I would say $16.95 to—well, beginning at $10.95 and going up to $16.95.

Q. Yes. A. Yes.

11886 Q. Now, as a matter of fact, Mr. Block, at that stage in the development of the Guild plan, and at that stage in the consideration of the problem of eliminating style piracy, was it not the expressed thought that a dress at that time selling for less than $10.75—a price list at that time below $10.75 and the price list, I might say at that time, below $10.75 immediately dropped, I believe, to below $6.75—was not considered a copy of a dress selling for $22.75 and above; is that the fact? A. I would say $16.75 and above.

Q. Is it not in that sense at that stage of the development of the Guild plan that you referred to as the agreement that dresses costing $6.75 and under were not to be within the purview of the Guild plan? A. What is the question?

Q. (Question read.) A. I cannot say as to whether that was the sense or not. I only know what was said.

Q. Is that not what was said and is that not the point upon which you predicated that statement that dresses $6.75 and under were not to be within the purview of the Guild plan? A. I know what was said. I do not understand the question.

Q. Did not Mr. Rentner and the discussion itself, for 11888
that matter, concern itself with the fact that at that stage of the Guild development, at that embryonic stage of the development of the theory of eliminating style piracy, it was considered by all present that the spread between the price wholesale of $16.75 and above, and you have stated that there were only a few manufacturers at $16.75 and above, and most of them ranged from $22 up, that a dress selling below $6.75 at that period under the Guild plan would not be considered a copy of a dress of the manufacturers who were then members of the Guild? A. Nothing was said as to any stage or stages.

Q. What was the sense of the statement? A. We are all living to-day. We are not concerned with yesterday or to-morrow. We are talking about to-day's affairs.

Q. You will not deny that that was the topic of conversation of those three hours, of this three-hour meeting as I have roughly included it in my question? A. What was the topic? 11889

Q. Have you not been listening to the questions? A. I certainly have.

Q. Let me refresh it for the third time.

Examiner Averill: Please, just tell him what the topic was and go on from that.

The Witness: I am talking of one topic and he is speaking of another topic.

Examiner Averill: That is what I want you to do, I want to get you together on that.

By Mr. Albert.

Q. Was not the topic of discussion at that original inception, practically, of the Fashion Originators Guild of America, the following: That most of the members of the Guild, manufacturers, with few exceptions at that time, manufactured wholesale price $22.75 dresses and above, thought that the spread at retail of the wholesale price of
11891 dresses which would sell below $6.75, $6.75 and below, and the price that the $22.75 wholesale dress would sell for at that time was so great that it would not be considered at that time that a copy of a $22.75 wholesale dress being sold at below $6.75 would be within the purview of the Guild plan; is that clear? A. Very clear.

Q. What is the answer? A. That might have been the conclusion, but it was not the topic.

Q. Then you would not deny that it was the conclusion, let me put it that way. A. I have told you what Mr. Rentner, at the conclusion of that meeting, said.

Q. Well, you just made the statement that that might have been the conclusion, but that was not the topic. A. Yes.

11892 Q. Will you then say that you will not deny that that might have been the conclusion of what was said at that time? A. It might have been.

Q. Now, Mr. Block, one further question. A. Yes.

Q. Mr. Block, was Mr. Bergdahl present at that conference? A. I believe he was, yes.

Q. That was freely discussed, was it not? A. Very freely discussed.

Q. Was there anything secret about it? A. No.

Q. There was nothing secret about it, was there? A. Not a thing; no, sir; nothing was secret.

Q. And the provision of not considering anything below $6.75 a copy was applicable to everybody in the industry at that time who were retailing co-operators; is that so? A. Yes—you mean $6.75 and anything that was below $6.75?

Q. Yes. A. In other words, $6.75 and under?

Q. Yes. A. I cannot swear as to that. We had these meetings there, and I am not sure that the result of the meetings were made public.

Q. But the conclusions and the provisions with respect to the non-inclusion of $6.75 and under copies was considered to be applicable to all of those who were present at 11894
that meeting; is that so? A. That is right.

Q. And at least in the beginning of the Guild plan, none of your member stores who co-operated returned anything under $6.75; is that so? A. What is the question?

Q. At least in the beginning of the Guild plan, Mr. Block, no one of your member stores who co-operated returned anything in the way of a dress or other garment under $6.75 wholesale; is that true? A. Returned anything costing $6.75 or under? I believe so.

Q. Yes? A. Yes.

Q. Now, Mr. Block, you have testified that a change occurred in the Guild plan with respect to the inclusion of dresses under $6.75 in the Guild plan against style piracy, have you not? A. I mean $6.75 and under.

Q. And when I say $6.75 I mean "and under." A. 11895
When you say "under $6.75," they made them also $3.75, you see at that time there was not much below $6.75 until it hit the $3.75 level.

Q. Yes. A. Now, what is your question?

Q. Let me phrase it this way, originally $6.75 and under were not within the purview of the Guild plan, according to your testimony? A. Yes.

Q. Subsequently, it was decided that $6.75 and under were to be included within the Guild plan; that is so, is it not? A. Yes, sir.

Q. You also testified that when $6.75 and under were to be considered within the Guild plan, there was to be leniency in the enforcement of that provision; is that so? A. That is so.

Mr. Haycraft: I would like to hear the question read.

(Question and answer read.)

By Mr. Albert.

11897

Q. Did you discuss that with Mr. Bergdahl? A. I believe it was discussed at a meeting of the A.B.O. generally, and Mr. Bergdahl was present at that meeting.

Q. Was it the general consensus of opinion that leniency should be exercised in the enforcement of this plan including $6.75 and under? A. Yes, sir.

Q. As a matter of fact, this leniency was discussed and advocated by both Mr. Bergdahl and Mr. Post; is that so? A. Yes, that is so.

Q. And was not the purpose of this leniency in order to permit the market to adjust itself? A. The purpose of this leniency was in order to permit the market to adjust itself, and also in order to give the Fashion Originators Guild of America an opportunity to bring in the non-

11898 signatory stores.

Mr. Albert: That is all.

Redirect examination by Mr. Haycraft.

Q. Was there any specific limit, time limit, put upon the leniency you just referred to? A. No, not that I remember.

Q. Was there any time limit put on the statement made by Mr. Rentner as to the inclusion of $6.75 cost garments, and under, at the time of the general meeting in 1933? A. No time limit.

Q. No time limit? A. No time limit.

Q. You were asked the question "That was freely discussed"; referring to that June, 1933, meeting. What was freely discussed? What did you mean in your answer? A. The question as to the inclusion of dresses costing $6.75 and under, and the anti-piracy plan of the Fashion Originators Guild of America.

Q. Was there anything said by Mr. Rentner at that meeting, as to the— A. What? 11900

Q. I will withdraw that. A. Yes.

Q. In your answer a few moments in referring to the disadvantage to the department stores having basement stores and economy shops selling dresses in the lower brackets, you said that in addition to the chain stores referred to in your testimony there were thousands of shops throughout the country that were selling cheap merchandise that were not co-operating with the Guild. Do you remember that? A. That is right. I remember right.

Q. Then you were asked by counsel for the respondent as to whether those shops could get Guild merchandise. A. That is right.

Q. I will ask you to state for the record whether or not these shops that you referred to were and are a substantial factor in the merchandising of ladies' and women's— 11901 ladies' and misses' ready-to-wear garments?

Mr. Albert: That is objected to as improper redirect examination, and no foundation whatsoever has been laid showing the ability of Mr. Block to give an opinion upon that matter, and he has not even attempted to justify that; he has not even attempted, in fact, to testify that he knew about it.

Examiner Averill: I will overrule the objection; exception for counsel.

The Witness: What is the question?

Q. (Question read.) A. Are you referring to independently owned specialty stores that are non-signatories?

By Mr. Haycraft.

Q. Yes. A. I would say that they are a substantial part of the retailing industry and ladies' and misses' ready-to-wear in the popular-priced lines.

Q. In popular-priced lines, what price ranges would you
11903 include? A. Well, I would say from $16.95 retail, down all the way down to maybe $2.88.

Q. $16.95 retail would be about $10.75 wholesale? A. Yes, women's and misses', most of the goods in the range from $7.95 retail down.

Q. What, in your opinion, and based upon your experience, would be the percentage of the total number of garments sold by retail dealers throughout the United States that would be sold in those lower brackets which you have indicated as compared to your total?

Mr. Feldman: In those specialty shops?

Mr. Martin: No, go ahead.

A. I believe it was shown during the N.R.A.

11904

Mr. Albert: That is objected to. The witness was asked as to his opinion and not what was done by anyone else.

Examiner Averill: You can give us your opinion, but do not quote what somebody else said.

Mr. Albert: If the witness knows what his opinion—if the witness has an opinion on that—

The Witness: He will give you his opinion.

By Mr. Haycraft.

Q. Proceed and answer the question. A. I will say between 80 per cent. and 85 per cent. of the number of dresses sold throughout the country are in the group costing $6.75 at wholesale, and under.

Examiner Averill: How much, costing how much?

The Witness: $6.75 wholesale.

Mr. Albert: That is objected to, and I ask that the answer be stricken as not responsive.

Mr. Haycraft: It certainly is responsive.

Mr. Albert: It certainly is not responsive.

11906

Examiner Averill: I think it was. I think it absolutely was responsive.

Mr. Albert: May we have the question again?

(Question read.)

Examiner Averill: My ruling is the same. Exception noted to counsel.

By Mr. Haycraft.

Q. What is your estimate, in your opinion, of the proportion of that volume of $6.75 and under that is sold by retail shops including chain stores and the small shops that you have referred to that are not signatories to the Guild program?

Mr. Feldman: I do not think the question is intelligible. 11907

Mr. Albert: I object on the ground the question is not intelligible.

Examiner Averill: I do not think that I understand it, either, but if the witness can answer it, he may.

A. I would not care to venture a figure, but I would say a very substantial proportion, if I understand the question.

Mr. Feldman: "Substantial" is a word whi may mean anything from 2 per cen. to 70 per cen

Examiner Averill: When you say "very substa tial"—can you give us a little better idea of that?

By Mr. Haycraft.

Q. Can you give us a little better estimate of that, Mr

Examiner Averill: I would like to know if you can give us any figure that would indicate what you think by "very substantial"; that is what I am trying to get at.

11909 The Witness: No, I would not care to hazard a guess as to the exact percentages of the volume of $6.75 and under dresses that is sold by retail shops, including chain stores and the smaller shops non-signatories to the Guild program, that I referred to a moment ago.

By Mr. Haycraft.

Q. Would you care to say whether it was more or less —that is, more dresses sold by non-signatories than sold by signatories of the Guild program? A. It would be very difficult to say offhand.

Q. Now, when you said that these independent shops and non-chain stores, but non-signatory shops, could not

11910 get these higher-priced merchandise—that is, $16.95 cost and up—what did you have in mind, and what did you mean by that? A. Well, I meant that they could not get it from any of the Guild manufacturers.

Q. What about other available sources of supply at $16.95 and up. A. They could get it from non-Guild members.

Q. From your experience, is there a substantial group of manufacturers in those higher brackets? A. Large manufacturers? Which manufacturers do you refer to?

Q. $16.95, outside of the Guild. A. No, no——

Examiner Averill: Do you mean——

By Mr. Haycraft.

Q. What percentage, in your opinion, of the manufacturers from $16.95 and up are members of the Guild?

Mr. Feldman: If you know.

A. Almost all the well-known houses.

Q. What percentage, in your opinion, of the manufacturers of dresses $10.75 and up are members of the Guild? A. I do not know as to the percentage, but I would say 11912
that the large majority of the very important—the large majority of the more important resources in that price group.

Q. Are members of the Guild? A. Yes. That is the Guild affiliate of $10.75—the $10.75 Guild.

Q. You mean the Dress Creators' League? A. Yes, the Dress Creators' League.

By Examiner Averill.

Q. From your understanding—let me understand one thing, please, Mr. Block. A. Yes.

Q. Are there groups of manufacturers who do not manufacture dresses that sell for less than the—which wholesale for less than $16.75? A. Yes, sir, they do.

Q. Now, then, that group, as I would understand your 11913
testimony, does not manufacture goods or dresses that sell at wholesale for $10.75; is that the way it is? Are they devoted to the separate lines and are they divided that way in the manufacture of dresses? A. Well, it changes, your Honor, it changes. To-day we find some manufacturers that will make $10.75 dresses as well as $16.75, whereas a few years ago, a few years ago they did not and then a few years back again they did, so that it

varies from time to time according to the demand for the better or for the cheaper merchandise, but there are manufacturers to-day who manufacture dresses at $16.75 and also lower and there are also manufacturers who make dresses costing $10.75, $12.75, $14.75 and sometimes even $16.75. There is no set rule, but generally they do something like this, as a rule; that is, a manufacturer who manufactures dresses below $10.75 also includes in his manufacturing enterprise dresses at $6.75 and lower, so what I mean is there is no distinction in the group in some places whereas there is in others. For instance, there is a distinction in the group, one group that manufactures
11915 dresses in the $3.75 group and lets his activities stay in that particular group and then another one manufactures in the $6.75.

Q. In other words, if I get your statement clearly, this thing is divided up on the basis of manufacturers who stick, more or less, to certain price lines and devote themselves exclusively to it; that is, to take your own illustration, the manufacturer who manufactures dresses below $10.75 also includes in his manufacturing efforts dresses at $6.75 and lower. In other words, would you say there is a distinction in the group, one group manufacturing say $3.75 and under, and another group that manufactures $6.75 and less and still another group that manufactures $10.75 and another one at the higher brackets, and does it
11916 hold true all the way down?

Mr. Haycraft: I would suggest that the witness go into that in detail and just give you how the market stands at the present time.

The Witness: I am trying to do that. I will try to make it a little clearer if it is desired.

Examiner Averill: I wish you would.

A. I think I can get at what your Honor wants to get at by making it in a simpler form. The line of demarka-

tion as to prices is more prominent and sharp in the lower brackets than it is $16.75 and up. In other words, a manufacturer may make dresses costing $16.75, $22.75 and $29.75, whereas the manufacturer who makes $6.75's or $4.75's or $3.75's usually confines himself to one price line, particularly the largest resources in the lower-priced group. On the other hand the man who makes from $16.75, $22.75, $29.75 will sometimes go even higher than that in his line. That depends upon materials and things of that sort.

By Mr. Haycraft.

Q. In the lower brackets such as $3.75, $4.75, $6.75, 11918
that is where they have mass production, is it? A. Their system is to have one price line and mass production.

Q. Whereas the higher lines, they are not the same type of manufacture? A. No, the higher brackets handle goods which they price according to the price of material that they have to put into the garments and they do get in various qualities so that the buyers when they come into the showroom of one of the better class manufacturers make their selections with a little more variety and they can get the finer goods and this was particularly true of the Guild manufacturers that a buyer might buy dresss costing from $22.75 up to $59.75.

Mr. Haycraft: Does that answer your question, Mr. Examiner? 11919

Examiner Averill: I believe now that it was brought out before, but it was not as clear then as it is now. I think it is rather definitely established by the testimony of the witness than in the higher-priced bracket that the manufacturer may carry several price lines, whereas in the lower price brackets the manufacturers ordinarily confine themselves to one price line and go in for mass production. Go ahead.

By Mr. Haycraft.

Q. At the time that the Guild program was first presented to the buying offices generally at the meeting of June, 1933—at the June, 1933 meeting, what were the recognized price lines wholesale that were being sold in this market at that time? A. 1933?

Q. Yes. A. Principally, I will take up the lower grade goods first; $3.75, $6.75, $10.75 and a few $12.75, very few, $16.75, $22.75 and then upwards.

Q. As time went on, were there new lines of merchandise brought out? A. As time went on other price lines became more prominent, particularly $4.75 and then there
11921 developed a demand for $7.75 ad $8.75. There also got around, or cropped up a number of manufacturers making very sightly dresses costing $2.25.

Mr. Albert: You mean that they were sights, or that they were fashionable?

Examiner Averill: I think the word is rather clear in that connection.

By Mr. Haycraft.

Q. Do you mean that they were attractive dresses? A. What is the question?

Q. (Question read.) A. I do not understand.

Q. Do you mean by "sightly" that they were very attractive? A. Yes, sir.
11922

Q. And that they sold in large quantities? A. Yes, they sold in large quantities, very large quantities.

Q. All these lines that they had they were manufactured in large quantities and in mass production; that is, $4.75, $7.75, $8.75, $2.25— A. Largely the $4.75's.

Q. —what was the situation with respect to the sale of garments alleged to be copies of merchandise, higher priced merchandise, in these lines that you refer to, for

instance, take the $3.75 and the $6.75 that you refer to, what was the situation that you referred to? A. With respect to what?

Q. $3.75 and $7.75. A. What do you mean? Situation?

Q. Do they manufacture garments which were considered in the trade as being copies, or reproductions or adaptations of higher-priced garments? A. Mostly copies or adaptations and sometimes their own designs where they had designers.

Q. The problem that you retailers had then was the problem of returning to such manufacturers garments that were claimed to be copies of Guild merchandise? A. You mean later on?

11924

Q. At that time you were talking it over with Mr. Rentner, was that a problem that you were discussing at that time? A. Well, that is a question that we were concerned with for the future.

Q. Whether you would be required to return $3.75 and $6.75 that you knew would be copies of higher-priced merchandise; is that right? A. Yes, sir.

Examiner Averill: Which they knew to be or which were adjudged to be?

Mr. Haycraft: It is generally considered in the industry, of course, that the manufacturers of the cheaper garments copied them; that they were copies of something else in the higher-priced garments; they might not be exact copies but they were adaptations of what was a going garment that was popular in the industry. I will ask the witness that question if you wish.

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Examiner Averill: Just as you desire.

By Mr. Haycraft.

Q. What was the situation, Mr. Block, as to the general characteristics of the garments produced and sold by $3.75

and $6.75 manufacturers in 1933? A. Well, as I said before, most of our—most of their garments were either adaptations of copies, and a few were originals emanating from showrooms or designing rooms where they had designers; not many had designers, however.

Examiner Averill: That still brings me back to my query as to whether the question was intended to be asked the witness as to whether they were signatories of the Guild program or on the Guild program—were to return, themselves, in the price ranges mentioned; namely, the lower brackets, if they were to be copies of styles put out of some
11927 of the Guild manufacturers, or whether it was their obligation to return them provided they were adjudged to be copies.

Mr. Haycraft: I will ask the witness what it was at that time.

By Mr. Haycraft.

Q. Will you answer that, please? A. The answer is "yes" in both cases, they were supposed to return copies which the retailer recognized as a copy, or if it were adjudged to be a copy by the Fashion Originators Guild of America.

Examiner Averill: Do you see what I was after, in trying to find out? Because it seemed to me that
11928 it could not hardly be such a thing in the $3.75 and under dress, such a thing where it was not a copy of something.

Mr. Martin: That was the problem.

Mr. Haycraft: That was the problem, if your Honor please.

By Mr. Haycraft.

Q. Now— A. What?

Q. Strike out "Now." A. What?

Q. I am going to reframe the question. A. Oh, I see. I thought you asked me one.

Q. No, no. A. I am sorry.

Examiner Averill: All right, let us have the question.

By Mr. Haycraft.

Q. I was not quite sure with respect to one of the answers that you made? A. No? 11930

Q. After June, 1933, when the organization and the members that you represented generally signed up these so-called declarations of co-operation, was it customary or did any of the stores—did any of the stores mentioned return garments to manufacturers in the lower-priced brackets?

Mr. Albert: I object as previously answered.

Examiner Averill: Let him answer it again and I think we will save time. Objection overruled.

By Mr. Haycraft.

Q. Answer the question. A. I do not understand the question.

11931

Mr. Haycraft: Well, in fact I do not believe I had finished the question. I ask that the question be read.

(Question read.)

By Mr. Haycraft.

Q. —from June, 1933, up until the middle of 1935, the latter part. A. Yes, there were returns made by our retailers.

Q. Those returns were made in the lower-priced brackets as well in the higher-priced brackets, in some instances? A. It would not make any difference if it were adjudged a copy if it were higher or lower; if it were a copy and their attention was called to it, or had they recognized it as a copy I presume they would have returned it.

Q. Your reference to this agreement or understanding that you had with Mr. Rentner—with regard to that, did you ever at any time ever invoke with respect to the return of garments on behalf of the dealers that you represented,
11933 that understanding that you had with Mr. Rentner? A. I do not believe, but I will say that we had very little trouble at the beginning.

Mr. Haycraft: That is all.

Recross-examination by Mr. Albert.

Q. What do you mean by saying that you had very little trouble; do you mean that you had very few copies? A. No, I mean by that, as I remember, there were very few disputes as between the Fashion Originators Guild of America and any retailer concerning $6.75's or as to the necessity for the return of such dresses. That was for a such time, and I remember after a while we began to get-
11934 ting notices from the Guild giving illustrations of garments in the higher brackets made by those that were Guild manufacturers and which had been copied by some other manufacturers in the $6.75 group or lower.

Q. Up to the time that you got these so-called notices, you voluntarily returned copies in the lower-priced brackets? A. Well, just remember I am not the man in the retail business, I am at this end of it, but as far as I know, the Guild did receive co-operation from these retailers.

Q. That was voluntary, was it? A. Voluntary and otherwise; voluntary and involuntary.

Q. Do you recall being present at a meeting of retailers in May, 1935, at which were present Mr. Sussman of the May Company, Mr. Eisenberg of Hahn's, Mr. Bergdahl, Mr. Greenebaum of Felix Lilienthal, and Mr. Swinney of the Specialty Stores Association, as well as others, at which the question came up about the inclusion of the $6.75 and under, dresses, and the question of leniency in the extension of that program? A. There were such meetings, at least one, I do not remember the date, and I do not remember who were present, but I recall from your general description just what you are talking about. I 11936
know what you are talking about.

Q. You know when that meeting was held? A. No, I do not know.

Q. Does that refresh your recollection if I tell you that such meeting was held at the office of Mr. John Swinney of the Specialty Stores Association on May 2, 1935? A. I remember such a meeting, but I do not remember the exact date.

Q. Would you deny that it was in May, 1935? A. No, I would not.

Q. Does that sound about right? A. It does.

Q. Do you also recall that at that meeting after a discussion of the question of leniency and including the $6.75 dresses, and under in the Guild program, there was another definite understanding that this leniency was not 11937
to extend beyond the period of sixty days? A. No, I do not recall that.

Q. Do you recall any discussion whatsoever in which the period of sixty days was mentioned? A. No, I do not recall that.

Q. Would you deny that there was such a meeting about the fact that the period should not extend beyond sixty days? A. I could not deny. I do not recall it.

Q. Then you do not remember one way or the other, now? A. I do not remember hearing such a discussion regarding the sixty days.

Q. Is it a fair statement, Mr. Block, that in your low-end field the greatest fear of competition of those who are not co-operating retailers is of the chain stores? A. What is that question again?

Q. Is it a fair statement, Mr. Block, that in your low-end field the greatest fear of competition of those who are not co-operating retailers is of the chain stores? A. The greatest fear of chain stores?

Q. I mean of the little stores the independent little
11939 stores are not particularly feared in the sense of your fearing them on the Guild program? A. Oh, yes, they are. They handle a lot of merchandise. They are feared.

Q. Would you say if all of the chain stores were included as co-operators, that your fears of the injury that the Guild program might be would be materially, if not very substantially, lessened? A. Right.

Q. Just to further that a little bit, if all of the chain stores signified their intentions of co-operating with the Guild, your fears of competition in the low-end price field would be substantially lessened, would it not? A. Undoubtedly.

Q. Undoubtedly? A. Undoubtedly.

Q. How many chain store organizations are there whose competition you fear, have you made any computation of
11940 them?

Q. Would you be kind enough to answer it again? A. There are a number of chain stores that I have given their names, and there are others whose names I will get you if you want them.

Q. From your experience and knowledge in this industry, can you tell me approximately how many such chain store organizations there are whose competition you fear? A. My guess would be about twenty or twenty-five.

Q. Twenty or twenty-five? A. Yes, sir.

Examiner Averill: When you say chain stores, you do not mean individual stores but you mean chains?

The Witness: Chains; that is right.

By Mr. Albert.

Q. Chain stores in the commonly accepted sense, chain organizations? A. Yes.

Q. In that group would you consider— A. What?

Q. Question withdrawn. A. O.K.

Q. Is that the total number of chain stores? A. What? 11942

Q. Question withdrawn. A. I do not catch.

Q. I withdrew the question. At the commencement of the Guild program against style piracy or the Guild program of anti-style piracy, how many chain store organizations were there who were in competition with your member stores, and whose competition you feared, in number? A. Do you refer to apparel chain stores?

Q. I refer to chain stores whose competition your members feared in the low-end price field. A. Of dresses?

Q. Yes. A. There were less at that time than there are now.

Q. There were less at that time? A. Yes, sir.

Q. So that there are more chain stores who you now fear than there were at the time the Guild program was instituted? A. That is correct. 11943

Q. At the time the Guild program was instituted, were there not chain stores who had signified their intention of co-operating their Guild?

Examiner Averill: Can he testify to that?

The Witness: No important ones that I know of.

Examiner Averill: All right. Go ahead.

By Mr. Albert.

Q. Well, you have used the word "important." Would you be good enough to tell me three of the most important chain organizations in this particular field?

Mr. Feldman: Lerner's, Lerner's and Lerner's.

A. That is well put. Lerner's is No. 1.

By Mr. Albert.

Q. You knew that without Mr. Feldman's assistance? A. No, I really did not need Mr. Feldman's assistance.

11945 Q. You knew it of your own independent recollection and knowledge? A. Oh, yes, I knew that Lerner's was No. 1 all right.

Q. And he did not have to help you in the giving of that answer? A. No, indeed.

Q. Could you name two more? A. I think I would give you the name of Grayson's and Wilbur Rogers. That is my guess. There may be two that stand higher or do more volume than the last two mentioned, but those are the ones that I fear of mostly.

Q. That is, from the time from 1933 to the present? A. I will not say as to that. I am talking about to-day.

Examiner Averill: I do not see where we are getting with this.

11946 Mr. Albert: This is most important. If you will bear with me it will only take about one or two more questions.

Examiner Averill: Very well.

By Mr. Albert.

Q. Have you ever heard of Sears Roebuck & Company, Mr. Block? A. Yes, sir.

Q. Would you say they are important, more important than Wilbur Rogers or Grayson's? A. I did not catch.

Q. Would you say they are important chain store operators? A. What do you mean?

Q. In this field.

Examiner Averill: What field are you talking about?

By Mr. Albert.

Q. In the women's and misses' ready-to-wear apparel, and when I refer to any chain organization I refer to one in the women's and misses' ready-to-wear. A. Your question is easily answered, Sears Roebuck is a very important chain organization, but not so much in style merchandise.

11948

Q. Have you any idea of the volume they do in this particular field?

Examiner Averill: When you refer to, "style merchandise," do you mean the volume of style merchandise, or the volume of garments sold?

By Mr. Albert.

Q. Volume of garments sold. A. No, I will not venture any opinion as to the volume that they do.

Q. Mr. Block, as a matter of fact, do you not know that in the very price lines that you referred to, Sears Roebuck & Company does more business than Grayson and Wilbur Rogers chains combined, and with the same manufacturers who are using as sources—or, rather, who are used as resources by Sears Roebuck & Company are used by resources, or for resources by Graysons and by Wilbur Rogers? A. I would like for you to repeat that question. I got sort of lost in the middle of it somewhere.

11949

Q. Mr. Block, as a matter of fact, do you not know that in the very price lines that you referred to, Sears Roebuck & Company does more business than Grayson's and Wilbur Rogers' chains combined, and with the same manufactur-

ers who are used as resources by Grayson's and by Wilbur Rogers? A. It does not make any difference for the reason——.

Q. Would you be good enough to answer my question? Oh, no, no, no, no. Let him finish his answer, I think the implication is obvious, and let us get the facts. I am desirous of getting the facts on that.

Mr. Albert: I will be very glad to have the witness give us any reason that will do any good, your Honor.

By Mr. Albert.

11951 Q. Please proceed. A. It does not make any difference for the reason—it does not make—my answer is, it does not make any difference for the reason that these chain stores and these specialty stores that have been referred to as the "pappa, mamma, and Rosie" stores—in other words, a little family store, they have very good locations and they are situated near to our type of stores. Sears Roebuck & Company may be three or four blocks out of the way and caters to a different element. Our stores are concerned more with the ctiy type of families, and Sears Roebuck & Company gets a lot of its trade from the rural districts, and so forth, and they give them lots of parking space and usually have a stand that is not nearly as 100 per cent. a location as our stores have.

11952 Q. That also refers to the retail stores of Sears Roebuck & Company that are in the cities in which your stores are located? A. Yes, sir.

Mr. Feldman: Such as the State Street Store in Chicago?

The Witness: Oh, there are exceptions, you know that.

By Mr. Albert.

Q. You cannot tell what we know, it might surprise you what we do not know about these things. Suppose you tell us just what those exceptions are. A. Well, during the depression they managed to get hold here and there of a first class location at a bargain price, but originally their plan was to open stores not in 100 per cent. locations, and the large majority of their stores are not in 100 per cent. locations and it is the show window competition that our people have to fear.

By Examiner Averill.

Q. When you say "our people," to whom are you refer- 11954
ring? A. I am speaking of the retailers such as we represent.

Examiner Averill: Go ahead.

By Mr. Albert.

Q. Have you ever heard of J. C. Penny & Company, Mr. Block? A. Yes.

Q. Are they a substantial chain outfit in the price field that you have reference to? A. Practically altogether in the lower-priced price lines, yes, especially in the lower brackets I would say from $7.95 down. They handle some goods in the same style as ours, but in the percentages it would not amount to much. Most of their stuff is in the 11955
lower-priced brackets.

Q. How about the Darling shops? A. I would like to add about J. C. Penny & Company, it is in the same category with Sears Roebuck & Company.

Q. We had expected you to say that. A. Well, that is the fact.

Q. How about the Darling shops? A. The Darling shops are in the different category. They operate like the average apparel chain store does. They take good locations, and so forth.

Q. They are direct competition that you fear? A. Yes.

Q. How about the Peggy Ann Shops? A. They would be in the same type or category.

Q. The same category as the Darling shops? A. Yes.

Q. How about the Sally Shops? A. They would be in the same type or category.

Q. How about the Peggy Page Shops? A. I would say they are in the same category.

Q. As the Darling shops? A. Yes, sir.

Q. How about Zucca's shops? A. They would be in the same category as the others.

Q. How about Jerome's? A. They would be the same
11957 thing. It would be the same thing.

Q. How about Angermann's? A. Angermann's usually get good locations. They are practically the same.

Q. How about the Plymouth shops? A. I do not know so much about them, but generally the same.

Q. No one of these chain stores was a co-operating retailer at the time of the formation of the Guild, was it? A. I believe not, as far as I know.

Q. Will you accept my statement that everyone of them I have mentioned here is presently co-operating with the Guild?

Mr. Haycraft: I object to that.

A. If Mr. Post says so, I will accept his word for it.

11958 Mr. Haycraft: I move to strike that.

Examiner Averill: All right, strike that. It has nothing to do with this. However, he undoubtedly would accept the statement of Mr. Post in regard to that. I want to ask you something myself: Have you gentlemen not left out one important one; that is, Montgomery Ward & Company?

The Witness: Yes, they do the same thing as Sears Roebuck & Company, if your Honor please.

Mr. Albert: They are unsigned. We were simply giving a list of those who had signed up with the Guild.

By Mr. Albert.

Q. Montgomery Ward & Company and Sears, Roebuck & Company, they would be in the same category, Montgomery Ward with Sears Roebuck, is that correct? A. What is that?

Q. Montgomery Ward & Company would be in the same category as Sears, Roebuck & Company? A. That is about it.

Q. And have been? A. Yes. 11960

By Mr. Feldman.

Q. It is your opinion that they are in the same category with Sears Roebuck & Company? A. Yes, sir.

Examiner Averill: I just wondered why you left them out.

Mr. Albert: I was merely referring to those who had signed. The ones I mentioned were signed up chain stores. The witness thus far has been unable to give a list of the unsigned or signed.

Examiner Averill: I think the witness' testimony was that of these people whom you named at the time of the formation of the Guild, or shortly thereafter, they were not then members of the 11961 Guild.

Mr. Albert: That is right.

Examiner Averill: If that is the case, I wanted to know whether Montgomery Ward & Company was included in that list, and he said yes, they would be in the same category as Sears Roebuck & Company in regard to their dealings as to the style of stuff they had, and so forth. Of course, if

all these gentlemen have signed up since then, as you gentlemen seem to indicate, that is a matter of affirmative proof that you will put in.

Mr. Hayeraft: At the proper time.

Mr. Albert: Oh, yes.

By Mr. Albert.

Q. Mr. Block, what is the total volume of business in dollars and cents done in the lower-priced end?

Examiner Averill: Gentlemen, let us not go into all of this.

11963 Mr. Albert: He gave some figures on percentage, and I want to show what that is based upon.

The Witness: I spoke of garments manufactured and not in dollars and cents.

Examiner Averill: What is the use of making this man guess? As to figures you will doubtless find there are published Department of Commerce figures elsewhere, and those figures are more or less accurate, I suppose. I do not see any value in having this witness simply speculate on something of this matter.

Mr. Albert: If your Honor feels that the statement of 80 per cent. to 85 per cent. of sales of dresses in the lower-priced bracket is sold by that group is simply a wild guess, and one that cannot 11964 be properly substantiated by this witness, then I will withdraw any further questions in regard to the matter.

Examiner Averill: I do not think it would be any value to examine the witness in regard to those matters when he does not have the figures before him.

Mr. Albert: In view of your Honor's ruling, I have nothing further. Exception.

AFTERNOON SESSION—2.15 P. M.

JOHN B. SWINNEY was thereupon called as a witness for the Commission and, being first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Your name? A. John B. Swinney.

Q. Your residence? A. 15 Clairmont Avenue, New York City, New York.

Q. Your occupation? A. I was until very recently manager for the Specialty Stores Association at 1441 Broadway, New York. 11966

Q. New York City? A. Yes.

Q. What is that? A. Specialty Stores Association.

Q. That is a group of stores? A. Yes, sir.

Q. How long have you had that position? A. What?

Q. How long have you been in that position? A. From August, 1928 until very recently. I resigned on the 10th day of September, effective at the end of this current year.

Q. What stores are included in that organization? A. At the present time there are thirteen stores. Shall I list them for you?

Q. Yes. A. The E. P. Slattery Company of Boston.

Q. Yes. A. The E. F. DeWecs, Incorporated, Philadelphia, Pennsylvania.

Q. Yes. A. The Richard Healy Company, Incorporated, Worcester, Massachusetts. 11967

Q. Yes. A. Frank I. Jelleff's, Incorporated, Washington, D. C.

Q. Yes. A. L. L. Berger, Incorporated, Buffalo, New York.

Q. Next. A. Charles Livingston & Sons, Incorporated, Youngstown, Ohio.

Q. Yes. A. The Addis & Company, Syracuse, New York; The Stern & Mann Company, Canton, Ohio.

Q. Yes. A. The Lindner Company, Toledo, Ohio.

Q. Toledo or Cleveland? A. Cleveland—did I say Toledo?

Examiner Averill: Yes, you said Toledo; did you mean Toledo?

The Witness: No, I meant Cleveland. Mr. Post knows they are in Cleveland.

Mr. Post: So they are.

By Mr. Haycraft.

Q. Proceed. A. Cleveland, Ohio. The Union Company, Columbus, Ohio; the Himelhoch Brothers & Company,
11969 Detroit, Michigan; the Young-Quinlan Company, Minneapolis, Minnesota.

Q. Yes. A. Harzfeld—Harzfeld's, Incorporated, Kansas City, Missouri.

Q. Generally speaking, in what business are those stores engaged? A. They are engaged in the retailing of what is known as ladies' ready-to-wear and accessories, women's ready-to-wear and accessories, with one exception being the Union Company at Columbus, Ohio, who have also misses' wear—I mean men's wear.

Q. They also carry men's wear? A. Yes.

Q. What price range of garments do they handle? A. Medium and fine merchandise.

Q. By medium do you include $10.75 cost? A. Yes, sir.

11970 Q. Wholesale cost? A. The medium, the amount under $10.75 cost and some of them go all the way down to $3.75 to a limited amount—in other words, a limited amount under $10.75 cost, some go way down to $3.75 to a limited amount on the part of certain stores.

Q. Which stores in that group handle the lines in the lower brackets that you refer to and which classes are exclusive of the higher brackets? A. Well, I would say that the Young-Quinlan Company, Minneapolis, Minnesota, was almost exclusively in the higher-priced brackets

Q. Yes. A. I would say that the Union Company, Columbus, Ohio, at the present time carries a great deal of popular-priced merchandise.

Q. You mean below $10.75 when you say "popular-priced" merchandise? A. I mean the Union Company will buy merchandise down to $3.75 cost price.

Q. And what is the highest? A. A sprinkling of dresses not much over $49.50; retail I am speaking of now.

Q. That is over the whole range? A. Their business is mostly in merchandise selling for $6.50 to $16.50.

Q. Wholesale cost? A. Wholesale cost. Their business is mostly in that particular store, a store like that, they sell that type of goods, while a store like the Young-Quinlan deals mostly in higher-priced merchandise. They 11972
buy the finest merchandise available in this town.

Q. That ranges how high? A. Oh, dresses up to $300 and $400 each at retail. I have been with their buyer on many occasions when they have bought dresses at $250 cost.

Q. That is the Young-Quinlan Company? A. Yes.

Q. Minneapolis? A. Minneapolis, Minnesota, yes

Q. And the other you said was between $3.75 and how much? A. They go up as high as $16.75 cost.

Q. $16.75 down? A. Yes. They buy a little above that and they formerly bought more than they have recently in the higher-priced brackets.

Q. Of the other stores in that group, how would you describe their price lines? You have given us the two extremes. A. The prices in the other stores mostly—take dresses which is an easy criterion, they are mostly from $10.75 cost up to about $39.50—$39.75 cost. 11973

Q. They are distinctly within what would be known in the trade as the better shops? A. They are, yes.

Q. Now, when you first went with this Specialty Stores Association, did it have the same membership that they have at the present time? A. No. When I went there

they had about eight or nine stores. I would have to check my office on that, but that is approximately the fact. I have taken in the membership during the last few years most of the additional ones. I lost one store due to certain conditions.

Q. Which ones have come in since you have been with the organization? A. Young-Quinlan & Company have come in; Harzfeld of Kansas City have come in; Livingston & Son, Incorporated, Youngstown, Ohio, have come in; the Addis Company, Syracuse, New York, have come in; Richard Healy Company, Incorporated, Worcester, Massachusetts, have come in; and the Lindner Company
11975 of Toledo, Ohio—Cleveland, Ohio, was out at about that time, and about that time I got them to come back, making up about six.

Q. Well, now, what sort of an organization is the Specialty Stores Association? Is it owned by these stores, or is it an independent organization which renders service to the stores? A. It is owned by the stores itself; in fact, it is almost a copy of the set-up of the Retail Research Association which is the parent corporation of the A.M.C. In other words, we do not have a separate corporation for this merchandising work. We do all of it through one corporation, where they have two. It was guided almost entirely from their set-up. It is owned by the stores themselves, organized under the membership laws of New York State.

11976 Q. What service do you render the stores? A. We assist their buyers when they are in the market and doing their buying. We talk over their plans with them when they come in and advise them where to go to get what they need, and tell them the things that we think they ought to have that they might not have planned to get. Very frequently, our buyers go out with them when they go out in the market.

We keep and maintain an elaborate exchange of figures between the stores, the operation of the stores, merchandising and collections, store expenses and personnel operation. We get out a weekly fashion and market service report summarizing the fashion situation and new things in the market, and the market tendencies, and so forth.

We get out a report summarizing the best-selling numbers, picking out the numbers which the stores have reordered and calling them to the attention of the other stores. We also get out reports on sales promotion ideas, window dressings, and things of that sort. We look after their foreign purchases, get them samples, make arrangements for the purchasing of merchandise in foreign countries, arrange with commissionaires, arrange for the handling of money payments, and the securing of the goods, the customs, and things of that sort. 11978

We arrange for picking up orders and seeing that orders are shipped promptly on time. We speed up the work of handling the delivery of merchandise, and we do one thousand other things that these stores may need to have done in the New York market, and taking care of the adjustments of complaints, and things like that.

Q. How many employees do you have? A. About twenty-five.

Q. They are mostly buyers, are they? A. About eleven or twelve of them are buyers and the rest being stenographers and follow-up clerks. Our exchanges of figures in recent years has been handling by Harvard University, so we do not have a staff for that, and we just send the figures up to Harvard University and they take care of the tabulations, and so forth. 11979

Examiner Averill: What do you mean by that, this exchange of figures?

The Witness: We have an elaborate exchange of figures, weekly and monthly, with regard to

sales, collections, personnel, the handling of items by departments, and so forth, between the different stores. This is used to help out competition and to keep the stores on their toes.

For instance, we say, "Here is a fellow who is going ahead in the sale of handkerchiefs, and he is doing a better job than the other stores are doing in handkerchiefs." That causes the other fellow to wonder why he is not doing so well in handkerchiefs. It spurs them up to see what is wrong in their department in the handkerchiefs. In addition to that, we have other items. One particular thing
11981 I want to call your attention to is something we used to have. We created a particular brand of merchandise which we sold under the brand name of Romney, known after the famous painter of women, George Romney. That was very active until a few years ago, when there were so many restrictions made on it—so many restrictions were made on group buying that we stopped that.

By Mr. Haycraft.

Q. What was that group buying, just explain that a little further. A We bought Romney dresses that sold for $49.75. We would have a committee of the buyers decide on what we were going to have—for instance, if for
11982 our next showing of dresses we wanted to have evening dresses, or we wanted to have daytime dresses, or what have you, and we would get as many suggestions as we could from the buyers, and also suggestions as to resources that they would favor for that kind of merchandise.

Then we would go around to the manufacturers and ask the manufacturers, and frequently go to the designers in their showrooms and we would tell them that we had for Romney designs this month a certain sort of work

that we wanted, and we wanted to get some designs from them. For instance, if we were working on evening dresses we would go to an evening dress manufacturer, and they would work out a few numbers for us, a few special dresses on that in return for the volume of business we gave them, and these dresses would be organized by the dress buyer and myself, as the merchandiser, and eventually the day would come and we would have a showing of these dresses and the buyers from the stores would come in and select four or five dresses, whatever the majority liked, and then they would be bought for the group of stores, each store buying anywhere from a minimum of five or six, up to about eight or ten, depending 11984
on the circumstances, and these would be bought by that group of stores, and they would be purchased and forwarded at one time as an individual proposition. That is what we called the Romney dresses, we called them that, and we had a special label which we owned known as the "Romney" label, and this was a feature that we handled very successfully for a long time. The manufacturers would send over samples of dresses that they cared to submit under that plan, and we would make our selection and the purchases would then be made.

Examiner Averill: Would different manufacturers submit their designs, or would you just get together and agree to submit your specifications to just one manufacturer and let him work up the 11985
matter in the design?

The Witness: No, different manufacturers. We would have, as a rule, probably about fifteen dresses or twenty dresses from which we would select three or four. Then, in the last few years, these restrictions in regard to group buying came into effect, and since then the rules provide that they cannot send dresses to our showroom, so the

only thing that we could do was to go around to their places. Therefore, we would arrange for the dresses, but the difference was that they would show them in the manufacturers' showroom. We would take a whole group of buyers and trail around from one manufacturer to another and see these things—we would show them the dresses which they had worked out, and after that had been done and we had spent most of the day doing it, we would come back to our showroom or to our office, and we would take a blackboard and we would write down all the dresses we had seen, and a brief
11987 description and they would have to rely on their own memory and what they could remember having seen and what we told them on the blackboard because of the rule that we could not bring them to the office. It was a very clumsy method of doing it and served no good purpose that I could see.

By Mr. Haycraft.

Q. When it was worked out that way, did the Association submit to those manufacturers designs or suggestions as to the type of garments? A. Yes, they would work, say, on evening dresses, and if that was true, of course, they would go to a house that made only evening dresses and we would tell them what we wanted. Generally, our
11988 buyer was very well acquainted with the market, and after she had talked with the manufacturer, he would say, "Come on, let us go back and see the designer." We would go into the back room and sit down and talk it out with the designers, and sort of get our heads together in working out what these dresses should be.

Q. When was this that these restrictions with respect to group buying and group showing went into effect? A. That really went into effect with the formation of the Guild.

Q. The Fashion Originators Guild of America, Inc.? A. Yes. There was no restriction on that previously, previous to the formation of the Guild.

Q. I now show you Commission's Exhibit 14 in this record, being the minutes of the meeting held at the Garment Center Capital Club February 17, 1933, with representatives of resident buying offices—where representatives of resident buying offices and members of the Fashion Originators Guild were in attendance. I call particularly to your attention the statement on the second page of these minutes, which reads as follows: "Mr. Swinney of the Specialty Stores Association arose and expressed the thought that the manufacturers could help curb the evil 11990
of piracy by speeding deliveries of dresses on order. He also stated that if the Guild members saw fit not to supply dresses to buying clinics, that he would not ask the Guild members to co-operate with him until such time as the Guild could see its way clear to lend him this support." Do you recall that? A. Yes.

Q. I would like to ask you what is meant by "clinics"? There are two points in there. A. I will take up your second one, which is the one that you have asked for now: Resident buying offices, such as ours, have held periodically, as much for the education of store owners and advertising and display people as to anything, at the beginning of the season, a brief demonstration of fashion tendencies, skirt may be shorter or you might have this 11991
kind of a silhouette which has come in, and in order to make that demonstration practical I have always felt it was much better to show them the actual clothes rather than merely talk about them.

Then, another thing; all the resident offices are more or less in competition with certain independent organizations that are running that kind of thing which put us more or less on the spot. We have Toby, Ann Parish, and

so forth. We have felt from time to time that it was desirable for us to have these so-called clinics at which we would demonstrate these fashions. I began some years ago doing it by renting models of French originals, but that was not satisfactory. I arranged after that with the Guild on some occasions to get dresses from the Guild to demonstrate the points of view. That is what I have reference to in that particular statement. It was obvious that the Guild was entirely opposed to these clinics, and I stated that if they were I would not try to oppose them and therefore I would not try to have them, either directly or by trying to get around it some other way. We simply
11993 had to stumble along the best way we could after that.

Q. They had expressed opposition to your holding of these clinics? A. They had refused to. It is a part of their program. They had refused to give us any merchandise for clinics. There is a long story in that connection. At times, they have given it to us temporarily and then they have taken it away.

Q. What was the practice before the Guild was organized just as you have described it here this morning? A. Well, generally, about twice a year, sometimes extra times like at the beginning of the Palm Beach season, we would have a fashion show in the evening in our showroom, at which we would show the high lights of the situation, the dresses and the goods and the wraps and the coats, and so forth, and we would have around seventy-five people
11994 out which would come in from eleven or twelve stores. Frequently, we would have heads of divisions and especially store principals, because they seldom had time to see the line and get a survey of the whole thing. In addition, we would also have the advertising managers and the display managers. It was a very good education for them.

Q. After the Guild was formed, you were not allowed to do that? A. I think they would make an exception once or twice, or did once or twice and let us have them, and then they withdrew it.

Q. What was the other point, the speeding up of deliveries of dresses on order? A. In discussing this question of copies, I said, "One of the serious things is that frequently the copies show up in our inexpensive departments before the originals are delivered." In other words, we will place the business with Rentner or somebody else on four to six weeks' delivery. We will buy it and we will see the order put in process. Say we place that order on the 10th day of September, we will not get it until the 15th 11996
day of October. Along about the first of October we will suddenly discover, and I say that advisedly, that we already have the same dress, or a copy of the same general idea in our inexpensive dress department.

My point was that the one way, or at least one very good way to help out in this program of copies, in which I believe they were really sincere, I thought was to find some way to expedite the delivery of their merchandise, that a four to six weeks' delivery was too long, and that one of the causes of copying was because a man making $10.75 would get it out in ten days, and we would have to wait six weeks for the original of this copy.

Q. Did anything come out of this situation—especially, did anything come out of the suggestion that you made at that time? A. What is that? 11997

Q. Did anything come out of the suggestion that you made at that time? A. No.

Q. Nothing? A. No.

Q. What next? A. One of the most serious problems that we have in the better dresses is the very long time we have to wait for merchandise.

Examiner Averill: If a dress comes out that is supposed to be an original, how many years, or months, or days, does it continue in vogue? I mean, is there a real demand for any length of time, and if so what is the length of time for which there is such a demand?

The Witness: Very seldom more than—there are occasionally dresses that might be the exception, but I cannot recall any instance in my experience of a dress that was good for re-order more than a couple of months—I cannot recall it lasting longer than that, and I have been with this business for nine

11999 years in this capacity.

By Mr. Haycraft.

Q. Outside of the members of the Guild in 1933, were there any manufacturers of high-priced merchandise that you were interested in in the New York market? A. Oh, a great many in 1933.

Q. That is, from $16.75 up? A. A great many in 1933.

Q. Were you able to get your group buying with those manufacturers that you refer to? A. Yes, we had very little difficulty in getting all the women's dresses that we wanted because many of the people we looked to and that we liked to work with in women's dresses were not in the Guild.

12000 Q. At that time? A. At that time, and we had no competition in bringing their dresses into the stores.

Q. What was your difficulty? A. Misses' dresses, because most of the misses' dresses houses around $25 to $39.50 were in the Guild, there was hardly any one out.

Q. Was that continuing into February, 1933, the time that I directed your attention to? A. Yes.

Q. At that time did you sign any written declaration of co-operation, or the stores that belonged to your Associa-

tion, with the Guild, in carrying out the Guild's program? A. My recollection is that there were no definite requests made upon us for that until some time in the spring of 1933.

Q. Do you recall as to just when it was? A. My recollection is that they asked us for those at the beginning of the fall season of 1933?

Q. At the beginning of the fall season? A. That would be about the first of July.

Q. Was there a date—do you recall that a date was set definitely when such agreements had to be signed up in order that you would receive garments? A. I am speaking from memory, but I think my memory is fairly reliable. 12002
I think that the beginning of the fall season, and the fall season, of course, began around the first of July, 1933.

Q. What brought it to your attention at that time? A. Well, there were various meetings at which Guild matters and the Guild plan was discussed. I had been in frequent consultation with Mr. Rentner on Guild matters and with my own stores, and had letters from them in regard to these letters that went from the Guild in the spring of 1933. Unless I am very much mistaken I do not think I am, the opening date was the fall season of 1933.

Q. Would July 5, 1933, refresh your recollection as to that? A. Yes.

Q. Was that about the date? A. That would be about the date, generally, because lines are opened for the fall right after the 4th of July. Some people spring it earlier, 12003
but that is about the usual date.

Q. What was your understanding of the requirements of the Guild after July 5, as distinguished from before July 5? A. I do not recall any difference between before and after July 5, 1933, immediately before and immediately after.

By Examiner Averill.

Q. In other words, as far as you are concerned, as you understand the policy of the Guild, it was the same before as it was afterwards? A. Immediately before and immediately after.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 99-A to E, and ask you if that paper was ever called to your attention. This is a letter dated June 16, 1933, with certain attachments. I will ask you if you are familiar with those exhibits? A. 99-A to E, yes. Yes, I remember those letters because I
12005 had so many of them come back to me from stores, asking my opinion on the matter and what they should do.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. I will ask you, Mr. Swinney, whether or not prior to the latter part of June, 1933, your organization or any of the members of your organization, any of your members had been required to sign the so-called declaration of co-operation of anti-piracy, Commission's Exhibit 99-E? A. I do not think we had. That was the first distinct and
12006 definite request when we had a definite statement to that effect.

Q. I call your attention to 99-C, being a resolution which was passed unanimously at a meeting of the Fashion Originators Guild of America, on Monday evening, June 12, 1933: "Resolved that, in order to protect the property rights as embodied in their originations, the members of the Fashion Originators Guild of America, beginning with the opening of their fall lines on and after July 5, 1933,

limit the showing and sale of their merchandise solely to retailers who will co-operate in protecting these property rights by refraining from purchasing or marketing or dealing in any way in garments that are copies of models created by Guild houses." Now, calling your attention further to the explanatory note immediately following which says: "You will note that this resolution plainly stipulates, in order for a buyer to have access to any Guild house, he must consent to abide by the conditions set forth. We are, therefore, enclosing a copy of a declaration of good faith to which the signature of all retailers desiring to deal with Guild houses is to be affixed. There will be no exceptions to this policy." I will ask you whether or not 12008
that portion of the resolution had been—whether or not any such resolution—I will ask you whether or not prior to this time; that is, June, 1933, such action had been taken by the Guild— A. Well, the Guild——

Q. —with respect to showings of Guild merchandise by Guild manufacturers? A. The Guild had discussed with us at various times that that was to be their program, but I do not recall seeing it put into that form until that time. Does that answer that question?

Q. Did you discuss at that time with members of the Guild this problem? A. Yes, on various occasions.

Q. What was the subject matter of those discussions? A. Well, I attended various meetings called by the Guild at which they explained what they were going to do. We raised some questions and that is all I recall. 12009

Q. What questions did you raise? A. Just how far they were going to go—what the program was going to do. The thing that brought that up first was the report that they were going to exclude all resident buyers from show rooms. I went over to see Mr. Rentner on that. That was when the Guild was first started. My dress buyer came back. She had been in Mr. Rentner's show room and she came back with the report that they were going to exclude

them, the Guild was in the future going to exclude them and they were not going to let resident buyers in the show rooms. That is what she told me, and I went over to see Mr. Rentner and he said that that was not the whole story, and that that did not clearly represent the facts, but that they were not going to allow them in unless the stores themselves signed the agreement, and the officers, themselves, also signed it.

Q. Did your office sign the agreement with the Guild? A. Yes, sir.

Q. Did you sign the same agreement, or along the same general line? A. It was the same thing; it was the same agreement as the stores signed, as far as I can recall.

12011

Q. The reason I asked you that is, I show you Commission's Exhibit 92 and ask you if this is what you signed? A. We signed the general blank, I cannot be sure that that is an exact copy of it, but I assume it is. If this is the standard agreement it is the one that I signed.

Q. This is the standard agreement of the buying offices. A. Then that is the one we signed.

Q. Subsequent to that time— A. What?

Q. First, I will call your attention to the following statement in Commission's Exhibit 99-E: "We are proceeding on the principle that—since the Guild comprises all the outstanding style houses in the country, every retailer who is desirous of conducting his business in a wholesome, capable manner, will describe to the protective

12012

policy enunciated in the enclosed declaration." I will ask you whether or not you recognize the statement contained therein as being the situation at that time? A. I would not say that it was in 1933. There were important style houses that were not in the Guild at that time. I think most of them came in the Guild afterwards.

Q. During the year 1933 and the year 1934, what took place with respect to the membership of the Guild? A. The only thing I can say is that in "Women's Wear Daily"

every little while you would see an announcement that such and such a firm had joined the Guild, and it was evident that they had from time to time gotten many additional members.

Q. Since June, 1933, had your organization, and by "your organization" I mean the Specialty Stores Association— A. Specialty Stores Association it is.

Q. —and the stores which make it up, co-operated with the Guild in its anti-style piracy program? A. So far as I know we have always co-operated with the Guild.

Q. In that you intend to include the returns of garments to manufacturers where the garments in question were adjudged to be a copy? A. I think we have always returned 12014
them. I think one case last year we had of a man—that one of our stores or store owners questioned the matter, and I took it up with the Guild and they said in that case that so many people had copied it that they would not require a return of the garment, and that he might sell them, that they had had so many complaints about that particular garment, and the copying of it was so widespread that they need not return it. That is the only case where we did not return it, and then we did it with the approval of the Guild.

Q. You mean you did in all other cases return the goods? A. We kept the garments and sold them. They said so many people had copied them that they had gotten out of hand and that they were going to drop the matter as far as this particular dress or dresses were concerned, rather. 12015

Q. During that particular time, has the Guild extended its membership to include—to your knowledge, has the Guild extended its membership to include the $10.75 cost manufacturers as distinguished from $16.75 and above at the time of the Guild organization? A. I do not quite get what you mean.

Q. I withdraw the question. A. All right.

Q. I will ask you a new question: In June, 1933, did the Guild include in its membership any $10.75 manufacturers? A. No.

Q. Did there come a time later when the Guild program was extended to include $10.75? A. Nearly two years later.

Q. When did that first come to your attention? A. The first definite news that we knew of it was in the report in "Women's Wear" that the Dress Creators League was going to have their filing or keeping of registrations of styles done through the Guild, and I talked to one of them, and he said that it was more practicable than their first

12017 plan to set up their own bureau.

Q. Can you fix the time when that came to your attention? A. In March or April, 1935.

Q. Do you recall attending a meeting in your office in or about May 2, 1935? A. That I recall very well indeed. It was one of the five or six meetings that we had had. I remember the meeting very well, May 2, and then it was continued on May 4.

Q. I show you Commission's Exhibit 31, and ask you if you recall whether or not at a meeting held on May 4, that you refer to, did you attend that in person, or was some one from your firm present? A. No, I attended it myself.

Q. And were you at the other meeting— A. Yes.

Q. —the second meeting? A. Yes.

Q. From what organization did that meeting come pri-

12018 marily? A. The A.B.O.

Q. Who assigned it? A. What?

Q. Who designated the membership of the committee? A. Well, my recollection is that John Block did, who was the President.

Q. Who else, besides yourself, was on the committee? A. Well, there was quite a few of our A.B.O. members there. I remember Mr. Greenebaum was there and Mr. Block was there.

Q. Do you remember anyone from the Guild there? A. Yes, Mr. Post was there and Mr. Reinitz was there and Mr. Golby was there and there were some dress manufacturers there also, but just who they were I am not sure now.

Q. Do you recall the subject-matter of the discussion at that meeting? A. Yes.

Q. What was it? A. Well, it was in conclusion of several other meetings from time to time in connection with taking in the $10.75 manufacturers. Some of the stores in the A.B.O. were very much concerned about it because of the problem of the extension of the Guild copying rules to the cheaper dresses. My own group of stores 12020
were not very much concerned over it because they bought so little merchandise in the lower prices. It was not such a serious problem with them, but some of them did, some of them were somewhat concerned, but in general the feeling among our stores was that the advantages of the Guild program were sufficient so that we ought not to object as a result to any disadvantage which might result from taking in the lower-priced manufacturers.

Q. Was anything said at that time—at the time of these meetings, with respect to the return of garments $16.75 and under as to the number that could be returned? A. That was the big basis of the discussion at that meeting. They were trying, or we were trying to get a tangible interpretation of what would be leniency. The Guild had agreed to leniency during this period when they were try- 12021
ing to extend it down to include $3.75 and $4.75 and only until such time—furthermore, until such time as they could find a way of getting the chain stores into the organization; in other words, only until such time as the Guild could find some practicable way of getting the chain store organizations into the Guild organization.

A committee composed of Mr. Bergdahl, Mr. Reinitz being the other member, sat down in one of my offices to try to draw up an understanding of that sort as to just how far this agreement should go and such a memorandum was drawn up. It was at this time that this arrangement in regard to the 3 per cent. and 5 per cent. which has been mentioned in the previous testimony came out.

Q. Did you ever see any of the memoranda or documents what were made up as a result of these meetings and sent to the Guild? A. Yes.

Q. I show you Commission's Exhibit No. 8— Did you see this particular document? A. Yes, I saw that.

12023 Q. —62; Commission's Exhibit No. 862? A. Yes, I saw that.

Q. I will ask you if this is one of the memoranda that were drawn on about that time? A. This is the first letter.

Q No. 862 is the first meeting? A. That is one that grew out of the Women's Wear——

Q. I call your attention to Commission's Exhibit No. 867, and ask you if this is a copy of the minutes of the meeting that you referred to a moment ago that Mr. Reinitz and Mr. Post and yourself attended on May 4? A. Yes.

Q. It is? A. Yes, I am not sure that was—I am sure of it now, I remember that memorandum.

Q. Subsequent to— A. What?

12024 Q. I withdraw that. First, I will ask you whether or not as a matter of fact the $6.75 manufacturers were taken in after the $10.75 manufacturers were taken in? A. I understand that they were taken in that fall.

Q. Let me see. What fall is that? A. The fall of 1935.

Mr. Albert: The fall of 1935?

The Witness: Yes.

12025

By Mr. Haycraft.

Q. Now, since June, 1933, have any of the stores that you represent been red carded, or threatened with red carding by the Guild? A. None were red carded—none was red carded, but there was some talk of red carding two or three of my stores, but it was not done..

Q. Which stores and when? A. Shortly after Lord & Taylor was red carded Mr. Post called me up one day and told me he was going to issue a red card for the Union Company in Columbus, Ohio. I asked him on what basis he was going to red card the Union Company in Columbus, Ohio, and he said that the Retail Dry Goods Association of Columbus, Ohio, had repudiated their Guild 12026
agreement and he said he was going to do that, and I said, "I do not know anything about it"; and I questioned it. I said, "I will find out about it and then call you again right away." He said, "All right." So I called Mr. Robert Levy of the Union Company in Columbus, Ohio, and asked him about it and just what the situation was. He said he knew nothing about it and "I will have to call you back in an hour," and he further said, "I have not been at any meeting at which there has been any such action taken." He called me back.

Examiner Averill: Who called you back?

A. Mr. Robert Levy, the vice-president and general manager of the Union Company, Columbus, Ohio, he called me 12027
back and said, "I find that the secretary of the Retail Trade Board or Retail Merchants' Association, I do not know the exact name, wrote a letter to the Guild questioning the red carding of Lord & Taylor——

Examiner Averill: Just a moment. I do not think that is responsive to the question and I do not know the propriety of telling us what someone else

told you, not a member of the Guild, and not in the presence of the Guild, unless something else develops to make it more pertinent. I think reports might be used, perhaps as a basis for some statement and you may be, possibly, permitted to testify along that line, but I do not think your answer can be along the line you have just indicated. Let me ask you a question or two.

By Examiner Averill.

Q. When was the Union Company of Columbus, Ohio, called? Was that shortly after Lord & Taylor was red
12029 carded? A. Yes, sir.

Examiner Averill: Now you proceed, Mr. Haycraft.

By Mr. Haycraft.

Q. When was that? Do you remember when this Lord & Taylor red carding took place? A. Well, it was about the first—it was late in February or about the 1st of March of this year.

By Examiner Averill.

Q. Of this year? A. Yes, sir.

Q. Can you state the situation as to the other store? What was the name of the other stores that were threat-
12030 ened with being red carded at that time? A. I was just trying to tell you what the threat was.

Q. Tell us the name of the other store. A. I told you the Union Company of Columbus, Ohio, sir. I just wanted to tell you what was that situation.

Q. You cannot do that now, because the question does not include it. You cannot go any further until you have finished the other question and then, no doubt, you will be asked another question.

Mr. Haycraft: Perhaps I can ask another question. I would like to get the facts now.

Examiner Averill: No, I would like to let him finish the first question first. I think it ought to be brought out that way. Now, the first question was as to the other store. You have given one store which is the Union Company of Columbus, Ohio. What was the other store?

A. L. L. Berger Company of Buffalo, New York, was the second store.

By Examiner Averill. 12032

Q. Any other store? A. No.

Examine Averill: Now, proceed, Mr. Haycraft.

By Mr. Haycraft.

Q. Now, with respect to the Union Store of Columbus, Ohio, you have referred to the fact that you took the matter up with Mr. Post and he talked to you about it, and that you took it up with that store. After you took it up with the store, did you talk with Mr. Post any more about it? A. Yes, I reported back to Mr. Post what Mr. Levy had told me.

Q. What was that? A. That he had not repudiated his Guild agreement, and that the statement of the Retail Trade Board was merely a question as to why they had 12033
red carded Lord & Taylor and was not a repudiation on the part of the entire Retail Trade Board of Columbus, Ohio.

Q. Then, what did Mr. Post say? A. He said nothing further, and nothing more happened about it.

Q. And then, with respect to the Buffalo store, what was the situation there? A. The circumstances there were almost identical with the first one. It was reported that

the Buffalo retail group had repudiated their Guild agreement and they had picked out Mr. Berger, as a representative retailer of Buffalo, to be red carded.

Q. What did you do? A. First I was called up by Mr. Post. I then called up Mr. Berger on the phone and he said he had not made any such repudiation, that so far as he knew the only thing that had happened was that the retail trade group secretary had asked about the Lord & Taylor red carding, so nothing was done about that either.

Examiner Averill: Can you explain to us what the liaison between Lord & Taylor, which I understand is a store in New York City——

12035

A. Yes, sir.

By Examiner Averill.

Q. —and a store in Columbus, Ohio, and a store in Buffalo, N. Y., is; was the Lord & Taylor organization a part of that organization? A. No, no, no.

Q. What was it? A. When they red carded Lord & Taylor, Mr. Petree, of James McCreery & Co., and also president of the Retail Merchants Association of New York City, wired the secretary of the Trade Boards in a number of cities objecting and asking them to question the red carding of Lord & Taylor.

12036 *By Mr. Haycraft.*

Q. Did Mr. Petree himself write a letter to the Guild making protest at that time? A. I do not know about that.

Q. To refresh your recollection, Mr. Swinney, as to the date that this took place, I will call your attention to a portion of Commission's Exhibit No. 69, minutes of the meeting of the Board of Governors, Fashion Originators Guild, held at the office of the Guild, Tuesday, February 18

1936: "Mr. Golby read a draft of a suggested reply which was to be sent to Mr. Neil Petree, president of the New York Retail Dry Goods Association. This letter was to advise Mr. Petree that the Fashion Originators Guild had no contractual relationships with the New York Dry Goods Association; and, therefore, the Fashion Originators Guild could not construe his letter to us as a general repudiation of their member stores' individual agreements. Where we find that a store refuses to co-operate according to their signature to our declaration of co-operation, we will continue to act in accordance with our usual procedure. The Board of Governors authorized that a red card be issued for Lord & Taylor before repudiating its 12038
agreement with the Fashion Originators Guild. This repudiation was based on a letter received by Mr. Neil Petree, president of the New York Retail Dry Goods Association directing attention to the fact that certain stores, including Lord & Taylor, would not give protection on merchandise wholesaling below $16.75 and reserve the right to purchase copies wholesaling below $10.75. The Lord & Taylor agreement with the Fashion Originators Guild never provided for such exceptions." Does that refresh your recollection as to the date, February 18, 1936? A. Yes, offhand, it was right in about that time.

Q. Now, Mr. Swinney, have you ever discussed with Mr. Post or any other official of the Fashion Originators Guild of America, the matter of holding style shows with manufacturers? A. Yes. 12039

Q. Have you ever learned from him of instances where manufacturers were penalized for violating the Guild's rules in that connection?

Mr. Albert: The answer is "yes" or "no," Mr. Swinney.

A. You said Mr. Post only?

By Mr. Haycraft.

Q. Or any other executive of the Guild.

Mr. Albert: I object to it as being immaterial and no proper foundation being laid, and being pure hearsay.

Examiner Averill: Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. All right. I discussed——

Mr. Albert: The answer is still "yes" or "no,"
12041 Mr. Swinney.

A. Yes.

By Mr. Haycraft.

Q. With whom did you have such a discussion? A. With Mr. Golby, a very brief discussion of one circumstance.

Q. When did that take place, approximately? A. I would say that it was—and I have not verified my memory but I would say it was in the spring of 1935.

Q. I will ask you whether or not the information you have just given us in the last answer was given to you by Mr. Golby? A. I will try to make it as concise as possible.
12042 Mr. Golby told me that the Guild had fined Myron Herbert & Charles Cooper for putting on a fashion show.

Mr. Albert: Period.

Mr. Martin: No. Wait a minute. Do not interrupt.

A. —for putting on a fashion show for our stores, Harzfeld in Kansas City and for one other store.

By Mr. Haycraft.

Q. Then, there are two of those stores, your stores? A. No, one of our stores and one other.

Examiner Averill: What is that?

The Witness: Kline's of St. Louis was the other store.

By Mr. Haycraft.

Q. Did Mr. Golby tell you anything about the circumstances under which those shows were put on? A. What?

Mr. Haycraft: Read the question.

(Question read.) 12044

A. I do not think so. I think it was more or less understood.

Examiner Averil: No, no.

By Mr. Haycraft.

Q. What was the occasion for him telling you that? A. I wanted to talk to him. I went to him and asked him what had happened because there was a report in "Women's Wear" that they were going to be fined, or had been fined, and as it was one of our stores I wanted to know what the story was.

Q. Did you find out at that time, or afterwards, what the nature of the show was, what sort of a style show it was? A. Well, it was more or less in the form of the regular Myron Herbert & Charles Cooper line of dresses being on display. 12045

Q. Prior to the formation of the Guild, you referred to style shows and clinics, and so forth, here in New York City, of your own organization. A. Yes.

Q. I will ask you whether or not the custom during that time, prior to the formation of the Guild, of the manufacturers was to hold style shows in retail establishments in different parts of the country?

Mr. Albert: I renew my objection.
Examiner Averill: Objection overruled.
Mr. Albert: Exception.
Examiner Averill: Noted.

A. It was quite the custom on the part of certain manufacturers such as Hattie Carnegie and many others, to put on a fashion show in a store and a supplement to the
12047 efforts of the store in selling that manufacturer's line of dresses, sending their own models and generally someone to put on the show and talk up the things.

Q. Do you recall or do you recollect that your company was stopped by the rules of the Guild when the Guild was organized? A. Yes.

Q. So that such a showing—was that such a showing that you referred to in your testimony? A. Yes.

Q. A moment ago? A. Yes, sir.

Q. In regard to the finding of this particular manufacturer? A. Yes, it is the same sort of thing.

Q. Did he tell you how much that fine was? I am limiting that to what Mr. Golby told you. A. It is my recollection that he said it was $1,500.

12048 Q. I now show you Commission's Exhibit 67, minutes of a meeting of the Board of Governors of the Fashion Originators Guild held on Tuesday, December 3, 1935, when the following resolution was passed: "Resolved, that the Fashion Originators Guild invites retailers to participate in an advisory retail council to be formed by the Fashion Originators Guild to collaborate on any future policies passed by the Fashion Originators Guild affecting the signatory retailers and their retail businesses." Do

you know of any retailers—first, I will ask you whether or not you have ever been invited to attend, or become a member of any such advisory council? A. No.

Q. Do you know of any such council being formed? A. I do not.

Mr. Haycraft: That is all.

Mr. Albert: Does that mean that is all with that question, or are you through with questioning the witness, Mr. Haycraft?

Mr. Haycraft: That is all for the witness. You may examine.

Cross-examination by Mr. Albert. 12050

Q. Mr. Swinney, when you testified your stores were in the habit of going up to manufacturers— A. I cannot hear the first part of that.

Q. I say, when you testified that your stores, your members, were in the habit of going up to manufacturers and suggesting designs—I just want to clear up a minor point. A. Yes.

Q. —you meant, did you not, that your members suggested the type of dresses that they wanted and the manufacturer would prepare to and would examine and design the model and prepare the dress model? A. Yes.

Q. That was generally what took place? A. Yes.

Q. You did not mean to convey the impression that you submitted a design and asked the manufacturer to get up the dress? A. No. 12051

Q. You testified that one of the things that you would like to see Guild manufacturers improve was the question of delivery dates? A. Yes.

Q. Was that so? A. Yes.

Q. You testified that it depended, I will not say—withdrawn. You testified that you had found it to be your experience that at times copies of the particular dress were

out in the market prior to the time that you got the original from the Guild manufacturers; is that so ? A. Yes.

Q. Did your investigations also show that the originals had not been delivered to anybody? A. I would not be sure because I know that manufacturers would frequently show Pacific Coast stores their goods and ship them ahead of eastern stores and make deliveries two or three weeks ahead for them because of the difference in the climate.

Q. Will you say aside from that exception generally that nobody got delivery of these medium-priced or expensive dresses prior to the time that you did? A. I think that would probably be true.

12053 Q. Then it is not your testimony, and you are not stating that a particular and special store had any favoritism shown to it over your stores? A. No.

Q. In the course of your investigation of that problem, have you discovered that the reason for that was the fact that original designs were stolen from manufacturers who were members of the Fashion Originators Guild prior to the time that they could make delivery? A. Well, I do not know that to be a fact, but that would be the inference.

Q. A fair inference? A. Whether by hiring away the sketches or not, I do not know.

Q. Do you not also know that that inability to deliver prior to the time that the copy appears, is due to the fact that these designs had previously been pirated while being shown?

12054 Mr. Haycraft: He said yes to that several times.

Examiner Averill: Then it will not do any harm and it will probably expedite the hearing.

Read the question.

(Question read.)

A. I do not know that, no. I do know this, that when a manufacturer quotes four to six weeks' delivery, he gives certain accounts quicker deliveries because of them having

a fashion show or something of the sort, and they get deliveries in two weeks on a certain percentage of the order.

Q. That is one of the reasons why retailers and manufacturers have agreed to restrict the fashion shows? A. Well, those are fashion shows which are not now being restricted. They are fashion shows held by stores with their own merchandise, and they are being held by the best stores in the country.

Q. What do you mean they are being held with their own merchandise? A. Merchandise that they purchase in the market. For instance, Miss Lawton in Cincinnati will have a fashion show about the 20th of September with her own merchandise, and she will get quicker delivery on cer- 12056
tain dresses on account of that fashion show, and it would be perfectly possible for somebody to go in and get some of those things and make copies of them.

Q. Do you know when this party went in and purchased the goods? A. I have been with Miss Lawton many times on the 5th of September when she was purchasing the goods and she would get delivery on the 20th from houses like Hattie Carnegie. They would put through a certain percentage of her orders for quick delivery so that she might get organized for the fashion show in two weeks.

Q. You testified that not all of the important dress houses were in the Fashion Originators Guild when it was first organized; is that so? A. Yes.

Q. That there were a great many resources that you could have contacted at that time? A. Yes. 12057

Q. For better class merchandise?

Mr. Haycraft: I object to that. He did not say there were a great many.

Mr. Albert: The witness can contradict me if he did not say it.

By Mr. Albert.

Q. Were there a great many resources in the better class? A. There were quite a good many in some. There were not many in the misses' dresses but there were a few in women's dresses and a few of the Forty-seventh Street houses like Marie Conti. There were not many in New York.

Q. You were very active with Mr. Block in the A.B.O., were you not, Mr. Swinney? A. I was quite active, yes.

Q. Is it true or fair to say that you were very much interested in the F.O.G.A.? A. Yes.

Q. And discussed problems with him with the idea of
12059 your carrying out this anti-style piracy campaign?

Mr. Haycraft: I object to that as incompetent, immaterial, and irrelevant whether they discussed the matter or not.

Examiner Averill: Objection overruled, but I think the question should be restated in order to make it clearer.

By Mr. Albert.

Q. You discussed problems of the Guild with him during all of that period? A. I attended many meetings of the A.B.O. at which Mr. Block was chairman and presided, if that is the fact that you wish to bring out, and most of my contacts with him were in connection with meetings.
12060 There was not much aside from any of these meetings.

Q. Did you have any discussions with him prior to seeing him at the meeting, or by calling him up as to what was going to be discussed? A. Very seldom. Most of the discussions I had with him were at the meeting.

Q. Did you ever discuss with him in 1934 the inclusion in the Guild of the $10.75 dress houses? A. I do not think so.

Q. Did you ever hear him advocate the inclusion of the $10.75 dress houses in the Guild in 1934? A. I do not recall it.

Q. You mean by that that he may have, but you do not remember? A. I do not recall ever discussing the $10.75 with him, with Mr. Block, before the matter came out in "Women's Wear Daily" in the spring of 1935.

Q. Let me ask you this specifically: Did you ever see an article in "Women's Wear" which you have testified you got some of your information from, by Mr. Block, advocating the inclusion in the Guild of the $10.75 dress lines? A. I do not recall it. What was the date of it?

Q. January 17, 1934. A. 1934?

12062

Q. Yes. A. I have no recollection of ever seeing that.

Q. Do you recall the National Retail Dry Goods Association meeting held at the beginning of January, 1934? A. When——

Q. The convention. A. I went to the second one but not the first one. There were two.

Q. When was the second one? A. The second one was when Mr. Post and Mr. Rentner came into the meeting, Mr. Post I think made a talk.

Q. Was that, as a matter of fact, the first one? A. No, there was one before that. I did not attend the first one.

Q. Mr. Swinney, I am referring to the meetings which were held with the National Retail Dry Goods Association in 1935; to be more specific, directing your attention to the convention of the National Retail Dry Goods Association which was held on January 4, 1934. A. January, 1934?

12063

Q. Yes. A. Offhand, I do not recall it. I do not recall it as such. If I saw the reference to it I might remember it. I do not recall it now.

Q. I will just get at it this way: Do you recall attending the merchandise division of the National Retail Dry Goods Association convention on or about December 17, 1934? A. I do not recall it from that brief statement.

Who was on the program, and who was chairman and something like that, and maybe I will remember it.

Q. Maybe we will save time this way. A. I am trying to be helpful.

Q. I show you an article appearing in "Women's Wear Daily" on Wednesday, January 17, 1934, being a report of an interview with Mr. Block, and ask you if you heard Mr. Block make the statements contained therein. A. I do not recall this at all. I do not think I could have been at the meeting.

Q. Do you know anything about the speech of Mr. Rentner that is referred to at this time, or to which this has
12965 reference to at that time? A. I heard so many speeches by Mr. Rentner during this period on Guild matters that I am quite hazy about it.

Q. I think there are a good many of them in that category on this side of the bench from the Examiner. A. I do not recall. My recollection is that I heard another meeting on that day on the testing of merchandise, and I did not attend that meeting. I was chairman of the committee on fabric testing.

Q. You do not remember this? A. No.

Q. You did not, therefore, discuss the matter with him? A. No.

Q. I show you Respondents' Exhibit 44 and again ask you whether or not in the course of your perusal of "Women's Wear Daily" for your information in the in-
12966 dustry whether or not you saw that advertisement? A. I do not recall it.

Q. I show you Respondents' Exhibit 45 and ask you whether or not you saw that advertisement appearing in the "Women's Wear Daily"? A. I do not recall it. I think that arrangement was made afterwards—I think that arrangement was withdrawn afterwards.

Q. What? A. I think that arrangement was withdrawn afterwards.

Q. When did you first learn of that? A. Well, perhaps I should not ask a question. I am supposed to answer them. But it seems to indicate to me from 1933 on the Guild registered the $10.75 houses.

Q. When did you first learn that you think that was to be withdrawn? A. Well, the arrangement with the Guild between the Guild and the Dress Creators' League was not made until this spring.

Q. No, no, no. You say that you had never seen or did not recall Respondents' Exhibit 44 or Respondents' Exhibit 45. A. Yes.

Q. And that was your impression that the matters herein contained had been withdrawn—when did you first learn that? A. The first one is not anything, but the announcement of it and telling what a fine thing it is. 12068

Q. Very well, then, let us refer to your description of Respondents' Exhibit No. 45 as being something that refers to something. When did you first learn that that had been withdrawn? A. That is what I said. I said that so far as I knew the arrangements with the Guild were not completed until the spring of this year.

By Mr. Albert.

Q. Mr. Swinney, did you ever learn that the Dress Creators' League of America was collaborating with the Registration Division of the Fashion Originators Guild of America in August of 1933? A. That was announced in February or March, 1935, that they had completed such arrangements. I never heard of it in 1933. 12069

Q. Did you know that such arrangements had been commenced in August, 1933? A. I did not know anything definite on that. My assumption is that they started it but it did not go through.

Examiner Averill: Oh, no, we do not want any assumptions. We have had too many of them already.

By Mr. Albert.

Q. Did you know that they had started in August, 1933? A. No.

Q. You did not? A. No.

Q. Is it your contention that the first you ever heard of or knew of the intention to include the $10.75 dress manufacturers in the Guild was in the summer or late spring of 1935? A. Early spring of 1935.

Q. You have referred to a meeting held in your offices on May 2, 1935, at which the question was brought up with respect to the taking in of the $10.75 manufacturers and the protection of dresses selling for $6.75 and below. A.
12071 Yes.

Q. Do you recall that meeting? A. Yes, sir.

Q. And the question arose as to whether or not there should not be a leniency in the enforcement of that provision; do you recall that? A. Yes.

Q. Do you recall that during the course of the discussion at that meeting the statement was made that the period that would be considered would be a period of sixty days? A. I never heard of such a statement.

Q. Would you say that such a statement had not been made? A. I did not hear any such statement made.

Q. Were you present at all times? A. I think so.

Q. This was in your own office, was it not, Mr. Swinney? A. Yes, sir.

Q. Did you not in the course of your duties run in and
12072 out of the meeting to attend to various matters in the Specialty Stores Association? A. I do not recall leaving the room.

Q. Was it the consensus of the meeting that universal style protection was highly desirable? A. I think so.

Q. Was it the consensus of most of the members of the resident buying organizations that the difficulties were all of a minor nature and could be overcome easily? A. I do

not think that is quite true. I think that the stores which had large popular-priced departments felt that it was a more serious problem than that.

Q. Who were represented at this meeting? A. There was Mr. Cavendish, Kirby, Block & Company, and Felix Lilienthal, and——

Q. Who was present at that meeting on the part of Cavendish? A. I am reasonably certain it was Mr. Lundgren or Mr. Schaffer.

Q. Were there any others that you can recall in a similar position? A. Mr. Block was there and Mr. Greenebaum was there and I think Mr. Hasenberg was there. I have not checked the list, but there were five or six stores 12074
there.

Q. Were all those whom you have just named substantially in agreement that universal style design protection was highly desirable and the difficulties were of a minor nature and could be easily overcome? A. I would not say that the consensus of the meeting was that the difficulties were of a minor nature and could be easily overcome.

Q. Was any period of time whatsoever mentioned during which there was to be leniency in the enforcement of the Guild program in the low end dresses? A. I never heard such a period of time stated.

Q. What was the understanding, in your opinion, with respect to it, Mr. Swinney? A. To answer that question—do you want me to answer that question? 12075

Q. Yes. A. What was my understanding of the statement in regard to leniency, is that it?

Q. Yes.

Examiner Averill: The duration of time.

A. I heard no statement in regard to the duration of time.

By Mr. Albert.

Q. How was it referred to in any way at all? A. Until such time as it would be possible to get the cheaper priced manufacturers to get their own designers and create their own lines and until such time as something could be done about the chain stores.

Q. I show you a letter dated November 6, 1934, on the stationery of the Special Stores Association, and ask if that letter was sent by you and if this is your signature affixed to the letter? A. This is doubtless my letter. I did not send it out, but apparently my secretary signed it and sent it out. It is not my handwriting.

12077 Q. You dictated it, did you not? A. I probably did. I do not recall it definitely, but I probably did, but I did not send it.

Examiner Averill: You are not repudiating it?

A. No.

Q. You remember dictating it? A. I do.

Q. And you feel that it was sent out from your office in the regular course of business? A. I do.

Q. And your secretary signed it with your authority, did she? A. She did. I do not even know the initials of the stenographer. That is not my regular stenographer.

12078 Mr. Albert: Is it not a fact, Mr. Swinney, that the Specialty Stores Association are opposed to copying, and have no desire to encourage anyone in the making of copies?

The Witness: I think that is a fair statement.

By Mr. Albert.

Q. Now, in your testimony with respect to the Union Store of Columbus, Ohio, and the Berger Store, Buffalo,

Y., in which you stated that Mr. Post made certain
quiries with regard to red carding, is it not a fact that
r. Post called you on the telephone and stated that he
d heard certain rumors and had certain information
ich led him to believe that those two stores were with-
awing their co-operation, and that if that were so the
ult would be that those stores would be red carded
d asked you to check on that information? A. He
ened up the discussion by saying that he thought he was
ing to red card these two stores. Then he went on to
ne why.

Q. Did he not amplify his remarks by telling you what
d brought this on and stated what the results were if 12080
t were true and asked you to check up on the matter?
I have given you the statement of what he said.

Q. Do you deny that Mr. Post, Mr. Swinney, asked you
verify the information which he had, and whether or
t it was authorized? A. My recollection is as I have
eviously stated, that I volunteered to do so.

Q. And he said, "Can you get me the information?"
Something to that effect.

Q. So that it was just, generally, a very friendly con-
sation? A. So that it was just a general and very
endly conversation?

Q. Yes. A. Well, he was just forewarning me that he
s going to do something, and what he was going to do,
sked him why he wanted to red card that store, and
said that he wanted to red card some store besides the 12081
M.C. stores; that he did not want to limit it to A.M.C.
res.

Q. Did he not say that he would wait before taking
action until you obtained the information with re-
ct to these stores? A. I do not recall. He may have,
e chances are that I asked him to wait.

Q. The fact remains that he did wait? A. Yes.

Q. To get the information that you asked for? A. That is right.

Q. And you got him the information? A. I called him back in an hour or so.

Q. No action was taken? A. That is right.

Q. Are there any A.M.C. stores in Buffalo? A. In Columbus but not in Buffalo; the question came up in connection with Columbus where he had already red carded F. & R. Lazarus & Company.

Examiner Averill: And in Buffalo it was L. L. Berger?

The Witness: That is right.

12083 Mr. Albert: That is all, Mr. Swinney.

(Whereupon, at 4.23 o'clock P. M., December 7, 1936, the hearing was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 10, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

12084 (Same Appearances.)

PROCCEDINGS.

Mr. Haycraft: I offer in evidence at this time Commission's Exhibits for Identification 946 to and including 955, both inclusive.

Mr. Albert: No objection to this one.

Examiner Averill: Gentlemen, a copy of the letter heretofore marked Commission's Exhibit No. 946 for

Identification, and bearing date July 3, 1936, purporting to be from John B. Swinney to Jack Goldston of the Fashion Originators Guild of America, Inc., will be received in evidence and marked Commission's Exhibit 946.

(The letter heretofore marked for identification Commission's Exhibit 946 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I now offer Commission's Exhibit No. 947 for Identification.

Mr. Albert: No objection.

Examiner Averill: The letter bearing date July 2, 1936, heretofore marked Commission's Exhibit 947 for Identification, Mr. Jack Goldston to John Swinney, Specialty Stores, New York City, N. Y., will be received in evidence and marked Commission's Exhibit 947. 12086

(The letter heretofore marked for identification Commission's Exhibit 947 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer Commission's Exhibit 948 for Identification.

Mr. Albert: No objection.

Examiner Averill: The letter bearing date June 29, 1936, heretofore marked Commission's Exhibit 948 for Identification, from I. Himelhoch of Himelhoch Brothers & Company, Inc., Detroit, Mich., to John B. Swinney, Specialty Stores, New York City, N. Y., will be received in evidence and marked Commission's Exhibit No. 948. 12087

(The letter heretofore marked for identification Commission's Exhibit 948 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer Commission's Exhibit 949 for Identification in evidence.

Mr. Albert: No objection.

Examiner Averill: A copy of a telegram bearing date June 29, 1936, heretofore marked for identification Commission's Exhibit 949 for Identification, the same being from John B. Swinney to Himelhoch Brothers & Company, Inc., Detroit, Mich., will be received in evidence and marked Commission's Exhibit 949.

(The telegram heretofore marked for identification Commission's Exhibit 949 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer in evidence Commission's Exhibit 950.

12089 Mr. Albert: No objection.

Examiner Averill: A copy of a letter bearing date June 27, 1936, and heretofore marked Commission's Exhibit 950 for identification, apparently from John B. Swinney, Director, Specialty Stores, to I. Himelhoch, Himelhoch Brothers, Detroit, Mich., will be received in evidence and marked Commission's Exhibit 950.

(The letter heretofore marked for identification Commission's Exhibit 950 was marked as an exhibit and received in evidence.)

Examiner Averill: In connection with that particular exhibit, or is it the next one that does not have the date; apparently it is the next one. What purports to be a copy of a letter which the witness has testified as

12090 bearing date June 24, 1936—is that correct?

The Witness: Yes, sir; that is correct. It should bear date June 24, 1936.

Examiner Averill: And which was heretofore marked for identification Commission's Exhibit 951, the same purporting to be from Jack Goldston to John B. Swinney, will be received in evidence and marked Commission's Exhibit 951.

12091

(The letter heretofore marked for identification Commission's Exhibit 951 was marked as an exhibit and received in evidence.)

Examiner Averill: I might say that the witness having testified that this exhibit should bear date June 24, 1936, I have accepted that and placed upon the letter for easy reference to this by those who in the future may need to refer to it as an exhibit.

Mr. Haycraft: I offer Commission's Exhibit 952 for identification in evidence.

Mr. Albert: No objection.

Examiner Averill: I do not, at the moment, gather the point why this should be introduced in evidence. Just what is this and why should it go into evidence?

12092

Mr. Haycraft: This is a part of the complete file of this witness. I did not feel justified in leaving out a part of the file, but preferred to introduce it as a unit with every paper in it.

Examiner Averill: This simply seems to be a notation from Mr. Swinney to his buyer to see him about the matter. What possible value can it have?

Mr. Haycraft: In the first place, it is a part of the file and completes the file. In the second place—I would like to ask the witness as to what value it has other than that.

Redirect examination by Mr. Haycraft.

12093

Q. What other value does it have? A. Its only value outside of that is that it bears out the fact that at the time in my office I asked my buyer to come in and I discussed the matter with my buyer. As such, it would give some indication of the basis for what action I took, as being influenced to some degree, at least, by the conversation I had with the buyer.

Examiner Averill: Gentlemen, the paper here
tofore marked Commission's Exhibit 952 for Iden
tification, and which apparently was addressed t
Miss Saslove, and signed J. B. S., and heretofor
marked Commission's Exhibit 952 for Identifica
tion, will be received in evidence and marked Com
mission's Exhibit 952.

(The paper heretofore marked for identificatio
Commission's Exhibit 952 was marked as an exhibi
and received in evidence.)

Mr. Haycraft: I offer in evidence Commission'
Exhibit 953 for Identification.

12095

Mr. Albert: No objection.

Examiner Averill: The telegram bearing dat
June 26, 1936, heretofore marked Commission's Ex
hibit 953 for Identification, the same being fro
I. Himelhoch to Specialty Stores, attention of M
Swinney, will be received in evidence and marke
Commission's Exhibit 953.

(The telegram heretofore marked for identifica
tion Commission's Exhibit 953 was marked as a
exhibit and received in evidence.)

Mr. Haycraft: I now offer in evidence Commis
sion's Exhibit 954 for Identification.

Mr. Albert: No objection.

12096

Examiner Averill: The paper heretofore marke
Commission's Exhibit 954 for Identification, an
which is without date, from Jack Goldston, this i
apparently a form letter bearing addressed to "Gen
tlemen," and refers to a mimeographed sketc
which is on the letter itself, and part of the pape
itself will be received in evidence and marke
Commission's Exhibit 954.

(The paper heretofore marked for identification Commission's Exhibit 954 was marked as an exhibit and received in evidence.)

Examiner Averill: The above exhibit refers to style No. 974, registered with the Fashion Originators Guild of America by the Starr-Maid Dresses.

Mr. Haycraft: I now offer in evidence Commission's Exhibit 955 for Identification.

Mr. Albert: No objection.

Examiner Averill: A paper, without date, heretofore marked Commission's Exhibit 955 for Identification, and which refers to style No. 732 by Daniel S. Westheim, registered with the Fashion 12098
Originators Guild of America, and which apparently is from Jack Goldston, Fashion Originators Guild of America, Inc., will be received in evidence and marked Commission's Exhibit 955.

(The letter heretofore marked for identification Commission's Exhibit 955 was marked as an exhibit and received in evidence.)

Examiner Averill: You may proceed.

By Mr. Haycraft.

Q. I will ask you, Mr. Swinney, whether or not the two dresses described on Commission's Exhibits 954 and 955 were the dresses involved in this correspondence with I. 12099
Himelhoch of Himelhoch Brothers of Detroit?

Mr. Albert: That is objected to as improper redirect examination.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: As I understand this file, it grows out of a letter which was marked for identification Respondents' Exhibit 95, and which at the

time there was some question whether the lette would be exhibited to Counsel and whether it woul not, on Monday evening. I think as this is a matte which was brought out in a way, at any rate, i the cross-examination, why, I think it is pertinen for him to show on redirect examination anythin that may be material in connection with that ques tion of the dresses and the correspondence with Himelhoch, so I will overrule the objection and th witness may answer the question.

Mr. Albert: Exception.

Examiner Averill: Noted.

12101 *By Mr. Haycraft.*

Q. Answer the question. A. What is the question?

Mr. Haycraft: Read the question.

(Question read.)

A. Only one of these dresses were involved with Himel hoch, and that was the style No. 732 from David S. West heim, David Westheim it is—copied by Harris Dress Com pany and referred to on Commission's Exhibit No. 955.

Examiner Averill: That is David Westheim?

The Witness: Yes, sir.

By Mr. Haycraft.

12102 Q. What about the other dress? A. So far as I know they did not have the other dress.

Q. Did you receive from Mr. Goldston two sketches— that is, the two form letters, Commission's Exhibits 95 and 955? A. Yes, sir.

Q. I notice on Commission's Exhibit No. 949 you tel Himelhoch Brothers, "Do nothing about Westheim Dress No. 732, copied by Harris." What prompted you to send

that telegram? A. The discussion I had with the Guild on that, Monday the 29th.

Q. With whom did you talk at the Guild? A. I talked with Mr. Goldston about it.

Q. What did you say to him and what did he say to you? A. I asked him what he thought we should do about it. My memory is a little bit hazy on that, but the evidence is in the telegram, that after talking to Mr. Goldston I told Mr. Himelhoch that he need do nothing about the Westheim dress.

Q. Do you remember why he told you to do nothing about it? A. There was a number of cases where the dresses were copied by so many people and Goldston said 12104
that the matter had gotten out of hand and they would do nothing about it, and my recollection is that this was one of them. I do not know just exactly why I got the permission on the part of Mr. Goldston to do nothing about it, but I do know that that was probably the reason, and I do know that I did get permission from him to do nothing about it, and nothing was done about that.

Q. Following this conversation that you had with Mr. Goldston on June 9, 1936, you received this letter on July 2, 1936, being Commission's Exhibit No. 947? A. Yes, sir.

Q. Is that correct? A. It is.

Mr. Haycraft: Those are all the questions I have to ask.

12105

Recross-examination by Mr. Albert.

Q. Mr. Swinney, you understand the file of correspondence, being Commission's Exhibits 946 to and including 955, both inclusive, to be as follows, do you not? That Harris Dress Company was not only a confirmed but an admitted copyist of dresses and that any co-operating retailer who thereafter purchased dresses from Harris Dress

Company which were adjudged copies would be presumed to have intentionally purchased those copies; is that so?

Mr. Haycraft: I think that the exhibits should speak for themselves, Mr. Examiner.

Examiner Averill: Oh, I will overrule the objection. I think he may answer that.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Answer the question. A. I think as the result of that various correspondence, Mr. Goldston came out in
12107 one of his later letters with a request that the stores boycott Harris Dress Company.

Q. What letter is that? A. This is the June 24 letter.

Q. Will you please be good enough to point out any portion of that letter which states or asks what you say it does? A. He first went on to say in this letter that, according to his story, Harris Dress had served us with notice that they intended to copy certain dresses.

Q. As an expert in the industry, do you know that to be an actual fact? A. I do not.

Q. Go on. A. Then he says: "May we point out that as you do business with a manufacturer who has frankly stated that he intends copying our goods, more than the usual precaution must obviously be taken. The Fashion
12108 Originators Guild is compelled to infer from any continuance on sale of copies from a firm with which you have had previous unsatisfactory controversies as indicative of a store's intention to disregard its representation of cooperation to us." Now, in reply——

Q. Is that the part in the letter that you say states that you are going not to buy dresses from Harris Dress Company or that you are not to buy dresses from Harris Dress Company? A. Yes, sir.

Q. That is your interpretation of that paragraph? A. Yes, I would infer that is what Mr. Goldston means.

Q. Does a word of caution to you act as a stop signal; is that what you mean? A. I do not understand the question.

Q. That is, a word of caution to you is a stop signal; is that what you mean?

Mr. Haycraft: I object to that as argumentative. The witness has stated the language and his inference of it.

Mr. Albert: He did not say to that, he said the letter to him as an expert had a certain meaning. I am trying to develop that meaning a little fur- 12110
ther:

Examiner Averill: I think the witness may answer that question. The objection is overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

The Witness: What is the question?

(Question read.)

A. I do not know as I understand just what you mean by that.

By Mr. Albert.

Q. Answer it the best you can. A. We had no way of knowing that the Harris Dress, that a Harris Dress, 12111
rather, was a copy until it was so adjudged a copy. I had no knowledge that Himelhoch had bought these dresses from Harris, and Himelhoch had no knowledge that they were copies until they were so adjudged.

Q. You had full faith and confidence, did you not, in the Fashion Originators Guild of America— A. What do you mean by that?

Q. —in their anti-style piracy committees? A. You mean, we are in favor of it?

12112

Q. Yes. A. Yes.

Q. You had confidence and felt secure that when the anti-style piracy committees adjudged a dress a copy the probabilities were that that dress was a copy? A. Yes.

Examiner Averill: If Counsel thinks it necessary, all well and good. I think from the letter I would say that the letter is not capable of the interpretation that the witness has placed upon it. It is clearly not capable of any such interpretation as that. That is the reason I did not understand the purpose of the examination.

12113

Mr. Albert: In the light of Your Honor's statement, I shall ask no further questions on that. I have no further questions for the witness.

Examiner Averill: Anything further, Mr. Haycraft?

Mr. Haycraft: Nothing further.

Examiner Averill: Mr. Swinney, you may be excused.

(Witness excused.)

Mr. Haycraft: I will call Mr. Milton J. Greenebaum.

12114

MILTON J. GREENEBAUM was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name? A. Milton J. Greenebaum.

Q. How do you spell Greenebaum? A. G-r-e-e-n-e-b-a-u-m.

Q. Where do you live? A. 75 Central Park West, New York City, N. Y.

Q. What is your occupation? A. I am vice president and general manager of Felix Lilienthal & Company, resident buyers, resident representatives.

Q. Where do they have their offices? A. 119 West Fortieth Street, New York City, N. Y.

Q. What is the name of that company, again? A. Felix Lilienthal & Company.

Q. Is that an independent organization, or is it owned by department stores? A. No, it is an independent organization.

Q. Is it a stock corporation or a partnership? A. Corporation.

Q. Organized under the laws of what State? A. New 12116
York.

Q. How long have you been employed by that organization? A. Between fourteen and fifteen years.

Q. In what capacity during that period of time? A. Originally as buyer, then as manager, and then as vice president and general manager.

Q. How long have you been vice president and general manager? A. About twelve years.

Q. What types of merchandise does that firm buy? A. All types of merchandise.

Q. All types of merchandise? A. Yes.

Q. For what types of stores? A. For department stores and specialty stores.

Q. Where are your clients located? A. In various sec- 12117
tions of the United States.

Q. Do you buy ladies' and misses' ready-to-wear garments? A. We do.

Q. You do? A. Yes.

Q. Approximately how many clients do you have for whom you buy this merchandise? A I would say more than 100.

Q. More than 100? A. Yes.

Q. With respect to the nature of the business conducted by your clients, will you briefly describe for the record that business, indicating the type of merchandise of ladies' and misses' ready-to-wear that they handle? A. They handle everything in ladies' and misses' ready-to-wear, from $1 cotton dresses up to the best merchandise that is manufactured.

Q. Of all lines? A. Yes, of all lines.

Q. By that, do you mean that they have a full line, some of them have a full line and some of them do not? A. No, we have some stores who buy more popular-priced dress merchandise. We have some stores that buy more

12119 cheaper-priced merchandise and we have some stores that buy mostly better merchandise.

Q. Can you give us an illustration or an example of each of those classifications of department stores, just so that we might get an idea. A. Well, we have specialty stores, or stores in California which we represent, we have specialty stores in Oregon which handle only better merchandise, and nothing cheaper at all. The stores that buy some types—we have some stores that handle all types of merchandise, some handle the better merchandise upstairs and the low end in the basement, and some buyers have no basement and carry popular-priced and better merchandise in their upstairs' departments.

Q. What is the practice as to the service that you render to these stores, the buying service in the New York market

12120 of this merchandise? A. We furnish them with market information and buy for them, when they are in New York we accompany them in the market at such times as they request it. We buy for them when they are not in New York themselves and while they are doing their purchasing in New York, if they desire us to, we will send a buyer around with them. We have a fashion service, and we have a complete buying service, and a promotional service also.

Q. Do you give them any assistance to see that their orders are filled? A. Oh, yes, we follow up deliveries on orders.

Q. How many employees do you have? A. About 115.

Q. How many of these employees are connected in the merchandising of this type—that is, by "this type," I mean ladies' and misses' ready-to-wear? A. I would say about twenty-five to thirty. That includes the coat division.

Q. That includes the coat division? A. Yes, twenty-five employees, to about thirty.

Q. What is the custom as to the way in which you make your purchases—that is, do buyers go out to the manufacturers, or do manufacturers come to your place of business? 12122 A. Well, we have a great many manufacturers who call on us in the mornings in our sample rooms, and, of course, the buyers are out in the market from 10 o'clock to 10.30 in the morning until 5 o'clock or 5.30 purchasing merchandise.

Q. Going to the manufacturers' showrooms? A. As a matter of fact, most of the merchandise is bought in that way. There is very little bought in the office. If a sample is shown us and we think it is good, we go over to the manufacturers' place of business and look at his stock.

Q. Did you ever—did you ever do any group buying; what is called group buying? A. What do you mean by group buying?

Q. Where you have manufacturers put on a show for your buyers and have your buyers all assemble in one 12123 place? A. We have had an operation of that type, but I do not think it is exactly in the way that some of the other offices work theirs.

Q. Explain what it is. A. There are a great many different ideas on the way that it should be done.

Q. How do you do it? A. We have had group meetings at which we have had various manufacturers come to our office and show us our lines, but we have permitted the

manufacturer to be present when his merchandise was being looked at and to explain the value of his product. And I understand some of the other offices do not permit them to, but simply have the merchandise to come up and view it without the manufacturer being there.

Q. Are you familiar with the Fashion Originators Guild of America, Inc., Mr. Greenebaum? A. I am.

Q. When did you first learn of its existence? A. I believe—well, the first time that I heard about it was, I guess, about the time that it was formed. I do not remember what the exact date was.

Q. Were you ever asked by any of its officials to co-
12125 operate with the Guild in its so-called anti-style piracy campaign? A. Certain offices were, yes.

Q. When were you first contacted in that way? A. I think it was in the spring of 1933, as I recall it.

Q. Mr. Greenebaum, do you remember who it was that called upon you? A. The first time I remember any personal contact with the Guild was—I think it was in June of 1933 when we received our first declaration of co-operation which we were asked to sign.

Q. At that time, did you attend any meetings of representatives of buying offices and representatives of the Guild? A. I did.

Q. When the subject matter of this so-called anti-style piracy was discussed? A. I did.

Q. When? A. I attended such a meeting shortly after
12126 we received this first declaration of co-operation, yes.

Q. Do you recall when this meeting was held? A. Yes, it was held about that time.

Q. Do you recall where this meeting was held? A. Yes, it was held at the office of the Mutual Buying Offices, Miss Glenby's office.

Q. Do you recall those who were in attendance at that meeting? A. I do not remember exactly all of them, but those whom I remember were Miss Glenby, John Block of

Kirby, Block & Company, Mr. Bergdahl of the Associated Merchandising Corporation, either Charlie Weil or Mr. Gaynor, both of them of Weil & Hartman. I know Mr. Rentner was there and I think Mr. Golby, and Herbert Sondheim, and I believe, Willie Bass.

Q. Were they dress manufacturers? A. Yes, they were representing the Guild.

Q. Do you remember the purposes of the meeting? A. We, as officers, asked to have a meeting with the officials of the Guild to discuss the matter of carrying out or co-operating with them in their plan because there were certain things in our mind which made it necessary for us to have some conference with them before we signed these 12128 declarations.

Q. What was your understanding— A. I beg your pardon?

(The question, as amended, was read as follows:

"Q. Mr. Greenebaum, what was it that you had in mind, and what was it you had in view when you attended this meeting, what phase of co-operation did you desire to discuss or did you wish to hear discussed?") A. When we received the declaration of co-operation, it called for an agreement on our part not to buy copies of Guild merchandise without clarification. The question immediately entering my mind, was what were we going to do on the lower-priced lines?

12129

Q. What price lines did that include when you say "lower-priced lines"? A. Price lines under $10.75. That is, at the time there were only two price lines directly under $10.75, which was $6.75 and then $3.75. In other words, at the time there were no $7's or $8's.

Q. What price lines were there about $10.75? A. $16.75; $22.50 and then up.

Q. What price lines were the members of the Guild then making? A. I think mostly from $22.50 up, some $16.50 or $16.75, I do not know which.

Q. I, at this time, call your attention to Commission's Exhibit No. 92, and ask if this is the so-called "Declaration of Co-operation" that was submitted to you, as a buying office; or, was there something that was different from this? A. This was not the form that was submitted to us.

Q. This was not the form that was submitted to you? A. No. This was the result of the Association of Buying Offices' efforts afterwards.

Q. Presented afterwards? A. No, it was the first declaration of co-operation that everybody got. I do not think ours was any different from anybody else's. This, however, was not the one that was submitted to us.

12131 Q. I will show you another one. A. All right.

Q. I will now show you Commission's Exhibit 99-E and ask you if that is the one that you have in mind? A. That is it, I do not know whether it was in that exact form or not, but generally that was it.

Q. That was the substance of it? A. That was the substance of it. I do not know whether that was the exact form.

Q. Now, then, will you give in your own words the substance of the discussion that took place? A. What is that?

Q. Will you give us in your own words the substance of the discussion that took place at this meeting that you have referred to that was held in June in the Mutual Buying Offices and that was attended by all those you have

12132 named? What was said by you? What was said by them? What was said by the Guild manufacturers? What was said by the other representatives of buying offices? A. Well, at the beginning of the meeting I think Mr. Rentner who was more or less for the Guild group at that time, explained in a general way what was expected of the buying offices, and I think all of them present were; that is, all of the offices then present were in sympathy with the Guild program to curb style piracy. We called

him—we told Mr. Rentner and the other manufacturers that our only—that our principal problem in co-operating was to overcome the problem that was presented by having our stores agree not to handle copies of Guild merchandise in the $6.75 and the $3.75 price ranges when the chain stores, a chain store, or those stores handling only that price range which could not be controlled would be in competition with us. So Mr. Rentner said that if that was our only objection, that that was not even worth worrying about because they were not interested in copies of dresses below $10.75; that that was the price range in which the copies of Guild dresses were most prevalent and where they were having the most trouble, and that in his 12134
opinion he did not feel that a Guild dress could be copied at less than $10.75 and still look enough like the original dress to spoil the sale of the original dress. When we received that assurance we said that was all that was worrying us, and we would be perfectly willing to sign the Guild pledge all the way through, which we did, at least, I mean speaking for all of our stores.

Q. Well, now, at that time, did your buyers— A. What?

Q. Strike that out. Was there any particular reason for you or your clients taking any action at that time in signing the declaration of co-operation? A. Yes, because the spring season was just starting and the buying season started early in July, around possibly the 10th or 15th of 12135
July, and it had to be settled before our clients came to New York.

Q. You say the "spring" season? A. I mean the fall season. Pardon me.

Q. Why was that necessary? A. Because unless the businesses, unless the fundamental retail stores signed the declaration, they would not be allowed to go into the showrooms—Guild member showrooms.

Q. How do you know that to be a fact? A. What do you mean by that?

Q. How do you know that to be a fact? A. Well, our buyers reported back to us that they were told that by the manufacturers, and it was also our understanding given to us by Mr. Rentner and by the Guild.

Q. Would that have any effect upon the business of your clients? A. Oh, naturally.

Q. In doing business? A. Yes.

Q. You say "oh naturally." Explain that for the record, please. A. Well, the manufacturers who were the members of the Guild were at that time and still are the

12137 leading manufacturers in their price fields. There are manufacturers whose merchandise we could not get along without in our ready-to-wear division, in our opinion.

Q. Can you elaborate on that and tell us why you could not get along without them? A. Well, in order to have a successful better ready-to-wear business you have to deal with the best manufacturers and the best manufacturers were members of the Guild.

Q. They were the best manufacturers from what standpoint? A. From the standpoint of their product, and the saleability of their product.

Q. In your judgment and opinion, what percentage of the manufacturers of garments of, say $16.75 and up, were included in the Guild at that time?

12138 Mr. Albert: I object as no proper foundation has been shown as to this witness' knowledge to any such question.

Examiner Averill: Objection overruled. Your objection goes to the weight of the evidence rather than its admissibility.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. I do not think I can answer that question—intelligently—as to the exact percentage, or nearly exact percentage because that is a little too long ago, and I do not remember all the houses.

Q. What percentages of your clientele require the merchandise of these Guild manufacturers, or did at that time? A. Well, any store that handled merchandise in the Guild price line, and that was the great majority of them, certainly wanted to buy from Guild houses.

Q. Well, as a result of that meeting, did you request of your clients that signing of the so-called declarations of co-operation? A. We did, and as a matter of fact we secured permission and signed Guild declarations for certain of our clients who did not happen to be in New York when it was necessary. 12140

Q. Well, now, what was the extent of the co-operation in 1933 and 1934, we will say, given by your organization in the so-called anti-style piracy campaign, if any? A. We co-operated to the fullest extent.

Q. By the return of garments? A. Any of our stores that were asked to return garments I am sure returned them.

Q. Were you requested to return garments in the lower-priced brackets? A. No.

Q. During those years? A. No.

Q. Did there come a time when you were requested to return garments in the lower-priced brackets? A. Yes, sir. 12141

Q. When was it? A. Well, that was a normal development of the Guild program.

Q. What? A. That was a normal development of the Guild program.

Mr. Albert: May I ask that be repeated, please?

(Answer read.)

Mr. Albert: I did not hear the answer. I was listening to something else, your Honor.

The Witness: That was a normal development of the Guild program.

Mr. Albert: Thank you, Mr. Greenebaum.

Examiner Averill: Do you want it read again?

Mr. Albert: No.

A. That was the normal development of the Guild program when they were—when they had manufacturers in there who only made merchandise from $16.75 and up, the $6.75 firms and lower-priced lines did not bother them, but shortly after they took in the sportswear group, which takes in merchandise down to $6.75, then the problem of
12143 protecting their merchandise became more acute, and then the $10.75 situation arose. And, of course, when that arose that affected the price lines immediately below these lines—that is to say, the $7, $8 and $6 lines, and they were faced with the problem that caused these manufacturers—in other words, with the problem that because these manufacturers wanted protection, the Guild asked us to return merchandise all the way down.

Q. When was it that you first learned that the $10.75 group came in the Guild as members? A. The first thing I knew about it was the article appeared in "Women's Wear" on the subject.

Q. About when was it? A. It was in the spring of 1935—March or April, I do not know exactly the month.

Q. At that time was there such an organization as the
12144 Associated Buying Offices? A. Associated Buying Offices?

Q. Yes. A. Yes.

Q. Was your organization a member of that organization? A. It was a charter member.

Q. Did you attend any meeting of the Associated Buying Offices at which this matter of including the $10.75 group of dress manufacturers in the Guild, and as members of the F.O.G.A. was discussed? A. I attended several.

Q. I show you Commission's Exhibit No. 862 and ask you if you can identify that as minutes of such a meeting that you attended, or of a meeting at which you attended, and if so, what your recollection was? A. Well, this was a letter written to Mr. Post and Mr. Rentner commenting on the fact that the Guild was considering taking in the $10.75 dress manufacturers as affiliates. It is not minutes of a meeting but a letter written at a meeting, however.

Examiner Averill: No, I just noticed that this was not minutes but apparently a letter.

Mr. Haycraft: The witness has corrected that in his answer.

12146

By Mr. Haycraft.

Q. Did you have anything to do with the writing of that letter? A. I did and I was there when it was written.

Q. And who wrote it—that is, what group or what organization? A. The Association of Buying Offices.

Examiner Averill: Let me see that for a moment. Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. I now show you Commission's Exhibit No. 863 and ask you if you can identify that in any way—that purports to be a letter from the A.B.O. to Mr. Rentner, and under date of April 5, 1935. A. Yes, I remember this. 12147

Q. Did you attend the meeting referred to in that letter? A. Yes, I did.

Q. Was that the meeting referred to in that letter—was that a joint meeting of representatives of the Associated Buying Offices and of the Guild? A. Yes, sir.

Q. Do you have any independent recollection of who attended that meeting? A. No, I do not remember offhand. I do not remember.

Q. Do you have any independent recollection of the discussion that took place at that meeting? A. Yes.

Q. Does your recollection coincide with this exhibit, or does it differ from it, referring to Commission's Exhibit No. 863? A. That is exactly my recollection of what occurred.

Q. I now show you Commission's Exhibit No. 865, the original letter from Mr. Post addressed to the Association of Buying Offices under date of April 23, 1935 and ask you if you ever have seen that before? A. What?

Q. If you ever saw that before? A. This is a letter that was written at an Association of Buying Offices' meeting.

12149 Q. Now, I show you Commission's Exhibit 866, purporting to be a letter from the Association of Buying Offices to Mr. Renitz, April 27— A. I do not think that is the one that you refer to. You mean this one here?

Q. Yes. I did show you the wrong one. I have reference here to Commission's Exhibit No. 866, this purports to be a letter from the Association of Buying Offices to the Guild, under date of April 27, attention of Mr. Post, in reply to a letter of April 23, to which I have already called your attention, and ask you if you can identify this exhibit in any way? A. Yes, I was present when this letter was written also.

Q. Did you serve on a subcommittee of the Association of Buying Offices which had to do with Guild affairs? A. Yes, sir.

12150 Q. Who else was on that committee with you? A. Mr. Bergdahl and Mr. Lipman, but Mr. Lipman was not active.

Q. Did you have any part in the formation of this letter, Commission's Exhibit No. 866, the language that is in it? A. Yes, I did.

Q. Would you say it was a joint effort of yourself and Mr. Bergdahl and Mr. Kleinert? A. I do not remember, but I think so. Mr. Kleinert did most of the dictating to the girl. This letter here is a letter apparently from Mr.

Kleinert, from the Association of Buying Offices, and is addressed to the Guild, to the attention of Mr. Post, in reply to the letter of April 3, this one over here.

Q. Yes, I think we have identified that pretty well now. Were you at that time in accord with the statements made in that letter? A. Yes.

Q. Do you recall that subsequently you wrote—subsequent to the writing of this letter you were at another meeting—your committee had another meeting—a subcommittee had another meeting with representatives of the Guild on May 4, 1936? A. Well, if you will tell me where that took place——

Q. I show you Commission's Exhibit No. 867, to refresh 12152
your recollection. A. Why, this is the meeting that took place in Mr. Swinney's office, yes.

Mr. Albert: The Specialty Stores office?

The Witness: Yes, I remember that.

By Mr. Haycraft.

Q. That came right after your meeting that you had? A. Correct.

Q. Do you recall attending that meeting? A. I do.

Q. Do you recall who attended the meeting that Commission's Exhibit No. 867 purports to be the minutes of? A. Well, I remember Mr. Bergdahl, Mr. Swinney, Mr. Post, Mr. Reinitz and myself, and it seems to me one other person. It was on a Saturday morning. 12153

Examiner Averill: Mr. Reinitz.

Mr. Haycraft: Yes, Mr. Reinitz.

By Mr. Haycraft.

Q. Who was Mr. Reinitz at that time?

Q. Who was Mr. Reinitz at that time? A. Mr. Reinitz was acting as the publisher of a trade publication and

also as publicity director, I believe, of a number of manufacturing organizations.

Q. What kind of a magazine? A. A trade magazine.

Q. When you say "trade magazine," what trade magazine do you refer to? A. He called it the "Review." He published the "Review."

Q. What, if anything, did he have to do with the Guild activities at that time, and at that meeting especially?

Mr. Albert: That is objected to as calling for the conclusion of the witness, and no proper foundation laid.

Examiner Averill: Objection overruled.

12155 Mr. Albert: Exception.

Examiner Averill: Noted.

A. At that particular meeting in Mr. Swinney's office, Mr. Reinitz was representing, I believe, both the Guild and the $10.75 group. At least he talked for both.

By Mr. Albert.

Q. Then, he did speak at the meeting? A. Yes, sir.

Examiner Averill: He was not there simply in the capacity of a reporter gathering news for his publication?

The Witness: No, sir; he was representing the $10.75 group here and also representing the Guild

12156 to the extent that he talked with the—he talked for the Guild—I do not know that he was their accredited representative there or not, but I assume that he was because he spoke for them.

By Mr. Haycraft.

Q. Was there anybody else there for the $10.75 group? A. No, sir.

Q. I show you Commission's Exhibit No. 871, which purports to be a copy of a letter from the A.B.O., and addressed to Mr. Reinitz, dated May 13, 1935, and ask you if you can identify that? A. Yes, I remember this. I did not finish my other question. He spoke for both the Guild and for the $10.75 group, and it was my understanding that he represented both of them at that meeting.

Q. I see. Did you have anything to do with the dictation of that letter? A. Yes, I was present when it was written and offered my suggestions.

Q. When these discussions took place, do you recall receiving any letter from Mr. Post with respect to the subject matter of this correspondence to which I have just 12158
directed your attention—showing you Commission's Exhibit No. 873 and asking you if you can identify that as a letter from Mr. Post, dated June 21, 1935, with respect to this same subject matter? A. Yes, sir.

Q. Was that written at any of the meetings that you attended? A. Yes, it was written at one of these meetings.

Q. I show you Commission's Exhibit No. 900, which purports to be a copy of an original letter sent to Mr. Post in reply to his letter of June 21, Commission's Exhibit No. 873, to which I have just directed your attention; this is, the letter, Commission's Exhibit 900, being dated August 3, 1935, and ask you if you were a member of the special committee which purported to have signed that letter and sent it to Mr. Post; at least, the special committee which purported to have sent the letter to Mr. 12159
Post? A. Yes, I acted in that matter together with Mr. Bergdahl, as a special committee.

Q. Now, then, sir, I will call your attention to the following language appearing therein: "We have your letter of June 21 in which you state the reaction of the board of directors of the Fashion Originators Guild of America to the recent proposal submitted to you by the Association

of Buying Offices, Inc., in regard to the extent of its co-operating with you in connection with taking in $10.75 manufacturers as associated members.

"This is to inform you that the members of the Association of Buying Offices, Inc., will endorse this movement on your part to its member retailers. It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems.

"It is our intention to actively support the style piracy prevention efforts to the fullest extent, and we will rely to an equal degree upon your co-operation." This is
12161 signed by the Association of Buying Offices, Inc., by special committee. What did you have reference to where you said, "It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems." A. Well, when Mr. Post met with us at a regular luncheon meeting of the Association of Buying Offices, Inc., and discussed with us the matter of the $10.75 manufacturers, he mentioned the fact that it would be necessary for the Guild to extend its program to a lower-priced brackets. There were various conferences about it and the thing that we were particularly concerned about was the $4.75 price line because this is the price line that was very important in our stores in stores having basement departments, and in some of them upstairs.

12162 In some stores it was the lowest price line carried in the basement department, and in other stores it was the lowest price line carried on the first floor, and it was a very, very important price line particularly in view of the fact that the chain ready-to-wear stores were concentrating on that price line in their retail sales. We mentioned the fact that it would be impossible for us to co-operate fully in that price line because of the fact that there would not be enough, and there could not be enough styles originated

—in other words, there could not be enough style-originated merchandise and could not be for quite some time—as a matter of fact, there were not enough designers available, in my opinion, to organize the $4.75 group so that they could manufacture style-originated garments, and that until such time as the market was in a position to supply us with enough style-originated merchandise at that price we felt that the Guild must do something to help us out with this problem, and while I understand that there was some comment on the part of the Guild member representatives against the leniency, that was the sense of what was decided upon, that the Guild would be most lenient in their activities against stores returning merchandise costing $4.75 and below. 12164

Examiner Averill: You mean, less activities against stores who did not return the merchandise?

The Witness: Correct. As someone put it to us—I believe it was Mr. Post, I am not sure, in explaining what that would mean by co-operating stores and unco-operating stores, that statement would mean that if a store found a different subterfuge for not co-operating and returning copies every time they were asked to return copies, that they would be considered a store that did not want to co-operate with the Guild program and steps would be taken accordingly, but if stores who had 12165 shown their good faith in returning copies where they were asked to return copies, where they were asked to do so, and they complied in the returning of the copies, they would be considered as co-operating even if they did not return all of the copies that were found in the stores, but if they just returned the copies as they were requested to return. When we decided that we would withdraw any ob-

jection to their including the $10.75 group, it was done with that idea in mind; that is what that language meant.

Q. Well, then, as a matter of fact, the $10.75 group went into the Guild about that time, did they not? It was soon after August. A. I do not remember the exact date, but, yes, it was around that time.

Q. Did you have any further discussion, then, with representatives of the Guild as to the problems that you had in returning merchandise that your stores had? A. Well, of course, we had some conversations, but I think they
12167 were very familiar with our position, and after the time they were in sympathy in trying to help us work out the problem and work out their problem at the same time.

Q. Did you have any arrangement with respect to the percentage of garments that might be returned during the course of the month? A. I think that came up some time later. Some time later that subject was brought up.

Q. When did that come up? A. It was after August. I do not know. It may have been September or October.

Q. What was the occasion, what prompted it? A. Well, we had a meeting with some of the Guild people—I believe it was in the Guild office, and I think Mr. Bergdahl and I were present—I do not know about—I do not know who else—and we discussed the matter of the percentage of stores' returns, and, as I remember it, the understand-
12168 ing was that no stores should be asked to return more than 5 per cent. of their stock in any given month in their basement department and/or any department all over the store for that period 3 per cent. was sufficient. That is as near as I can recall what the agreement was. In other words, they could return 5 per cent. of their stock in any given month in their basement department, or they could take all of the departments all over the store for the same period of time and return 3 per cent. and be considered as in co-operation.

By Examiner Averill.

Q. You mean, of their entire stock of dresses? A. Of their entire stock for any given month, 5 per cent. of their stock.

By Mr. Haycraft.

Q. The entire stock in the basement of their store? A. It depends on where they carry their lower-priced merchandise.

By Examiner Averill.

Q. The lower-priced merchandise, is that what you have in mind? A. Yes, for the 5 per cent. 12170

Q. I mean, for this 5 per cent. of the stock that was in the lower-priced ranges, but not 5 per cent. of all the stock of the store? A. No, sir. That was 5 per cent. of the lower-priced ladies' and misses' ready-to-wear stock.

Q. That is what I wanted to get at. Thank you. I do not think the record was clear as to that. A. Of course, that is correct, Judge.

By Mr. Haycraft.

Q. Was there any time limit put on this 5 per cent. arrangement? A. No, there was no particular time limit.

Q. How long did that remain in force? A. I really do not remember. 12171

Q. Did there come a time when it was abandoned or rescinded? A. Well, there came a time when the Guild said that they could not make any further exceptions—that they could go no further—in one of these words—that the program had to be held to more closely conformance, and that they did not want to grant these exceptions as freely as they had in the past.

Q. Did your organization have any discussion with the Guild manufacturers, or the representatives of the Guild,

as to the inclusion of $6.75 merchandise in the Guild program? A. You mean the Association of Buying Offices?

Q. Yes. A. Yes, it was in a general way. It was my feeling personally that it would be very advantageous for us to have this Guild program if they were able to get in the $6, $7, $8 and $4 ranges, if they could get them to conform through their own groups which would be formed similar to the $10.75 group, and I thought that would solve the entire problem.

Q. Did you take steps to assist in doing that? A. I did.

Q. What did you do? A. I attended the meeting of the $6, $7 and $8 manufacturers and at a dinner meeting I
12173 gave them my views as——

Q. At what time was that? A. I think that was in October, 1936.

Q. Where was that held? A. At the Hotel New Yorker, if I remember correctly.

Q. Who were in attendance? A. A number of the manufacturers of the $6.75, $7.75 and $8.75 ranges.

Q. Who besides yourself was present there? A. Mr. Bergdahl and myself were there to speak.

Q. Representing the buying offices? A. We were down there representing the A.B.O. and, off the record, I did not represent my firm, I should say, but I told them that it was my feeling that we were fairly well known by reputation in the market, and we felt sufficiently strong regarding the value of having them join that we felt we would
12174 give them our opinion to them for what it was worth.

Q. Do you recall what you said to them or what you told them at that time? A. Well, I have no recollection of the words I used, except I told them that I thought it was to their definite advantage to join in the Guild program and begin to originate their own merchandise. I pointed out that since the $10.75 group had stopped their copying and had started to originate their own styles that it had benefited their industry, and I felt that it would

do the same with this group that we were talking about. I told them that we would be, as far as the Associated Buying Offices were concerned, I felt we would be co-operative with the manufacturers who designed their own merchandise, and that we could all work together for our mutual benefit.

Q. Do you recall what Mr. Bergdahl told them at that time? A. He told them substantially the same thing in his own words and for his organization.

Q. Was any action taken at that meeting which occurred between the $6.75, $7.75 and $8.75 manufacturers and yourselves? A. Well, I left before there was any action taken, but I was told the following day that a substantial group of them had decided to join the Guild program that evening. 12176

Q. Subsequent to that time, you learned definitely that they did? A. Yes, sir; certainly, a number of them did.

Q. Did you do anything to get the $4.75 manufacturers lined up in the Guild program? A. Yes.

Q. You did? A. Yes.

Q. What did you do in that respect? A. Well, in the first place I attended a meeting of theirs by invitation, and discussed the thing at some length from the floor. Shortly after that, they notified us—that is, Mr. Dubrile, one of the assistant directors, notified certain members of the A.B.O. that the principal volume group of the $4.75 manufacturers had formed themselves together in an endeavor to originate their own merchandise and join in the Guild program. 12177

Q. Do you remember when they met and where the meeting was held? A. I do not remember the date. I know that it was some time in the fall of the year.

Q. Was that in October? A. I think it was. I know it was in the fall some time.

Q. You do? A. I do.

Mr. Albert: 1935 or 1936?

The Witness: 1935.

By Mr. Haycraft.

Q. 1935? A. Yes.

Q. Well, first, who else besides yourself of the Associated Buying Offices representatives was there? A. At this meeting there were representatives from practically every buying office—every important buying office.

Q. Did they all talk as you did to them? A. They did.

Q. Did any of them have divergent ideas? A. No.

Q. Was there any result of that meeting, and if so what? A. The $4.75 men flatly refused to agree to originate their own styles because they said—you understand, that the way this thing went about, Mr. DuBrile, one of the asso-
12179 ciate directors, invited certain members of the A.B.O. and the principal volume group of the $4.75 manufacturers, to meet at his office in an endeavor to get them to originate their own merchandise and join in the Guild program. I was not sure from my previous answer whether you might get the idea that the $4.75 people themselves had formed themselves into an organization for that purpose.

Q. Yes, that is the idea I got. A. That is not right. The invitation was extended by Mr. DuBrile and they met and had this meeting at which there were representatives from that $4.75 group, and also, as I said before, representatives from practically every other buying office in New York, certainly every important one. At that meet-
12180 ing the $4.75 men, as I said, flatly refused to agree to originate their own styles because they said they worked on very low profits, on nickel profits, and could not afford to have designing staffs, and that it would slow up their production and they needed too many styles, and their merchandise turned over so quickly that it was a physical impossibility for them to design their own merchandise, and therefore that they would not want to join in, that they would not only refuse to do so but they would refuse

to accept orders from retailers bearing the stamp requiring them to receive returns if they were copies of Guild merchandise.

Q. Do you recall what this stamp had on it?

Examiner Averill: Oh, just refer to that as the warranty stamp; everybody knows what that is.

The Witness: Requiring them to accept returns from retailers.

By Mr. Haycraft.

Q. That is, the warranty stamp? A. Yes, sir; the warranty stamp.

12182

Q. Did you do anything with respect to the $4.75 manufacturers or did you continue to buy from them? A. Yes, we continued to buy from them.

Q. What effect did that have on the $6.75 manufacturers that were in the Guild? A. Well, the $6.75 manufacturers subsequently resigned from the Guild, a great many of them, because they felt that their merchandise could not be protected because of the standards that the $4.75 group had set, and because the $4.75 group were copying their merchandise.

Q. In other words, the $4.75 group of manufacturers manufactured substantial quantities of dresses that was said to be copies of the $6.75 manufacturers' production? A. So the $6.75 manufacturers contended.

Q. When do you recall that this group of $6.75 manu- 12183
facturers withdrew from the Guild? A. I have no recollection of the approximate date.

Q. Since that time, or whenever it was, did your clients return garments to $4.75, $6.75, $7.75 and $8.75 manufacturers that are or had been adjudged Guild copies? A. Yes, we do. As a matter of fact, instead of using the Guild warranty stamp on our order blanks, when we happened to need new order books we had it printed right on the back of our order book.

Q. What effect does that have upon the business of your clients, in your opinion, as to their ability to compete with dealers—that is, retail dealers who do not co-operate with the Guild in the Guild program of style protection? A. Well, they, as individuals and I, personally, have always maintained that it is an inequality if our stores find it necessary to return copies of Guild dresses where our competitors who do not handle the higher-priced garments, and who do not have to, and who do not, therefore, sign up with the Guild, can handle such merchandise, and do not have to return it.

Q. Why do you say——

12185 Mr. Albert: I ask that the answer be stricken as not responsive to the question, and ask that the question be directed to the witness again and the witness directed to answer the specific question.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I think it is responsive to the question. It may be a little long. That is the only objection to it that I see. Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft:

12186 Q. Why do you feel it is an inequality—what do you mean by that? A. Well, if all the retailers were in the same position in regard to the return of lower-priced merchandise that might be adjudged copies of Guild dresses, I think the thing might work out perfectly. As a matter of fact, I have always been in favor of the Guild program. I have been in favor of curbing style piracy and I was one of the advocates of having an anti-style piracy clause written into the code when there was a code, but when

we were faced with the necessity of restricting our dresses purchases, or, rather, our purchases to the necessity of returning merchandise which we purchased, because they were copies of Guild dresses, which dresses were admittedly good dresses because they are copies of Guild merchandise, and which are handled by chain stores which may be next door to our stores, and have these very dresses for sale, I consider that an inequality and that is what I meant by "inequality."

Q. Are you familiar with any of the other activities of the Guild aside from their anti-style piracy activities, referring particularly to the so-called trade practice rules?

A. I know of the fair trade practice rules; yes, sir. 12188

Q. I show you Commission's Exhibit No. 874 and I will ask you if that is a statement of the rules as you understand them?

Mr. Albert: That is objected to as being incompetent, immaterial and irrelevant. The matter is in evidence and the extent of the witness' knowledge with respect to that, or his belief, is entirely immaterial. If Mr. Haycraft wants to ask what objections this witness would or does take, he may make the point on that, but we have had six months of testimony in this matter already and I do not think we should have any further identification of exhibits already in evidence. We can save a great deal of time in this proceeding if Mr. Haycraft 12189 would just go right ahead. I will let him ask this witness anything he wants to, so long as it is at all within the issues of the case.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I cannot see any objection to that question. I do not see how he could introduce the matter any other way except by some way

which would be open to serious objection if you desired to make it. Of course, if you gentlemen wish to curtail the evidence, very well, and I wish to say to you that I will be very glad to co-operate with you, but that will have to be by way of agreement. I think the question is fair as it stands. Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Answer the question. A. What is the question?

12191

Mr. Haycraft: Let the question be read.

Q. (Question read.) A. Yes.

By Mr. Haycraft.

Q. Were you or your organization, the Association of Buying Offices, consulted as to the enunciation of this rule or rules before they were announced by the Guild? A. No.

Q. In your opinion, do any of them have any effect on your business—that is, the business of retail dealers? A. As such, there are practically none of these that I would have any objection to. The objection I made, personally, was from another angle entirely.

Q. What objection did you make?

12192

Mr. Albert: That is objected to as to what this gentleman's personal objections were. I think we are interested, of course, in his objections as a representative of his association, but I do not think we would be interested in differentiation of the two objections.

The Witness: I might say that my objections were the objections of the Association.

Mr. Albert: I have no objection at all to those When you said "personal," I thought you meant personally as differentiated from your Association. Objection withdrawn.

By Mr. Haycraft.

Q. Answer the question. A. What is the question?

Q. (Question read.) A. Our reason for being opposed to the inclusion of these rules were, of course, on the basis of the fact that the Guild—that the Guild program, in the first instance, that the Guild itself is a co-operative proposition and it depends upon the manufacturers' and retailers' co-operation for the strength of the Guild pro- 12194
gram, and if the Guild does that we do not feel that we should be called upon to support this type of program unless we had some say in the making and passing of these resolutions, because our co-operation was the thing that made it possible for the Guild to enforce these regulations.

By Examiner Averill.

Q. That is, I understand your testimony in your opinion that it is a practicable thing to endeavor to enforce co-operation against style piracy in the $10.75 group, but that when it comes down to the $4.75 and $6.75 groups, that then on account of the reasons that you have stated it becomes more and more difficult, if not almost entirely impracticable; is that so? A. That is exactly the point 12195
that I have tried to convey.

Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Referring back, for a moment, to the meeting that you had with members of the Guild in June, 1933, when Mr. Rentner made the statement that you referred to about

the lower-priced merchandise, was there anything said at that meeting as to whether or not—or, subsequent to that meeting, by Mr. Rentner, as to the advisability of the buying offices advising the retailers of that arrangements? A. It was requested of Mr. Rentner, or, rather, by Mr. Rentner, that the declaration carry some words to that effect, but as he stated he felt it was unnecessary because they—because of the fact that they were not at all interested in merchandise manufactured at less than $10.75 price, and that it should be understood between the offices and the Guild, and that they could tell their friends personally about it, but that he did not want to have anything in
12197 writing because it would just lay the low-priced lines open to unrestricted copying.

Q. I did not quite catch that answer. Would you mind repeating it? A. I say, it was requested by Mr. Rentner that the declaration carry some words to that effect.

Q. By Mr. Rentner? A. No, I beg your pardon, it was requested of Mr. Rentner that the declaration carry some words to that effect.

Q. Yes. But, as he stated as he felt it was unnecessary to do that, we asked him why, and he said because of the fact that they were not at all interested in merchandise manufactured at less than $10.75 cost price, and therefore it could be understood between the offices and the Guild, and that the offices could tell our stores personally about it, so that it would be understood, but that he did not want
12198 to have anything in writing to that effect, because it would surely get out, and it would just lay the lower-priced lines open to unrestricted copying.

Q. Did he at that time say that there was any time limit on the arrangement that you had with him on that? A. He did not.

Q. And you——

12199

By Examiner Averill.

Q. When you say "arrangement," I imagine you refer to the arrangement that has been referred to in the testimony as "leniency"? A. I beg your pardon.

Mr. Haycraft: No, before the leniency, the exemption.

Mr. Albert: Mr. Haycraft is now back in 1933.

Mr. Haycraft: 1933.

Examiner Averill: I see.

Mr. Haycraft: Leniency came in 1935.

Examiner Averill: Proceed.

12200

By Mr. Haycraft.

Q. To your knowledge, did Mr. Rentner ever repudiate the statement that he made in that meeting as you have narrated it?

Mr. Albert: That is objected to as calling for the conclusion of the witness.

Examiner Averill: I do not think so. We may find out something further by the witness' answer.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Answer the question. A. To my knowledge, he has never denied making the statement and making the ar- 12201
rangement.

Q. And I believe you said that Mr. Rentner stated he did not want to have anything in writing because it was just laying the lower-priced lines open to unrestricted copying? A. That was his statement.

Q. Did you, as a matter of fact, pass on that to your clients; that is, the retailers which you referred to and whom you represented—that is, the substance of that ar-

rangement at that time? A. Yes, I definitely did. I informed them of what Mr. Rentner said in that regard.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

MILTON J. GREENEBAUM resumed the stand and testified further as follows:

12203 *Direct examination (continued) by Mr. Haycraft.*

Q. Mr. Greenebaum, in any conversations with your organization, did any of the officials of the Guild indicate that they did not want you to buy from certain avowed copyists or manufacturers? A. Yes.

Q. Who made such requests? A. I think Mr. Goldston at one time made it; I believe—I think Mr. Golby also. I am not sure about Mr. Golby, but I know Mr. Goldston on several occasions did.

Q. Do you remember the names of the firms that were mentioned? A. I do not remember them offhand, but I can get that information. I think I kept the memorandums of them at the time and discussed it with our buyers.

Q. Did you comply with the request in that respect? A.
12204 Yes, I complied with those requests.

Q. But you do not remember now the names of the manufacturers? A. No, I do not remember offhand.

Q. Are any of the names given in that exhibit? A. I do not recall.

Q. Was the Harris Dress Company one of them? A. Well, they were one of the regular copyists, but I do not remember whether they were one of the names discussed on the telephone or not. They were regarded as copyists, I should say.

Q. They were? A. They were.

Mr. Haycraft: That is all at this time, but I will ask the witness to make a search and refresh his recollection and then come back to-morrow on that.

The Witness: I will be glad to do so.

Mr. Haycraft: You may cross-examine.

Cross-examination by Mr. Albert.

Q. Mr. Greenebaum, in answer to the last question of Mr. Haycraft, you stated that you had been requested not to buy from avowed copyists. A. Yes.

Q. What does the word "copyists," from your knowledge of the industry, mean to you? A. A man who copies a higher-priced garment for his own use. 12206

Q. That is, he does not design the line himself? A. No.

Q. But who takes his ideas from models and designs that have been originated by others? A. Yes, sir.

Q. That is what you mean by copyists? A. Yes, sir.

Q. Do you recall exactly the language that was used by either Mr. Goldston or Mr. Golby in making these requests of you, or, rather, not exactly, but the substance of it? A. Yes, sir; to this extent, that Mr. Goldston mentioned the dress house, whoever the name happened to be, I do not remember exactly who it was——

Q. Yes. A. And he mentioned the fact that this man was a habitual copier of Guild merchandise——

Q. Yes. A.—and that he, in spite of all requests to come up to the Guild office—— 12207

Q. Yes. A. —and attend meetings, would not make his appearance.

Q. Yes. A. And insisted upon copying Guild merchandise continuously.

Q. Yes. A. He asked us that pending some information from this manufacturer, that we not buy from him.

Q. Was that made to you, personally? A. Yes.

Q. Is it not a matter of fact, Mr. Greenebaum, that what occurred was this: These avowed copyists had refused to recognize and keep the warranty clause or acknowledge the warranty clause that was placed upon orders, and would refuse to accept back the dresses which had been adjudged copies? A. That was one of the points, also.

Q. Is it not a fact that what was suggested to you is that the only way that you could protect yourself from the manufacturer who refused to recognize the warranty clause was to refuse to do business with that man, especially in the light of the fact that that man was an avowed copyist and you, in the ordinary course of business, would
12209 be required to return merchandise to that manufacturer if it were adjudged to be a copy, and if he had refused to accept it back you would find yourself in a very analogous situation? A. The words that you use and the statement that you make were not used in the conversation, but that was the assumption, nevertheless.

Q. After all, you are an experienced man in the dress industry? A. Yes.

Q. And Mr. Goldston and Mr. Golby, are also experienced men in that line? A. They are.

Q. In discussing a problem of that kind—that is, in discussing a fundamental, elementary principle upon which action is predicated—that is what you were doing; is that so? A. Yes, on that point.

Q. Is it not a fact that the purpose of the warranty
12210 clause was not mentioned because that was the fundamental basis of the discussion—that was the fundamental basis of the discussion, was it not?

Mr. Haycraft: I object as calling for a conclusion.

Examiner Averill: Objection overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

A. If it were not for the warranty clause, they would not have called us up at all.

By Mr. Albert.

Q. Exactly. A. The fact that we signed the declaration of co-operation was based on that.

Q. Since they refused, these copyists, to acknowledge the warranty clause, your only protection to yourself, in your desire to return goods, was to refuse to continue to do business with them; is that so?

Mr. Haycraft: I object.

Examiner Averill: That question is all right. I will allow it. The objection is overruled. 12212

Mr. Haycraft: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Answer the question. A. We prevailed upon the manufacturers to accept back merchandise without resorting to that, usually.

Q. So that in the particular instance where you could not prevail upon the manufacturer to accept back his dresses which are copies, your only protection is to refuse to do business with him; is that so? A. I would say so.

Q. You have testified that there was a certain meeting of the $4.75 dress manufacturers in October of 1935. A. Yes. 12213

Q. You recall where that meeting was held? A. At the offices of the Associated Dry Goods Corporation.

Q. At that meeting you have testified generally that these manufacturers declared themselves as being unable to employ designers of their own, generally speaking? A. Yes.

Q. Do you recall what answer was made to these manufacturers? A. Yes.

Q. From your point of view? A. Yes.

Q. Directing your attention to your remarks particularly about concessionaires and the rest of them, would you be good enough to inform the Court as to what was your answer to them when they said that they could not afford to buy? A. My answer was that I could not understand that argument in view of the fact that that is one industry in which the commission buyers are pretty active, and that these manufacturers pay commission buyers commissions of 3 per cent. to 5 per cent. for buying their merchandise, and that in my opinion it surely would not cost them that much to have their own designers and to have
12215 their own designing department, and therefore I could not take any stock on that statement on their part.

Q. In other words, it was your contention that in substituting their own designing department for making use of commission buyers, that their expenses would not increase if they substituted one for the other? A. I imagine, in fact, it would be lessened.

Q. What—was that, in your opinion, and from your knowledge of the industry, a fact that there would be no increase in expense to the $4.75 manufacturer if instead of adopting his present practices he adopted the practice of using a designing staff of his own in order to originate his models? A. In my opinion there would not be a great deal of additional expense because the manufacturers of $4.75 merchandise work in such volume that the additional
12216 charge on an individual dress would not carry any great deal of influence in their costs.

Q. As a matter of fact, Mr. Greenebaum, are there not many $4.75 manufacturers who are to-day employing their own designers? A. There are.

Q. Coming back to 1933 when you first learned of the Guild and had your conversations with Mr. Rentner to which you testified, what was the— A. What?

Q. I withdraw the question. At that time, most, if not all of the members of the Guild, with few exceptions, were running lines from $22.75 wholesale and up, were they not? A. Yes, sir; they were manufacturing along those lines.

Q. At that time, from your knowledge of the industry, at what retail prices generally were goods of those lines being sold? A. The most prevalent were in the $10.75 class range—cost range——

Q. What is that? A. The most prevalent were in the $10.75 cost range.

Q. As a matter of fact, at that time it was an isolated case, was it not, where a copy of a Guild case was being 12218
sold at retail for under $6.75; is that not so? A. Yes.

Q. Is it not a fact that in 1933 the sale of copies of Guild originals, and the wholesale price of $3.75, or about that price, was an isolated instance of a manufacturer, and that most, if not practically all of the copies of Guild merchandise at that time were being sold at $10.75 wholesale, and up? A. Well, there were some $6.75 and lower, but I would say the majority were $10.75, and it would be a very isolated case at $3.75.

Q. And the copies of $6.75 were not important in their bearing upon the market, so far as the market was concerned? A. They were unimportant as far as Guild manufacturers were concerned.

Q. Yes. A. Yes.

Q. Is it not a fact that in the light of what you have 12219
just testified to, it was commonly understood at the meetings to which you have testified, that at that stage of the development of the Guild program, copies of merchandise in this low-end wholesale price would not be considered copies of Guild dresses? A. May I have that question?

Q. (Question read.) A. It was definitely understood that our arrangements would not include any merchan-

dise at less than $10.75 cost; that is, the run of merchandise to be returned.

Q. In a comparable sense, let us say, that a Ford cannot be considered a copy of a Rolls Royce.

Mr. Haycraft: I object.

By Mr. Albert.

Q. To finish my question, would you say that is comparable as of that time?

Examiner Averill: The objection is overruled. He can state whether he thinks it would be a good
12221 comparison or not.

A. I do not know whether that would be so, no. In fact, I would say that it would not.

By Mr. Albert.

Q. This understanding was quite open? A. Yes.

Q. The meetings, themselves, were not furtive? A. No, indeed.

Q. There was nothing secret about the matter? A. Not that I know of.

Q. Those that were there knew what was going on? A. Certainly, there was nothing about the meetings that was a secret to those who were present at the meeting. It was
12222 just an open proposition as far as they were concerned, and freely discussed by all who were present.

Q. Do you recall who was present? A. Yes, I believe I do.

Q. In addition to yourself and Mr. Bergdahl? A. Well, Mr. Block of Kirby, Block & Company, Mrs. Glenby, I do not think Mr. Swinney was there, although he may have been, and Mr. Weil and Mr. Gaynor of Weil, Hartman & Company, either one or both of them were there; I am not sure which one was there.

Q. I understand. A. And Mr. Gussmann of the May Company, I believe, was there, or it may have been Mr. Gutzman who was there, I do not just exactly recall, but some representative from the May Company was there as I remember.

Q. Your understanding of the problem is at that time the effect of the Guild was understood by all present— A. I do not quite understand.

Q. I will reframe the question: Your understanding of the problem as at that time affecting the Guild, and as it was understood by all present, was, first, that it would be applicable to all present; is that so? A. Yes. It was to apply to everybody equally. 12224

Q. Do you have it as your understanding that the problem as at that time it affected the Guild was understood, individually, by all of the persons present? A. Oh, yes, I am sure they all understood it. I hardly see how they could miss it.

Q. Was it not also the understanding at that time that although the Guild would not apply its program at that time to adjudge copies in the low-end merchandise of Guild merchandise, that no co-operating retailer would willfully, knowingly, intentionally, or deliberately, at any price, sell or encourage the sale of copies of Guild merchandise? A. I do not think that point was ever brought up at that particular meeting.

Q. Was it brought up shortly thereafter? A. No, not that I know of. May I answer that in my own way? 12225

Q. Yes. Go ahead. A. The declaration of co-operation that we received made no deviation and there were no exceptions on that declaration of co-operation. It was because of that fact that it was a simple, clear declaration of the agreement to return copies of Guild merchandise that were so adjudged that we asked for this meeting with the Guild officials, and it was because of our statement of the problem and of the opinion that, particularly in the

low-priced range, the situation would be difficult, that the statement was made by Mr. Rentner, in answer to a query in regard to that price range situation, that there was no need for anybody to worry on this thing because they were not interested in any merchandise manufactured at less than $10.75 cost. You see, the declaration of co-operation that we received made no differentiation on all the way up and down. There were no exceptions on that declaration of co-operation at all. In fact, it was because of that very fact that it was such a simple, clear and concise declaration of co-operation so far as the agreement to return copies of Guild merchandise that was so adjudged that we
12227 asked for this meeting with officials of the F.O.G.A. to discuss it. It was there, because of our statement of the problem as we saw it, and the difficulties that would exist in the low-price range, that the statement was thereupon made by Mr. Rentner that there was no need to concern ourselves about that matter at all because the Guild was not interested in any merchandise, the Guild members, manufactured at less than $10.75 cost. That was a definite statement, and he said that we should have no hesitancy in suggesting that it be signed by our stores because they would not require the return of copies below $10.75.

Examiner Averill: Off the record.

(There was a discussion off the record.)

12228 Examiner Averill: Back on the record.

By Mr. Albert.

Q. Let me ask you this, Mr. Greenebaum, and I will try to make it one single question—one single, all-inclusive question, in the hope that perhaps we can save a good deal of time. A. Yes.

Q. From your knowledge of the industry at that time—A. You mean back in 1933?

Q. 1933, and at that stage of the development of the Guild plan, while what you have stated as to the non-inclusion of the low-end dress copies is correct, was that not also your understanding of the essence of the Guild program, that it was a part of the normal, probable development to include the low-end price lines eventually? A. No, I am inclined to think that we did not think that far ahead.

Q. That is, may I put it this way: That at that stage of the development of the plan, the lack of knowledge of everybody concerned of the particular problems that then confronted them, they did not even dream that at that time of this, or did not certainly even attempt at that 12230
time to consider how it might develop, and they were just interested in the particular plan before them at that time; is that a fair statement? A. I would say that that was my recollection at that time, at any rate. They were only at that time considered—in other words, in the plan as they had it before them, and the practicabilities to be considered in working out that particular plan. They did not contemplate or think about any of the other difficulties because they did not realize what might come up as the thing went along.

Q. In other words, they were groping in the dark, and anything that was in the dark and they could not see, they did not worry about? A. Yes. It was a new departure, to put it that way, I should say.

Q. Exactly. A. I think that is the better way to ex- 12231
press it.

By Examiner Averill.

Q. Is it not true that there is testimony in this reco: showing how many manufacturers are engaged in these various fields or price ranges?

Mr. Albert: In 1933, your Honor?

Examiner Averill: Yes.

Mr. Albert: Yes, sir; sketchily, and there are numerous holes in it, but they will be completely filled in before the case is through.

Examiner Averill: I want to get some idea as to how many manufacturers were engaged in the different fields. I will ask both attorneys on each side if they can get hold of anything that shows that I would like to have it in here, because I think it would be rather important.

Mr. Albert: It is in very sketchily because it had to be brought out on cross-examination, naturally, and on our direct case we will bring in the full figures.

12233

Examiner Averill: Very well, Proceed.

By Mr. Albert.

Q. Mr. Greenebaum, at the time of the formation of the Guild you, representing your office, and others who were present there representing their groups, were in complete sympathy with the problem of eliminating style piracy, were they not? A. Yes, so far as I know they were, and I know I was.

Q. You wanted to do everything possible to curb that evil; is that so? A. Yes, anything that could be done without injury to our own business, naturally.

Q. In answer to a question by Mr. Hayeraft, that you signed your declaration of co-operation as a result of an emergency in that you believed that unless you signed the declaration of co-operation you would not be able to see Guild merchandise for your various lines, is not what you meant by that the following: That a problem had existed in the industry for some time; that you were in favor of eliminating and erradicating the evil which that problem was; that the Guild had adopted a plan which at that time seemed to be a good plan for eliminating it; that the moti-

12234

vating cause, the initial impetus, which directed you to join the Guild at that time and to sign the declaration of co-operation was the fact that the Guild, for the first time, was taking steps to eliminate this evil and in the promulgation of its plan it stated that retailers would not be permitted to see their merchandise unless they signed their declaration of co-operation? A. May I answer that question in my own way?

Q. Certainly. A. I think that you may possibly have misunderstood my answer to Mr. Haycraft's question.

Q. That is what I want to find out. A. We did not sign the declaration of co-operation in any haste. The endeavor was that we wanted to meet with the officials as quickly 12236
as possible because a new season was coming on and we wanted to get the things straightened out that were in our mind before the season opened, and that was the reason we asked for a meeting with the Guild officials as quickly as they could get together, and that was the reason the meeting was held that was held at Miss Glenby's office.

Q. And having straightened out what you believed to be your difficulties, you signed the declaration of co-operation willingly? A. The only difficulty, the primary difficulty that struck us from the standpoint of the office, as far as the offices that I represented were concerned with, anyhow, was the matter of the low-end merchandise. I recognized this difficulty and then I called the heads of several other offices, several other buying offices, on the telephone and asked them what they thought should be done about it, 12237
and it was agreed—or, at least, I observed that I got the same reaction from all of them as to their opinion of the difficulty that existed; and, furthermore, we decided to ask for a meeting with the Guild officials immediately and asked what could be done to take care of that problem. We had the meeting. When we came away from the meeting at the Mutual Buying Offices with the understanding that was reached there, we all signed these agreements

and sent them in immediately, because we were quite satisfied with Mr. Rentner's statement that we apparently had solved our problem.

Q. So that you signed the declaration of co-operation because you believed that the program was a good one, that the problems were all ironed out as far as you were concerned, and you signed the declaration freely? A. Yes.

Q. You did not sign it because you thought you were forced to sign it in order to see the fall lines? A. No.

Q. There was no duress in your signing it, was there?

Mr. Haycraft: I object as calling for a legal conclusion.

12239 Examiner Averill: It is a statement of fact. Overruled.

A. No, we did not feel that there was any duress.

By Mr. Albert.

Q. Unless you were satisfied that the program of the Guild were a good one, you would not have signed the declaration of co-operation for your accounts or for your stores that you represented; you would not just so that you could see the fall lines; is that true? A. Correct. The only reason I signed it was because I thought it was a good thing. Whether or not I could see the fall lines did not influence me one way or the other.

12240 Q. Was that belief, in your opinion, equally true of all the representatives of resident buying offices' members present at the meeting? A. I discussed this matter over the telephone before the meeting, and although I cannot identify any of the offices with whom I spoke—I do not remember that—I do not remember who they were offhand, but there were two or three of them who were all in accord with the idea of trying to curb style piracy, and the only thing that was in their minds was the same thing that was

in my mind as to how to meet with the lower-end dresses problem in these stores of ours that handled such merchandise or carried that merchandise, and when that point was brought up to Mr. Rentner and to Guild officials they answered us in the way they did, which removed the principal objection that we had, and then we had no further thought but to sign the declaration ourselves and to recommend that our stores sign it, which we did.

Q. And the question of whether you can see Guild merchandise in the fall was not the prompting or motivating or energizing motive which made you sign the declaration, was it? A. No; the point that was considered was whether it was a good proposition.

Q. Exactly. A. Yes.

Q. Now, Mr. Greenebaum, have you made any investigation at all as to the number of copies of Guild dresses that are sold by chain stores? A. I have not.

Q. No investigation of any kind whatsoever? A. No—do you mean from the standpoint of the number or percentage, or anything like that?

Q. No, any investigation that you may have had to obtain figures of any kind. A. No.

Q. You can answer that in any way that you want. A. No.

Examiner Averill: He says no.

The Witness: No.

By Mr. Albert.

Q. You have testified that in the low-end merchandise the competition of chain stores makes it unequal for your stores to send back copies of Guild merchandise; is that so? A. Yes.

Examiner Averill: In the lower brackets?

The Witness: Yes.

By Mr. Albert.

Q. Yes? A. Yes.

Q. Assuming, for the sake of argument, the truth of that statement, is that not offset by the inability of chain stores to obtain Guild merchandise and to compete with your stores in the medium and better-priced dresses? A. No, because the chain stores do not carry better-priced merchandise.

Q. Has that occurred for the most part since the adoption of the Guild program? A. Has what occurred?

Q. Has not the chain stores' abandonment of that type of merchandise—the chain stores gradually reduced their
12245 price lines to the low-end price dresses? A. No, I do not think so.

Q. Have you any figures, or have you made any investigation of that subject, from which you can perhaps give us some figures showing that chain stores do not sell in the $10.75 or the $16.75 brackets and have not sold in those brackets since the adoption of the Guild program? A. Well, I know from the standpoint of seeing Guild dresses in the stores and seeing what our competition is, that the greatest percentage—I mean, the greatest competition that we have is in the $4.75 cost.

Q. At the present time? A. Yes.

Q. Is it a fact that one of the largest chain stores, which formerly sold a great deal of merchandise in the $10.75
12246 price line, has since the commencement of the Guild program dropped that price line from sale? A. I really do not know.

Mr. Haycraft: We will concede that, if you wish.

By Mr. Albert.

Q. Is it a fact—is it a fact that Lerner's formerly sold dresses in the $10.75 price lines and have dropped that price line? A. Yes.

Q. So that the competition of the chain stores in that price line with your stores is an advantage which your stores have gained since the adoption of the Guild program and has offset or is an offset to the competition which still remains in the low-end price dresses; is that so? A. I would not call it an offset. I will concede that the elimination of the $10.75 price range from Lerner's stocks would be an advantage to our stores in their cities.

Q. Is it not also an advantage to your stores, Mr. Greenebaum, that the Guild merchandise which is sold in your stores at the present time is not being copied and sold at lower prices instead of necessitating mark-down of the Guild merchandise sold by you in your stores? A. Would 12248
you mind repeating that question?

Mr. Haycraft: That is objected to as contrary to the facts in the record and the testimony of the witness. Guild merchandise has been copied and is sold by these chain stores that he has been talking about, and that is the complaint.

Mr. Albert: I will amend the question without getting into an argument about Mr. Haycraft's erroneous interpretation of it.

By Mr. Albert.

Q. Is it not also an advantage to your stores, Mr. Greenebaum, that the Guild merchandise which is sold in your stores at the present time is not being copied and 12249
sold at lower prices, necessitating mark-down of the Guild merchandise sold by you in your stores?

Mr. Haycraft: Same objection.

Mr. Albert: I will withdraw the question and ask another question and see if we can satisfy Mr. Haycraft this time.

By Mr. Albert.

Q. In the medium and better-priced dresses is not the advantage to your stores that copying of those dresses has been greatly eliminated, saving your stores the loss previously occasioned by the necessity of having to mark down these dresses once they are copied at cheaper prices? A. May I ask what you mean by medium and better-priced?

Q. $10.75 and up. A. Yes.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

12251 *By Mr. Albert.*

Q. Mr. Greenebaum, you have testified that your first knowledge of your desire to include $10.75 dress manufacturers as members of the Guild was in the spring of 1935 or the summer of 1935? A. Yes; I think I have a memorandum on that.

Q. Yes. A. I think it was around March or April of 1935.

Q. Prior to that did you ever see any notice in the "Women's Wear"— A. Yes.

Q. Had you had any discussions whatsoever about it with anyone connected with the Guild? A. At the—you mean before the article appeared in "Women's Wear"?

12252 Q. I will ask you that: Prior to the time you saw a mention of it in "Women's Wear," had you ever talked about it with anyone connected with the Guild? A. I do not remember.

Q. Do you recall a meeting had at Gimbel's in January of 1935? A. With reference to what?

Q. I believe— A. We were meeting—I might mention the fact that we were meeting every Friday, the Association had their luncheons every Friday, so there were plenty of meetings.

Q. Do you recall that there was a meeting at Gimbel's at which Mr. Post was present? A. Well——

Q. And at which he discussed, or, at least, at which the discussion arose as to the taking in of the $10.75 manufacturers? A. I do not recall offhand. However, if I can see the minutes of the meeting I might be able to identify it; but I do not remember that offhand, that particular one.

Q. Did you attend a meeting which was addressed by Mr. Post shortly after he became associated with the Guild? A. Well——

Q. You recall that, do you not, the meeting that was held at the home offices of the Guild, the Guild offices? A. No, the meeting that was held at Gimbel's—you mean 12254
one of the Associated Buying Office luncheons?

Q. Yes. A. I probably was present.

Q. Do you recall, in the light of the facts that have been given you to refresh your knowledge, that it was the first meeting that was ever addressed by Mr. Post, and that at that meeting the question of including the $10.75 manufacturers was presented? A. I frankly do not remember having heard about the $10.75 being included until I saw it in "Women's Wear."

Q. Would you say that, despite the fact that your association met every Friday, that the matter had not been discussed whatsoever until you saw that notice in "Women's Wear"? A. I am not speaking of the notice that announced their admission. I am speaking of a little
write-up that said that they were being considered—that 12255
is the idea—that is, the idea of including them as affiliates of the Guild was being considered.

Q. About how big was that notice, would you say? A. Well, it was big enough for us to see it.

Q. Would you say it was 2 inches in size? A. No. I would say it was possibly 4 or 5 inches.

Examiner Averill: Is that notice not in evidence?

Mr. Haycraft: Yes, it is, your Honor.

Examiner Averill: Why pursue that further?

By Mr. Albert.

Q. I show you Respondents' Exhibit 44 and ask yo whether or not you likewise saw that full-page advertise ment from "Women's Wear" which appeared in 1933? A It seems to me that I remember seeing that, yes.

Q. Did you likewise see Respondents' Exhibit 45, whic I now show you? A. I think this is the one I remembe seeing. Let me look at this. I do not remember tha one. I do remember this one.

12257

Examiner Averill: Now, what type of record ar we going to have? Which one is "that one" an which one is "this one"?

By Mr. Albert.

Q. The witness has indicated that he remembers seein Respondents' Exhibit 45, but is not certain of having see Respondents' Exhibit 44. Is that true? A. Yes.

Examiner Averill: Yes.

By Mr. Albert.

Q. You customarily read "Women's Wear" every day, d you not, Mr. Greenebaum? A. Yes.

12258

Q. And in the course of reading it you see these adve tisements? A. Yes.

Q. What action, if any, was taken after you saw Re spondents' Exhibit 45? A. I beg your pardon?

Q. What action, if any, was taken after you saw Re spondents' Exhibit 45, either by you, the Associated Buy ing Offices or any of the gentlemen which you have testifie were on the committee with the Guild and interested i Guild activities? A. We had no association at the time t take these matters up, in 1933.

Q. What action, if any, did you take when you saw it? A. None.

Q. None? A. None.

Q. Did you discuss it with anybody? A. No.

Q. Did you discuss it with Mr. Post? A. No.

Q. Did you discuss it with Mr. Bergdahl? A. I do not remember discussing it with anyone.

Q. No one at all? A. No one at all.

Q. Just read the newspaper and laid the newspaper aside and forgot it; is that correct? A. That is correct.

Q. That is true? A. That is the way I remember it.

Q. But you do remember seeing it? A. I think I saw it.

Q. Now, Mr. Greenebaum, you testified that a certain 12260
understandfng was entered into in regard to the return of—in certain circumstances—of 3 per cent. copies and in other circumstances of 5 per cent. of the copies of Guild dresses? A. Yes.

Q. At any time did any of your stores approach that figure in the return of their copies? A. Well——

Q. They never had that many, did they? A. I really do not know.

Q. Have you any idea of the figures at all? A. No.

Q. It is not your testimony, is it, that this understanding was changed by reason of the fact that more than 3 per cent. or more than 5 per cent. of copies were prevalent in co-operating stores— is it? A. I do not know why it was changed.

Q. Now, you have testified, Mr. Greenebaum, that you 12261
were in accord with the fair trade practices which were shown to you as being Guild suggestions by Mr. Haycraft? A. Not in all of them.

Q. Substantially you had no particular disagreement with them one way or the other; most of them were good; is that so? A. Most of them were accepted and acceptable.

Q. You have also testified that your main objection to

these trade practices, fair trade practices, despite the fact that you would be in favor of them, was that you would not be consulted with respect to them; is that so? A. No.

Q. What is the fact? A. It was that we should be called upon to lend our wholehearted support to an organization which, after all, were considered to be solely for the purpose of eliminating style piracy, and then for them to adopt fair trade practices without consulting us, which we naturally were bound to uphold in upholding the Guild program.

Q. But the fair trade practices that were suggested were fair trade practices which, had the thought occurred to
12263 you, you would have asked to be set up; is that so, generally speaking? A. I could not answer that "yes" or "no." I might like some of them and not like others, but at least I felt that it should not have been brought in as part of the Guild program that we were supporting.

Q. Now, Mr. Greenebaum—and I am not trying—and I sincerely tell you this—I am not trying to get you to concede that each and every one of the fair trade practices that have been shown to you is a good practice—that have been shown to you as the Guild practices are, in your opinion, things that you would want to have 100 per cent; but I am merely asking you only as to the general cross-section; if, in your opinion, generally speaking—there may be individual things that you object to personally—those fair trade practices are just for the industry? Is that so?

12264

Mr. Haycraft: I object.
Examiner Averill: Overruled.
Mr. Haycraft: Exception.
Examiner Averill: Noted.

A. I would say in a general way, yes.

By Mr. Albert.

Q. Reserving to yourself the right to object to particular ones, I am talking about the Guild program in general so far as fair trade practices are concerned. A. Yes.

Q. It is your testimony, is it not, on direct testimony, that, although you had no objection to the rules promulgated, you objected to not having been consulted in the promulgation of those rules; is that so? A. As participating people in the agreement. I am not speaking about any consulting for myself. I am talking about the retailers in general.

Q. Now, as a matter of fact, Mr. Greenebaum, are you not aware that most of these fair trade practices had been 12266
suggested or were incorporated in the Guild plan from its formation? A. I am not aware of that, no.

Q. Is it not— A. I have been informed of that since. I know it now, but I did not know it then.

Q. Would you not say that perhaps that lack of knowledge—the lack of attention to these fair trade practices, has been because the most important matter before the Guild was elimination of style piracy? A. Well, I would say it was, because these other fair trade practice provisions that were a part of the Guild program were never commented upon to us or to anyone else in particular, because the thing that was most uppermost in everybody else's mind was the matter of style piracy elimination.

Q. The style piracy elimination was, so to speak, in the 12267
public's eye? A. Yes, that is correct.

Redirect examination by Mr. Haycraft.

Q. Mr. Greenebaum, was your objection to the fair trade practice rules based upon the fact—or, was your objection to the fair trade practice rules based upon the fact that the retailers were subject to being red carded for a breach of the rules that had been adopted by the Fashion Origi-

nators Guild after the retailers had signed the declaration of co-operation, without any consultation on the part of the Guild with the retailers with respect to those fair trade practices? A. May I ask that the question be read? It was rather long and it was just a little involved for me.

(Question read.)

Mr. Albert: In the first place, I do not understand the question at all.

Examinesr Averill: If you can answer it, you are at perfect liberty to do so.

12269 A. Well, I think that a great many of these fair trade practices refer primarily to the manufacturers and their dealings with the retailers. But the objection that we had to that was that, as I see it, the Guild program——

Mr. Albert: If your Honor please, I object to the witness answering anything except the question that was put. He has demonstrated the fallacy in the question as put by Mr. Haycraft, and in answering the question he has shown that it is impossible for a retailer to be red carded for a violation of the fair trade practice rules because there is no such in this industry that applies to them. Everything after that is immaterial and irrelevant. I was waiting to see if the witness would fall into the error that Mr. Haycraft's question was made upon, and so he has.

12270

Examiner Averill: I do not understand his answer to be exactly as you put it. Read it again.

(The answer was read.)

Examiner Averill: No, I do not. You may continue your answer.

A. As I see it, the Guild program was dependent to a great extent, if not all— in other words, if not to the entire

extent—upon the co-operation that they received from the retail stores. Therefore, if we were asked to co-operate and we signed a declaration of co-operation as far as this policy was concerned, it was our feeling that instead of the way they did it, inasmuch as we were supporting the Guild program and that it was through our support that the Guild program was in existence, that we should be consulted about any fair trade practice, if any should be passed, that affected the dealings with manufacturers; and that was one of the primary reasons that we objected to the inclusion of these fair trade practice provisions in the Guild program which we were supporting. I do not think——

12272

Examiner Averill: No, no. I think you have completed an answer to it.

Mr. Albert: Now that the witness has finished, in your Honor's opinion, I ask that it be stricken as not responsive.

Examiner Averill: The motion is denied. He has told us all about what it covered before. It is the same thing that he told us before. It is simply a repetition there, but I do not think I will grant any motion to strike it. Proceed.

By Mr. Haycraft.

Q. I will ask the witness whether he knows whether or not—I will ask you whether or not you know of any retail dealers that have been red carded because of violating the fair trade practice rules? A. I can answer that. 12273

Q. Do so. A. One of our stores was threatened about being red carded within the last three weeks because of an unfair return.

Q. Because of an unfair return? A. Yes, sir.

Q. What were the circumstances? A. The circumstances were that the garment was returned, said to be not like

sample, and it was maintained by the manufacturer that the garment was in fact like the sample, and the retailer in turn, out in Wyoming, decided not to accept the package for return from the manufacturer. I received a telegram—first I received a telephone call from Mr. Golby of the Guild telling me that he wanted to notify me, before red carding the store, that if the store did not handle this properly, that the store would be red carded. I wrote the store and they accepted the return and that was that.

By Examiner Averill.

Q. What do you mean, the store accepted the return
12275 from the manufacturer? I thought it was just the other way. A. The store returned the garment to the manufacturer, who refused to accept it because he claimed it was an unfair return.

By Mr. Haycraft.

Q. Who, the manufacturer? A. Yes, sir.

By Examiner Averill.

Q. Has that been adjudged as being a copy? A. That has nothing to do with copies, your Honor. This was an unfair return, alleged unfair return. The retailer said the garment was not up to sample, and the Guild house and the committee who passed on it said that it was an
12276 unfair return because the garment was in fact like sample, so the manufacturer returned it to the retailer and the retailer refused to accept it at first, and then later, upon advice from me as well as advices through me, accepted it.

Q. What was the name of the manufacturer and the name of the retailer involved in that transaction? A. The name of the manufacturer was Del Monte Hickey and the retailer was Kassis Dry Goods Company, in Cheyenne, Wyoming.

Q. Was it after Mr. Golby said that the store would be red carded if they did not make the right kind of a settlement that you told your client to take the return? A. Well, our buyer examined the merchandise and she reported to me, among others, that the garment was like sample and that the manufacturer was in the right, and we wrote the store to that effect and the garment was accepted.

By Mr. Haycraft.

Q. Is that the only instance that you know of where this rule with respect to unfair returns has been invoked on the part of your group? A. That is the only instance in 12278
our organization.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. With respect to your opinion, Mr. Greenebaum, as to the ability of the $4.75 manufacturers to employ designers— A. Yes.

Q. —what is your understanding of the amount of money that is necessary to employ a designer by a manufacturer? A. Well, that varies. I mean, I am not in a position to say exactly. It is not, of course, only the designer's salary. There are other costs that enter into 12279
it. As a matter of fact, my observations to the $4.75 manufacturers were not based upon any knowledge of their costs, but was based upon my own personal opinion.

Q. In your opinion do the $4.75 manufacturers sell as many originals that their designers originate as they do of copies? A. When you say "originals," do you mean original designs, original designed styles, or adaptations?

Q. Well, they are usually adapted, we will say, those that are so adapted that they meet no opposition from the Guild. A. Well, I would say it is probably fifty-fifty.

Q. In your opinion, would the $4.75 manufacturers maintain a volume of business if they restricted their manufacturing to adaptations which were not frowned upon by the Guild? A. Possibly not. Although those who are designing their own styles seem to be doing all right.

Q. But you do not know anything about the volume of business they do or the amount of profits they make? A. No.

Q. In 1933 was there any copying done by the $3.75 and the $6.75 manufacturers, or, rather, by the $3.75 manu-
12281 facturers of the $6.75 manufacturers? A. I assume there was copying by the $3.75 manufacturers of the styles gotten out by the $6.75 manufacturers, yes.

Q. Do you have any recollection of it? A. Well, I do not remember exactly, but I would say that there was copying done, without a doubt. Possibly, very probably that is so. It is very probable that the $6.75 manufacturers were copying some of the Guild merchandise and the $3.75 manufacturers were copying the $6.75 manufacturers' products. It goes down that way.

Q. And it was because of that fact that your clients—that is, the retailers that you represent—feared that they would be required to return garments that were purchased from those manufacturers? A. Yes.

12282 Q. Now, if your clients, the retail dealers, had been kept out of the showrooms of the Guild manufacturers in June, 1933, or July, 1933, would it have any effect on their business at all? In other words, would it have affected their business any?

Mr. Albert: I object, if your Honor please, as speculation.

Examiner Averill: It is speculation, merely speculation, but let him answer it.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. In my opinion it would have seriously affected their better business.

By Mr. Haycraft.

Q. You did everything you could to see that they got in there and you were doing that, were you not? A. Yes.

Q. At that time you did everything you could to see that they could get in there? A. I certainly did.

Q. With respect to the mark-down, give us the definition of what that term means. That word was used in a question propounded to you on cross-examination. What do you mean by the term "mark-down"? A. Mark-down is any price that a garment is sold for that is less than the price at which the garment was bought to sell for. 12284

Q. If a retailer had a garment which had a ticket $22.50 at the end of the season, he sold it for $17.50 in order to move it, would that be a mark-down? A. Yes, sir.

Q. In fact, if he sold it at any time during the time that he had that dress on hand for less than what he had intended to sell it for, would that be a mark-down? A. For anything less than what would have been the fair mark-up on the cost price. Of what the fair mark-up would have been on the cost price, yes.

Q. As a matter of fact, are not the mark-ups much higher in the higher brackets than in the lower ones? 12285

The Witness: Do you want me to answer that, your Honor?

Examiner Averill: Certainly.

A. Yes, because the risk is greater.

Q. As I understand it, it was—see if I am correct, and correct me if I am wrong—is it the fear of mark-downs

on the part of retail dealers that prompted them to co-operate with the Guild in their program in the beginning?

Mr. Albert: I object to that because it assumes a situation contrary to the testimony already in evidence. He testified that he wanted to be ethical. I am correcting you for an erroneous statement which I am sure you do not want to make.

Examiner Averill: I think I will overrule the objection and let the witness answer that, if he can.

The Witness: What is the question?

(The question was read.)

12287 A. I would not say the fear of mark-down alone.

By Mr. Haycraft.

Q. I will put it this way: Was it the hope of the retail dealers that because of their co-operating with the Guild in their campaign for the purposes, as they expressed them, that they might lessen their mark-down, that caused them to co-operate with the Guild in that program? A. Lessened mark-down, increased profits and prolonging the life of the higher-priced garments.

By Examiner Averill.

Q. In other words, where there is an extensive copying of any popular design it means that those who have bought
12288 that design earlier in the season will, in all probability, have to reduce their price at which they sell it? A. Possibly, if they have not already sold it.

Q. Of course, if they have already sold it, that disposes of it and it is no longer a problem? A. Yes, sir.

Q. But if they still have it on hand, they will have to reduce the price below what they consider to be a fair return in order to move it at all? A. Yes, sir.

By Mr. Haycraft.

Q. Is it your testimony that, as the result of the Guild's activities, your clients, in your opinion, have sustained fewer mark-downs or lesser percentage of mark-downs than they were sustaining prior to the Guild?

Mr. Albert: I will concede it, Mr. Haycraft.

Mr. Haycraft: I want to get the witness' testimony in that regard.

A. I would rather have that question asked of a retailer or, at least, answered by a retailer.

Q. I understood you to say that on your cross-examination. A. To my knowledge, yes, but for the specific, actual figures or percentages, I would rather have some of the retailers elaborate on that. 12290

Q. Is it a fact that consumers benefit by mark-downs?

A. Consumers benefit by mark-downs?

Q. Consumers buy at a cheaper price.

Mr. Albert: In other words, if you steal from the public, is it better?

Mr. Haycraft: I object to that as an improper interpretation of the question.

Examiner Averill: Disregard that, gentlemen. Answer the question.

A. Well, the fact that they are getting a better product for less than they ordinarily have to pay would be a benefit to their pocketbook. 12291

Mr. Haycraft: Nothing further.

Recross-examination by Mr. Albert.

Q. And a loss to the lady who had paid the full price by the unwonted reduction in the value of her garment?

A. Yes.

12292 *Milton J. Greenebaum—For Commission—Recross.*
David Rosenthal—For Commission—Direct.

(Whereupon, at 4.30 o'clock P. M., December 10, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 11, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

12293

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order to take further testimony in the case of the Federal Trade Commission v. the Fashion Originators Guild of America, Inc., et al., Docket No. 2769. You may proceed when you are ready, Mr. Haycraft.

Mr. Haycraft: I will call Mr. David Rosenthal.

DAVID ROSENTHAL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

12294

Direct examination by Mr. Haycraft.

Q. What is your name? A. David Rosenthal.

Examiner Averill: How do you spell that?

The Witness: R-o-s-e-n-t-h-a-l.

Examiner Averill: And your first name is David?

The Witness: Yes, sir.

By Mr. Haycraft.

Q. Where do you live, Mr. Rosenthal? A. 211 Central Park West.

Q. New York? A. Yes, sir.

Q. What is your occupation? A. Dress manufacturer.

Q. Where do you have your place of business? A. 1400 Broadway.

Q. What is the name of the firm? A. Rosenthal & Kalman Company, Inc.

Q. What position do you hold in that firm? A. President.

Q. Is it a corporation? A. Yes, sir.

12296

Mr. Albert: Would you mind speaking a little louder, Mr. Rosenthal?

The Witness: I will.

By Mr. Haycraft.

Q. How long has it been engaged in its present business? A. Five years.

Q. At the same location? A. At the same location.

Q. What does it manufacture? A. It manufactures dresses.

Q. Ladies'? A. No.

Q. Misses' and junior? A. Yes.

Q. Has that been true throughout the five-year period? A. Yes, that has been true.

12297

Q. At what price do you sell your dresses? A. $7.75 wholesale; some at $10.75 and some at $4.75.

Q. Has that price range been all its price ranges for its merchandise during the past five years, or have they been changed during that time? A. We started as a $6.75 manufacturer.

Q. Started in 1931 or during or about that time? A. What?

Q. In 1931, at or about that time? A. In 1932.

Q. 1932? A. Yes.

Q. And $6.75 manufacturers? A. Yes.

Q. How long did you continue as a $6.75 manufacturer? A. We continued until the N.R.A., in 1933.

Q. Then what did you do? A. We raised our price to $7.75.

Q. Why was it you started your $10.75?

Examiner Averill: One moment, Mr. Haycraft.

By Examiner Averill.

Q. When you say you raised your price, you mean you raised your price line? You do not mean you necessarily
12299 raised the price of the dresses you have been selling from $6.75 to $10.75, but you raised your price line; is that correct? A. Due to an adjustment of labor, due to the N.R.A., we were unable to make the same type of dresses at $6.75, so we had to raise our price to $7.75.

Q. I want to get this clear. A. Yes, sir.

Examiner Averill: Just let me ask this to get this clear, Mr. Haycraft, please.

Mr. Haycraft: I think it will be made clear in just a moment when I ask the witness my next question.

Examiner Averill: Here we have been talking about price lines which indicated a superior quality and superior article as the price went up. Now,
12300 apparently, we are going to talk about a raise in the price of a garment.

Mr. Haycraft: I am not talking about that so much.

Examiner Averill: I think that ought to be cleared up, because it is going to make a terrible confusion in the record if it is not cleared up.

Mr. Haycraft: I think I will make it clear in my next question. I have not gotten to it as yet.

By Mr. Haycraft.

Q. When did you put in your $10.75 line? A. We put it in there every year on January 1 and we just run it for about two months.

Q. When did you put in your $4.75 line? A. $4.75?

Q. Yes. A. About March 1 or April 1 we just add that additional line of $4.75.

Q. That is for the summer trade? A. Yes.

Q. It is? A. Yes.

Q. For the summer goods? A. Yes.

Q. Cottons? A. Cottons or little dresses of that type.

Q. What is the nature of the $10.75 as compared with the $7.75? A. Why, I would call that a coat and dress 12302
combination which we make.

Q. What type of dress is that? A. That is a redingcote which we make.

Q. A dress and a coat? A. Yes. We call it a redingcote.

Q. You originally started out with $6.75, which you increased to $7.75 at the beginning of the N.R.A.? A. Yes. Labor costs went up, so we had to increase the price.

Q. When the N.R.A. quit did you reduce it again? A. No.

Q. You continued it at the same price?. A. Yes. We found we could get that price for it right along, so we just kept the price up.

Q. During this period of time did you employ designers? A. Oh, yes. 12303

Q. You did? A. Oh, yes.

Q. Did you employ designers for all three lines of manufacture that you had? A. Oh, yes.

Q. How many designers do you have?

Mr. Albert: May it please the Court, I believe that that—oh, no, I will withdraw the objection.

Examiner Averill: You do not object?

Mr. Albert: No, sir. Just go ahead.

Mr. Haycraft: No objection?

Mr. Albert: No.

By Mr. Haycraft.

Q. How many designers do you have? A. Two.

Q. Two? A. Two.

Q. How much of a staff do they have? A. About twelve.

Q. Can you testify briefly as to the functions or the duties of these designers and what they are expected to do and what they do as a matter of fact under your instructions? A. Well, they naturally are supposed to supply

12305 styles of salable dresses that we can sell.

Q. Do they go to Europe? A. Yes.

Q. They do go to Europe? A. They do.

Q. How often and when? A. Well, there is one just come back last month. That is the second trip this year.

Q. Do you know what they do when they go over there? A. Well, they go into the various couturiers and they buy dresses.

Q. Do they bring back sample dresses? A. Oh, yes.

Q. Do you make copies of those dresses, or adaptations of them? A. We either make copies or we make adaptations.

Q. Both? A. Both.

12306 *By Mr. Albert.*

Q. Will you distinguish between the two, or are you distinguishing between the two, Mr. Rosenthal, perhaps I should say? A. No, we are making both.

Q. You are making both? A. Yes.

Q. Are you using "both" as one meaning, or are you using both words interchangeably, or is there any distinction between them?

Mr. Haycraft: I would like to conduct this examination, if you please. You may cross-examine on these matters, of course.

Mr. Albert: Surely. Will you bring that out, please?

Mr. Haycraft: I shall be happy to do so.

By Mr. Haycraft:

Q. Is there any distinguishment between a copy and an adaptation? A. Naturally.

Q. There is? A. There is.

Q. What is it? A. A copy is an exact duplication. An adaptation is taking the various parts of a garment which 12308
are taken from the original garments and making up another garment from them.

Q. Is it customary for your designers to make adaptations of domestic as well as foreign garments? A. I would imagine so, yes.

Q. Did your firm ever belong to the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you join it? A. Some time in October, 1934.

Q. Is that 1934 or 1935? A. '35, rather; 1935.

Q. Did you know of the Guild before that? A. Yes.

Q. How did you first learn of it? A. Through the "Women's Wear."

Q. Through the "Women's Wear"? A. Yes.

Q. Had you ever been solicited by officials of the Guild 12309
to join the Guild— A. No.

Q. —before you joined? A. No.

Q. What were the circumstances under which you did join the Guild? A. Well, Mr. Keller of the Topaz called me one day and asked me whether I cared to attend—whether I would like to attend a meeting for the purposes of forming a popular-priced group as an affiliate of the Fashion Originators Guild of America.

Q. Who is Mr. Topaz? A. I do not know whether he is an officer——

Mr. Albert: No, you mean Mr. Keller.

The Witness: Keller of Topaz. I do not know whether he is an officer or partner, but I know he is connected with Topaz.

By Mr. Haycraft.

Q. What price garments does Topaz Frocks, Inc., make? A. $10.75.

Q. $10.75? A. Yes.

Q. Did you attend such a meeting? A. Yes.

12311 Q. Where was it held? A. At the Hotel New Yorker.

Q. Who else attended this meeting besides yourself? A. I believe there were twenty others.

Q. Do you recall who some of them were? A. Oh, yes, I do.

Q. When was it held? A. Some time in October, I believe.

Q. What year? A. 1935.

Q. Whom do you recall were there? A. Mr. I. Irving Cohen of H. & I. Cohen & Goshin.

Q. Yes? A. Mr. Lou Cohen of Gorgeous Frocks.

Q. Yes? A. Mr. Levine of Branson-Levine, Inc.

Q. Yes? A. Mr. George W. Cohen of the same name.

Q. Yes? A. Naturally, Mr. Keller was there, of Topaz

12312 Frocks, Inc.

Q. Of course. A. I believe Mr. Swift of Abbate & Swift, Inc.

Q. Yes? A. The balance I cannot name. I remember them, but I just cannot remember them just now.

Q. Was there anyone there from Argosy Dresses, Inc.? A. Yes.

Q. Was anybody there from Beacon Frocks, Inc? A. Yes.

Q. Was anybody there from Bretter & Sussman? A. I believe Mr. Sussman was there.

Q. Was anybody there from Campus Modes, Inc.? A. Yes.

Q. Was anybody there from Century Frocks, Inc.? A. Yes.

Q. Was anybody there from the G. W. Cohen Corporation? A. Yes.

Q. Was anybody there from Delhart Dresses, Inc? A. Yes.

Q. Was anybody there from Elvira Dress Company, Inc.? A. Yes.

Q. Was anybody there from M. & S. Extract? A. Yes. 12314

Q. Was anybody there from Garland Dress, Inc.? A. Yes, sir.

Q. Was anybody there from Gladdy Tru Size Dress Corporation? A. Yes, sir.

Q. Was anybody there from Gra tte Dress Company, Inc.? A. Yes.

Q. Was anybody there from George Hess Company, Inc.? A. Yes, sir.

Q. Was anybody there from Mike Kaplan Dresses? A. I do not know whether it is a corporation. I think it is just him, but he was there, or represented.

Q. Was anybody there from Moe Kurland, Inc.? A. Yes, sir.

Q. Was anybody there from Lipman Brothers? A. Yes, sir. 12315

Q. Was anybody there from Letty Lynn Frocks, Inc.? A. Yes, sir.

Q. Was anybody there from Miss Plaza Dress, Inc.? A. Yes, sir.

Q. Was anybody there from Nite Club Frocks, Inc.? A. I do not remember.

Q. Was there anybody there from the Patricia Dress Corporation? A. Yes, sir.

Q. Was there anybody there from Rexley Frocks, Inc.? A. Yes, sir.

Q. Was there anybody there from Rosenthal & Kalman, Inc.? A. Yes, sir; I was there representing them.

Q. Was anybody there from Sandora Frocks, Inc.? A. Yes, sir.

Q. Was anybody there from Tiljane Costume Corporation? A. I do not recall.

Q. Varsity Dress Company, was anybody there for them? A. I do not remember.

Q. Was anybody there from Wein Frocks, Inc.? A. Yes.

Q. Was anybody there from Zabin-Mayer, Inc.? A. I do not recall.

12317

Q. Was there anyone else besides representatives of these firms present at that meeting on this occasion? A. Yes.

Q. Who else? A. Mr. Bergdahl, I believe, was there.

Q. Bergdahl of who? A. A.M.C.

Q. Who else? A. Well, I think there was Mr. Eisenfeld of Folmer & Adelman.

Q. What price line? A. They are a buying office.

Q. By the way, these manufacturers that I have called your attention to, are they all popular-priced group manufacturers? A. Yes.

Q. They are? A. That is what they make.

Q. By that I mean $6.75? A. Yes.

Q. $7.75 and $8.75? A. Yes.

12318

Q. Was Mr. Greenebaum of Felix Lilienthal there? A. I believe he was there.

Q. Was there any other buying office represented? A. Not that I recall. There may have been.

By Examiner Averill.

Q. How about John B. Swinney of the Specialty Stores Association? A. He was not there at that meeting.

Mr. Haycraft.

Q. Was any representative of the Fashion Originators uild of America present? A. I think there was.
Q. Do you remember who it was? A. Yes; Mr. Golby.

Examiner Averill: Mr. Golby?
The Witness: Yes, sir.

Mr. Haycraft.

Q. What did take place at this meeting? A. Well, we ere——
Q. Who presided, first? A. Well, Mr. Keller presided.
Q. All right. Did he speak? A. Mr. Keller spoke first, 12320
d then Mr. Bergdahl spoke and Mr. Eisenfeld spoke and en Mr. Greenebaum spoke.
Q. Anyone else that you recall? A. I do not recall.
Q. Did Mr. Golby say anything? A. Whatever questions t to him were answered by Mr. Golby.
Q. Now, at this meeting, first, what did Mr. Keller have say? A. Well, he explained the purposes of the meeting, at we were to get together as a group and join as an filiated body of the Fashion Originators Guild of Amer-a, Inc., telling us the purposes of the——
Q. What purposes did he state? A. To prevent the pying of dresses; to prevent the purchase of these same esses by various stores that were signed up with the uild.
Q. That is, to prevent the purchase of the copies? A. es. 12321

y Examiner Averill.

Q. Of the copies, not the originals? A. That is correct, r.

By Mr. Haycraft.

Q. The purposes of the Guild were explained? A. I mean by purchases made from these various buying offices from the stores unless they were O.K. It was to prevent them being purchased from these various buying offices or from the store owners or from the store buyers, to prevent them also from copying each other's dresses.

Q. Did he say how that could be done? A. Well, by the registration of the various styles with the F.O.G.A. so that there would be no question as to who designed the dress first. As it usually happened, many dresses—many times the various manufacturers chose the same
12323 dress, identically the same, and, naturally, one claimed the other was a copy of each other's, so that they were to prove which one of the several had copied the dress first, and there would be a regular form of the F.O.G.A. as to its registration data, and in that way they would be able to tell, because the date would show who registered the dress first.

Q. What else was said by Mr. Keller with respect to the question as to whether—or, first, with respect to the manner in which the copying could be prevented? We will take that first. A. Well, they would not sell anybody unless they were signed up with the Fashion Originators Guild of America, the F.O.G.A., as far as the purchase was concerned; that anybody that bought copy dresses would
12324 not be sold by us, and nobody that did not affiliate themselves or signed the pledge of co-operation would be red carded and our merchandise would not be shown to them in the showroom or sold to them at any time.

Q. What did Mr. Bergdahl have to say? A. Well, he gave us a sales talk. He told us what an advantage it would be for us to join the Guild. He said that it would not be but a very short time until the chain stores would have to fall in line and sign these co-operative pledges

12325

or they would not be able to procure desirable merchandise at that particular price; and that if we would honestly go into this proposition and be honest with it, why, we would have the ability to and we would then force whoever had not signed the Guild pledge to fall in line and thereby prevent the piracy of our garments by low-end manufacturers, compelling them to go into the designing of their own merchandise.

Q. Was that about all that Mr. Bergdahl had to say? A. He said that it would be to an advantage; that he would help us in whatever way he could; that he would see that whatever co-operation we required would be given to us.

12326

Q. What did Mr. Greenebaum have to say? A. He spoke along the same lines.

Q. At that time was your organization selling any dresses to— A. What?

Q. I will withdraw that. To what class of trade was your firm selling dresses in 1935 at the time this meeting was held? A. What class of trade?

Q. Yes. A. You mean the type of store?

Q. Yes. A. We sold only the fine department stores and better specialty shops.

Q. Any chain stores? A. Well, there is an entire difference of opinion as to chain stores. Would you call an outfit of seven or eight stores a chain store?

Q. Yes, I would say that was so. A. Well, if that is so, I would say we have several of them on the books.

12327

Q. At what price usually were the dresses that you sold at $7.75 retailed for by the retail customer, your customer? A. $12.95.

Q. That is the usual price? A. Yes.

Q. What did the chain store get for them? A. $12.95.

Q. In the summer months it would appear that you made 4.75 garments. A. For them.

12328 *David Rosenthal—For Commission—Direct.*

Q. And what price was the $4.75 garments usually retailed by the retail shops you sold to? A. $7.95 and some $6.95.

Q. During the winter months, when you refer to the two-piece dress that you sold at $10.75, at what price retail, or at what price would the retail store usually sell them for? A. $16.75 to $19.75.

Q. Was there any action taken at this meeting with respect to joint action to the joining as an affiliate by the individuals there? A. Yes, there were. I do not know how many pledges signed, or applications for membership.

Q. Did you sign up at that time? A. I signed an application, I believe, that night.

12329

Q. What prompted you to do so?. What was the motivating reason for filling it out, for your signing up with the Guild? A. Well, I wanted to see that the style piracy was stifled as far as it possibly could be done.

Q. You had never been invited to join the Guild before that, I take it, as you said? A. No.

Q. Did the statements made by Mr. Bergdahl and Mr. Greenebaum have anything to do with the making up of your mind on that occasion?

Mr. Albert: I object to that as entirely incompetent and immaterial and irrelevant, as to what caused him to make up his mind. The fact that he made up his mind is the essential thing.

12330

Examiner Averill: Oh, no. I think that this witness is entitled to testify as to what influenced him in his opinion, if anything did.

A. Naturally, we were always under the impression that—though we had nothing definite as far as proof was concerned, but we were always under the impression that the Guild guaranteed the various retailers a protection against piracy from $10.75 and up, because before they

took in the $10.75 manufacturers that was the prevailing price at that time, and we knew that. Well, we did not know, but we had some idea that there was some sort of an arrangement made as far as dresses in our price line, which is the so-called popular-price line, is concerned —that it would be somewhat the same arrangement. Then, when we saw buyers of the type of Mr. Bergdahl—I mean, representing offices that they represented, and Mr. Greenebaum, and the various others, and we thought then that we had the co-operation of the so-called larger purchasers or users of popular-priced merchandise, and so they would, in effect, more or less naturally police it for us, besides what the Guild was attempting to do. We felt assured, 12332 and I know I did and I believe the rest of them did, from what they told me, that the industry would be stabilized and this style piracy would be cut out and we could live in peace.

Q. In other words, they represented offices—the larger buying offices represented a large number of retailers that bought popular-priced merchandise in the price line that you had to sell? A. Yes, and the lower-priced dresses, besides ours.

By Examiner Averill.

Q. But the meeting was primarily a meeting of manufacturers of popular-priced dresses, was it not? A. Yes.

Q. Of course, these other gentlemen were present, but 12333 it was really a meeting of popular-priced manufacturers? A. Yes, sir.

By Mr. Haycraft.

Q. While the retail dealers represented by Mr. Greenebaum, Mr. Eisenfeld and Mr. Bergdahl, they were there upon invitation of your group? A. Yes, sir.

(The document referred to, heretofore marked for identification Commission's Exhibit 956, sheets 1, 2, 3, 4, 5, 6 and 7, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Do you recall whether or not you attended any meetings of the Guild—I refer to the Affiliated Division of the Guild—in 1935? A. Yes.

Q. Do you recall when the first meeting was that you attended? A. I recall it?

Q. Yes, the first meeting of the Guild for your division
12335 of the Protective Affiliates; when was that that you attended it? A. Well, it was about a week after we joined, I believe.

Q. About a week after you joined? A. Yes, sir.

Q. Would the date October 25, 1935, refresh your recollection with respect thereto? A. It was at or about that date. I could not fix it with exactitude.

Q. October 28, I should say. A. It was thereabouts, in that period of time, I should say, Mr. Haycraft.

Q. I now show you Commission's Exhibit 958 for Identification and ask you if you can identify that in any way? A. Yes, sir.

Q. Where did you get it? A. This was part of the literature supplied to us by the Fashion Originators Guild of
12336 America, the F.O.G.A. Affiliate Division.

Q. At or about the date you joined? A. This is the type of letter that we should send forward to all retailers that had not signed the declaration of co-operation.

Mr. Haycraft: If your Honor please, this is already in evidence as Commission's Exhibit 398-C and I am not offering this particular document in evidence, but I want to connect it up directly with that.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 958 for Identification, the same being a letter sent to all retailers not signed with the Guild, and it appearing that this letter—paper, is a duplicate of a paper now in evidence as Commission's Exhibit 398-C, the same has been withdrawn.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 959 and 960 for Identification and ask you if you can identify both of those papers or either one of them? A. I believe I can.

12338

Q. What is Commission's Exhibit 959 for Identification, Mr. Rosenthal? A. This is a letter addressed to the various Protective Affiliates of our group.

Q. Dated when? A. November 7.

Q. What year? A. 1935.

Q. Who sent it? A. The Fashion Originators Guild of America, and it is signed "J. M. Golby."

Q. What is Commission's Exhibit 960 for Identification, Mr. Rosenthal? A. The type of letter, the sample or form letter, which manufacturers might send to retailers who have not signed the declaration of co-operation.

Q. Was Commission's Exhibit No. 960 for Identification sent to you along with this letter of November 7, 1935, being Commission's Exhibit 959 for Identification? A. Yes, sir.

12339

Q. It was? A. It was.

Mr. Haycraft: Those two exhibits, namely, Commission's Exhibits 959 and 960 for Identification, are both offered in evidence at this time. However, I want to ask the witness one more question about it.

12340 *David Rosenthal—For Commission—Direct.*

By Mr. Haycraft.

Q. I will ask you whether or not Commission's Exhibit 960, at the time you received it, was physically attached to Commission's Exhibit No. 959 and the two were together attached when you received them? A. Yes, sir. That is the way I received it. They were stapled together with a wire staple.

Mr. Albert: You are offering both of these?

Mr. Haycraft: I am.

Mr. Albert: No objection.

Mr. Haycraft: I first offer Commission's Exhibit 959 for Identification.

12341

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 959 for Identification will be received in evidence and marked Commission's Exhibit 959, the same appearing to be a letter dated November 7, 1935, addressed to the Protective Affiliates in the $6.75, $7.75 and $8.75 price range, and being from the Fashion Originators Guild of America, J. M. Golby, Executive Secretary.

(The paper heretofore marked for identification Commission's Exhibit 959 was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 960 was marked as an exhibit

12342

and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 961 was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 962 was marked as an exhibit and received in evidence.)

Mr. Albert: I object to the admission in evidence of Commission's Exhibit 962 on the ground it is already in evidence as Commission's Exhibit No. 37.

Mr. Haycraft: That objection comes too late. He has already ruled on that.

Examiner Averill: The objection is overruled; but the paper has already been received in evidence.

By Mr. Haycraft,

Q. I show you Commission's Exhibit No. 961, Mr. Rosenthal, for identification, and I call your attention to the first paragraph in that letter, which reads as follows: "As a member of the Fashion Originators Guild of America, 12344
Inc., you have pledged yourself to sell only to those stores which have indicated that they will protect your merchandise by signing the 'Declaration of Co-operation' with the Guild." I also call your attention to the second paragraph of that letter, which reads as follows: "In order to facilitate your determination with respect to which stores are co-operating with the Guild, we have provided you with an index card system. The names of certain retail stores are listed on red cards and, as you undoubtedly know, these accounts cannot be sold." Did you receive the index card system referred to in this language that I have just quoted to you? A. Yes, sir.

Q. Do you still have them in your possession—that is, this card index system? A. What? 12345

Q. Do you still have this card index system in your possession? A. Oh, yes.

Q. Will you produce it at this proceeding, at your convenience? A. Yes. In fact, I have them here, I think.

Q. You have them here? A. Yes. I think I sent them to Room 502 and they should be there now. I sent them about two hours ago by our porter and they should be there now.

12346 *David Rosenthal—For Commission—Direct.*

Q. Now, Mr. Rosenthal, beginning on, say, November 26, 1935—November 1, 1935—or I will say November 26, 1935—or I will put it at just before December 1, 1935, did your organization co-operate with the Guild by having confined your sales of garments to retail dealers in the file indexes submitted to you by the Guild in accordance with the statements contained in Commission's Exhibit 961? A. Yes.

Q. Did you receive from the Guild reports of instances where shoppers had reported that copies of garments registered by your organization with the Guild were being sold by certain retailers? A. Yes, sir.

12347 Q. That is what is known as piracy reports? A. Right.

Mr. Haycraft: I ask to have these documents marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 964, 965, 966, 967, 968, 969, 970 and 971.)

(The letter heretofore marked for identification Commission's Exhibit 970 was marked as an exhibit and received in evidence.)

Examiner Averill: Gentlemen, you may proceed.

By Mr. Haycraft.

Q. Showing you Commission's Exhibit 964, this state-
12348 ment appears therein: "In view of the fact that Mr. Kalman, of Rosenthal & Kalman, made a private agreement with Mr. Weisen, of Feinberg Weisen, concerning the copy of your style No. 415, we cannot give you any protection on this style." What was the protection referred to? A. Well, to ask the stores that had to or were pledged to co-operate with the Fashion Originators Guild of America to return garments which were considered copies of this particular style.

Q. All right. What do you know about the private agreement with Mr. Weisen and your firm referred to in that paragraph? A. At the time we found out about the copy of this particular dress by Feinberg & Weisen, I went down to see Mr. Weisen and Mr. Feinberg and told them that I had several thousand dresses in work for this particular style and that would they please hold up delivery of their dresses until I could get my dresses into the hands of the retailers, or at least out of the factory, so that we could distribute them to the various customers that had orders with this style with us. He agreed to do that and said he would hold them up a week so that it would give me sufficient time to get all of our dresses 12350
in to them and we could make these deliveries to the various customers to whom we had sold the merchandise to.

Q. Can you fix the date that you had that conversation with Mr. Weisen? A. It was about February 7—no, it was about January 17, rather.

Q. January 17? A. About January 17.

Q. Do you have any way of fixing that date in your mind? A. Yes. I was just leaving for the South at that time and it was that same morning that I went down to see them about it.

Q. This sketch No. 175 is the sketch of style 415, manufactured by Rosenthal & Kalman; is that correct? A. Yes, sir.

Q. I am referring to Commission's Exhibit 965. A. Yes.

Q. Style No. 415, Commission's Exhibit 965, who made 12351
that? A. Our designer.

Q. When did you return from Florida? A. February 8, 1936.

Mr. Haycraft: I ask to have these two documents marked—there are four of them—marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 972, 973, 974, 975 and 976.)

(The paper heretofore marked for identification Commission's Exhibit 976 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I call your attention, Mr. Rosenthal, to Commission's Exhibit 973, being a telegram from Fashion Originators Guild, Albert M. Post, to Rosenthal & Kalman, Inc., under date of February 17, 1936, and reading as follows:
12353 "Imperative that you attend to-night's meeting at Waldorf, 8.30." I will ask you whether or not you attended that meeting? A. Yes, sir, I did.

Q. What was the meeting for? A. It was a general meeting called by the Board of Governors of the Fashion Originators Guild of America and their affiliates to take up the matter of red carding a certain number of stores upon which the Board of Governors refused to take it upon themselves to do alone, but wanted to have the membership themselves decide upon this procedure.

Q. Do you have a recollection as to how many were in attendance at that meeting? A. How many members?

Q. Yes. A. Well, maybe, I guess, about 150 or 175, or maybe more. It was quite a large gathering.

12354 Q. Have you any independent recollection of approximately how many of the Protective Affiliates group that you belonged to were present? A. I think there were about five or six; the others had resigned previously to this.

Q. They had resigned previously? A. Yes, sir.

Q. Do you have any recollection of who was present at this meeting? A. Who were the members of which?

Q. The Protective Affiliates in the price ranges $6.75, $7.75 and $8.75. A. May I see that?

Q. You may refresh your recollection from that. A. Well, Abbate & Swift, Inc. Bretter & Sussman, Inc.

Q. Yes? A. Branson-Levine, Inc.

Q. Yes? A. George Hess Company, Inc. I was there—Rosenthal & Kalman, Inc.

Q. Yes? A. Zabin-Mayer, Inc. There may have been one or two others that I do not recall.

Q. Now, do you have a recollection of what transpired at this meeting? A. The membership was asked to regard a certain number or a certain group of stores that belonged to the Retail Research.

Mr. Albert: You are among friends. You can say it is the Associated Merchandising Corporation. 12356

The Witness: The A.M.C. And also I believe at that time Lord & Taylor was among them and several of the Associated Dry Goods stores. There was quite a bit of controversy going on there in the "Women's Wear," where I got my information from, and there was quite a series of letters going backwards and forwards between the Fashion Originators Guild of America and the various department stores that were in this controversy, and I believe it had all led up to a showdown as to whether the Fashion Originators Guild of America was going to proceed in the manner in which they desired or whether the stores were going to defy the Fashion Originators Guild of America as far as the copying was concerned. 12357

Mr. Albert: By "stores" you mean the American Merchandising Corporation, you mean, Mr. Rosenthal?

The Witness: And other stores that were in the controversy—whether they were going to defy the Fashion Originators Guild of America, Inc., and disclaim the so-called pledge of co-operation which they had previously signed.

By Mr. Haycraft.

Q. What was the controversy? A. The controversy was not aired on the floor, if I recall, except that they wanted these various stores sign this new declaration of co-operation.

Q. By that do you refer to Commission's Exhibit 976? A. I believe that is what it was.

Q. Was any statement made at that meeting as to why they wanted these stores to sign this new declaration of co-operation? A. No. The Board of Governors, as I recall, asked the membership to pass their entire confidence on—or to base their entire confidence in, I should say, in what
12359 the Board of Governors were doing, because they felt that they could not very well bring this out into the open as to what was the cause behind this particular step that they wanted to take.

Q. Do you recall whether or not certain resolutions of the Board of Governors were read at that meeting? A. Yes, they were.

Q. Referring to Commission's Exhibit 38, minutes of a general membership meeting of the Fashion Originators Guild and its Protective Affiliate members, held at the Waldorf-Astoria Hotel, Monday, February 17, 1936, at 8.30 P. M., I call your attention to the following resolution —or, rather, I call your attention to the following: "Upon a motion by Mr. Kane, seconded by Mr. Kahn (of Somay,
12360 Inc.), the following resolution already passed by the Board of Governors was unanimously ratified (Mr. Maidman of Fashionwear not voting): Resolved that each of the resident buying offices be requested to sign a new 'Declaration of Co-operation' in form satisfactory to the chairman and counsel of the Fashion Originators Guild, and in the event of failure by any of the said offices to sign such a 'Declaration of Co-operation' within a week from the date of mailing to them, such failure shall be deemed a refusal to co-

operate and our members shall be notified accordingly. Upon a motion by Mr. Garfinkel, seconded by Mr. Herzog" —no, that refers to the succeeding one. Just refer to the one ending with the words, "and our members shall be notified accordingly." I will ask you whether you voted on that resolution? A. No.

Q. Do you know whether anyone else refrained from voting on it? A. No.

Q. Did you make any remarks or statement at the meeting with respect to that resolution? A. No.

Q. You did not? A. No.

Q. I call your attention to the following item in the same minutes: "Upon a motion by Mr. Gans, seconded by 12362
Mr. Herzog, the following resolution already passed by the Board of Governors, was unanimously passed by the membership: Resolved that upon the receipt of a 'red card' each member of the Guild or any Protective Affiliate who at the time of such 'red card' has on order any merchandise from such 'red carded' account, shall within twenty-four hours submit to the Guild a statement setting forth the style numbers and the quantity of each style on order, regular or special and the dates of such orders. Violation of this resolution shall be deemed a violation of the rules with regard to 'red cards' and shall be subject to the same disciplinary action." Did you vote on that resolution? A. Does that specify in that resolution who the accounts were?

Q. Not yet. A. No, I did not. 12363

Q. Did you make any remarks with respect to that resolution? A. I did. Yes, sir; I did.

Q. What did you say with respect to it? A. I said that I did not think it was fair to take an attitude at this time; that it was going to prove of serious harm to me and to my firm if we had to live up to that agreement as I had a terrific amount of business booked and that I was practically the only one left in the $7 field with the members

of the Fashion Originators Guild of America and I thought I did not care to be a martyr to the cause as far as the Fashion Originators Guild was concerned. Also, several of the other members they thought I should be given quite a little bit of consideration, but it seemed that this was a sort of a steam rolling meeting where any objection that anybody raised was immediately shouted down and hollered down, and you could not expect to get anything of anybody in there because they were very angry about something that apparently none of the members knew except the board of governors, and that there were certain things that they had got in there that was going
12365 to be done at any cost, so there was no further necessity of further going into the discussion of this particular amendment that was being put through there that night.

Q. Referring again to Commission's Exhibit 38, and continuing the list of names that I was reading from, down to and including the name "Strawbridge & Clothier, Philadelphia, Pa.," I call your attention to that list of names and that is the list of names I was reading from when the Examiner interrupted me, and I will ask you whether or not you voted on that resolution. A. Whether I voted on the resolution?

Q. Yes, whether you voted on the resolution. A. Yes, I voted on it.

Q. And which way did you vote, aye or no? A. No.

Q. Do you know whether or anybody else did? A. Wait
12366 just a moment. Just what was this motion that you had reference to?

Q. The motion about the red carding of these stores. A. Oh, I voted against that resolution.

Q. Do you know whether or not anyone else present voted against that motion? A. I do not recall.

Mr. Albert: That is objected to. In the first place, it is entirely immaterial one way or the other.

Examiner Averill: No, I think he is attempting now to contradict the statement set forth in the exhibit to the effect that it was a unanimous vote.

Mr. Albert: It may have been a secret vote.

The Witness: No, it was not unanimous.

Mr. Post: It says very clearly that it was not unanimous.

Mr. Haycraft: That is another matter.

Examiner Averill: I understood counsel to say that it was said that it was not unanimous?

Mr. Haycraft: The resolution does not read that way. The resolution says specifically, "Upon a motion made by Mr. Fox, seconded by Mr. Mallas, and unanimously carried," and I certainly think that means "unanimous." 12368

Examiner Averill: The objection is overruled, gentlemen; the witness may answer the question.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Yes. Answer the question. A. I voted against that motion.

Q. Did anyone else vote against it? A. I do not know. I do not recall.

Q. You saw the vote taken? A. I did.

Q. How was the vote taken? A. It was by acclamation. 12369

Q. Was it aye and no? A. No, raising your hand.

Q. Raising your hand? A. Yes, sir.

Q. Was a "no" vote put so you could raise your hand with respect to voting against it; will you say? Were you given an opportunity of voting against it? A. Yes, sir; sure.

Q. And you voted against it? A. Yes, sure.

Q. You do not recall now whether anyone else voted against it or not?

Mr. Albert: In order to ease Mr. Haycraft's mind, we will stipulate that the vote was 185 to 17; it was passed that way on the first vote.

Mr. Haycraft: Very well, I will be glad to have that statement.

Mr. Albert: Would you also like to be informed, Mr. Haycraft, that a motion was made to make it unanimous and that that was carried?

Mr. Haycraft: Very well. I will ask this witness about that.

By Mr. Haycraft.

12371 Q. I will ask you as to whether there was such a motion —in other words, I will ask you whether on the further vote you voted in favor of that motion? A. No. I did not. I did not vote either way.

Q. On the last one? A. At the time of the acclamation, in other words, at the time they decided to make that motion unanimous.

Q. You did not vote on that at all? A. No, I refrained from voting.

Q. I also call your attention to the following motion which is set forth in the minutes of that meeting: "Mr. Lasher made the following motion, seconded by Mr. Altmark: That, in respect to those stores 'red carded,' the members should fill all orders on hand that were received
12372 prior to the issuance of the red card." Did you vote on that motion? A. Was that after the other motion?

Q. Yes. A. No, I decided not to take any further part in the particular motions as they proceeded after that.

Q. Did you have anything to say with respect to the motion that I referred to when it came up? A. Yes, I did.

Q. The one with reference to the red carding of the list of stores, that is the one I have reference to. A. Oh, yes. I did. That is the one I understood you referred to rather than the last one.

Q. Yes. What did you say about that? A. I took the floor and told the board of governors and the membership that I did not believe that that thing should be done as it would be a very serious thing as far as I was concerned, that at the time I joined the Fashion Originators Guild of America there were twenty or twenty-five or maybe at least seventeen of us that were joined together, and that during that time I was away quite a few of them dropped out from the Fashion Originators Guild of America. My partner signed this new declaration, or this new proposal of membership while I was away. And when I came back I found out, I did not know until that particular night that I attended the meeting that there were just a few left 12374
of the original group that joined the Fashion Originators Guild of America as an affiliated organization, or an affiliate organization as far as the $6.75, $7.75 and $8.75 group were concerned. I took the floor that night and said that I did not want to be a martyr to the cause; that I was perfectly willing to go along in any particular program in my own particular price line and would go along, but there would be no necessity for me to continue because I would be the only loser in this entire program or transaction; that any account that was red-carded could very easily obtain merchandise from any competitor of mine that was under no such obligation, and I said I would not be a party to it. Well, of course, there were some of the members there that defended my action, Mr. Lasher of
Mary Lee Frocks said there was lots of justification of 12375
what I contended and there were several others, but I do not know their names now, who made the same statement, but there were several who spoke against it and said they were also in the same situation. Of course, they were under the impression that they were competitors of mine, when in reality they were not because they were making higher-priced dresses than I was by a dollar, anyway.

But, anyway, it was put to a vote and naturally the results you know from the meeting itself through the minutes.

Q. Did you attend any more meetings of the Guild after that? A. No, I did not.

Q. You spoke in your last answer about a new agreement which was signed by your partner while you were away. A. Yes, sir.

Q. Can you identify that from any of these papers which I now hand you? A. Yes, sir; this is it.

Mr. Haycraft: I ask to have this blank form of declaration of co-operation marked Commission's
12377 Exhibit 977 for Identification.

(The paper was marked for identification Commission's Exhibit 977.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 977 for Identification and ask you if this is the agreement that you referred to in your answer a moment ago as the new agreement with the Guild signed by your partner while you were away? A. That is right.

Q. Will you say that that was signed about January 28, 1936? A. This one here?

Q. Yes. A. No, I do not know when it was signed, but it was during my absence, anyway.
12378

(The paper heretofore marked for identification Commission's Exhibit 977, sheets 1 and 2, were marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I think we should have something in the record there in connection with Mr. Kalman's associate, because he has been referred to as your "partner," whereas I understand this is a corporation. A. It is a corporation.

Q. What is Mr. Kalman's position with the organization? A. He is treasurer.

Q. I ask that because I understood you to use the word "partner" and the organization is a corporation. A. That is right. My error. He is treasurer.

Mr. Haycraft: I now offer in evidence Commission's Exhibit for Identification, 978.

Mr. Albert: No objection.

Examiner Averill: The paper which has just heretofore been marked Commission's Exhibit 978, which bears date February 20, 1936, being a telegram from the Fashion Originators Guild to Rosenthal & Kalman, Inc., under date of February 28, 12380
1936, will be received in evidence and marked Commission's Exhibit 978.

(The telegram heretofore marked for identification Commission's Exhibit 978, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 978, a telegram which says in part: "Grievance committee has been appointed to hear charges involving violations of membership rules of Fashion Originators Guild as well as special contract signed by your firm on January 28." What were the charges therein referred to?

12381

Mr. Albert: I am going to object to any more of this reading into the record of a telegram which is already in evidence and it is simply cluttering up the record because it is obviously only necessary for counsel to refer to it. This is simply running up a huge record which there is no necessity for running up.

Mr. Haycraft: There is more record being taken up by the objection than there is by reading the short excerpt from what I wanted out of that telegram in evidence.

Mr. Albert: If you must make it necessary for me to object I must, but otherwise it would not be done.

Mr. Haycraft: I did not do it. If you want to make an objection of that sort I cannot stop you from it.

Examiner Averill: Gentlemen, I do not see why you do not just show the telegram to him.

12383 Mr. Haycraft: I cannot, Mr. Examiner. I simply want to call his attention to a certain part of the telegram. I do not want to ask him about all of it.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. When you refer to that language in there——

Mr. Haycraft: As you see, Your Honor, before I continue with that question I am simply referring to that particular language in this telegram. I do not want to ask him about the whole business but just part of it.

Examiner Averill: Go ahead. We will see what it

12384 is about.

By Mr. Haycraft.

Q. I will repeat that in order to make the question clear, if you do not remember it. A. I do not remember what you referred to now.

Q. Calling your attention again to Commission's Exhibit 978, a telegram which under date of February 28, 1936, says: "Grievance committee has been appointed to hear

charges involving violations of membership rules of Fashion Originators Guild as well as special contract signed by your firm on January 28." What were the charges that were referred to in this language that I have just quoted to you, if you know; first, do you know? A. Yes.

Q. What were they? A. That had reference to allowing them to examine my books.

Q. What were the circumstances? A. Well, they had sent an examiner and I had refused to permit him to examine the books.

Q. Who was it that they sent up there? A. Who sent him up?

Q. Who came and then who sent him? A. Some young 12386
man. I do not know who he was.

Q. Who sent him? A. The Fashion Originators Guild of America through some of their officers.

Q. What did he want? A. He wanted to go over our books to see if we were shipping any of the accounts that were red carded by the Fashion Originators Guild of America in the last meeting that we spoke about.

Q. That you testified to this afternoon? A. Yes, sir.

(The telegram heretofore marked for identification Commission's Exhibit 979 was marked as an exhibit and received in evidence.)

(The letter heretofore marked for identification Commission's Exhibit 980, sheets 1 and 2, was marked as an exhibit and received in evidence.) 12387

(Whereupon, at 4 o'clock P. M., December 11, 1936, the hearing in the above-entitled matter was adjourned.)

12388 *David Rosenthal—For Commission—Direct.*

Room 901, 45 Broadway,
New York, N. Y.,
December 14, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

PROCEEDINGS.

Examiner Averill: You may proceed.

12389 Mr. Haycraft: I ask that these documents be marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 981, 982, 983, 984, 985, 986, 987, and 988.)

DAVID ROSENTHAL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

(The documents heretofore marked for identification Commission's Exhibits 981, 982, 983, 984, 985, 986, 987, and 988, were marked as exhibits and received in evidence.)

12390

(Documents were thereupon marked for identification Commission's Exhibits 989, 990, 991, 992, 993, and 994.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 989 to 994, both inclusive, and ask you if you can identify those papers that

you received from the Guild and as having been taken from your files? A. Yes, sir.

(The documents heretofore marked for identification Commission's Exhibits 989, 990, 991, 992, 993, and 994, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Mr. Rosenthal, I call your attention to Commission's Exhibit 993, a pink card reading as follows: "Do not attempt show the Dayton Company or B. Forman Company any goods for s bstitution, nor substitute numbers on these 12392
orders of your own accord." I will ask you if you would say that that referred to the showing of garments in your showroom? A. Yes.

Q. Now I call your attention to Commission's Exhibit 994, and I will ask you whether or not you received similar letters with respect to— A. What?

Q. I will ask you this way: Calling your attention to Commission's Exhibit 994, I call your attention to the first paragraph which reads as follows: "This is to advise you that we have been specifically requested by the B. Forman Company, Rochester, N. Y., to ship all merchandise which they had bought prior to their withdrawal of their 'Declaration of Cooperation' and the subsequent red carding." The second paragraph of that letter reads as follows: "We request you to immediately ship to them any merchandise 12393
which they had previously bought and which is now available for delivery." I will ask you whether or not you received letters containing language similar to that except that the company making the request was that of the Dayton Company, Dayton, Ohio, and the Boston Store, Minneapolis, Minn.—no, this is the Dayton Company, Dayton, Ohio; the Boston Store of Minneapolis, Minn., and the

Boston Store, Milwaukee, Wis., on the same date as that? A. That is correct for the Dayton Company and the Boston Stores.

Q. In this same letter it says: "Please do not confuse the purpose of this notice. It applies only to that merchandise ordered prior to February 17th and does not authorize you to accept any new orders, to exhibit your line or to ship any additional goods. Further, we wish to caution you that extreme care must be exercised to prevent any substitutions. Kindly notify this office at once of any merchandise shipped so that it can be checked off against the records which you have previously given us." I will ask
12395 you whether or not the reference to "red carding" means Exhibit No. 993; that is to say, whether or not the red card, Commission's Exhibit 993, refers to that same subject matter? A. Commission's Exhibit 993, this little pink card, refers to the same subject matter that you read to me from that letter.

Mr. Haycraft: I ask to have the following documents marked for identification Commission's Exhibits 995 to and including 998.

(The documents were marked for identification Commission's Exhibits 995, 996, 997, and 998.)

By Mr. Haycraft.

Q. I now show you Commission's Exhibits 995 to 998,
12396 both inclusive, and ask you whether or not these are papers coming from your records and received from the Fashion Originators Guild of America, Inc.? A. Yes.

(The documents heretofore marked for identification Commission's Exhibits 995, 996, 997, and 998, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I will ask you, Mr. Rosenthal, whether the pledge referred to in Commission's Exhibits 995, 996, and 997 is the pledge that is already in evidence as Commission's Exhibit 250?

Mr. Albert: As to that——

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: If your Honor please, instead of having this witness read both of them, if we can look at them it will only take a moment to see if they are the same.

Mr. Keller: The only difference is the date. One 12398
says January 15 and the other says February 1.

Mr. Albert: All right, then, they are the same.

Mr. Haycraft: What about it? Will you stipulate it?

Mr. Albert: Yes. If you will just have my last statement read you will see it is to that effect.

Mr. Haycraft: Let it be read.

(Mr. Albert's comment was read.)

Mr. Haycraft: All right. That is what I want.

By Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 998, I will ask you whether or not the pledge referred to in that is the same as the one in Commission's Exhibit 250? 12399

Mr. Albert: You mean the pledge mentioned as having been included in Commission's Exhibit 998?

Mr. Haycraft: Yes.

Mr. Albert: We will stipulate that it is the same.

Cross-examination by Mr. Albert:

Q. Mr. Rosenthal, you testified that at a meeting of the members of your individual manufacturers' association,

that approximately at the beginning of 1935 Mr. Bergdahl was present and told you the advantages of your being in the Guild, and that he believed in a very short time chain stores would likewise be co-operating ret. 'ers. At that time did he express any opinions as to the reasons why he thought the chain stores would sign up as co-operating retailers, or would soon be co-operating retailers? A. I am sorry. I do not catch that question.

Q. I say, you testified, Mr. Rosenthal, that at a meeting of the members of your individual manufacturers' association, approximately, I should say, in the beginning of 1935, but the time you will recall, Mr. Bergdahl was present and

12401 told you the advantages of your being in the Guild and that he believed that in a very short time chain stores would likewise be co-operating retailers, and I want to ask you did he at that time express any opinions as to the reasons why he thought the chain stores would soon be co-operating retailers? A. No.

Q. What was the substance of his statement at that time? Did he merely assure you that if you gentlemen joined up the chain stores would very soon be co-operators, or just what was it? A. He said, he just said that it was proving successful, but that in order to prove entirely successful it would be necessary for everybody concerned in the manufacture of dresses to be able to employ their own designers, and through that medium they would be able to eliminate the style piracy.

12402 Q. Then, would you say that it was his statement at that meeting of the members there, that the lower-priced manufacturers join the Guild then that would necessitate the chain stores becoming co-operative retailers, and because of that necessity, that, of necessity, the chain stores would, in fact, become co-operating retailers? A. Well, I do not recall that there was anything said about chain stores, Mr. Albert.

Q. You did testify that Mr. Bergdahl said that in a very short time the chain stores would be co-operating? Do you not recall that? A. No, I do not.

Q. Is it the fact that he did so speak to you? A. I cannot positively say.

Q. Do you employ separate designers in your $4.75 group of dresses? A. Yes.

Q. As distinguished from your other price lines? A. No. You see we do not make $4.75 dresses except in about two months of the year. Those same designers take care of it.

Q. Turning, then, to the $4.75 field, do they design their dresses? A. Well, we do not make a regular line. We might make up ten dresses and that would be sufficient for 12404 us for these two months.

Q. You signed the original declaration of co-operation for your firm, did you not, Mr. Rosenthal? A. I believe I did.

Q. The latter one was signed by Mr. Kalman, was it not? A. That is right.

Q. You have given some testimony of the differences that arose between you and the Guild at certain times? A. Yes.

Q. Would you mind telling us more about that, please? A. We never had any differences.

Q. Are you a member of the Guild at the present time? A. I do not know.

Q. Shall I say that a disagreement arose between you and the Guild, if you do not want to admit that there is 12405 a difference, and ask you to tell us what that disagreement was? A. Well, at the time of the February 17 meeting, when they passed this resolution, I felt that I did not want to become a martyr, and that it would be very detrimental to my own business.

Q. You mean by that that you had so much business with the Associated Merchanding Corporation, or A.M.C., that you could not afford not to sell them? A. The A.M.C.?

Q. The A.M.C. A. Not necessarily, no, I did not agree with that. The A.M.C. are one of my smallest customers and that was not the reason why we had this lack of accord.

Q. Just what do you mean by that? A. You see, at that meeting besides the A.M.C. being brought into this question, the Associated Dry Goods Association were brought in. Then there was talk of the Mandel Brothers, and then there was some talk of Marshall Field's. Now——

Q. You sell those stores much goods, or do you? A. Oh, yes, I do, I should say that I sell that particular group probably half a million dollars worth of business a year.

12407 Q. With that group? A. Yes.

Q. Yes. A. And it did not make any difference how I felt about it privately; I felt that since I was the only one in my particular field, or price group, that was going to be penalized, that I did not care to become a party to that type of an agreement.

Q. What do you mean by the only one in your particular field? A. There was no competitive concern in the affiliated left.

Q. In February, 1936, you mean? A. That is right.

Q. Well, after the decision was made, did you continue to sell to these red carded stores? A. Yes, sir.

Q. To whom did you sell? A. To whoever wanted to come in.

12408 Q. Did you sell Lord & Taylor? A. Lord & Taylor were not red carded.

Q. Did you sell Abraham & Straus? A. Yes.

Q. Have you any idea of how much you sold? A. No, I have not.

Mr. Haycraft: That is objected to.

Examiner Averill: Objection overruled.

Mr. Haycraft: Exception.

By Mr. Albert.

Q. Did you sell Bloomingdale's? A. Yes, sir.

Q. Have you any idea of how much you sold them? A. No.

Q. Did you sell Wm. Filene's Sons & Company? A. Yes.

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell Lord & Taylor? A. Yes.

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell John Shillito Company? A. Yes.

Q. Have you any idea how much goods you sold them? A. No.

Q. Did you sell Strawbridge & Clothier, Philadelphia? A. Yes, sir. 12410

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell the Reich-Cumler Company? A. Yes, sir.

Q. Have you any idea how much you sold them? A. No.

Q. Have you sold any other red carded stores besides those whom I have mentioned?

Mr. Haycraft: I object.

Examiner Averill: What is the basis of that?

Mr. Albert: They sold whomever they felt it was to their interest to sell, according to the testimony of Mr. Rosenthal, so I am asking him as to what particular concerns he sold to.

Mr. Haycraft: That is objected to.

Examiner Averill: Objection overruled. He can state to whom he has sold. 12411

A. I would have to go into the records and find out who they red carded first, and then find out whether we sold any of those houses.

By Mr. Albert.

Q. Do you not know? A. No.

Q. Do you not have the slightest idea? A. No, I do not.

Q. Did you sell R. H. White? A. Yes.

Q. Do you know how much you sold to them? A. No.

Q. Did you sell The Emporium, San Francisco, Calif.? A. Yes.

Q. Do you know how much you sold them? A. No.

Q. Did you sell A. C. Capewell? A. H. C., yes.

Q. Do you know how much you sold them? A. No.

Q. Did you sell Ernest Kern? A. Do we or did we?

Q. What did you think I was asking you about?

12413

Examiner Averill: Oh, tell him what you were talking about and we will get along faster.

By Mr. Albert.

Q. Did you after February 16— A. Yes.

Q. —sell to Ernest Kern? A. Yes.

Q. Did you also sell to Schuster Company? A. Schuster?

Q. Milwaukee. A. Yes.

Q. Do you know how much you sold them? A. Yes.

Q. Did you sell J. L. Hudson Company in Detroit? A. Yes.

Q. Do you know how much you sold them? A. I do not have any idea.

Q. Did you sell William Taylor? A. Yes.

12414

Q. Have you any idea how much you sold them? A. Not at all.

Q. Did you sell The Dayton Company? A. Yes.

Q. Do you know how much you sold them? A. I have no idea.

Q. Did you sell B. Forman & Company? A. Yes.

Q. When did you sell them? A. We have never stopped.

Q. You never stopped during all of this period? A. No.

Q. Have you any idea how much you sold them? A. No.

12415

Q. Well, now, did you ever resign from the Guild, Mr. Rosenthal? A. I do not know.

Q. Have you since February, 1936, Mr. Rosenthal, paid to the Guild the dues that you were supposed to pay? A. No.

Q. I show you a photostatic copy of a declaration of co-operation purporting to bear your signature, Mr. Rosenthal, and I will now ask you if this is a photostatic copy of the declaration of co-operation——

Mr. Haycraft: That is not a declaration.

Mr. Albert: No, it is not.

12416

By Mr. Albert.

Q. —of the agreement between you and the Guild——

Mr. Albert: Thank you, Mr. Haycraft.

A. Yes.

Mr. Albert: I ask that this be marked Respondents' next exhibit, for identification.

(A document was marked for identification Respondents' Exhibit 97.)

Mr. Albert: I offer Respondents' Exhibit 97 in evidence, if your Honor please.

Mr. Haycraft: No objection.

12417

Q. Mr. Rosenthal, did the shipment of orders to the various stores to which I referred and about which I have interrogated you, and do they now appear in your books? A. Do the shipments?

Q. Yes. A. The various orders?

Q. That is right.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. As a matter of fact, have no other names been substituted in your books for the names of these various stores to whom you shipped goods after February 16?

Examiner Averill: Is there an objection to that question?

12419 Mr. Haycraft: I do object to that question.

Examiner Averill: Sustained. Exception noted for Counsel.

Q. Do your books show, Mr. Rosenthal, that you shipped goods to Wm. Filene's Sons & Company after February 16, 1936? A. That is correct, your Honor; I did ship them all the time.

Mr. Haycraft: Both before and after.

Examiner Averill: If he has said that about that particular firm it would seem that would close the investigation.

The Witness: That is what I said, your Honor.

Examiner Averill: Please, Mr. Rosenthal, I have to listen to Counsel on this matter.

12420 Mr. Albert: I object to the witness interjecting himself to the matter in this way, your Honor, and I desire to have it noted on the record that he is showing an undue effort in the matter.

Examiner Averill: Perhaps we all show more or less effort at times.

Mr. Haycraft: His testimony is the same as to all of them.

Examiner Averill: Objection sustained.
Mr. Albert: Exception.
Examiner Averill: Noted.

By Mr. Albert.

Q. Do you recall when the auditor for the Fashion Originators Guild of America, Inc., came up to your firm to look at the books; you recall that, do you not? A. Yes.

Q. When he first came in he was given the books, was he not? A. Yes.

Q. And he was permitted to examine them, was he not? A. Yes, by our bookkeeper.

Q. Do you recall that after having examined the books 12422
of the firm, by the bookkeeper, he requested the express receipts on these orders? A. No.

Q. Do you recall that he was given these express receipts? A. Well, the auditor was only here in our place of business for a half an hour. I was out at the time that the order came in, and he came in and asked the bookkeeper could he examine our books and she did not know any different, she said, "Yes."

Q. Did he examine your books at all? A. When do you mean?

Q. Did he examine your books before that time? A. He never did.

Q. This was the first time? A. Yes.

Q. Then what happened? A. I came in and I saw a 12423
strange man there examining our books and I said "Who is that man?" She told me. I said, "Shut out your books." There was no request made for anything up to that time, and then he requested me if he could see them, and I then said to him, "I am sorry. We cannot allow you to examine any books here."

Q. Do you not recall, Mr. Rosenthal, that the books were given to the auditor to look at; that you were in the inner office at the time; that he examined the books; that

he expressed a dissatisfaction with the books, with the records in your books; that he asked for the express receipts; that the bookkeeper gave him the express receipts; that you learned that he saw the express receipts and it was then that you came out and insisted that the man leave the premises? A. No.

Q. By the way, do you still have the express receipts on these shipments?

Mr. Haycraft: That is objected to as incompetent, immaterial, and irrelevant.

Q. Was there any subsequent conversations with any-
12425 one connected with the Fashion Originators Guild of America and you with respect to the examination of these books? A. Yes.

Q. With whom? A. I think it was with either Mr. Goldston or Mr. Golby, one of the two.

Q. May I refresh your recollection and tell you it was with Mr. Golby? A. Yes.

Q. Do you recall what that conversation was? A. He wanted to know why we would not let him examine the books.

Q. What did you tell him? A. I did not answer that.

Q. You did not answer him at all? A. No. I said we did not want to.

Q. That is all that you said? A. Yes.

Q. You gave no reason for refusing to permit him to
12426 examine the books? A. None whatsoever.

A. And the books have not been examined since? A. No, sir.

Mr. Haycraft: I take it that you mean by representatives of the Guild——

By Mr. Albert.

Q. By representatives of the Guild, of course. A. No, they have not.

Q. You referred to Mr. Kalman as your partner. Do you mean by that that Mr. Kalman had an equal stock interest as you in the corporation? To simplify matters, let me ask you this: Has he an equal stock interest in the firm? A. Yes.

Q. That is, do you both own an equal amount of the shares? A. Now?

Q. Yes. A. Now, you put in evidence a letter requesting you to ship Forman of Rochester, N. Y., all goods on order prior to February 16, have you not?

Mr. Haycraft: I put it in, not the witness.

Mr. Albert: You could not put it in without the witness, Mr. Haycraft. 12428

By Mr. Albert.

Q. What was your answer? A. Yes.

Q. At that time you were fully co-operating with the Guild in its program, about February 16? A. Yes.

Q. Is it not a fact that as a co-operating manufacturer you received letters of similar import from the Guild to the effect that any red carded store was to be permitted to receive, and that you were permitted to ship them any and all goods which they had ordered prior to February 16, 1936? A. No.

Q. No? A. No.

Q. What is the fact, if you know? A. After some length of time had elapsed, and these various stores wrote to the 12429
Guild, it is my recollection at some time later that the Guild's request of me, or at least I understood at least it was a courtesy to the stores that they permit the various Guild members to ship merchandise to these various red carded stores and that was in order not to create any hardship.

Q. Upon the various stores? A. Yes.

Q. I believe it is obvious from your testimony that you are not quite certain of the relationship that existed at that time, but would you say from your knowledge of the facts at that time that any red carded store which had requested the goods be shipped to it which it had ordered prior to February 16, would have been shipped goods with the consent of the F.O.G.A.?

Mr. Haycraft: I object.

A. Yes.

Examiner Averill: Overruled.

12431 *By Mr. Albert.*

Q. In connection with that understanding that they receive their goods which they had ordered prior to February 16, does the mention of the Wm. Filene's Sons & Company's suit in Boston, Mass., refresh your recollection as to the time when that understanding existed? A. I do not recall the length of the time or anything about it.

Q. I know you do not recall the exact date, yes, but you do recall the fact that if any red carded store had desired it they could obtain the goods which they had ordered prior to February 16?

Mr. Haycraft: I object because that is not proper cross-examination.

Examiner Averill: Objection overruled. I think

12432 he can testify as to that. Objection overruled, the witness can testify and may answer if he knows.

A. Yes.

By Mr. Albert.

Q. Mr. Rosenthal, to save time, I will place it in an all-inclusive question: Is it a fact that you had full notice of this meeting of the committee of the Fashion Origina-

tors Guild of America, Inc., which had been called to pass upon the disagreement or dispute or difference, whichever words you may want to use, which existed between you and the Fashion Originators Guild of America? A. Yes.

Q. And you refused to appear before that committee? A. Yes, sir.

AFTERNOON SESSION.

Examiner Averill: You may proceed. 12434
Mr. Haycraft: I will call Mr. Aaron Rosenstein.

AARON ROSENSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name? A. Aaron Rosenstein.

Examiner Averill: Your first name is Aaron?
The Witness: Yes, sir.
Examiner Averill: Your next name is what?
The Witness: Rosenstein.
Examiner Averill: How do you spell that?
The Witness: R-o-s-e-n-s-t-e-i-n. 12435

By Mr. Haycraft.

Q. Where do you live? A. Hotel Beacon, Seventy-fifth Street and Broadway, New York City, N. Y.

Q. What is your occupation? A. Silk manufacturer.

Q. Where do you have your place of business? A. 131 West Thirty-seventh Street.

Q. New York City? A. Yes, sir.

Q. Do you have any other factories? A. That is our selling office. We have a factory in Paterson, N. J.

Q. What is the name of the firm? A. Rosenstein Brothers.

Q. How long have you been in that business? A. Practically all of my life.

Examiner Averill: You will have to tell us how long that was because we cannot tell, from looking at you, just how long that has been.

The Witness: We started Rosenstein Brothers in 1922.

12437

By Mr. Haycraft.

Q. You say you are a silk manufacturer? A. Yes, sir.

Q. Describe for the Examiner just what the nature of that business is and just what you manufacture, and so forth? A. We manufacture high class novelties.

Q. Novelty silk goods? A. And tinsels.

By Examiner Averill.

Q. Do you mean that you manufacture the cloth or that you manufacture these tinsels or that you manufacture these specialties or one or both or all? A. We manufacture specialties, but tinsel is a cloth.

Q. Tinsel is a cloth? A. Yes.

12438

Q. What kind of cloth? A. A silk cloth.

Q. You make silk cloth also? A. Yes, sir.

Q. What else? A. And prints also.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. Do you manufacture prints? A. Yes.

Q. What sort of machinery do you have to have in your factory for that purpose? A. For printing?

Q. Yes. A. The prints, we do not make them in our own factory but we give them out to be printed, but we make the sketches and the designs.

Q. You have someone else to do the actual printing? A. To make what is known as screens to do the screen printing.

Q. What about the other fabrics which you mentioned, the tinsels? A. Yes.

Q. Describe that fully and give the type of fabrics that you make, and so forth? A. We make a tinsel fabric and silk novelties and silk fabrics which consist of tinsel and silk thread woven together. That is our main line, and the other follows in after that such as prints and fills in our 12440
line, because we make quite a full line of goods, we make a lot of products so that we may have a complete line to supply our trade with.

Q. Where do you get your raw material? A. We buy it here in the United States of America.

Q. What does your raw material consist of? A. Silk and tinsel thread. The tinsel thread is imported from Europe and we buy it here in America.

Q. You buy your thread and weave it into cloth? A. Yes, sir.

Q. Do you employ designers for the purpose of designing the fabrics? A. Yes, sir.

Q. Do they originate these designs or do they copy, adapt it from fabrics already manufactured? A. Right now we are originating everything we make. 12441

Q. How long has that been true? A. Oh, for the past year or so.

Q. Before that, what did you do? A. Before then we would design and we would copy also. We have done both.

Q. When you copied, what did you copy from? A. From the import.

Q. But you discontinued copying from imports? A. Yes.

Q. When you referred to tinsel, does that mean metallic cloth; is that the same thing? A. Yes, sir.

Examiner Averill: The metallic cloth is the same thing you referred to as tinsel cloth?

The Witness: It is.

By Mr. Haycraft.

Q. Is it a fact or not that the design, usually the designs for metallic cloth, originate in France? A. Yes.

Q. Are those designs the designs that you told us you copied when you spoke of copying imports? A. Yes, sir.

12443 Q. But for the past year or so you have not copied imported designs of others? A No.

Q. You have originated your own designs? A. Yes, sir.

Q. What do you do about foreign designs, or French designs, buy them, buy the material, or what? A. We go to Europe twice a year and we buy fabrics over there to get an idea of the line and then we build upon or around that.

Q. Adaptations, would you say? A. Yes.

Q. Where do you sell these materials after you have finished them? A. We sell them to the dress trade mostly.

Q. Dress trade where? A. In New York City and anywhere there is a dress manufacturer that wants to buy them.

Q. Such as? A. We sell in New York, Boston, Chicago,
12444 San Francisco, and Los Angeles.

Q. Do you sell to any other people? A. We also sell department stores.

Q. You sell them all piece goods? A. Yes, sir.

Q. Do you know anything about the Industrial Designs Registration Bureau? A. Yes, I know them.

Q. When did you first learn of the existence of that organization? A. When the N.R.A. started.

12445

Q. The N.R.A. started? A. Yes.

Q. Have you registered your designs with that Bureau? A. Yes, sir.

ALBERT M. POST was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified as follows:

Direct examination by Mr. Hagcraft.

12446

Q. Mr. Post, you are the same Albert M. Post that has heretofore testified in this proceeding? A. Well, not quite the same. I have learned a lot since, but I am the same person.

Q. The same Mr. Post, only more so? A. Yes.

Q. You were called upon to produce during this proceeding correspondence, memorandums, and reports from your files relating to the red carding of certain retail dealers? A. Yes.

Q. Have you complied with that request? A. Yes, I believe that the papers there are the ones.

Q. Now, with respect to the retail dealer, Gertrude Bell, at Ogden, Utah, do you have a red card for her in your files? A. Yes, we had a red card.

12447

Q. You had a red card? A. Yes, that red card was changed subsequently.

Q. What is it now? A. It is a blue card now.

Q. What does that signify? A. Well, looking at this here it would indicate that this is a retailer whose policy regarding protection of design originations was unknown to us and that efforts had been made to find that out and we have received no replies showing that, so these parties are notified, our members are notified on the blue card

that if this retailer comes in their show rooms to get in touch with us.

Mr. Haycraft: I ask to have these three documents marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 999, 1000, and 1001.)

By Mr. Haycraft.

Q. You said a moment ago you made some effort to find out what the attitude of this individual was with respect to——

12449 Mr. Albert: Would you mind speaking a little louder, Mr. Haycraft?

Mr. Haycraft: No, I would not mind.

By Mr. Haycraft.

Q. —to the particular store as to its attitude towards protection? Q. Yes, sir.

Q. Just what means did you take to find that out? A. Are you asking me generally or specifically in regard to this store?

Q. Well, take this one specifically and we will work to a generality from this specific instance. A. I think it would be a little safer if you would let me answer generally, first.

Q. Do so. A. A member of the Guild may desire or
12450 inquire of us as to whether it is a co-operating retailer, or what their policy is, and the usual procedure in such instances is as follows: The manufacturing firm, the member, will write to them their own letter. If they do not hear from them within a week or ten days or two weeks that request is followed up by another, and there are a series of letters which are sent out which are these.

Q. Referring to Commission's Exhibits 999, 1000, and 1001 for Identification. A. That is correct. These are the three letters.

Q. Commission's Exhibit 999 for Identification is the first letter? A. First.

Q. How long do you wait before you send out the second letter? A. Well, that is, I think, determined by the remoteness of the retailer from New York and whether it takes one day for a letter to get there, or three or four days, but usually the minimum would be a week to ten days between letters.

Q. Then, how long do you wait before the third letter is sent out? A. The same period would be used.

Mr. Haycraft: I offer these letters in evidence.

Mr. Albert: No objection.

12452

(The paper heretofore marked for identification Commission's Exhibit 1001 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Calling your attention to the firm, Wilbur Rogers, would your testimony be the same with respect to that retail dealer? A. Yes, except that I have a recollection that they were contacted personally on several occasions.

Q. You mean you personally got a statement from them as to their policy? A. Yes.

Q. But you have nothing else in writing; is that right? A. That is correct.

Q. Does a blue card at the present time have a significance with respect to this firm the same as the one you just referred to? A. That is right.

12453

Q. In other words, they are not to be sold, and if they make inquiries they are to get in touch with you before they do any business with them? A. That is correct.

Q. I now call your attention to Sloan & Strobel, Baltimore, Md., and ask you if you have a red card with that organization? A. May I see what you have in that regard, Mr. Haycraft?

Q. Yes. Why was that firm red carded? A. This folder has no correspondence and yet I seem to have some recollection that there is already in evidence some correspondence on this. It may be that our files were cleaned out at the time that we delivered these papers to you and that might be the answer.

Q. Does the card itself give any indication for the reason for the red carding? A. Yes, it says, "an apartment house shop," and refers to a letter of the Baltimore Guild.

Q. Calling your attention to Commission's Exhibit No. 132, I will ask you if this letter is the letter you have in mind, the same being a letter from the Baltimore Guild to
12455 Mr. Golby under date of March 28, 1935? A. Yes, that appears to be the letter, Mr. Haycraft.

Q. It was on the basis of that letter that you put the red card in your file?—that you red carded this store? A. Not exactly on the basis of the letter, but on the basis of our standards of merchandising.

Q. It was information that you received in that letter which caused you to do so? A. Yes.

Q. Now, calling your attention to the firm of Turner-Sladin, Daytona Beach, Fla., is that firm red carded in the same category as the previous firm in Utah? A. It is the same thing. It appears in the current record as a blue card.

Q. The blue card has the same significance? A. It has the same significance.

12456 Q. Is it also your testimony that the letters, Commission's Exhibits 999, 1000, and 1001, were used to ascertain the attitude of this firm? A. Well, I do not say that, Mr. Haycraft. I say that that is our procedure. I cannot swear it nor do I believe that there is anybody who is equipped to say definitely under oath that those letters were sent out in every case, but I know that that is our procedure, and I believe that that is correct.

Q. Will you indicate for the record what information you have on that red card with respect to this concern, to save the trouble of putting the red card in evidence? A. The card reads, after the name: "O. K. to ship $6.75, $7.75, $8.75 protectiv affiliates. Does not conform to the standards of fair trade of the F.O.G.A. Take out yellow card and insert red."

Q. What date? A. 10-29-35.

Q. What is the date of the blue card? A. April 30, 1936.

Q. It says what? A. "Fails to co-operate. Do not sell. Refer to the Guild to adjust matters."

Q. Now, calling your attention to the firm of Stenner & Taub, Trenton, N. J., I will ask you if that firm has both 12458
a red card and a blue card in your files? A. No.

Q. What is the status of it? A. The status is the same as the others, but I assume that the red card was in the file and the blue card is now.

Q. In other words, what does the red card show and what does the blue card show? A. The red card reads, after the name: "Refused co-operation by not signing proffered declaration October 16, 1935. Red card O.K'd by Messrs. Mallas, Fox, and Gumprechd.

Q. The blue card says what? A. "Fails to co-operate. Do not sell. Refer to the Guild office to adjust matters." The date is March 25, 1936.

Q. Calling your attention to the firm of Karl Winslow, Evanston, Ill., I will ask you what your records show 12459
with respect to that firm? A. Our records show that this Karl Winslow, Evanston, Ill., is red carded and the notation on the card is: "Do not sell. Speakeasy shop. Does not conform to the standards of fair trade of the F.O.G.A."

Q. What does that mean, "speakeasy shop"? A. Well, a shop that is not a shop, paradoxical but true. In other words, someone doing business in a residence where you ring bells, and come in and out at all hours, and there is

no observance of any laws, sanitary or anything else. That is what we mean by the term "speakeasy shop." Briefly stated, it is an illegitimate business.

Q. I now call your attention to the firm of Worth's at Dallas, Texas, and ask you what your records show with respect to that firm? A. They were red carded on February 6, 1936, and they refused co-operation by not signing proffered declaration of co-operation. Subsequently, on March 26, 1936, that was changed to a blue card.

Q. With the same notation on it as the previous blue cards? A. Yes.

Q. I now call your attention to the firm of Wittenberg's
12461 Fashion Shop, and ask you what the reason was with respect to that retail shop—Wittenberg's Fashion Shop, Milwaukee, Wis.? A. Absolutely exactly the same as the previous ones.

Q. I now call your attention to the firm of the Douglas Shop, Pueblo, Col., and ask you what are your reasons with respect to that? A. Exactly the same as the previous ones.

Q. I now direct your attention to the firm of Davidson Brothers, Detroit, Mich., and ask you what your records show with respect to that one? A. Well, I have a recollection, Mr. Haycraft, that again some correspondence was submitted on this in Detroit, but I am not sure about that, but I can answer your question that it would appear from our records that I have before me that the Davidsons were co-operating with the Guild as of 8-20-35 and that on No-
12462 vember 27, 1935, they were red carded for a breach of their declaration of co-operation; that they were subsequently reinstated and a yellow card was subsequently reinstated, rather, and on the 5th of December, 1935, which on January 8, 1936——

Q. 8th or 18th? A. January 8, 1936, according to this record, a red card was placed back in the file. The last red card says, "See correspondence in the file but I do not see any of this folder."

Q. Is that firm affiliated with Goodwin's? A. I believe they are the same organization, if not the same corporation. They certainly operate together, the same unit.

Mr. Haycraft: I ask to have this document marked for identification.

(The documents were marked for identification Commission's Exhibits 1002-A to 1002-L, both inclusive.)

By Mr. Haycraft.

Q. Will you direct your attention to the Goodwin Company and testify as to what the folder shows as to the red carding and the yellow cards, and so forth in there? A. The experience seems to be the same but the dates are somewhat different. The original yellow card on Goodwin's is August 1, 1935; the first red card is dated September 5, 1935; the next yellow card is dated December 5, 1935, and the existing red card is dated January 18, 1936. 12464

Q. Have you produced any correspondence with the Goodwin firm? A. You have it there.

Q. Showing you Commission's Exhibit 1002-A to and including 1002-L, both inclusive, I will ask you if this file of correspondence is the one which you produced in response to the Commission's subpoena in that regard? A. Yes.

Q. Relating to Goodwin's? A. That is not the complete file but that is this file. 12465

Q. Is that the file that refers to the red carding of that firm? A. Yes, all of these letters do.

(The documents heretofore marked for identification Commission's Exhibits 1002-A to 1002-L, both inclusive, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Mr. Post, I call your attention to the retail firm of Kennedy's Shop, Dallas, Texas, and ask you what your records show in that regard? A. Our records show that this individual was signed up on the declaration of cooperation I believe January 24, 1936, but for some reason that is not included in this file they were red carded on February 24, 1936, and subsequently changed to a blue card on March 30, 1936.

Q. Is there any way you can tell us why the red card was changed to the blue card? A. Yes, this states—no, I do not believe so; you will remember at the time you were
12467 at the Guild office that you inquired in regard to this matter and I have tried to check up since that time but apparently it was because of the result of the shopper. I could not tell exactly.

Q. I will ask you if you will have somebody make a note to check up the reason that the shopper gave in the correspondence. A. That was correspondence, if you will recall, Mr. Haycraft, that you asked us about the time you were in the office, and if you will recall I called in my secretary and they have been unable to find the correspondence on this. It appears that there was some but where it is I do not know.

Q. Just make a note of it and if you can find it I would appreciate it. A. Yes, sir. We have already but we will
12468 check it up once more. This is Kennedy's.

Mr. Keller: What is the date on the red card?
The Witness: February 24, 1936.

By Mr. Haycraft.

Q. Now, directing your attention to Annabelle Mills, Chicago, Ill., what do your records show with respect to that situation? A. This is an apartment house shop which was red carded on February 19, 1934.

Q. What does the red card show with respect to the reason for the red carding? A. The stated reason is that the apartment house shop does not conform to the standards of the fair trade practices of the Fashion Originators Guild of America.

Q. Now, directing your attention to Mace & Taylor, Kansas City, Mo., what do your records show with respect to this concern, and is there any reason for red carding? A. Well, this is one of the situations where a store failed or refused to advise us regarding its policy, and actions, in regard to style piracy. It was red carded on February 6, 1936, which was subsequently changed to a blue card on March 25, 1936. 12470

Q. A blue card is the same blue card as you have already described? A. Yes.

Q. Now, directing your attention to the firm of Queen Frocks, Chicago, Ill., what do the records show with respect to the reason for red carding them?

Mr. Albert: Were they called as witnesses in Chicago?

Mr. Haycraft: I do not think so but I was not there the last day.

A. This is the same sort of situation as I have just described as pertained to the last one. They did not cooperate on design protection.

Q. What is the date of red carding? A. The date of red carding is December 19, 1935, which was subsequently changed to a blue card on March 25, 1936. May I see that for a moment, please? 12471

Q. Yes. What does your red card say with respect to the reason for red carding? A. Well, the card reads "Refused co-operation by not signing the proffered declaration of co-operation."

Q. Did a committee pass on it? A. Yes, Shapero, Mallas, Fox.

Q. They are manufacturers? A. Yes. They are members of the board of governors.

Q. Members of the bo[illegible] of governors? A. Yes.

Q. Directing your attention to the firm of Lord's Dresses, Louisville, Ky., what reason does your record show for this firm's red carding? A. Well, it appears from these records that the New York office for that concern notified us of the store's policy. The card is not dated so I cannot tell the date, but again I would have to check from the record that the store itself repudiated that agreement on February 19, 1936, and at that time the yellow card was taken out and a red card inserted.

12473 Q. Do you have any correspondence in your file with respect to it? A. Apparently.

Q. But that is your recollection, or do you have any recollection as to why or why not this was repudiated? A. No, I have none except, Mr. Haycraft, again you will recall in the office there was some point as to whether you wanted some correspondence immediately before the red carding and this is the way these folders were prepared. I will check back and look in these files if you wish me to see if there is any additional correspondence.

Q. Wherever you have no recollection, will you please get that correspondence, if you can find it? A. I will.

The Witness: Mr. Keller, will you kindly make a note of these things so that we can check them up?

12474 Mr. Keller: Yes.

By Mr. Keller.

Q. I direct your attention to the firm of Lord's Dresses of New Orleans, La. I do not know whether that is the same organization or not, and I will ask what these records of yours show with respect to the red carding of that firm? A. Would you mind letting me see that one of Lord's of Louisville, Ky., with that record on it, please?

Q. Yes. Here they both are. A. There is nothing in these regarding any connection or to indicate that they are the same transaction, but the transaction would make it appear that they are. Lord's of New Orleans also was notified through their New York office of the yellow card and the yellow card is dated February 19, 1936, and that coincides with the Lord's of Louisville. That declaration was apparently repudiated by Lord's of Louisville and by Lord's of New Orleans and changed to a red card on the same date.

Q. Who is their New York office? A. Well, on the card —I do not know—except on the card for the Louisville Lord's the name is mentioned as Sidney Gottleib. 12476

Q. Would it be possible that you had some oral telephone conversation or other oral statement from Mr. Gottleib in respect of the change in the status of this firm? A. Yes, it would be possible.

Q. You do not have any recollection of that? A. I do not have any recollection.

Q. I now direct your attention to the firm of Goldsmith of Pittsburgh, Pa., and ask you what your records show as to what the cause of that firm being red carded? A. Well, it refers to a letter of the Retail Merchants Association, dated March 24, 1934.

Mr. Haycraft: I ask to have this document marked for the first letter 1003-A, and for the second letter 1003-B. 12477

The letters were marked for identification Commission's Exhibits 1003-A and 1003-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1003-B, being an orginal letter from the secretary of the Merchants Association, dated March 24, 1934, attention of Mr. "Golley,"

which was evidently intended to be Mr. Golby, and ask you if that is the letter referred to in your last answer? A. Yes, I believe it is.

Q. And is the reply to that letter made by your office Commission's Exhibit 1003-B by Mr. Golby a carbon copy of the letter which he wrote to the Merchants Association, Pittsburgh, Pa., dated March 26, 1934? A. Yes. It seems to do with an apartment shop.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: No objection.

(The letters heretofore marked for identification
12479 Commission's Exhibits 1003-A and 1003-B were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now direct your attention to the firm of Esther Cantor, Reno, Nevada, and ask what your red card shows with respect to the red carding of that store? A. Well, that is the same situation I previously described where we had no way of being advised or advising our members as to the policy of these stores that were trying to buy, and we issued a red card in this case on February 6, 1935, and on March 25, 1936, that was changed to a blue card.

Q. I now direct your attention to the Helene Shop, Stamford, Conn., and ask you to testify what your record shows with respect to the red carding of that store? A.
12480 My records show that this is an apartment house shop; that the red carding was originally issued on May 9, 1935, and that we had no signed declaration of co-operation at that time, and the red card was subsequently changed to a blue card on March 25, 1936.

Q. Now, I call your attention to the firm of Curtis Styles, Spokane, Wash., and ask you the same question, what does your record show in regard to that? A. A re-

usal—a reference to the file indicates that they refused to ile advice with us regarding its policy of protecting style riginations. The red card was issued February 6, 1936, nd changed to a blue card on March 26, 1936. The same onditions and situation as has been described for the thers.

Mr. Haycraft: May it please your Honor, I have now reached a convenient stop to adjourn, and inasmuch as we have reached an adjourning point I ask that we adjourn until to-morrow morning.

Examiner Averill: Gentlemen, we will adjourn to reconvene to-morrow morning at 10 o'clock.

12482

(Whereupon, at 4.30 o'clock P. M., December 14, 1936, the hearing in the above-entitled matter was adjourned.)

12483

Room 901, 45 Broadway,
New York, N. Y.,
December 15, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

PROCEEDINGS.

12485 Examiner Averill: Proceed, gentlemen.

Mr. Haycraft: If your Honor please, I will recall Mr. Aaron Rosenstein back on the stand.

AARON ROSENSTEIN resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. The last question was whether you had registered designs and you stated that you had. A. Yes.

Q. When did you first register your designs with the Industrial Design Registration Bureau? A. We registered jacquard designs when the N.R.A. was in business. It was in the code to register them.

12486 Q. You registered jacquard designs? A. Yes, sir.

Q. Did you register any other designs at that time? A. No. We were not making prints at that time so we had no need to register.

Q. What else were you making? A. We were making tinsel fabrics.

Q. Tinsel fabrics? A. Yes.

Q. Did you register your tinsel fabrics also? A. No. They were excluded from registration.

Q. When did you start making prints? A. Last year.

Q. What time? A. Around October.

Q. Can you give me any more definite time than that? A. I cannot tell you any more definite date than that. We started building our line in October, 1935.

Q. That is, your line of prints? A. Yes.

Q. You had not been handling or making any prints before that at all? A. No, sir.

Q. Is there any difference in the class of trade to whom you sell prints, tinsels and jacquards? A. No, we sell the same thing to all the trade that we sell to.

Q. In other words, your same customers buy prints that buy tinsels? A. Yes. 12488

Q. That buy jacquards? A. Yes.

Q. How long after you began to manufacture prints did you register your designs with the Industrial Design Registration Bureau? A. We registered from the beginning.

Q. Why did you do that? A. Because it was the procedure of the silk manufacturers to register prints. We followed suit.

Q. Had you registered your tinsel and jacquard designs before that time? A. No, not before that.

Q. Did you thereafter register them? A. Yes.

Q. When did you start registering your tinsels and jacquards? A. This year.

Q. What time? A. We started making our samples, I believe it was, in March and April. 12489

Q. Both of jacquards and tinsels? A. Yes, sir.

Q. Why did you continue to register them in March and April of this year? A. Our customers would ask us if we would register them and I decided it would be to the best interests of our concern that we register them.

Q. Who were your customers at that time? A. We sell the entire cutting-up trade, or better trade.

Mr. Keller: Louder, please.

The Witness: We sell the entire cutting-up trade, or better trade.

By Mr. Haycraft.

Q. What customers asked you to register your designs of jacquards and tinsels with the Industrial Design Registration Bureau? A. There is no one in particular. My partner went around and had a talk with a few of them and he decided when he came back to register the jacquard designs.

Q. Do you know with whom he talked to? A. No, I do not.

Q. Where did he go? A. In to the trade.

Q. Who are your principal customers for jacquards and tinsels and who were they in March and April of this year?

12491 A. You want the names of them?

Q. I want the names. A. —or do you want the trade?

Q. I want the names. A. Well, we sell most everybody in the better brackets, as we would call it.

Q. By "better brackets," what do you mean by that? A. People that make dresses from $16.75 up.

Q. Are they known as Guild manufacturers? A. I believe they are.

Q. Why did you not register these designs for jacquards and tinsels that you had been making during the past? A. What?

Q. I believe you said you had registered your jacquards over the period of time the N.R.A. was in effect? A. Yes.

Q. What period of time was that? A. I believe it started

12492 in 1933.

Q. And ended when? A. I believe they declared it—

Mr. Keller: —unconstitutional.

A. —when they——

Q. Some time in 1935? A. Yes.

Q. Why did you not register your jacquard designs between the time that the N.R.A. ended and March of this year? A. It was not necessary.

Q. Why was it not necessary? Explain that. A. I did not quite get the question.

Q. Why was it not necessary? Explain the reason. A. It is not necessary to register them until—at all at any time, in fact, but we have done this voluntarily for what we think is the best interests of our concerns—to register our designs.

Q. Did any manufacturer ask you to register designs prior to March of this year? A. Yes.

Q. When? A. In the past few years.

Q. For the past few years? A. For the past few years, yes.

Q. But it was not until March of this year that you decided to do it? Is that right? A. Yes, sir; that is right. 12494

Q. Had it been customary in the trade for textile manufacturers to register jacquards with this Industrial Design Registration Bureau prior to March of this year? A. Yes.

Q. Now, the tinsel designs, you never had registered them with the Industrial Design Registration Bureau prior to March of this year, had you? A. No.

Q. Had you been requested to do so by manufacturers of garments, garment manufacturers prior to March of this year? A. We had not been requested at any time by them—by that, I mean that no one forced us to do it. We done it of our own free will for the best interests of the business, of our business.

Q. Well, was there any change in the past in the way business was done in March of this year that made it necessary for you to do it? A. No. We started the season with registration, or registering of our tinsels, jacquards, and prints, and we had a very successful season. 12495

Q. Are there foreign manufacturers of those fabrics? A. Yes.

Q. Had they been registering their designs with the Industrial Design Registration Bureau? A. Yes.

Q. Had they had anything to do with your decision, or did that have anything to do with your decision not to register your designs prior to March, 1936? A. Yes.

Q. What did that have to do with it? A. Well, they are permitted to bring over a half yard sample and register it with the Design Registration Bureau and that prevents American manufacturers from making it, and we did not think it was fair.

Q. That is not true with respect to prints, is it? A. The same thing applies to prints.

Q. To your knowledge, how long has this Industrial Design Registration Bureau been operating? A. For registering designs?

12497

Q. For the registering of designs and for the registering of fabrics? A. It started compulsory with the N.R.A., but prior to that, I believe, to the best of my knowledge, the Design Bureau was operating.

Mr. Albert: I move that the answer be stricken out as the question was to his knowledge when the Registration Bureau started, and the witness' answer is purely a guess.

The Witness: It is a guess.

Examiner Averill: Read the question and answer.

(Question and answer were read.)

The Witness: I do not know. I would rather not answer that question.

12498

Examiner Averill: If you do not know, it is always the best thing to say so—always.

Q. Mr. Rosenstein, I call your attention to the following language in Commission's Exhibit 250, which is known as the pledge of the members of the Guild with the Textile Division of the Fashion Originators Guild of America, and which reads as follows: "1. That on and after January 15, 1936, we will purchase only such prints, jacquards, metals, and laces and embroideries which bear registration num-

bers showing that the designs have been registered at the Design Bureau of the National Federation of Textiles, or the Fashion Originators Guild of America, Inc. Should we for any reason purchase or use an unregistered design, we will upon instructions from you authorize a representative to return them." I will ask you whether or not the substance of that passage I have just read to you was ever brought to your attention by anyone? A. Yes.

By Mr. Haycraft.

Q. Who brought that to your attention? A. Well, I believe we saw it in the papers.

Q. What papers? A. In "Women's Wear." 12500

Q. A public announcement to the trade? A. Yes, sir.

Mr. Haycraft: I ask that this be marked for identification, this being a copy of a letter, one page, dated December 17.

(A letter was marked for identification Commission's Exhibit 1004.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1004 for Identification, which purports to be a copy of a letter from Irene L. Blunt, and addressed to the members of the trade, and dated December 17, 1935, and ask you whether you ever saw that or the original of that?

12501

Mr. Kaufman: May I see that, Mr. Haycraft?

Mr. Haycraft: No, not until the witness gets through with it.

Mr. Kaufman: I think I can help the witness out.

(Mr. Kaufman thereupon turned the document over and indicated certain writing on the back of the document to the witness.)

A. Oh, yes, that is the one we sent to you. This is ours. This is the one we sent to you.

By Mr. Haycraft.

Q. In other words, you saw the original of this when it was gotten out by your Registration Bureau? A. I believe we did.

Q. Did you receive the original of which this is the copy? A. Yes, I believe so.

Q. On or about December 17, 1935? A. Yes, sir.

Mr. Haycraft: I offer this in evidence.

Mr. Bruce: No objection on the ground it is a

12503 copy.

Examiner Averill: Gentlemen, the paper in question which has been marked Commission's Exhibit 1004, for identification, and which purports to be a copy of a paper on the letterhead of the Industrial Design Registration Bureau, New York City, addressed to the trade, and bearing date December 17, 1935, and signed apparently by Irene L. Blunt, Director, will be received in evidence and marked Commission's Exhibit 1004.

(The letter heretofore marked for identification Commission's Exhibit 1004 was marked as an exhibit and received in evidence.)

12504 Mr. Albert: I am merely objecting so that it will not be thought that I let it go in as binding upon the F.O.G.A. by default. I am objecting on the ground that anything said in there is made without any authority by the Fashion Originators Guild of America, and is in no way binding upon it.

Examiner Averill: If that is the case, I will as a matter of form, overrule the objection and the paper in question has already been received in evidence and has heretofore been marked Commission's Exhibit 1004.

Mr. Albert: That is the reason I made the objection after you had received it.

Mr. Kaufman: That is true, your Honor.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. Between January 1, 1936, and the date that you first registered your jacquards and tinsels in March, 1936, did you have any difficulty in selling those fabrics to members of the Guild? A. We were not making tinsels.

Q. No? A. They were out of season.

Q. When did you start making them? A. We started making our line in March and April. 12506

Q. Then, as soon as you started making them you registered them? A. Yes.

Q. Is it your testimony that you never attempted to sell Guild manufacturers tinsels and jacquards between January 1, 1936, and the date you first registered with the Industrial Design Registration Bureau? A. Yes, we did not sell any.

Q. Is that your recollection? A. No, we did not offer any for sale prior to that time. We did not make them.

Q. What time of the year do you usually make jacquards and tinsels?

Mr. Feldman: Louder, if you please. We cannot hear you at all.

12507

By Mr. Haycraft.

Q. What time of the year do you usually make jacquards and tinsels? A. We start about March making sample blankets.

Q. Over what period of time? A. The first line sells in June—it runs for about six months.

Q. Prior to the time that you began registering your jacquards and tinsels, did you show any of your line to

any garment manufacturers that were members of the Guild? A. No, it was not ready. It was out of season.

Q. I will ask you the same question with respect to your prints. A. We had registered the prints.

Q. You had registered your prints in October? A. Yes.

Q. Prior to the time that you registered your prints, did you attempt to show your line of prints to garment manufacturers who were members of the Guild? A. We did not have any. That was our first entrance into the print business.

12509 ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, continuing the testimony that we were pursuing yesterday, I call your attention to the Chelsea Specialty Shop, Atlantic City, N. J., and I will ask you what your records show with respect to the reason why this firm was red carded? A. Well, our records show that this shop originally notified us of its co-operation August 10, 1933, and on December 4, 1934, apparently we were advised that they carried only bathing suits. Furthermore, that they did not operate from commercial premises
12510 at the Hotel Chelsea—but are a commissionaire shop who were attempting to purchase dresses for individual customers and not for stock, and what is known in the trade as a commissionaire, they were an apartment house shop and they were known in the trade, as I say, as a commissionaire business. In other words, they take a customer around the market and make a selection and the merchandise is billed to them and they charge the customer something above the cost, a fixed percentage usually. As a re-

sult of that investigation and information, on January 3, 1935, they were red carded and on April 30, 1936, was changed to a blue card.

Q. And the record shows what the blue card means? A. Yes, the same as I testified to heretofore.

Q. I now direct your attention to Carp's, Inc., St. Louis, Mo. and ask you the same question. A. This store apparently started to co-operate in our program of design protection on August 20, 1935. The record shows that on December 18, 1935, they were red carded. The card indicates "Refused co-operation by not signing proffered declaration of co-operation." That red card was changed to a blue card on March 25, 1936.

12512

Q. I now direct your attention to the firm of Carrollelan's, Salt Lake City, Utah and I will ask you the same question with regard to that particular one as I did to the previous one. A. This is the same situation as the previous one. I get from the record—I am sorry, upon inspection of this record, I cannot give you the original date of the red carding. It is not noted, but the blue card is dated March 6, 1936. On May 20, 1936, a blue card was changed and a yellow card inserted indicating that the store is now co-operating with us in our program.

Q. Do you have any signed declaration of co-operation from this organization? A. Well, I assume that we have some knowledge or information on it, yes.

Q. I would be glad to have you look that up and see whether the declaration of co-operation was signed. A. 12513
Well, I am having all of these things looked up because, as I pointed out to you yesterday, our files are not complete.

Q. I now direct your attention to the firm of Stern & Company, Chicago, Ill. and ask you the same question with respect to them. A. Well, this record, plus my recollection, is that there is no Stern & Company and that this is one of the situations that I described to you the other day,

of people who have gone around the market under fictitious names having signed what appeared to be memoranda and that the person represents himself as being in business and thereby sees the lines of the manufacturers.

Q. What notations do you have on that? A. "Apparently for the purpose of sketching or copying merchandise, of making copies."

Q. What notation do you have with further reference to that? A. The red card is dated no particular date, as I see it here, but has this statement on it, "Have representative of this firm get in connection with the Guild office when in town." It also says, "Has been cal''ng on junior misses houses and the mail addressed to him has been returned—it is signed "Reg.-Sut e-Fox," also received inquiry in mail for dresses and so forth. Miss Killian's investigation made and found that the name on the board gave the room as No. 1110, however the young lady in the office said their name is the Triangle Sales Company and they have nothing to do with Mr. Stern and do not know what his business is. The renting man said that he was a new tenant but does not know his business.

12515

Q. Who is Miss Killian? A. Miss Killian at that time was the Guild shopper in Chicago.

Q. I now direct your attention to the firm of I. J. Shearer Company of Baltimore, Md. and ask you the same question with respect to that concern?

12516

Mr. Haycraft: First I ask to have these documents marked as follows: I ask that a copy of a letter dated November 1, 1935, from Miss Eltin Lapedus to Mr. Jack Goldston, Fashion Originators Guild be marked Commission's Exhibit 1005-A for Identification. I ask that a copy of a letter under date of November 6, 1935, from Fashion Originators Guild of America, by J. M. Golby, executive secretary, to I. J. Shearer & Bro., 105

West Lexington Street, Baltimore, Md., be marked Commission's Exhibit 1005-B for Identification.

(The letters were marked for identification Commission's Exhibits 1005-A and B.)

By Mr. Haycraft.

Q. What do you say as to that? A. Well, it appears from these records that on October 25, 1935, this retailer signed a declaration of co-operation. Our members were notified of that and a green card which indicates merely that they are not members of the local retail guild was issued. This was brought in apparently and this party bought some goods from one of these affiliates and from 12518
the attached correspondence it would appear that they cancelled their order and advised us that they were not interested in our price goods which we corresponded with them about and then they wrote to us further and then we notified our members on a red card on November 7, 1935, with instructions to take up the green card, or take out the green card and insert the red card.

Q. I show you Commission's Exhibits 1005-A and B, both for Identification and ask you if this is a copy of the correspondence between yourself and this dealer? A. Yes.

Q. That you referred to? A. Yes, I believe it is.

Mr. Haycraft: I offer these in evidence.

12519

By Mr. Haycraft.

Q. I notice this is signed by Mrs. Lapedus, is she your shopper in Baltimore, Md.? A. She is.

Mr. Keller: No objection.

Examiner Averill: Gentlemen, the papers heretofore marked Commission's Exhibits 1005-A and 1005-B, will be received in evidence and marked Commission's Exhibits 1005-A and 1005-B.

(The papers heretofore marked for identification Commission's Exhibits 1005-A and 1005-B were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now call your attention to the firm of Sally's, Baltimore, Md. and ask you the same question with respect to that firm? A. Well, this correspondence file here indicates that on January 4, 1936, a member of the Guild, Grossman & Greeneberg, asked us to send a declaration to Anna—I just do not make out the last part of the name, in Baltimore. He apparently believed that this was a firm
12521 in the business of retailing garments, dresses. That, we did. Apparently he received back the signed declaration on January 9, 1936. We notified the Baltimore Guild about that and discovered that there was no shop there but that a man by the name of Louis A. Salawetkel was in the automobile salvage business, and his wife by the same name brought up the original correspondence and apparently it had simply come about that he had come up to the market and was trying to buy at wholesale from manufacturers by representing himself to be a retailer. As a result of that, on the 14th of January, 1936, a red card was issued against Sally's which subsequently was changed to a blue card. We have heard no more since then from that concern, if it is a concern.

12522 Q. I now call your attention to a retailer by the name of W. J. Ruggles, Tonawanda, or, I believe, it is Towanda, Pa. and ask you the same question with respect to that firm. A. Towanda. This record indicates W. J. Ruggles of Towanda, Pa., advised us of their policy regarding style piracy on the 8th day of November, 1935. We apparently received an acknowledgment from them of their communication which they replied to on November 23. As a result of that correspondence they advised us on Novem-

ber 30, 1935, to cancel their declaration, and the record shows that on the 4th day of December, 1935, a red card was issued.

Q. I now direct your attention to the firm of Marie Leavell, Dallas, Texas. A. Well, it appears from this file that Marie Leavell was conducting a business from her home, and that when we were notified of her desire to cooperate with the Guild, we did not have any shopper in Dallas, Texas, at the time, we wrote to numerous retailers, in order to find out whether or not the facts as we understood them were correct. It appears from this record that she does, as I stated before, operate an apartment house shop. Therefore, it appears that we were notified there- 12524
after of this fact on the 8th day of August—no, August 17, 1933. It would appear that on March 16, 1936, that she is either in business of a shop of some kind, or something that I cannot tell now, but in any event a yellow card was issued as of this date.

Mr. Haycraft: I ask to have this document marked for identification.

(Documents were marked for identification Commission's Exhibits 1006-A to 1006-M, both inclusive.)

By Mr. Haycraft.

Q. Mr. Post, I show you Commission's Exhibits 1006-A 12525
to 1006-M, both inclusive, for identification and ask you if this exhibit consists of correspondence between the Guild and Dallas, Texas, retail dealers and taken from your files? A. Yes, these are copies of correspondence taken from our files.

Mr. Haycraft: I offer them in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1006-A to 1006-M were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now direct your attention to the retailer Ed Schuster Company, Milwaukee, Wis. and ask you to state in answer to that as you have in answer to question along a similar line with regard to other retailers? A. The file indicates that Schuster's originally notified us of their co-operation on July 17, 1933, and that we had considerable correspondence with them during the month of January,
12527 1936, as well as receiving some reports from the shopper at Milwaukee, Wis. As a result of that, on February 11, 1936, a red card was issued.

Mr. Haycraft: I ask to have this "Report of Refusal or Failure to Co-operate" marked as Commission's Exhibit 1007 for Identification.)

(The paper heretofore marked for identification Commission's Exhibit 1007, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I now direct your attention to the firm of Esterlene Frocks, Birmingham, Ala. and ask you the same question
12528 with respect to that company. A. This is a firm that according to these papers here, and from my own recollection, just buys goods and never pays for them. They had originally indicated anti-piracy co-operation on April 17, 1935. We found, however, that, as I said before, that all the people that they had bought from during that period, they did not pay, and they would come back and go to new people, so we issued a red card on October 2, 1935, asking our members to have that retailer communicate with the

Guild office should they come in, and before they were shown any merchandise. The red card was subsequently changed to a blue card on April 30, 1936.

Q. Mr. Post, is there any rule or regulation in the Guild that——

Mr. Keller: Yes, there is.

By Mr. Haycraft.

Q. —authorizes the insertion of a red card for the reasons stated?

Mr. Albert: For what reasons?

12530

By Mr. Haycraft.

Q. Failure to pay your bills? A. The answer is yes. I should say the simple ruling of reason, if you do not get paid for your goods there is not much sense in shipping them out.

Mr. Albert: That was not an A.M.C. store, was it?

The Witness: No.

Mr. Haycraft: I ask to have the following documents marked for identification.

(The documents were marked for identification Commission's Exhibit 1008-A to 1008-E, both inclusive.)

12531

By Mr. Haycraft.

Q. I show you Commission's Exhibits 1008-A to E and ask you to identify this as documents taken from your files with respect to the Esterlene Frocks account? A. Yes. I identify that as copies in our files and these are the copies that were given you. Is that all of it? I do not know.

Mr. Haycraft: I offer these in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1008-A to 1008-E were marked as exhibits and received in evidence.)

The Witness: You understand, Mr. Haycraft, that the situation on that is that there is a blue card now.

By Mr. Haycraft.

Q. At the present time? A. Yes. That red card issued
12533 merely stated that they should communicate with our office.

Q. I direct your attention to the retailer, The Miller-Wahl Company, New York City and Kansas City, Mo. and ask you to give the same answer as you have to previous retailers. A. This file is headed—I hate to keep repeating this.

Mr. Albert: May I suggest that perhaps you may be able to say the same answer to the same question.

The Witness: I cannot in this case.

Examiner Averill: You cannot because the question there is reference to the things done in that particular intimate case.

12534 The Witness: I do point out, however, again, that Mr. Haycraft asked us for the correspondence directly incident to the red carding of these accounts. In some cases there are things that have extended over a long period of time that did have to do with the situation and I am answering purely from the files as they appear here. In this case, it appears that the Miller-Wahl Company, which operate a chain of stores, has under the name of

the three sisters, I believe, signed declarations with the Guild on January 2, 1935. It appears that in November, 1935, at least, one of their store managers claimed to know nothing about the policy of Miller-Wahl regarding style piracy and failed or refused to remove copies from sale.

Q. Failed to remove copies from sale? A. Yes. In this articular he did both, he failed and refused to remove opies from sale.

Q. I notice you use the phraseology "failed or refused"; that what you mean? A. Yes, failed or refused. They pparently agreed to take some of this off-sale and they 12536
hen failed to do so, and then they also refused to take ome others off. Then in December this correspondence ndicates that a similar situation prevailed in their Chiago store, which I believe is their headquarters after correspondence and telephone conversations——

Q. Would you mind attempting to state what their contention was, if any, with respect to this last transaction hat you refer to? A. The one in Chicago was that their osition was that they would not protect any merchandise rom style piracy if the individual manufacturers who riginated the style would not agree with them to sell them he original. In other words, they said, "If you do not ell us the original, regardless of how you may feel about for your individual business or what your individual olicy is, we are going to get it and carry copies of those 12537
oods." So, as a result of this correspondence, conferences, and telephone messages in which they maintained hat position, on December 18, 1935, the retailer's red card as issued.

Q. What was the fact with respect to whether or not ertain Guild manufacturers would not sell this chain of ores? A. Well, from this record it appears that a Guild ember in Chicago, the Junior Guild, did not want to sell hem its merchandise, that particular merchandise.

Q. Does the correspondence disclose why? A. I do not believe that this correspondence does. If you have it there?

Q. Do you know, as a matter of fact, why? A. Oh, goodness, no. I could not answer why.

Q. Do you know whether this customer—that is, to say, the Junior Guild, had the policy of confining its line to certain retailers or certain dealers in certain localities? A. I do not even know that. They follow the individual policy which the firm decides it is best for its own business.

Mr. Albert: Is this one of the different kind of cases?

12539 Mr. Haycraft: Yes.

Mr. Albert: I suppose this is supposed to be a red card without reasons?

Mr. Haycraft: I will attend to the reason for it in argument when that time comes. Do not worry about that.

Mr. Feldman: That is what we are worrying about.

By Mr. Haycraft.

Q. I call your attention to the firm of Horne & Fried, Pittsburgh, Pa. and ask you the same question with respect to that firm? A. This case seems to be similar to others that I have already described, in that this man ap-

12540 parently notified us of his policy on July 12, 1935, and then advised our shopper that he does not buy our goods and is not interested in the Guild program so we wrote to him seeking to confirm that fact, or setting the facts as we understood them, and subsequently on September 20, 1935, or about that time, we issued a red card.

Q. I now call your attention to the Pallais Royal account, Houston, Texas and ask you to state the facts with respect to that. A. Well, this appears to be the case of a

retailer who was co-operating with the Guild as of November 9, 1935, but when the shopper in December, 1935, pointed out some copies that he had there on hand he not only refused to remove them from sale but put them in the window.

Q. Then what happened? A. Well, we were advised of that and we wrote to him about it and he told our shopper that he was not interested in Guild merchandise or being what he called a "member of the Guild"; apparently got in touch with our New York office who agreed to this—or, rather, who according to this notation, thought that arbitrary, they thought it arbitrary, but I do not see how they could say so because they did not want to co-operate 12542
and they put the goods in the window.

Mr. Albert: Startling new, that case, I call it.

Mr. Haycraft: I suggest counsel be sworn and take the witness stand if he wants to testify.

Mr. Albert: I will let you do the testifying.

Mr. Haycraft: I would be obliged if you would let the witness do it.

Examiner Averill: Gentlemen, please stop that and proceed.

By Mr. Haycraft.

Q. Directing your attention to the account of Florence Parlott, Baltimore, Md., I will ask you the same question with regard to that? A. Well, the record does not show 12543
how we came to inquire about Florence Parlott, but it does appear that we were brought in direct contact with her at some time or another. In other words, we were advised by the Baltimore Guild after that on February 19, 1934, that this was a Baltimore dressmaker operating a dress making business operating from a private residence where the living room had been converted into a display room, and the other rooms used for dressmaking, although

they may have lived there. The red card was issued on February 19, 1934. Now, it appears that the first letter we had from Florence Parlott is dated May 6, 1936, in which she wanted to know why they were red carded. We knew that they had been advised that they had been red carded by the attorneys for Wm. Filene's Sons & Company, Boston, Mass., because they were writing to the red carded stores. That seems to be their only interest in the entire transaction. We replied to that letter and they never replied to us.

Q. Calling your attention to the firm of Holman's Department Store, Pacific Grove, California, I will ask you
12545 the same question with respect to that? A. Well, it appears that this was a firm who bought some merchandise from one of our members; that is, attempted to buy some merchandise, and that the member wrote to them enclosing a declaration of co-operation and they replied by stating the reasons why they would or could not co-operate with the Guild. That letter was turned over to us and we made a detailed reply. As a result of their initial decision, it appears from this record that they were red carded on June 27, 1935, which was changed to a blue card on March 26, 1936, and on April 8, 1937, they apparently—

Q. When? A. April 8, 1936, I beg your pardon, they apparently agreed to co-operate because a yellow card has been issued.

Q. Have you a copy of their agreement? A. No, I do
12546 not have it here.

Q. Will you look that up for me? A. Yes, sir; I will.

Mr. Haycraft: The hour now being 12.30, I suggest that we recess until 2 o'clock, if your Honor please.

Examiner Averill: We will take a recess until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

ALBERT M. POST resumed the stand and testified further follows:

irect examination (continued) by Mr. Haycraft.

Q. I now call your attention to a dealer known as rances Malsh of Chicago and ask you the same question I have asked previously with respect to the previous alers. 12548

Mr. Albert: This was the deaf woman that was in Chicago and that testified?

A. This apartment house shop in Chicago was red rded on August 22, 1934. I do not know whether all of is correspondence is complete. Some of it is already evidence but I do recall independently that this is a oman, I believe, who testified that she had not even an artment house shop. The woman goes around peddling ods with a car. Yes, I am quite sure—at least, that is, do not remember whether there is any testimony to that ect or not.

Mr. Haycraft. 12549

Q. You mean by that that she goes to private homes and es orders at those homes for dresses and then places e orders with the manufacturers, or attempts to do so?

Well, she might do that, or she might sell the garments ectly, the particular garment that she brings along, . I am not sure about that. She can do either.

Q. What does she say in her letter that she does?

Mr. Keller: There is some correspondence in the record.

Mr. Haycraft: I withdraw the question.

By Mr. Haycraft.

Q. I will ask you whether this account was red carded and if it has been blue carded what the steps were and what the status is at the present time? A. It appears from the file that it was red carded on August, 1934, and the file has never been changed.

Q. So she is still red carded? A. She is still red carded?

Q. Yes. A. Just a moment, please.

12551 Q. Yes. A. It seems to me that is the woman who peddles goods. Yes, that is correct.

Q. Now, I call your attention to the firm of Majestic Dress Company, Boston, Mass. A. Yes.

Q. I will ask you the same question with respect to them. A. My answer is made purely from what these files are, or on the other hand, if I have an independent recollection, as the case may be.

Q. Just what the files show, and then your independent recollection, but just make it clear on the record which way it is all right. A. All right.

Q. Now, if you will answer the question. A. Just a moment, please.

Examiner Averill: Off the record.

12552 (There was a discussion off the record.)

A. Shall I answer the question?

Q. Yes. A. Well, it appears from the correspondence in the file some one by the name of Albert Stern signed a declaration of co-operation representing themselves to be associated with the Majestic Dress Company of Boston, Mass., on or about June 19, 1935. Notice was sent to our members and a yellow card as of that date issued. In

ust, 1935, it appears that a question was raised about Majestic Dress Company being in the retail business at is, whether or not they were in the retail business, we discovered that they were manufacturers and they no retail business. We wrote them seeking informa- on that, to which they replied that they did not know Albert Stern was; that he was not a representative heirs; and I believe the correspondence indicate that were not buying any merchandise from our members, ad any need for it. The red card was issued, as I before, August 17, 1935, and we placed on April 30, , because at that time it was changed to a blue card.

. I now direct your attention to the firm of McGlenn 12554
cks, Minneapolis, Minn. and ask you the same question respect to them. A. Well, this file of correspondence cates that the McGlenn Frocks shop of Minneapolis, n., knowingly was selling copies of Fashion Origina- Guild of America members' merchandise, and when it called to their attention they refused to remove them sale. They were red carded on the 3rd day of Janu- 1936. On the 25th of March, 1936, that was changed blue card, and it appears from this file that it was ged back to a yellow card on April 22, 1936.

Does the file indicate whether the declaration was ed at that time or not? A. Well, it indicates that it

But there is no correspondence? A. I would say 12555
I believe that that was so, that the declaration of co- ation was signed earlier—the correspondence indi- that they had never signed one. I am just a little as to this thing.

I will be glad to have you look that up and give us y of it if you have such a copy. A. Yes. I will look that further.

The Witness: Mr. Keller, will you please check up on that?

Mr. Keller: How do you spell that, M-c-G-l-e-n-n? Or is it M-c-G-l-y-n-n?

The Witness: It is either McGlenn or McGlynn.

Mr. Haycraft: One or the other.

By Mr. Haycraft.

Q. I now direct your attention to the Herz Hat Shop, St. Louis, Mo. and ask you the same question with respect to that dealer. A. I am afraid I cannot tell you much about this. It appears that a yellow card was issued on the 26th day of July, 1935, and that a red card was issued on the 18th day of December, 1935, and the red card states
12557 that the reason is that they refused to co-operate by not signing the proffered signed declaration of co-operation, and that that red card was changed to a blue card about the 20th day of March, 1936.

Q. I now direct your attention to the firm of Hahnemann's Dry Goods Company, Jonesboro, Arkansas. A. It appears from this file that on January 24, 1935, a Miss Hess, the New York buyer from Felix Lilienthal's office, who were then the resident buying office for the Hahnemann's Dry Goods Company, signed a declaration and our members were notified accordingly on December 10, 1935, and we received a letter from this store asking who had signed the declaration of co-operation. When we advised them that, after an exchange of several letters, they re-
12558 quested us to withdraw the declaration and our members were notified by red card on December 10, 1935, which was subsequently changed to a blue card on March 24, 1936.

Q. That letter is November, 1935; is that the date of the letter? A. What did I say it was?

Q. Well, I took the date from the red card, but the correspondence started in November and there apparently were two declarations signed, but as to any other one of them or, in fact, as to either one of them I cannot tell you

as to anything about the date because neither one of them was dated and therefore I cannot tell you anything about the date of either of those.

Q. I see. At any rate, that was the actual situation as a result of the correspondence? A. Yes, that was. They finally wrote us that no one was authorized to sign and that they did not wish to co-operate, in words or in substance.

Q. I now direct your attention to the firm of Gately Clothing Company, Minneapolis, Minn. and ask you what the facts are in regard to that? A. Well, the Gately Shops, as indicated by this folder, are according to my recollection men's stores that operate in several cities, and 12560
they put in women's goods. I think there is one in Detroit and Kansas City also, in addition to the ones that you have here.

Q. What is the situation there? A. The record seems very short and very clear. In January, 1936, we wrote sending them a copy of the declaration and that letter of theirs indicates that they do not want to co-operate.

Q. What did they say in that letter? A. "We do not wish to join the Guild."

Q. What else does it say? A. "If you will be good enough to send us a list of the members we will refrain from buying from them in the future." The red cards were issued in the case of Detroit on January 22, 1936, and blue cards—subsequently, blue cards were issued on the 26th, and in the Minneapolis store December 26, 1935, red 12561
carded and blue carded on March 24, 1936.

Q. That seems to be a concern who at no time signed a declaration of co-operation? A. Yes.

By Examiner Averill

Q. They at no time signed a declaration of co-operation? A. No, sir.

Q. And when you sent them a declaration of co-operation they wrote to you and told you they did not want to buy from you. I do not now understand why a red card was issued under those circumstances.

Mr. Haycraft: It is not very clear.
The Witness: Here is the situation.
Examiner Averill: This may be off the record.
(There was a discussion off the record.)
Examiner Averill: Back on the record.

By Mr. Haycraft.

12563 Q. It might be well to clear up a little of this on the record. I will ask you whether or not this is one of the firms that you sent out the form letters about which you testified in your former testimony? A. I believe so. One of them is attached to these letters. Of course, Mr. Haycraft, I can answer that, but I will say to you in all cases that these letters have gone out, generally speaking, but I can be sure of it in this case because the letters are attached.

Q. I see. Now, I direct your attention to the firm of Hertz-Lang, also known as the Florence Hertz-Hazel Lang, Chicago, Ill. I think that is one of the cases that we talked about. A. It is.

Mr. Haycraft: I ask these documents be marked
12564 Commission's Exhibits 1009-A to 1009-J, both inclusive.

(The documents were marked for identification Commission's Exhibits 1009-A to 1009-J.)

By Mr. Haycraft.

Q. First, I will ask you the date of the red carding of this account. A. January 9, 1936.

12565

Q. What does the red card say about it? A. This firm not up to the standard of fair trade of the F.O.G.A.

Q. I show you Commission's Exhibits 1009-A to 1009-J for Identification and ask you if this is the file of correspondence taken from the records with respect to this account? A. These are copies of letters taken from our files. I do not believe that this—without checking the dates, I do not believe that this is all of the correspondence that we have had with this particular firm.

Q. This is the correspondence that would have to do with the red carding of this firm? A. In my judgment, I would say yes.

Q. You feel that this is sufficient? A. Yes, I think so.

12566

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Averill: Gentlemen, the papers in question which are bound firmly together and have been marked Commission's Exhibits 1009-A to 1009-J, will be received in evidence and marked Commission's Exhibits 1009-A to 1009-J.

(The documents heretofore marked for identification Commission's Exhibits 1009-A to J, both inclusive, were marked as exhibits and received in evidence.)

The Witness: The reason I asked for it back was because I notice that the date of the record is 1936 and this particular Hertz woman was then notorious as a speakeasy shop when I was in Chicago in Mandel Brothers six years ago, and I cannot understand why the card should be dated that date. There must be some back file on that.

12567

By Mr. Haycraft.

Q. You do not think that is the first date that you red carded her? A. Well, I would doubt it, but I would say

if that is true then I think our system fell down in this particular case because she was advised apparently by some agency of the Government.

Q. There is one in here dated January 6, 1935, and the next one is January 8, 1936; this is the one of January, 1936. A. That is the one that—yes.

The Witness: Mr. Keller, I would like for you to take these and check these up.

Examiner Averill: Commission's Exhibits 1009-A, etc., have been temporarily withdrawn in order to check up on some of the dates concerned therein but will be returned to the record promptly.

12569

(There was a short recess taken. The exhibits were checked and returned to the record.)

By Mr. Haycraft.

Q. I call your attention to a firm named "Lord's," having stores in Birmingham, Ala., Atlanta, Ga. and Knoxville, Tenn. and I think they also have a store in Milwaukee, Wis., by the name of Herold's. A. Yes.

Q. I will ask you the same question I have been asking you with respect to stores under the name of Lord's. A. Well, it appears from this record that a declaration of co-operation was signed and given to us by one Emanuel Hirsch on or about July 26, 1935, under the name of Lord's & Gloria Apparel Shops, apparently one company, and

12570

that during the fall season they had various transactions in their stores when they failed or refused to remove copies from sale and their managers claimed that they knew nothing about co-operating with the Guild and in December we got in touch with Mr. Hirsch who had signed the declaration and brought to his attention the facts and it would appear, in any event, they felt unable to—we were unable to get any response from him whatsoever, so

12571

on the 27th day of December, 1935, the stores were red carded although the card was dated and delivered to our members on the 30th of December.

Q. What was the situation with respect to the Herold Stores in Milwaukee, Wis.? A. I do not see anything in this file yet.

Q. Look further and you will find it. A. Yes, it would appear from this that we did not know of the Herold Store in Milwaukee being the same organization and after this they were red carded in December, 1935, the earlier stores, then in February, 1936, we found out that they were the same organization and that Mr. Lord was the manager and specifically for that store he refused to

12572

remove any goods from sale below $10.75, so they were red carded apparently, although it does not show that here in the record.

Q. Do you have any record at all showing that they were red carded on the 19th of February? A. Well, I am sorry, but it does not seem to show exactly. The card is not here, but the authorization of the board of governors is here, I have a copy of it.

Q. The dress which was called to the attention of Herold's, and on which they would not co-operate, was the $6.75 wholesale dress, was it not? A. Yes, it was a registration—no, no, the original was $10.75 and the copy was $6.75, that is correct. You see, you pointed out the price of the copy. This store, as I stated before, signed an original declaration in June—July, 1936, and we at that time

12573

had taken in a number of the $10.75 people.

Q. In July? A. Yes, they came in on the first of July. As a matter of fact, that declaration was secured by one of our $10.75's.

Q. Manufacturers? A. Manufacturers, yes.

Q. Now, directing your attention to Ernst Kern Company, Detroit. A. Just one moment. The company that turned that in was Jomark.

Q. Jomark? A. Yes.

Q. Now, directing your attention to Ernst Kern Company, Detroit, I will ask you the same question with regard to that that I have asked you previously with regard to the others. A. Well, the first thing in which I had better cover in this file I think is the history of the cards. The period that Ernst Kern first indicated their policy of co-operation on August 18, 1933.

Q. That is to say, they signed the declaration of co-operation then? A. I know somewhere in these letters it is shown. Let me see if a copy of the declaration is here. I do not think it is. The card indicates that on the 10th
12575 of February, 1936, they were red carded. On the 22nd of June, 1936, the red card was replaced with a yellow card. The balance of the file—let me see if I can get it in order; if you will wait just a moment.

Q. Yes. Now, I think I can give you the name of the party you had in mind, Marie Barnes. I will ask you whether or not that is the name of the person who signed the declaration of co-operation? A. These letters indicate that it was signed by Marie Barnes. From the correspondence in the file it appears that in January, 1936, Miss Patterson of Ernst Kern Company refused to remove from sale some copies that had been identified as having been adjudged copies.

Q. Notified by the shopper? A. At the same time identified by the shopper and at the same time the shopper dis-
12576 covered that there was also in stock some copies that had previously been called to the attention of Miss Patterson on which the shopper anyway had believed had been removed from sale, or were to be removed from sale.

Q. Will you give us the wholesale price of the copy that was to be removed? A. Well, I am afraid I cannot—wait a moment—unless it is in the file here.

Q. Is it not on the first report dated January 14? A. What?

Q. Is it not on the first report dated January 14? A. I do not seem to have the report—oh, wait a moment. I am sorry. The last copy was retailing at $7.95.

Q. That is a $4.75 dress, is it? A. Well, I can presume that it is a $4.75 dress although I am not certain. It also appears that the other dresses that were found on sale and that had been called to their attention on December 21, and that were back in stock on January 14—we got in touch with them both by telegram and by getting in touch with Mr. Flannigan of their New York office. Subsequently, they came over, as I recall it—they came over to our office and discussed the matter. As I remember it now, our last communication, there was some question as 12578
to whether or not Miss Barnes had ever been authorized by the manager of Ernst Kern Company to sign their declaration—Miss Barnes in 1933 was the buyer.

Q. What did Mr. Flannigan and Miss Patterson tell you on the morning of the 20th with respect to dresses your shopper had asked her to return? A. Well, I see on this memorandum that they took the position that these copies manufactured by the manufacturer who was the Claudette Company had refused to accept the return from them and we showed them by our records that this manufacturer had accepted similar returns from other retailers. When I say "by our records," obviously the only records we have on that matter are the reports from the shoppers in the stores saying that these things have been returned.

Q. Did they say that they had ever returned these gar- 12579
ments to Claudette? A. Did they ever say that?

Q. That they had been returned to Claudette? A. They said they had returned them on the 6th of November, 1935 and I do not see how that checks with the other information.

Q. What did they say about the Argyle Dresses? A. You mean on that particular point, and just before I answer that question, it appears from this record that they

were not told to remove these dresses until December 25th and I am not sure about that.

Q. Now, as to the other question. A. As to the Argyle Dresses, Miss Patterson claimed she only had one dress.

Q. What did she say she did with it? A. She said—and that she would dispose of it immediately either by selling it to some girl in the store or marking it down to a price where it would be disposed of very quickly.

Q. Did she make any excuse for not having it returned? A. Well, she said she considered the dress too old to justify a return. Then, of course, we got to this situation about Miss Barnes—their statement that Miss Barnes had
12581 not been authorized to sign the declaration of co-operation, although obviously they had been operating under it for almost three years. At the end of this conference we believed that the matter was satisfactorily adjusted and straightened out and all explained. I believe in order to obviate the question of the proper signature, that it was suggested that they sign a new one, either by Miss Patterson with the approval of Mr. Kern, or by Mr. Kern himself, have him sign. Now, it next appears that early in February, and transactions and meetings that I have referred to were on or about the 20th of January, that we found what appeared to be a copy against in Ernst Kern Store and we took this up with them.

Q. A copy of an original? What original, if so? A. The original was model No. 708 from Charles Lang. In
12582 order to know whether the dress is new and adjudged a copy you have to know the manufacturer's name and the model number. The copies' name and model number, of course, you must know in order for the girls to check up with their sketches. Obviously, if the store refuses to tell you who the manufacturer is, what the model number is, and what appears to be a copy is brought to your attention or comes to your attention, you cannot immediately say that this is a copy and has been so adjudged because

you can only say that it comes from John Jones and is No. 100, and that John Jones' No. 100 has been adjudged a copy of an original by a piracy committee. It appears from the report that Mrs. Brydell, who apparently is assistant to Miss Patterson, refused to identify the dress as being a copy or give any information on it, stating that Miss Patterson had instructed her not to give out any information.

Q. And you could not find Miss Patterson? A. We could not locate Miss Patterson that day.

Q. What do the records show you did thereupon, upon receiving that report? A. After this report was sent in by our shopper and received by us, I do not know what date, 12584
but under date of February 7, 1936, we wrote to the Ernst Kern store.

Mr. Haycraft: I ask this document be marked Commission's Exhibit 1010 for Identification.

(The letter was marked for identification Commission's Exhibit 1010.)

By Mr. Haycraft.

Q. Showing you Commission's Exhibit 1010 for Identification, is that a copy of a letter that you wrote the company on that date? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection. 12585

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 1010 for Identification, will be received in evidence and marked Commission's Exhibit 1010, being a letter dated February 7, 1936, to Ernst Kern Company, Detroit, Mich., from Albert M. Post, executive director, Fashion Originators Guild of America, Inc.

(The letter heretofore marked for identification Commission's Exhibit 1010, was marked as an exhibit and received in evidence.)

The Witness: The file shows that after the writing of that letter there was undoubtedly some conferences with Mr. Flannigan, and I believe he sent us a copy of the letter, of the original letter that he had received from Miss Patterson.

By Mr. Haycraft.

Q. What is the gist of her claim with respect to the Lang dress? A. Well, Miss Patterson apparently sets her-
12587 self up as being a piracy committee of one member, and she states that this is not a copy because the sleeve is pleated and also the bottom is pleated.

Q. Whereas the Lang dress had a pleated collar? A. Yes, that is my recollection. My recollection is that she was shown the Lang dress, or at least it is quite obvious even by her own letter that she knew this dress was, with the exception of a few details which she mentioned, a copy of the Charles Lang dress.

Q. At any rate, the upshot of the whole matter was that she was rather upset about the whole thing, is that not true? A. I think that that was one of the least important things that happened in connection with this transaction.

Q. Did you get further report from your shopper on
12588 that transaction? A. Yes. Apparently Miss Patterson called our shopper after hearing from Mr. Flannigan of their New York office. Our shopper wrote us that Miss Patterson had informed her that she was always willing to co-operate and did not understand why Miss Miller—Miss Miller was our shopper—had sent in a report to the contrary. Of course, Miss Miller had never stated that she was not willing to co-operate, but she had merely reported that she had found a copy there and the transaction in connection with it.

Q. Will you refer to Miss Miller's report and tell us what she said about this being a copy as is shown thereon?

Mr. Albert: Your Honor, does your Honor want to hear what Miss Miller said that Miss Patterson stated?

Mr. Haycraft: What is that?

Mr. Albert: Does your Honor want to hear what Miss Miller said that Miss Patterson said?

Examiner Averill: What is that about?

The Witness: This is about Miss Patterson.

By Mr. Haycraft.

Q. Just read what it says there. A. "Miss Patterson 12590
states that the dress was not a copy."

Q. Proceed. A. Mr. Haycraft, may I interrupt the resumption of the reading of this statement with the statement that the next sentence which I shall read is our shopper's statement rather than Miss Patterson's, and the next sentence reads: "It may not be as there are—and there are a couple of minor changes about my instructions that neither the buyer nor the shopper have the authority to decide that a dress is a copy, it is either up to a Guild decision by its committee or a local piracy committee to determine that. Now, the next thing that happened on this transaction was the letter which I received from Mr. Flannigan. However, before we come to that letter, that one seems to be a little out of order, there is a letter on the 12591
last of February, still on this same subject of this Ernst Kern transaction, in which I pointed out to Miss Patterson what the situation was on their declaration, and of course our position was that in view of the fact that they had suggested that Miss Barnes was not authorized to sign, that we felt that in view of that information that we wanted no question about the future and we were asking for a new declaration. Well, I guess, to summarize this

correspondence, Mr. Haycraft, I can say that after no definite word being received, or could be secured from Ernst Kern regarding their policy with reference to anti-piracy and so forth, that a red card was sent to our members as I have already testified.

Q. I would like to make this request of you that if you can locate any correspondence that you may have, or a copy of their declaration that they finally signed in June, will you do so? A. I can certainly get that, although my recollection is that there was no correspondence, that Miss Patterson and a few other people came in to see us, although frankly I cannot say. I will look it up.

12593 Q. And get the form of the declaration that they did sign? A. Yes.

Q. Now, we will take up the J. L. Hudson matter in Detroit, Mich. I will ask you to give us the dates of the red carding.

Mr. Haycraft: I will ask——

Mr. Albert: Mr. Haycraft, am I to understand that these cases are supposed to have been taken up at random?

Mr. Haycraft: Yes.

Mr. Albert: In the first place, J. L. Hudson & Company have already testified in Detroit for over a week, or about a week. Do you want Mr. Post's version of the transaction of what took place there, or what?

12594 Mr. Haycraft: No, I am asking what the records show.

A. On May 5, 1935, this card says, I know it is 1933, J. L. Hudson—our members were notified that J. L. Hudson & Company were co-operating in their better departments. I do know that the declaration was signed was one that specified for the basement also, and was the no-

tice for the basement, and why the notice for the basement is dated June 21, 1933, I do not myself understand at the moment, but that is the way the record appears in this folder. In other words, there seems to be two notifications sent to our members, although, in fact, there was but one declaration. The red card was dated the 13th day of February, 1936. It states "definitely refuses to cooperate."

Mr. Haycraft: I ask to have the following documents marked Commission's Exhibits 1011-A to 1011-G for Identification.

(The documents were marked for identification Commission's Exhibits 1011-A to 1011-G, both inclusive.) 12596

By Mr. Haycraft.

Q. I show you Commission's Exhibits 1011-A to 1011-G, both inclusive, for Identification and I will ask you whether or not this file consists of the reports and memoranda taken from your files relating to the red carding of the J. L. Hudson Company? A. Well, the first part of your question is right and the second part is also correct, although I feel that I am quite sure that it is clear to everyone that the red carding of the J. L. Hudson Company was not based upon the particular transactions herein referred to. This is the last transaction and for that reason was put in this folder, but as you can and do know in this case that J. L. Hudson Company's red carding is clearly one of policy and the basis for our action in their case was because of their policy. 12697

Mr. Haycraft: Mr. Examiner, in offering this file in evidence I wish to make the observation in the record that this file should be taken into consideration with the reading by whoever reads the rec-

ord in connection with Commission's Exhibits 476, 499, 500, 501, 502 and 503 already in evidence.

Examiner Averill: That is, it does not contain those?

(The documents heretofore marked for identification Commission's Exhibits 1011-A to 1011-G, both inclusive, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

12599 Q. I now direct your attention to R. H. White & Company, Boston, Mass. and ask you the same question that I have asked you heretofore, asking you to confine your answer to the red card that you have there. A. The record of the cards indicates that our members were notified regarding R. H. White & Company's policy on July 5, 1933 and were notified as being red carded on February 10, 1936. In between those dates there is quite a story.

Q. There is some correspondence? A. Yes.

Mr. Haycraft: I ask to have these documents marked for identification.

(The documents were marked for identification Commission's Exhibits 1012-A to 1012-I, both inclusive.)

12600 *By Mr. Haycraft.*

Q. I show you Commission's Exhibits 1012-A to I, both inclusive and ask you whether you identify that as the file of correspondence and reports, memoranda, and so forth, taken from your files relating to the red carding of R. H. White & Company? A. Yes, I believe these are copies of reports which we supplied you with relating to the red carding of R. H. White & Company.

Mr. Haycraft: I offer them in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1012-A to 1012-I were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now direct your attention to the Boston Store of Milwaukee, Wis., otherwise known as Her-feld-Phillips Company store. What do your records say with respect to the red carding of that store? A. The record indicates that they were red carded on the 18th day of February, 1936. This folder further shows that while we had some violations that the probable determining factor at that 12602
time was the notice that we received in their name from Col. Phillip J. Reilly of the A.M.C., stating that in the future the policy of their stores would not be to protect our members' copies except above a certain price line.

Q. You refer now to Respondents' Exhibits 38 and 37? A. Are those the right numbers?

Mr. Keller: Yes.

By Mr. Haycraft.

Q. The Reilly letter? A. The Reilly letter, and in the case of the Boston Store, we sent them a telegram, and the one which is in evidence which is——

Mr. Keller: Respondents' Exhibit 38. 12603

A. —Respondents' Exhibit 38, asking whether Col. Reilly was speaking for them, and when we did not receive a reply, the entire matter was submitted to the membership meeting that was held on or about that time and a red card was voted.

Q. On February 17, 1936?

Mr. Keller: The letter was Respondents' Exhibit 37 and the telegram was Respondents' Exhibit 38.

By Mr. Haycraft.

Q. Respondents' Exhibits 37 and 38? A. Yes.

Q. And Mr. Rosenthal mentioned it in his testimony? A. Yes.

Mr. Haycraft: I ask to have these documents marked Commission's Exhibits 1013-A to 1013-G for Identification.

12605 (The documents were marked for identification Commission's Exhibits 1013-A to 1013-G, both inclusive.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 1013-A to G for Identification and ask you if you can identify that as a file of reports and correspondence and memoranda taken from your records relating to the red carding of the Boston Store, Milwaukee, Wis.? A. Well, those are some of the records except that I would say that the reason the store was red carded was because, as we have previously testified, that we were placed on notice by Col. Reilly, but some of these transactions that appear in this group of

12606 correspondence go back and give a sort of a background to part of this matter. They were all part of the situation in that they indicate the store policy that indicated to us that Mr. Reilly was correctly speaking for the store, but I would like to distinguish between the red carding of the store because of this transaction here because I do not believe that is correct.

Q. If you will just answer my question I do not believe you will have any trouble. A. Well, as I get it——

Mr. Albert: That is why he is answering it that way.

Mr. Haycraft: I ask that the question be read to the witness.

Q. (Question read.) A. Well, relating to the red carding of the Boston Store in Milwaukee. Now, that infers to me that these are the transactions that caused it and that is not the fact.

Mr. Albert: The only thing relating to the red carding is the Reilly letter.

Examiner Averill: I think that the explanation that the witness gives supplies fully the information 12608
as to what he means. It prevents any possible misapprehension of what the witness meant when he answered.

By Mr. Haycraft.

Q. You do identify these? A. Yes, I do; yes, sir.

Mr. Haycraft: I offer these in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1013-A to 1013-G were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now direct your attention to the Dayton Store, 12609
Minneapolis, Minn. A. Yes.

Q. I will ask you the same question with reference to that that I did with reference to the others. A. The time of the Dayton Store was the 18th February, 1938, and the situation is just about the same as I testified to just a moment ago regarding the Boston Store, indicating that this is a particular transaction which is one of those that occurred prior to the notification from Col. Reilly, it may not be identical, but it is in the same category.

Mr. Haycraft: I ask to have these documents marked for identification.

(The documents were marked for identification Commission's Exhibits 1014-A to 1014-G, both inclusive.)

By Mr. Haycraft.

Q. When does the record show that they first co-operated with the Guild? A. May 20, 1935, although, Mr. Haycraft, I would say——

Q. That is along with the formation of the Minneapolis Guild? A. No, this is the date, I believe, of their own
12611 independent recollection. If you will recall the Minneapolis testimony, there was a letter written in 1932. It was the letter written in 1932 saying that these stores wanted to co-operate. Apparently at that time we had no card system but I should say that their stated co-operating started at the very beginning of the Guild.

Q. I call your attention to Commission's Exhibits 1014-A to 1014-G, both inclusive, for Identification and ask you if you identify this as a file of correspondence, reports, memoranda taken from the records of the Guild relating to the transactions prior to the red carding of the Dayton Store? A. Yes. I identify them as copies of correspondence taken from our files and with the same qualifications as I have identified similar ones.

12612 Mr. Haycraft: I offer them in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1014-A to 1014-G, both inclusive, were marked as exhibits and received in evidence.)

(Whereupon, at 4.30 o'clock P. M., December 15, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
December 16, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances)

PROCEEDINGS.

12614

Examiner Averill: Proceed.

Mr. Haycraft: Mr. Post, will you resume the stand?

ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, I now call your attention to the Wm. Filene's Sons Company, Boston, Mass., with whom I presume you are familiar. A. I am.

Q. I will ask you what the record shows as to the red carding of that concern. A. I suppose I shall have to correct you again on that, Mr. Haycraft. This record, which I suppose is our record, is in no sense a complete record. It shows, by our files, that Wm. Filene's Sons & Company notified us and through us, our members, by the head of their New York office, that they were withdrawing their co-operation in our program and campaign to eliminate style piracy.

12615

Q. What is the date? A. They notified us in a letter, which I believe——

Q. What? A. They notified us in a letter signed by Philip J. Reilly on, I believe, February 15.

Q. Seventeenth? A. Not 17th. After we received the letter——

Q. That is right. A. —we wired——

Q. Is it not on the 14th? A. Yes, our telegram is dated the 14th. I wired Filene's asking whether Mr. Reilly was authorized to speak for them and whether or not that was the position of the store and requested a reply, and then on the 17th they did not reply, and after the meeting of the membership on that evening the red card was authorized and issued on February 18.

12617 Q. I take it that that request did not show that the Wm. Filene's Sons & Company had not been co-operating in the return of garments? A. Well, this, again, this record does not show it, but this method of getting the situation in on the basis of the last transaction does not really show the story.

Q. What was the situation with respect to the red carding of Wm. Filene's Sons & Company? Was it any different from any of the rest of the members of the Associated Merchandising Corporation group, or is it a fact that they had been co-operating up until this time? A. Well, I am afraid, Mr. Haycraft, that you would have to define the word "co-operating."

Q. I mean to the extent of returning dresses that were adjudged copies by the Guild, or by piracy committees,

12618 and the returning of such goods to the manufacturers thereof. A. I believe they returned a good many of those that were called to their attention, but they did not return all of them. In some cases they told us that they had returned the dresses and we subsequently found in stock those dresses. In another case we had manufacturers complain that they were returning goods that were not adjudged copies under the claim that the F.O.G.A. had told them that they were copies.

Q. When did these transactions take place? A. All along, they were the subject matter of discussion generally through the entire fall of 1935 and the early part of 1936, although I believe our complete files indicate that there were actual transactions of that kind occasionally ever since we were in a position to know whether the stores co-operated.

Q. Was that because of certain reservations that the Wm. Filene's Sons Company apparently had as to the extent of the co-operation that they were to give? A. No, Mr. Haycraft. If you will recall the Filene declaration of co-operation, they made some reservations regarding determining of copies, and we replied that we could not accept 12620
them and they, in turn, replied accepting our positions. There was no reservation or special agreements with Filene. Naturally, there was a program that had to be evolved, but it would be a big stretch of the imagination to say that any difficulties with Wm. Filene Sons & Company, Boston, about not co-operating, or involving the return of merchandise that they had agreed to return, and even subsequently put back on sale, had anything to do with even their claimed reservations or the other situations where they returned non-copies and told the manufacturers that they—that we had directed them to return them.

Q. Were any of these transactions that you referred to during the month of January, 1936? A. Well, in the absence of the complete file I would not want to say. I do 12621
not recall.

Q. I would like to have you, or your assistants, make a search and see whether or not there are any reports of failure or refusal to co-operate made by your shopper or in your office memoranda in any one respect, with respect to piracy committee reports relating to the Wm. Filene Son's Company during the months of January and February, 1936. A. I will be glad to do it if you want it on that limited basis.

Q. You understand what I want? A. Yes.

Q. I call your attention to the firm of John Shillito Company, Cincinnati, Ohio and ask what your records show with respect to the red carding of that concern? A. Well, the records show that John Shillito Company, Cincinnati, is one of the stores in this A.M.C., and under date of February 14 in a letter from the head of their buying office and the head of the A.M.C., Mr. Reilly notified the F.O.G.A. and through them its members that they would no longer protect merchandise against style piracy. This occurred in 1936.

Examiner Averill: Go ahead.

12623

A. Except that having received this letter from Mr. Reilly, we wired the store and asked whether this letter was authorized by them.

Examiner Averill: You stated that already.

The Witness: No, I stated that on the previous case, but not of John Shillito Company, Cincinnati, Ohio. Having received no reply the matter was submitted to our membership at our meeting on February 17 and a red card was voted for the John Shillito Company that evening and sent out on the 18th.

Examiner Averill: Of what year?

The Witness: Of 1936. I am sorry to seem

12624 somewhat repetitious, but each one of these is an entire situation in itself, although they are quite similar.

Examiner Averill: All right. Now, answer the question about the red carding, please.

The Witness: What is that question?

Q. (Question read.) A. On February 18, 1936, it says "Refusal to co-operate." It also says, "Take out the yellow card, insert red card."

By Mr. Haycraft.

Q. Do your files contain any correspondence showing—strike that out. Do your files contain any correspondence such as reports or memoranda or correspondence relating to the instances where the John Shillito Company had declined to return garments to manufacturers; that is, garments that had been adjudged copies of Guild merchandise?

Mr. Albert: If the question is asked do the files which the witness was subpoenaed to produce at this time, that is objected to on the ground that the witness was not required to produce such, but if you only—the witness was only required to produce such records as affected the red carding, but if Mr. Haycraft is merely asking the general question on that subject matter, I have no objection. 12626

Examiner Averill: Read the question.

(Question read.)

Mr. Haycraft: I would like to amend that—during the year 1936, prior to the red carding.

Examiner Averill: Do you mean all of his files, or the files that the witness has right now.

Mr. Haycraft: All of his files, or anything that he has before him now.

A. Well, if you mean all of our files, I feel certain that they do, although when you specify the months preceding the red carding, I cannot tell you whether that is so or not at this time. 12627

By Mr. Haycraft.

Q. Then I am going to request that you ascertain through your assistants whether or not there was such correspondence or memoranda in the months of January and February, 1936, prior to the red carding with respect

to the John Shillito Company. A. Do I understand your request to mean merely what you said, their refusal to remove goods from sale, or the further situation where they agreed to remove goods from sale and subsequently we found that they did?

Q. Any reports that you have with respect to either one of the two situations that you referred to. A. I think I understand that.

Q Now, when you referred to the Reilly letter a moment ago, when you referred to it a moment ago, and also to the former A.M.C. stores and I objected to the characterization of it, I ask you whether you referred to Commis-
12629. sion's Exhibit 924 in evidence? A. Well, this is the letter I referred to. This is not the complete story either.

Q. I am asking you whether this is the letter you referred to? A. This is the letter I referred to—just a moment—yes, this is the letter I referred to.

Examiner Averill: What is the exhibit number?

Mr. Haycraft: This is also Respondents' Exhibit 37, I think.

The Witness: Respondents' Exhibit 37, yes.

By Mr. Haycraft.

Q. Can you now direct your attention to the F. & R. Lazarus Company, Columbus, Ohio, and I will ask you whether the situation with respect to the F. & R. Lazarus
12630 Company is the same as exists with respect to John Shillito Company? A. Well, if you are speaking specifically of the issuance of the red card, the answer is yes.

Q. Also as to the correspondence with Mr. Reilly. A. That is correct as to that store.

Q. And the lack of reply on the part of the Lazarus store to your telegram of February 15. A. Yes.

Q. Which is now in evidence as Respondents' Exhibit No. 38? A. Yes.

Q. What is the situation with respect to reports in your files as to instances where the F. & R. Lazarus Company has not co-operated in the return of garments? A. Well, I could not trust my memory on that.

Q. Well, I will make the same request for the F. & R. Lazarus Company, Columbus, Ohio, that I have already made for the John Shillito Company, Cincinnati, Ohio. A. Yes.

The Witness: Herbert, will you add that to the other list?

Mr. Keller: I now have three.

The Witness: No, you have six.

Mr. Keller: I only seem to have three. 12632

Examiner Averill: Just a moment and I will read them to you.

Mr. Keller: I think I have them here.

Mr. Albert: I think we have a list of them here, your Honor.

Examiner Averill: I have them here and I can read them to you, if you wish.

The Witness: Mr. Keller, if you will listen the Examiner will give you the list that he has.

Mr. Keller: I have now located them, I have all six of them now.

The Witness: This is not going on the record, I suppose.

Mr. Haycraft: Oh, yes, I think it should be there to show that it is clearly understood. 12633

Mr. Albert: It does not show much of anything, but I have no objection.

By Mr. Haycraft.

Q. I now call your attention to the firm of William Taylor & Sons. A. Yes.

Q. I will ask you whether or not this firm is in the same category as the John Shillito Company and the F. & R.

Lazarus Company, in your records with respect to the red carding? A. Well, if you mean the issuance of the red card, yes, the record is the same, not if you mean with respect to our records that we have.

Q. Yes, as to the red carding. A. In so far as the issuance of the red card, yes.

Q. What did you produce here pursuant to the subpoena relating to the William Taylor & Sons Company? A. The specific request made for this selected list of the files immediately preceding the red carding—that is, I believe the subpoena read the correspondence regarding the red carding.

12635 Q. Do you have that subpoena with you? A. No, I do not have it.

Q. To refresh your recollection, did it not call for all correspondence, memoranda, and reports in your files relating to the red carding of the retail dealers that had been named? A. Is your question——

Mr. Albert: That is objected, if your Honor please. Let Mr. Haycraft ask him for anything that he has produced and not ask him what the witness thinks the subpoena contains because that is a legal conclusion. They seem to be getting now into an argument as to the language of the subpoena.

Examiner Averill: Read the question.

(Question read.)

12636 Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: I withdraw the question. Let us see where Mr. Haycraft is going after that question.

Examiner Averill: I am not able to attempt to foreordain where anybody is going, gentlemen. Read the question to the witness and let him answer it if he can.

(Question read.)

A. The thing I want to say is that after we received the subpoena, I naturally made a study of it, and I inquired from Mr. Haycraft just exactly what he wanted, because my literal interpretation—perhaps not a legal—but a literal interpretation of the subpoena, it meant all the records of any transaction that was a part of the background of the set-up of this situation. Mr. Haycraft specifically told me that all he wanted were the things immediately preceding it, and he said, I think, the calendar month of January, 1936. Subsequently, and when Mr. Martin and Mr. Seidman and he came to our office and went through these records—that was last week, I cannot remember the day—I inquired again about the matter because I did not 12638
make a note of it, but it was last week, but I did enquire into the matter because I felt that frankly this was an attempt to limit these records to that period of one month of January, when all of these conferences and discussions were going on, and certainly, in my opinion, it does not give the picture as it took place by any means whatever.

By Mr. Haycraft.

Q. In other words, you produced what you thought I desired? A. Yes, I did.

Examiner Averill: In other words, as you have just told counsel, you produced what you thought he wished you to produce.

The Witness: What he told me, or what my un- 12639
derstanding of what he told me was.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. Does your record contain any correspondence or reports of shoppers relating to the instances where the Wm. Taylor Company had not co-operated with the Guild by returning garments adjudged to be copies during the year

1936, prior to February 18? A. I cannot say, but you are speaking of the month of January, 1936, apparently?

Q. Yes, January, and the first two weeks of February. A. I cannot say as to that.

Q. Mr. Post, I call your attention to the Stix, Baer & Fuller concern and ask you if you have any record of the red carding of that organization? A. Well, this file indicates that a red card was issued on the 18th day of February, 1936, and the same general situation as previously described pertaining to some of the A.M.C. stores—the notification by Mr. Reilly and also the transaction of November 8, 1935. It contains a report of our shopper as
12341 of that date and a letter from our shopper in St. Louis as of that date, and what appears to be a copy of our reply to that shopper's letter of November 18, under date of November 19, 1935.

Mr. Haycraft: I ask this be marked for identification Commission's Exhibits 1015-A to D.

(The documents were marked for identification Commission's Exhibits 1015-A to 1015-D, both inclusive.)

By Mr. Haycraft.

Q. I will ask you whether or not you identify Commission's Exhibits 1015-A to D as correspondence to which
12642 you have just referred to in your testimony as copies of that correspondence? A. Yes, these are copies of the matters that I just referred to.

Mr. Haycraft: I offer these in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1015-A to 1015-D, both inclusive, were marked as exhibits and received in evidence.)

AFTERNOON SESSION.

Examiner Averill: Gentlemen, you may proceed.

ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, while you were on the witness stand yesterday and were testifying with respect to Hertz-Lang, you stated you did not believe that the file of correspondence that you had turned over to counsel for the Commission was complete, and that you thought there was other cor- 12644
respondence with that firm? A. Yes.

Q. At my request have you made a further search to see whether or not there was further correspondence? A. I had a search made, yes.

Q. What did you find? A. I did not find any additional correspondence.

Q. Yesterday, while you were on the witness stand, you were questioned with respect to the firm of McGlenn Frocks, Minneapolis, Minn. A. Yes.

Q. At that time, I requested you to see if you could find a copy of their recent declaration of co-operation which was signed some time in 1936. A. Yes.

(The document heretofore marked for identification Commission's Exhibit 1016 was marked as an 12645
exhibit and received in evidence.)

By Mr. Haycraft.

Q. You spoke to me with respect to the copies of that? A. I did.

Q. I am referring now to Carolellen's, Inc. A. Yes.

Q. And I believe you said you would check into that and see if you could find any further matter in that regard? A. Yes.

Q. What did you find with respect to that? A. I found the declaration of co-operation and I have brought down here a photostatic copy thereof.

(The document heretofore marked for identification Commission's Exhibit 1017 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. This morning I requested you to have a search made among your files to see whether or not you had any additional file with respect to F. & R. Lazarus Company as to the instances that that concern had not co-operated with
12647 the Guild in its program. A. Yes.

Q. Have you done so? A. Yes. I have had such a search made.

Q. With what result? A. The file has been produced. While the file indicates that the basic situation and the red carding is the same as the other A.M.C. stores that I have mentioned, and that we received the telegram from these people.

Q. I think you have already testified to that. A. I was not sure. And then in addition it appears from the file that as late as November last, in fact November 11, we were writing to their merchandise manager asking them for suggestions for a shopper, so it appears that we did not have any shopper in Columbus, Ohio, during most of
12648 the fall season of 1935, and I am not sure that we had one in January, 1936, so that the absence of greater information on the F. & R. Lazarus Brothers & Company might be accounted for in part on account of the fact that there was no shopper in Columbus, Ohio, at that time.

Q. Do your files show that there was any instances where you had called the attention of the F. & R. Lazarus Brothers & Company to the existence of a copy? A. Yes.

Q. In their stock? A. Yes. There is one, Mr. Haycraft; such instance that you refer to.

Q. What reply, if any, did they make to the matter when it was called to their attention? A. Under the method that we used, when we have no shopper, apparently on October 23 a sketch, we sent them a sketch of the dress that had been copied and requested that if they had any copy to remove it from sale. On October 28 they wrote back and said that they had nothing like it in stock but in that though they said they had nothing similar to that in stock they did mention another style which they say is the "nearest approach" to this style. That should be in quotation marks. Apparently, on November 12650
1 we advised the store who had originally the complaint of what their reply had been with the suggestion that they send their own shopper for their store, to send their shopper in to satisfy themselves as to the correctness of the F. & R. Lazarus Company reply.

Q. That is the only instance you have in your records of that kind? A. Yes, that is true. That is correct. That is all I have here.

Q. I now direct your attention to H. C. Capwell Company, and ask you what your records show with respect as to the red carding of that store, first, and, secondly, as to the co-operation of the store with the Guild plan? A. The H. C. Capwell Company being one of the A.M.C. stores did not make any reply to our wire and was red carded on February 18, 1936. As a matter of situation 12651
I have previously described in more detail. The files show no shopping reports because we did not have a shopper in Oakland, California.

Q. Oakland, California? A. Yes. But the file shows some correspondence and evidence of telephone conversations regarding the piracy matters. There was a later report of the fall season of 1935 as well as some correspondence regarding deliveries subsequent to the red carding.

Q. Was this concern represented by Mr. Bergdahl in this market with respect to the Guild program? A. Yes. They were. Not merely as to the Guild program, because the Guild's contact with this store was largely through Mr. Bergdahl, but he is their general buying representative, and he apparently during the course of this file brought to our attention some kind of a transaction involving piracy.

Q. Was there an objection on the part of the H. C. Capwell store to putting the warranty stamp on all orders in the latter part of 1935 before—or the latter part of 1935 in October? A. May I take the time to read this

12653 correspondence?

Examiner Averill: You will have to, sir, if it is necessary in order for you to answer.

(The witness examined the document for several minutes.)

The Witness: May I have the question again?

(Question read.)

A. After reading this correspondence, Mr. Haycraft, it is recalled to my memory just what these transactions were, and if your question is intended to have me tell the background of this correspondence I will be glad to answer. I do not want to volunteer it. What I mean to say is, I do not wish to go beyond your question.

12654 Examiner Averill: Let the question be read.

(Question read.)

A. Answering that question again, I would say there was some misunderstanding regarding that that I believe could be called an objection.

By Mr. Haycraft.

Q. You addressed the letter to the H. C. Capwell Company store explaining your position at that time? A. Yes.

Q. Or before? A. Yes.

(The documents heretofore marked for identification Commission's Exhibits 1018-A to 1018-E were marked for identification and received in evidence.)

By Mr. Haycraft.

Q. Mr. Post, subsequent to October, 1935, did the Capwell Company put a warranty stamp on all of its orders? A. I could not answer that. 12656

Q. You do not know? A. I do not know.

Q. Did you get any information from Mr. Bergdahl with respect to whether or not they would put their warranty stamp on all orders subsequent to that date? A. We got information from Mr. Bergdahl that on all the orders that he placed for the H. C. Capwell Company, that they were included.

Q. Now, I call your attention to the Reich-Cumler Company, Dayton, Ohio. A. Yes, sir.

Q. I will ask you what your records show with respect to the red carding of that store. A. The record shows that they were red carded on February 18, 1936, subsequent to the membership meeting; and the writing of various letters and telegrams already referred to. The receipt of the letter and the submission of the telegram already referred to—I should say—and no answer. 12657

Q. Have you made a search of your records to see whether or not there was any other correspondence of shoppers, or shoppers' reports, or correspondence of any kind relating to the co-operation of that concern with the program of the Guild? A. I did.

Q. What did you find in that regard? A. I found this regular folder, this complete folder.

Q. Consulting that folder, will you testify as to what the records show as to the Reich-Cumler in connection with its co-operating with the Guild? A. First as to shopper's report, there are no reports regarding the Reich-Cumler Company because we have never had a shopper in Dayton, Ohio, which is the city in which Reich-Cumler Company is located. There is some correspondence in that file subsequent to the red carding, but as I understand your question you asked prior.

Q. Before, that is right. A. Well, there seems to be a transaction around the middle of or during February, 1936, that is similar to the one I just described with the
12659 F. & R. Lazarus & Company where, because of the absence of a shopper, we did send to the Reich-Cumler Company on January 4 a sketch of a dress alleged to be a copy and requested them to remove it from sale if they had such a copy on sale. It appears that on January 15 they acknowledged having received such a copy but they do not state that they have removed it from sale. They merely state that they had such a dress and told us who it came from.

Q. They did not say anything about whether they sold it or not, sold them all out? A. Yes, yes, they say they have no more in stock at the time, on the 15th. That is in reply to a letter of January 4—which we acknowledged, their last letter. Wait a minute, now. That appears to be one transaction on which we had no correspondence
12660 with the Reich-Cumler Company regarding piracy—the only one, I mean. That is the only one in which we had any correspondence with them regarding piracy.

(The documents heretofore marked for identification Commissions Exhibits 1019-A, 1019-B and 1019-C were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1020-A to 1020-E, both inclusive, were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1021-A to 1021-I, both inclusive, were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1022-A to 1022-L were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1023-A to 1023-V, both inclusive, were marked as exhibits and received in evidence.) 12662

(The documents heretofore marked for identification Commission's Exhibits 1024-A to 1024-R, both inclusive, were marked as exhibits and received in evidence.)

(Whereupon at 4:30 o'clock P. M., December 16, 1936, the hearing in the above-entitled matter was adjourned.)

12663

12664 *Albert M. Post—For Commission—Direct.*

Room 901, 45 Broadway,
New York, N. Y.,
December 17, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, you may come to order. Mr. Haycraft, you may proceed.

12665

ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, did you keep any record, or does your office keep any record of the number of registrations of garments made by members of the Guild in the past year? A. Well, we have a record. I do not know as it has been summarized recently, but, of course, there is a record kept of all registrations.

Q. How often do you summarize it? A. My recollection is that we did it just once.

12666

Q. When? A. At the time of the Filene litigation.

Q. What did you summarize at that time? A. We summarized the number of registrations that we had in the past season.

Q. Was that for certain months of the year, or what was it? A. No, it was for six months.

Q. Did you keep monthly records of the registrations, or registration summaries? A. The registrations are all by serial number, and I suppose that we keep records and

kept records in the past. We did not have any occasion to summarize any of the registrations except at the time of the Filene registration summarization. At that time we wanted to know the particular point of what we had, so we took the numbers and the date and added them up for the six months. I believe I testified as to the exact number of registrations for the six months, and then estimated what they would be for possibly a year. At least that is my recollection of it. We have a record in the office, because each registration is numbered, so it would be a very simple thing to see what the situation is.

Q. For instance, could you get the number of registrations for the year 1933 and the year 1934 and the year 1935? A. I have not got it yet. 12668

Q. Do you know what the total number of registrations at the end of the years is? A. Well, by the method I have just described, we do have the opportunity to learn that, and we had, as I recall, the registrations for the spring season of 1935, let me see if I am right about that—no, for the fall season of 1935, because the litigation was in March, 1936. So we have factual knowledge of the fall season of 1935, and we estimated by that the number of registrations for 1936. As a matter of fact, we offered no specific figures for the year 1936, or any other year, but just testified as to what that had been for the fall season of 1935, and estimated on that basis that they——

Q. Have you not from time to time made public announcements at meetings, or in the "Women's Wear," as to the number of registrations that were issued, possibly, for the past three months, or for the past six months? A. Well, possibly now that you ask the question I do recall that we have at some time or another—I think that either Mr. Golby or Mr. Goldston in the piracy end, possibly, yes, but there is no regular capitulation that is gotten out each month or each season. I remember once that I perhaps did see a report that we got up for the benefit of the Associated 12669

Buying Offices to indicate just how many copies there were in proportion to the total number of registrations. That was based on the same figures of approximately 20,000 registrations for the six months' period.

Q. Was that your estimate of that, or was it factual? A. That was factual. That was given in the Filene suit, and as I recall it we said that we had approximately 21,000, or 20,600, and something, as I remember the figures in question, for the six months period of time.

Q. That would include the period of time that the $10.75, the $8.75, the $7.75, and $6.75 affiliates were affiliated with the Guild? A. It would include the time that the $10.75
12671 were in, and as to the $6.75, $7.75, and $8.75 group, they came in in November sometime, as I recall it. I am testifying on those figures merely by memory. I believe that we do carry the figures for the fall of 1935. If this is the desired answer, and if my recollection of those figures is correct, then the answer I gave you to that question is correct. In any event, I believe it is so. It seems to me that there were 21,000 registrations for the fall season of 1935, and there were 416 of those dresses that had been copied, or something like that.

Q. That is, 416 numbers that had been copied? A. Yes.

Q. Of those that had been copied, you had no knowledge of how much had been copied? A. How many garments, you mean?

Q. Yes. A. No, I have no knowledge of that. I just
12672 know something about the number of styles. You start in with approximately 21,000 styles, and of those 416 were copied. When I say "416," that means the original styles. Those 416 copies might be, in fact, 1,000 styles, because the same styles might have been copied by more than one manufacturer.

Q. In other words, those were extremely popular or "hot" numbers that are copied as a rule? A. I would not say that at all.

Q. You would not say that?

Mr. Feldman: Why was it that you said that?

The Witness: As a matter of fact, speaking as a retailer, and I am after all essentially a retailer by way of experience, although of course I have a knowledge of this other end of it, too, I can testify it is just the reverse.

y Mr. Haycraft.

Q. What is it? A. Dresses are frequently copied for no etter reason than the original came from a well known aker.

Q. How much of a task would it be to prepare yourself 12674
testify as to the number of registrations for garments in ose years—namely, 1933, 1934, and 1935? A. Well, cur-ntly, 1935, I believe the figures are available for 1934. Let e put it this way: It is no great task if the figures are ailable. I am not sure just how well the mechanics of r own office were organized in those years, so I cannot y whether those records were maintained or preserved, d if they were currently maintained, but if this informa-on is available, then it is only a matter of a half hour's ork, and I shall be glad to have it done for you if you ish it, and my Counsel consents to it.

Q. Yes, I would. A. The only difficulty that I can see to at would be the question of the years prior to 1935. I not think we have any record as to how many of the 12675
esses were copied.

Q. My question refers to registrations, not to copies. A. believe because the registrations are certainly serially mbered, I believe we can tell you from the total number registrations we have had since the first day we started gistering. Whether or not I can tell you how many in ch year prior to 1935 I am not certain.

Q. You will make an attempt to look that up? A. I rtainly will, yes, if my Counsel agrees to it.

Q. Referring to Commission's Exhibit 52, Mr. Post— A. Yes.

Q. —reference is made, as you will notice there, to a report of a committee, the findings of a committee with respect to the Myron Herbert-Charles Cooper, Inc., for an alleged violation of the rules of the Guild. A. Yes.

Q. That resulted in a fine of $1,500. A. Yes.

Q. A copy of that report does not accompany the minutes which we have here. I was wondering whether you could look into that and locate it in the Guild's files. A. My understanding is it was a verbal report.

Q. It says, "Report herewith attached," and it could not
12677 be a verbal report.

Mr. Albert: Why not, a verbal report could be either in writing or orally.

A. Where does it say that?

Q. Right in the second paragraph. "The Board of Governors unanimously accepted the finding of the committee and the report herewith attached." A. All right. I have never seen that report myself. I will see if there was such a report.

Mr. Albert: If your Counsel agrees to it.

The Witness: Of course.

By Mr. Haycraft:

12678 Q. Was it before your time? A. Yes. But, in going over the records which I have had occasion to do very frequently since all of this litigation has started, I have never seen such a report. It may be somewhere.

Q. Referring to Commission's Exhibit No. 55, which is the minutes of the meeting of the Board of Governors for May 21, 1934. A. Yes.

Mr. Albert: What is the last question and answer?

(Question and answer were read.)

By Mr. Haycraft.

Q. That was before your time. I do not know whether you will be able to answer it or not. As a matter of fact, was the $1,500 fine collected from Myron Herbert and Charles Cooper, Inc., as referred to and indicated in the last paragraph of those minutes? A. Well, with this exception. The fine was collected and it was divided into $750 that was voted to be given to charity, where, as a matter of fact, I think we gave about $2,500 to charity.

Mr. Albert: You should explain that.

The Witness: What I mean by that is, that everybody that has a charity they would like some contribution from the Guild, and they came up and asked us about the money that we had available for that purpose. 12680

By Mr. Haycraft.

Q. Did Kansas City and St. Louis, Mo., take the money and divide the money? A. That I am not certain of. I believe that is correct, but I am not sure whether it was divided between the two cities of Kansas City, Mo., or St. Louis, Mo., and it may be that it simply went to one of them. I do not remember.

Mr. Albert: We will take care of Minneapolis next month.

12681

By Mr. Haycraft.

Q. Is this the only fine that has been placed against Myron Herbert-Charles Cooper, Inc., with respect to the violation of the rule, or have they been fined since that time? A. I do not believe they have.

Q. Do you recall the testimony of Mr. Swinney in respect of fining the Myron Herbert-Charles Cooper, Inc.? A. Yes.

Q. Is this the same fine which he has reference to? A. Yes.

Q. It is? A. It is the same one, yes.

Q. I call your attention, now, to Commission's Exhibit No. 58, the minutes of the meeting of the Board of Governors held on the 17th day of September, 1934. A. Yes.

Q. I call your attention to the following language: "Minutes of meeting, Board of Governors, Fashion Originators' Guild held at the office of the Guild, Monday, September 17, 1934, at 12 o'clock. Upon a motion made, seconded, and unanimously carried, the Board of Governors instructed the secretary, after receiving information that
12683 J. M. Silverman Dresses, Inc., were registering merchandise wholesaling below $16.75 in the Guild office, to inform its manufacturer that his continuance to register garments below this price range would cause his immediate expulsion from the Guild." What regulation of the Guild was the manufacturer supposed to be violating in registering merchandise below $16.75?

Mr. Albert: What is the date?

Mr. Haycraft: September 17, 1934.

A. I had occasion to look that up myself, although I was not with the Guild at the time. Our application forms, as you may remember, indicate the price range at which our members manufacture goods. Now, the background of this
12684 J. M. Silverman affair was that they had joined the Guild as a manufacturer of $16.75 dresses and apparently their registrations were all in the price ranges below that. And at that time the Guild policy was that the members were to register within their own price ranges and not there, shall I say, supplementary price ranges. I, perhaps, can make myself a little clearer by recalling to you that most of these manufacturers that even you have brought to the stand have testified that they supplemented their regular business by an irregular adventure in the off season in the

lower price ranges, and that is what this transaction had to do with. At that time the Board of Governors felt that the members should not register merchandise that is in a price range that is not a part of their regular business. Subsequently, that was changed. That was the situation at that time.

By Mr. Haycraft.

Q. What price range do you recall that J. M. Silverman Dresses, Inc., was registering at? A. I believe it was $10.75, although I am not certain of that.

Q. Were any of your manufacturers at that time registering dresses at $10.75? A. Yes. 12686

Q. There was some? A. There was some.

Q. What was the objection to allowing one—I withdraw that. What was the reason for allowing one manufacturer to register $10.75, and not another?

Mr. Albert: May it please the Court, the question has been answered.

The Witness: I have explained it, but I do not object to explaining it again.

By Mr. Haycraft.

Q. You said it was. What I am trying to find out now is the reason. The reason back of it. Why did the Guild object to the $16.75 manufacturers registering $10.75 garments? A. It is very simple—is there an objection? 12687

Mr. Albert: It has already been answered.

Examiner Averill: Objection overruled, if there is an objection.

Mr. Albert: Exception.

Examiner Averill: Go ahead and explain it, Mr. Post.

A. At that time and up to July 1, 1935, we only had regular members. We had no protective affiliates. The regular membership at that time and today starts at $16.75.. The Protective Affiliates—no, I am mistaken about the Protective Affiliates—start at $12.75 coming up to, at that time—but at that time, to put it this way, they started at $16.75. The merchandise which was sold at below $16.75 by members of the Guild at that time came from the sports wear group and the junior group, and the Guild felt that a member, a regular member in our membership—in the Guild membership, that is, was the only one who had a regular line of merchandise which went in along with manufacturers in the Guild at $16.75 and up; they were the regular members, and that a regular member, therefore, registering goods below that was unnecessarily and unfairly complicating the problems of the Guild. Had he been a junior wear manufacturer, or a sportswear manufacturer where the question was clearly understood, I do not think there would have been any question, but he was not. Our membership at that time was—the regular membership, and there was no affiliate membership at that time—and the regular membership, as distinguished from the sportswear and the junior dresses started at $16.75 at that time. Perhaps I have made that sentence pretty long from the beginning to the end, and what I mean to say is that the regular membership at that time started at $16.75 and leaving out the sportswear and the junior dresses.

12689

12690 Q. So at that time there was a registration restriction, or at least there was a restriction upon the regular membership of the dress manufacturers as to the members who might register with the Guild, and what price lines they might register with the Guild? A. There was no restriction as to what members might register with the Guild because they all had to, but we did have something to say about what prices lines, but I do not accept your word as to "restriction." If you mean we did not have any below $16.75, I will agree to that.

Q. Here was a man attempting to register merchandise at below $16.75; is that correct? A. If that is what you call a restriction, all right, but I said I did not agree with it, but I will agree to what happened, and it can be interpreted in any way it is desired.

Q. Is that the fact that the rules did prohibit a gentleman, a regular manufacturer, that is, of $16.75 merchandise, from registering designs on $10.75 merchandise? A. What do you mean by that?

Q. Is it a fact that the rules did forbid a concern that regularly manufactured $16.75 merchandise from manufacturing and registering designs in the $10.75 merchandise? A. They could manufacture anything they wanted 12692
to. However, well, I just testified as to the facts decidedly to the reverse, but if you want to put it that way, that is all right. I do not see here in this vote or in this transaction at all that there was any rule against it, and I explained that the board at that time felt that the member doing that was unduly complicating the situation of enforcement and unfairly so, perhaps, to the Guild and the other members, and I do not know of any restriction as such, and I know that I know from these minutes that the thing that they said, to me, means something different from that.

Q. That they would expel him if he attempted to do so; that is said, is it not? A. Yes. I mean to point out that they did not fine him. They simply said if your business is apparently below the $10.75—or, rather, apparently be- 12693
low $16.75 and in the $10.75 range, and we do not have any membership in that price range, we feel it is unfair for you to register goods below $16.75, and if you continue to, why, apparently, they said, we will expel you, but there was no restriction, in my judgment. This is, I suppose, a matter of interpretation, but I see your premise on it.

Q. Is it correct to say that the manufacturers who were registering $10.75 at that time were in the junior and

sportswear group? A. Well, it is correct to say that manufacturers who were registering, and with the knowledge of the Guild, if that is the assumption, yes.

Q. Were any dress manufacturers of ladies' dresses allowed to register below $16.75 in September of 1934? A. Yes, that is right, none of them were.

Q. That is not exactly what I asked, but it is your statement that no dress manufacturers who manufactured ladies' dresses were permitted to register them if they sold at below $16.75 in the month of September, in the year of 1934? A. Oh, I see your point. The answer is the same. That is right. They were not.

12695 Q. Now, when was it that the dress manufacturers of the $10.75 price line were first allowed to register with the Guild? A. August, 1933—unless it was July 1.

Q. Dress manufacturers? A. Yes.

Q. I thought you just got through saying that in September, 1934, they were not allowed to. A. Both of those statements are correct, Mr. Haycraft.

Q. Was there a period in August, 1933, when you would have the J. M. Silverman Dresses, Inc., when you would have allowed them to register $10.75 women's dresses? A. That seems a little speculative to me because I was not with the Guild at that time and I do not know what they would have done. I might assume or guess—

Q. If you do not know, please do not assume. A. Quite right:

12696

Examiner Averill: Please do not assume anything.

By Mr. Haycraft.

Q. When was the time you went with the Guild, first, Mr. Post? A. The latter part of October, or let us say November 1, 1935—no, no, no, 1934.

Q. 1934? A. Yes.

Q. Were there any $10.75 dress manufacturers registering dresses at that time? A. Regularly—as against the junior and sportswear?

Q. Yes. A. No.

Q. When was it since you have been with the Guild that they were allowed to register with the Guild, and when I say "they," I mean the regular $10.75 dress manufacturers? A. July 1, 1935.

Q. July 1, 1935? A. Yes. If I may explain, that is when their membership started—then. We accepted registrations perhaps a week or so before on copies which they had not as yet shown, or which had not yet been shown to anybody. 12698

Q. You started to give protection? A. No, that is not correct. It is not correct. That is to say, to amplify my answer, we started on July 1, but in order to take care of the additional clerical and stenographic work we did not hold up registration until their membership started because there would have been a tremendous amount of registration from these men who intended to join the Guild, so we simply told them to come ahead and register their styles so that their registrations would be on our file, and the mechanical work of getting it into the file would be taken care of, but it was not to begin to operate until July 1, but we did accept the registrations—it may be that we accepted them as early as the 20th of June, but, as I said heretofore, their membership started the 1st of July. 12699

Q. Referring to Commission's Exhibit No. 64-A, being minutes of meeting of board of governors, Fashion Originators Guild, held at the Hotel New Yorker, Tuesday, June 4, 1935, at 6.45 o'clock P. M. I suppose this would be about the third page there, 64-A would be the first page. A. You mean on the second page of mine?

Q. The second page of yours, I guess. This is gotten up a little differently. A. Oh, I see. Which paragraph do you refer to?

Q. I refer to this: "The executive director outlined the background of our discussion with the Association of Buying Offices and rendered a report regarding meetings held with a committee from the Association of Buying Offices. The report is herewith attached." I will ask you if you will—strike that out. The minutes that we have do not have the report attached. I would like to have you make a search for them. A. I know the report is in the file, and I will be glad to produce it.

Mr. Albert: If your counsel consents.

The Witness: Of course. I believe it is in evidence already because I remember reading it the
12701 other day and going over the exhibits I saw it, but I am not prepared to tell you the number of it now. I do not remember the sequence of it here, but I will have it checked up.

By Mr. Haycraft.

Q. Now, I call your attention to Commission's Exhibits 66-A and B, being entitled as follows: "Minutes of board meeting of governors of Fashion Originators Guild held at the Waldorf-Astoria Hotel, Monday, October 21, 1935, at 7 P. M." A. Yes.

Examiner Averill: Off the record.

(There was a discussion off the record.)

12702 Examiner Averill: Back on the record.

By Mr. Haycraft.

Q. I call your attention to the following language in this report, it will probably be on the second page of yours. A. Yes.

Q. It is as follows: "Upon a motion by Mr. Wersba, seconded by Mr. Fox and unanimously carried, the Retail

Guild contracts entered into by the Oklahoma City retailers and the Baltimore retailers were approved." A. Yes.

Q. Have you got copies of those contracts? A. Well, I think we have and you have also, except that they were never approved by the—as I recall, one of these was one that never went into operation. They were not signed. Let me explain this as this is perhaps a little obscure. The method was simply that we secured the approval of our board of governors to enter into a contract if the local guild wished it. The approval is contained in that vote.

Q. Do you have copies of the agreement mentioned? A. This is the regular agreement, I believe. You have it there. 12704

Mr. Albert: Of the Baltimore Guild?

The Witness: The Oklahoma City never went in because I do not have that—I do not think that one was ever anything but just approved as set forth here. I do not think the matter ever went any further.

By Mr. Haycraft.

Q. I now call your attention to Commission's Exhibit No. 69-A and B, respectively, being as follows: "Minutes of meeting, board of governors, Fashion Originators Guild, held at the office of the Guild, Tuesday, February 18, 1936." A. Yes. 12705

Q. Reference is made there to the following: "A proposed draft of a reply to the telegram received from Mr. Pirie on behalf of certain State Street department stores was read. The board informally approved the reply providing certain changes were made therein." Who was the Mr. Pirie mentioned there? A. Mr. Gordon Pirie, one of the members of Carson, Pirie & Scott, Chicago, a Chicago department store.

Q. And "State Street" referred to there is State Street in Chicago? A. Yes, sir.

Q. Do you know whether or not the records of the Guild have therein the telegram from the Guild and the reply received to, if any, that telegram in connection with this matter? A. I am certain the Guild has. I believe that it is in evidence already before the Commission.

Q. Do you know what the exhibit number is?

Mr. Albert: No, we do not know the exhibit number.

Mr. Haycraft: I am talking to the witness.

12707 A. No, I do not.

Mr. Albert: All right, we will play your way, Mr. Haycraft. You write the rules and we will play them.

By Mr. Haycraft.

Q. When was that put in, in Chicago? A. Yes, I think so. Of course you were ill, Mr. Haycraft, but therefore you might look at the testimony of either Mr. Wisanby or Mr. Lightly, I am not sure which one it is, or whether it is either, but I think so. I remember he said he had never seen it. I am referring to Mr. Lightly of Marshall Field & Company.

12708 Mr. Albert: That is right, I forgot you were not in Chicago, Mr. Haycraft. That is where it came out.

Mr. Martin: Who is the telegram from?

The Witness: Gordon Pirie.

By Mr. Haycraft.

Q. Will you look it up? I will ask you to refer—while you are looking that up, or, rather, while we are looking

it up to see if we can find it, I will ask you to refer to that same exhibit which reads as follows, in part: "Mr. Golby read a draft of a suggested reply which was to be sent to Mr. Neil Petree, president of the New York Retail Dry Goods Association. This letter was to advise Mr. Petree that the Fashion Originators Guild of America had no contractual relationships with the New York Dry Goods Association and, therefore, the Fashion Originators Guild could not construe his letter to us as a general repudiation of their member stores' individual agreements." Is that the telegram that you had reference to?

Mr. Martin: The telegram from Mandel Brothers? 12710

The Witness: No.

Mr. Albert: No.

By Mr. Haycraft.

Q. Does the Guild have a copy of the letter from Mr. Petree and the reply? A. Yes, that is already in evidence also. I am not sure about the reply being in evidence, but I am certain that Mr. Petree's telegram is in evidence.

Q. Where would that be? A. Well, it is my recollection that it was put in in Chicago. That is all part of that same situation but I am not certain of that. I know it was in evidence because I had lunch with Mr. Petree one day and I was telling him about it.

Q. I think the easiest way would be to produce it and 12711 we can check against it and make sure. A. Perhaps.

Q. Will you look up your records and bring the Postal telegram from Pirie and the letter and correspondence with Petree referred to in those minutes also? A. I will be glad to do so if Mr. Albert will permit me.

Q. You may consult with Mr. Albert.

Mr. Albert: You may tell Mr. Haycraft that I will be glad to consult with you, Mr. Postal.

The Witness: My name is Post and not the Postal Telegraph Company.

Mr. Albert: That is a conclusion, Mr. Post. Be careful.

By Mr. Haycraft.

Q. Referring now to these same minutes from the board of governors authorizing that a red card be issued against Lord & Taylor for repudiating its agreement with the Fashion Originators Guild, this repudiation being based on a telegram, or, rather, upon a letter being received from Mr. Neil Petree, president of the New York Dry
12713 Goods Association; is that the same letter that you referred to in the paragraph there that you have reference to? A. The letter is the same. The minutes are not quite as clear on that particular matter as they might be, but the letter referred to—answering your question, the letter referred to is the letter from Neil Petree, yes.

Q. Lord & Taylor's name was mentioned in that letter, was it? A. I believe so, yes.

Q. Are Lord & Taylor the only retail dealers that claim to reserve the right to purchase copies below $10.75? A. No. That is why I say that the transcript of the minutes of the meeting here is not quite as clear on that transaction as they might be.

Q. Do you have an independent recollection of just what
12714 did transpire at this meeting with respect to Lord & Taylor? A. Well, I think the minutes are clear as to what transpired at the meeting with regard to Lord & Taylor. There was a vote to advise our members by way of red card. My point was that the minutes do not correctly indicate what transpired prior to the meeting.

Q. What did transpire prior to the meeting that is not recorded in the minutes? A. That is a long story. I will go ahead.

Mr. Albert: Go right ahead, Mr. Post.

By Mr. Haycraft.

Q. Yes. A. Trying to confine my answer to the particular situation of Lord & Taylor rather than the broad problem that was confronting us at the time as is indicated by these various communications and general letters which we received from various people, there was a meeting called—at this meeting I cannot recall the exact date, although I shall subsequently, when I tell the whole story—but it was referred to on Mr. Bergdahl's testimony, although he was not present—on cross-examination, he said, I believe, that Mr. Reilly, his superior, had attended the meeting at the Union League meeting. I believe he did say that that was around February 10. The meeting con- 12716
sisted of the group of presidents, I guess, of many of the largest stores in New York. As a matter of fact, it was—I do not know whether it is exactly proper to call it a meeting. It was a luncheon arranged by Mr. William Riordan, president of Stern Brothers, on his own initiative, purely as a gesture to bring the stores and the Guild together for a discussion.

Mr. Petree was there; Mr. Riordan, of Stern Brothers, was there; of course, the president of Lord & Taylor's was there; of course, Mr. Perday, Edwin Marks, vice-president of R. H. Macy & Company, was there; Mr. E. Puckett, president of the Allied Stores, and others—I do not recall at the moment who they were—were present.

Mr. Riordan called me that morning and said—if you 12717
will excuse me, there were two other important witnesses, Mr. Mike Shatt, president of Bloomingdale's, and Col. Reilly, executive director of the A.M.C.

Mr. Riordan called me either that morning or the evening before, I am not certain of that at this moment, and said that he did not—first, he said that these gentlemen who were taking lunch with him, said who they were, and he thought it would be a good idea to see what the

differences were in the Guild, or with the Guild, on the part of some stores, and that he would like to have me join them for lunch, which we did.

It was an informal meeting, I suppose, and the retail stores represented no established organization. They were retailers and most of them were members of the National Retail Dry Goods Association; I suppose all of them were. Most of them were members of the New York Dry Goods Association, or whatever the correct corporate name of that organization is, although Mr. Puckett, president of the Allied Stores, is a man who has no store here in New York, but he has a group of some fifty or more stores, in-
12719 cluding some of the largest stores in the country, included among them being Jordan Marsh in Boston, Mass.

So there was a discussion, and after the luncheon I was asked what was the exact situation at that time because at that time we had red carded R. H. White and Strawbridge & Clothier, and the evidence by these minutes is, and perhaps by the evidence already before the Commission, is in, in that connection, but if not, I believe it will be by the time the full evidence is in, it will be there, but there was a definite attempt on the part of this one organization who obviously were set upon——

Mr. Haycraft: I do not like to interrupt you, Mr. Post, but please do not testify what someone else might say or do at this time, but just as to
12720 what you heard and what you saw. You understand the position I am in.

Mr. Albert: I suggest that the witness be permitted to continue his train of thought and not be interrupted, and that the witness be permitted to answer the question in his own manner here without interruption by Mr. Haycraft, the same objection as Mr. Haycraft has previously made when I unfortunately interrupted his witnesses. I do not

believe Mr. Haycraft is doing it intentionally, but I think the witness should be permitted to answer the question.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: If your Honor please, I do not believe that because Mr. Haycraft does not like the answer that he should be permitted to cut it off.

Mr. Haycraft: I think the witness understands. I will be glad to have him go ahead, but if he will try to refrain from testifying as to what happened in the minds of others I think it will be better.

The Witness: I understand your objection, Mr. Haycraft, although there are, of course, in certain situations where I was definitely—— 12722

By Mr. Haycraft.

Q. You can certainly say what you believed. A. What we believed.

Q. What you believed. A. All right. Now, as a matter of fact, we knew that there was a movement afoot to stir up a sort of crystallized opposition to us, and we knew that because that was the basis for this meeting and luncheon that Mr. Riordan had called.

May I say that Mr. Riordan called the luncheon at the time that he notified me; whether that was the night before or the morning before, I am not certain at this moment. I believe my personal notes in my diary will indicate that, when it comes time. I am not completely prepared on this thing without my notes here, but I am sure my notes will have it. Perhaps this has no probative value in this case, but Mr. Riordan happened to be in Filene's with me twenty years ago, and we were old friends, and he is a retailer, and the president of a large metropolitan store, and was quite well aware of what was 12723

going on, and he felt if the complaints of the A.M.C. were justified that certainly I should know it, and just what the Guild was doing about it, so the Guild could adjust it, and if they were not justified that it was better that the true background of the situation be given to everyone, and I think what happened was that he called me and told me about certain conferences and meetings and expressions that he had heard, and what could be done about it, and suggested that we have this luncheon, and that is the way the luncheon came about in this particular case.

He felt if these people were there at the luncheon and the matter was explained, and if we were not very far
12725 apart across the table, most of these things could be adjusted. As a matter of fact, before I attended the meeting, I notified our board of governors because I felt I had no authority to attend such a meeting without their knowledge and their consent, and I also specifically developed subsequently this particular—but I will go into that at some other time. It is a contention of the Guild, and it is my belief, that the so-called controversy between the Guild and the retailers was purely a controversy between a small group of retailers, the A.M.C. particularly, and that——

Q. (Interposing) May I ask if Lord & Taylor were members of the A.M.C.? A. No.

Q. Of course, my question was directed to Lord & Taylor. A. I warned you at the beginning it is not an
12726 easy question to answer. If you will recall, I mentioned that at the beginning, because I said that the minutes were not quite complete as to the background.

Q. Yes. A. The A.M.C. in various conferences that we had had with officials of the Guild, myself included, had indicated that they had no serious objection to the Guild program of design protection, and had supported it and would support it, and that it was fundamentally

correct and sound and honest, but they most seriously objected to an organization that interested itself in what they called——

Mr. Haycraft (interposing): Mr. Examiner, I dislike to interrupt the answer again, but, as I said, I am only interested in the Lord & Taylor matter and not in the A.M.C., and I do not want to get into a long discussion of the A.M.C. problems, and if the answer requires that——

The Witness: It does require it.

Mr. Haycraft: I will withdraw the question and the answer both because I do not think I desire to be placed in this position. 12728

Examiner Averill: You placed yourself there.

Mr. Albert: I have no intention, your Honor, of being abitrary, but I certainly think the witness should be allowed to complete his answer.

Mr. Haycraft: It is a matter of evidence that they can bring in at the proper time, and my whole question has simply to do with Lord & Taylor.

Examiner Averill: You cannot separate one from another in explaining how things happen, you cannot separate them entirely, apart, from the whole, and simply go into that part without referring to the whole at all. I think that is impossible in many instances, and therefore if you do not care to have the witness testify to the matter 12729 in its generalities, I will strike all the witness' testimony in connection with the matter.

Mr. Haycraft: That is my motion.

Mr. Albert: I object, if your Honor please, because this was a fair question and the witness was answering it fairly, and answering it over warning, and I think he has a right to answer it.

Examiner Averill: Gentlemen, this shows now the necessity for striking it because we cannot go

off into far fields that have nothing in direct relationship to this, and that certainly do not come into the head of evidence. It is a very unfortunate situation that we have gotten into, and therefore the motion to strike all of the questions and all of the answer is granted, not physically out, but the motion to strike is granted.

Mr. Albert: Exception, and I also wish to object to Government's counsel refusing to permit evidence in the record which clearly manifests the contentions of the Fashion Originators Guild of America and that it clearly shows the basis of the
12731 entire differences that existed between those who have testified on the stand heretofore and those who are testifying now.

Mr. Haycraft: I have no objection to that going in at the proper place and time, and I will have the opportunity to cross-examine on these things, but my question did not call for the answer I got in response to it, and the answer is not responsive.

Examiner Averill: The answer was responsive, but I am going to strike it out because of the fact I think it would be very unfortunate to have the witness at any time go into things of that sort, and when we are going into them we will simply get into them more and more at length, and this is
12732 something that you simply cannot restrict. I am not finding fault with the witness. The witness is doing well and ably in connection with the matter, but it is a matter apparently now where it cannot be separated from hearsay and while it is cluttering the record up with matters, it is simply getting them in such shape where they will have no probative value that you will be able to segregate from the others. You gentlemen may bring that out by way of question and answer.

By Mr. Haycraft.

Q. Mr. Post, in these same minutes, the statement is made that the Lord & Taylor agreement with the Guild does not provide for any exception below $10.75 in the return of garments. Did you have an agreement with Lord & Taylor—have you still that in your possession or did you return it to Lord & Taylor? A. I believe we have it. I am not certain.

Q. Do you know whether it was a regular form, or whether it was a letter indicating their desire to co-operate? A. It was a letter and followed the regular form rather generally, but it was on their letterhead.

Q. I would like to have you produce that letter. A. 12734
With the consent of my counsel.

Q. Is Lord & Taylor the only New York retailer mentioned in the Petree letter, that was red carded by the board of governors? A. Yes—no—I cannot say; I will have to get the letter.

Mr. Albert: Do you think, your Honor, that it would be well to take our usual five-minute recess at this time?

Examiner Averill: No, I do not believe we will be able to take the usual five-minute recess to-day, and we will be obliged to go straight ahead.

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 84, which is 12735
headed as follows: "Minutes of meeting, grievance committee, held at the Guild office, Tuesday, October 29, 1935, at 5 P. M." A. Yes.

Q. The last paragraph reads as follows: "The Committee recommends that the firm of Anna May Love, Inc., take a membership in the Fashion Originators Guild and in the event they failed to do so, they would recommend that the Board of Governors expel the firm of Charles

Armour & Bro., Inc., from this organization." Do you know whether or not, as a matter of fact, Anna May Love, Inc., became a member of the Guild? A. I, as a matter of fact, know they did not.

Q. What action was taken with respect to Charles Armour & Bro., Inc., subsequent to the date of this? A. There was no action.

Q. There was not? A. No.

Q. No further action at all? A. Well, I do not know whether or not receiving an explanation is an action or not.

Q. Were they fined or suspended or anything of that
12737 kind?

Mr. Albert: The answer is "yes" or "no."

A. Well, there is yet another answer; I do not know. I do not think they were but I do not know that they were, and I would not be able to testify.

By Mr. Haycraft.

Q. Will you look that up and see what the situation was with respect to that? A. Well, with the consent of my counsel.

Q. Referring to Commission's Exhibit 86, which is headed as follows: "Minutes of meeting, grievance committee, held at the offices of the Guild, Thursday, Janu-
12738 ary 2, 1936." Do you notice there that the last paragraph of that meeting states as follows: "B. Tobias, Inc. For failing to conform with the rules of their membership, the grievance committee voted that this firm be suspended from membership, and the committee is drafting a report to be submitted to the Board of Governors of the Fashion Guild at its next meeting recommending the expulsion of B. Tobias, Inc. from membership." Do you know what the B. Tobias Company had done to

ring about that action? A. Well, I know what the uild's position was on it, if that if what you mean; yes, r.

Q. Just what were the circumstances in that regard?

Mr. Albert: If your Honor please, here comes another one of these uncertain questions, and I ask that Mr. Haycraft decide here and now whether he wants the witness to answer or not when he propounds a question of this kind.

Examiner Averill: I think it would be well.

y Mr. Haycraft.

Q. I will withdraw that question to you, and I will ask 12740
ou what ruling of the Guild was violated by B. Tobias, nc.? That should not be a long story. A. Well, the efinite thing that brought that about was the refusal of . Tobias, Inc., to permit the auditing of its books in ccordance with his application form, and the rules of he Guild in that regard.

Q. What price line did B. Tobias, Inc., manufacture? . I believe $10.75. He was a member of the Dress reators League.

Q. Were you auditing the books to see whether or not e was selling to red carded retailers? A. We audit all our members' books, both for that reason and perhaps r others as the occasion may come up.

Q. Was that the reason when this particular audit was 12741
ade? A. Well, I think the particular reason for auditg it is to find out whether they are selling red carded ccounts—that is the usual thing that they are audited r.

Q. For that? A. That is correct. May I say that there as some complaint that they had been selling red carded ccounts, although that particular audit was a perfectly utine one in the regular schedule.

Q. The record that we have does not show that any further action was taken by the Guild or the grievance committee or the board of governors. I would like to know whether or not there was any further action on the B. Tobias, Inc., case? A. He has been expelled.

Q. Expelled, not suspended, but expelled? A. Expelled, I believe.

Q. I would like to have you look that up— A. Well, I can say this to you about it without looking it up, and this might clear up your point. There was some delay on the final active expulsion due to the fact that he was a member of the Dress Creators League, and we felt that
12743 they should know what the situation was first, and I believe subsequently in the year 1936 there was action taken in that regard perhaps after you had asked for our minutes' action against the firm was definitely taken.

Q. I would like to have you look that up and bring whatever minutes you have on the B. Tobias., Inc., matter. A. I will do so with the consent of my counsel.

Mr. Haycraft: I ask to have these marked 1025-A and 1025-B.

(The documents were marked for identification Commission's Exhibits 1025-A and 1025-B.)

By Mr. Haycraft.

12744 Q. I show you Commission's Exhibits 1025-A and 1025-B and ask you if you can identify that between correspondence between the Guild—copies of correspondence between the Guild and your shopper in Baltimore, Mrs. Lapedus?

Mr. Keller: What is the number of that?

Mr. Haycraft: 1025.

Mr. Keller: A and B.

The Witness: What is your question?

(Question read.)

A. Yes, I suppose if you mean—and I am not begging the question, but what it means is correspondence between Mr. Goldston and the shopper, and correspondence between the Guild and the shopper, I think—yes, it is correspondence between Mr. Goldston and the shopper.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1025-A and 1025-B were marked as exhibits and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1026 was marked as an exhibit and received in evidence.) 12746

Mr. Haycraft: May the record show also that this Mrs. Lapedus is the Baltimore shopper of the Guild; is that correct?

The Witness: Yes.

(The documents heretofore marked for identification Commission's Exhibits 1027-A, 1027-B and 1027-C were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1028-A and 1028-B were marked as exhibits and received in evidence.)

12747

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1029 for Identification, and ask you if you can identify that as a carbon copy of a letter from The Hub Company, Baltimore, Md., attention Mr. Pollack, dated December 10, 1935, from the Fashion Originators Guild of America, Inc., signed by Jack Goldston? A. I identify that as a copy of a letter taken from our files.

Q. Was the original written by Mr. Goldston? A. Yes.

Mr. Albert: May I examine on the voir dire, your Honor?

Examiner Averill: Yes.

By Mr. Albert.

Q. Is there any authority for the writing of this letter by Mr. Goldston, Mr. Post? A. How do you mean?

Mr. Haycraft: I object.

Mr. Albert: I want to show that there was no authorization by the Guild for the writing of this.

12749 Mr. Haycraft: I object to that. That is not proper examination on voir dire.

Mr. Albert: Certainly, otherwise I object to it on the ground that no foundation has been laid to show the authority of the writer of this document by the Guild in the manner in which it was written.

Examiner Averill: Objection overruled. He has simply identified that letter as a letter in his files. If it was written by this gentleman, that is simply that point.

Mr. Albert: I object to the relevancy and materiality of the letter unless it is shown that the writer of the letter had the authority to write the letter.

12750 Examiner Averill: If you are going to raise any such objection as that, of course we will have to go all the way back into it, and Mr. Jack Goldston having written so many letters his authority has not been questioned in the past on them, of course.

Mr. Albert: That does not mean that he has the authority to write this, that he can sit down and write anything that he wants to, and ascribe it to the Guild.

Examiner Averill: I understand your position in regard to that matter, but as far as this particular document is concerned, if you are going to go back to all of the papers that have gone in and show the authority in Jack Goldston in writing them, I think it would take a long time.

Mr. Albert: This is a little different objection. If I might have an answer from the witness it might very well be that he is properly within his authority, and in order to avoid the objection I wanted to ask Mr. Post if that authority existed in Mr. Goldston to write the letter, and if Mr. Haycraft will permit me to ask Mr. Post that I will not press my 12752 objection.

Examiner Averill: Gentlemen, I overrule the objection. It has been clearly shown throughout this record that Mr. Jack Goldston has been acting in the capacity he has acted for the Guild, and if it is desired to assail his authority to do the thing, it can be done directly but not in this manner, because if that is the case we would have to go back through the entire record on every paper in here for something or another. Therefore, the objection is overruled and the letter in question heretofore marked Commission's Exhibit 1029 for Identification will be received in evidence, the same purporting to be a copy of a letter dated December 10, 1935, from the F.O.G.A., by Jack Goldston, to The Hub 12753 Company, Baltimore, Md., attention Mr. Pollack.

(The letter heretofore marked for identification Commission's Exhibit 1029 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Post, have you prepared in any way a statement showing the total volume of business done by Guild members during the years 1933, 1934 and 1935? A. No.

(Whereupon, at 4 o'clock P. M., December 17, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y.,
12755 December 21, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

Mr. Martin: Your Honor please, I should like to have this document marked for identification Commission's Exhibit 1032.

12756 (The document was marked for identification Commission's Exhibit 1032.)

Mr. Albert: I believe, your Honor, that when we adjourned—that is, when the adjournment was taken—that you signified that over the week-end you were going to examine the Dr. Teper figures and pass upon the question of the admissibility of them.

I am recalling to your attention that after the colloquy that occurred between counsel no attempt was made what

soever on the part of Commission's counsel, Mr. Haycraft, or anyone else, to any way solidify, reinforce or bolster up the figures that had been put on the record, in the manner in which your Honor is familiar, and that, therefore, they remain in the same conditions at which your Honor, without in any way committing yourself or binding yourself, expressed the belief of at least a reasonable doubt as to their admissibility.

Mr. Martin: If your Honor please, as I recall it, these figures were introduced and Dr. Teper testified from a paper, having a prepared statement showing how these figures were arrived at.

Your Honor expressed the opinion that his statement 12758
was very plain. However, your Honor was uncertain as to whether his explanation made in the record was plain and requested that what he did testify to in the record be written up and the two papers compared, and it was then your Honor's intention to, with the consent of counsel, to submit the witness' statement as showing how he arrived at these figures if the testimony which you are really uncertain about proved to be, in fact, satisfactory.

Examiner Averill: I think that is about it.

Mr. Albert: May I say a brief word here?

Examiner Averill: Yes.

Mr. Albert: I want to point out something, Mr. Martin; you suggested to Mr. Haycraft that Mr. Haycraft put into the record this prepared statement of Dr. Teper's, but Mr. Haycraft pointblank refused to do so and rested the sig- 12759
nificance and accuracy and the relevancy of the figures entirely upon Dr. Teper's statement in the record.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Gentlemen, it will be recalled that at the last hearing on the 17th certain papers known as Commission's Exhibits 1030 and 1031, to be exact, being a compilation of figures, had been offered and had been received in evidence, subject to a motion to strike in the

event that the examination of the witness under whose guidance the figures were prepared showed a substantial basis for such figures.

It appears to the Trial Examiner that the testimony of the witness does not furnish the substantial basis for such figures, and that the motion now pending to strike the papers heretofore admitted as Commission's Exhibits Nos. 1030 and 1031 from the record should be granted.

Therefore, it is ordered that the papers heretofore marked in evidence as Commission's Exhibits Nos. 1031 and 1030 be, and the same hereby are stricken. Of course, counsel offering figures has the right at a later date to

12761 recall the witness who prepared the figures or other witnesses, if such are available, by which the figures may be substantiated, and those papers may be again offered.

(Whereupon, Commission's Exhibits 1030 and 1031 were stricken.)

Mr. Martin: Note an exception.

Examiner Averill: An exception noted to counsel.

Mr. Martin: I will recall Mr. Post for further examination.

ALBERT M. POST was thereupon recalled as a witness for the Commission and, having been previously sworn, testified further as follows:

12762 *Direct examination (continued) by Mr. Martin.*

Q. I hand you Commission's Exhibit 1032 for Identification and ask you if you can identify that? A. Yes.

Q. What is it? A. It is a recapitulation of the card files secured in the general manner that was outlined at the time when Mr. Haycraft requested those figures.

Mr. Martin: I offer it in evidence.

Mr. Albert: No objection.

(The paper heretofore marked for identification Commission's Exhibit 1033, was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 1034, was marked as an exhibit and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1035, was marked as an exhibit and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1036, was marked as an exhibit and received in evidence.) 12764

(The documents heretofore marked for identification Commission's Exhibits 1037, 1038, 1039 and 1040, were marked as exhibits and received in evidence.)

(Whereupon, at 12.15 o'clock P. M., December 21, 1936, the hearing in the above-entitled matter was adjourned.)

Federal Trade Commission Building,
Washington, D. C.,
September 20, 1937.

Met, pursuant to notice at 10 A. M. 12765

Before: CHARLES F. DIGGS, *Examiner*.

APPEARANCES:

REUBEN MARTIN, Attorney for the Federal Trade Commission.

Mr. Martin: If the Examiner please, by arrangement with the counsel for the respondent it has been agreed that

this hearing would be postponed until 10.00 o'clock A. M., October 11, 1937, to be held in Room 500, 45 Broadway, New York.

The Examiner: I understand that this agreement is acquiesced in by the Commission. Therefore this hearing is adjourned and will be resumed at 10.00 o'clock A. M. on October 11, 1937, in Room 500 at 45 Broadway, New York City.

(Whereupon the hearing in the above-entitled matter was adjourned to October 11, 1937, to be resumed in New York City.)

12767

Room 901, 45 Broadway,
New York, N. Y.,
October 13, 1937.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

APPEARANCES:

EVERETT F. HAYCRAFT, REUBEN J. MARTIN and RUSSELL KING, attorneys or the Federal Trade Commission.

MILTON C. WEISMAN, HERBERT KELLER and MELVIN A. ALBERT, attorneys for the respondents, 1450 Broadway, New York, N. Y:

12768

AFTERNOON SESSION

(The hearing was resumed at 1 o'clock P. M., pursuant to adjournment for the noon recess.)

Trial Examiner Diggs: I understand that the attorneys for the Commission and the attorneys for the respondents,

have agreed that in order to save time, that it would be necessary in order to introduce over one hundred witnesses, to establish the amount of business done by the various members of the Guild, both as to their gross and net business, that a plan had been reached whereby the counsel for the respondents is to submit to the counsel for the Commission, the list of all of the members of the Guild as to April 16, 1936, in so far as it is possible to obtain them, setting forth their gross and net business, and that after this shall have been done, that there will be a tabulation made setting forth the total volume of both gross and net business done by all the members of the Guild during the periods of 1933, 1934 and 1935, or such periods as they 12770
may have been members of the Guild; with the further provision as to this latter phase, that such members who have come in during the early part of 1936, endeavor will be made to obtain the 1935 figures.

In addition to this, the counsel for the respondents will also furnish to the counsel for the Commission a statement showing the price line of each member of the Guild.

Now, as I understand it, gentlemen, in order to secure this information, it is going to require some time; it has been suggested by counsel on both sides that this date be continued until 1.30 P. M., October 18, 1937, at Room 500, 45 Broadway, New York.

I understand that the statement I have just made is a fair statement of the situation as you have outlined it to me, is that correct? 12771

Mr. Martin: That is correct.

Mr. Weisman: Yes, that is correct.

Mr. Haycraft: I want to address you, Mr. Examiner, with respect to a matter that came up in this matter on December 21, 1936, at which time the then Trial Examiner struck from the record Commission's Exhibit 1030 and 1031 with this comment on page 8069:

"Of course, counsel offering figures has a right at a later date to recall the witness who prepared the figures and other witnesses who are available, by whom those figures may be substantiated and those papers may be again offered."

I wish at this time to recall the witness referred to, Dr. Lazare Teper and ask him if he will take the witness stand at this time.

DR. LAZARE TEPER, a witness for the Commission having already been duly sworn, testified as follows:

12773

Direct examination by Mr. Haycraft.

Q. Are you the same Dr. Teper that testified in this proceeding on December 17, 1936? A. Yes, sir.

Q. Do you hold the same position at the present time that you held at the time you testified? A. No.

Q. What is your present position? A. Research Director for the International Ladies' Garment Workers Union.

Q. How long have you occupied that position? A. About three days.

Q. Where do you have your present office? A. 3 West 16th Street, New York City.

Q. What are your duties in your new position?

12774

Mr. Weisman: I object to that as being immaterial. He has been three days in his position. That won't qualify him very much.

Trial Examiner Diggs: I will take the answer. I want to find out what his position is.

A. I have been transferred from the Dressmakers' Joint Board where I occupied the position of research director, to the position I now hold in the office of the International

Ladies Garment Workers Union, which is the parent organization, to occupy the same position and to engage in exactly the same task only on a larger scale, that is, the collection and gathering of information pertaining to the garment trades, specifically to the dress industry in particular, and the interpretation of that data.

Q. Interpretation of the data in what respect for what purpose? A. The purpose of the Research Bureau is essentially to provide facts upon which the Union can base its action or make its decisions. I suppose that answers your question.

Q. Where are the facts obtained? A. The facts are obtained from several sources. Some are by direct surveys 12776
with our own staff; others from Governmental agencies. The third type of facts is from private agencies.

Q. I show you Commission's Exhibit 1043 for Identification, consisting of eight pages and I ask you if you prepared it? A. Yes.

Q. Now, referring to Commission's Exhibit 1043 for Identification and I will ask you whether or not the data contained on pages 1 and 2 of this exhibit is the same data that you identified on the previous occasion as Commission's Exhibits 1033 and 1031?

Mr. Weisman: I object to that as being incompetent, irrelevant and immaterial. I object to the witness referring to any paper not in evidence, and I object to him identifying something as the same 12777
as something else. The record speaks for itself when it gets into evidence.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Was the data which is contained on Commission's Exhibit 1043 for Identification secured from the same sources as the data which appears on Commission's Exhibits 1031 and 1030?

The Witness: It was secured from the same sources.

Trial Examiner Diggs: I asked you if that was the same?

The Witness: It is exactly the same data.

Trial Examiner Diggs: Secured from the same sources?

The Witness: Yes. The figures are not changed in any way.

Trial Examiner Diggs: I overrule the objection. You may have an exception.

Mr. Weisman: Exception.

12779 *By Mr. Haycraft.*

Q. Now, I will ask you to tell the Examiner what pages 3 to 8 are of Commission's Exhibit 1043 for Identification? A. Pages 3 to 8 describe the method used in preparing the figures for the volume of business of the dress industry for 1934 and 1935, and the discussion of data as gathered by certain other agencies on the volume of business in the dress industry.

Q. Are there any adequate statistics gathered for the dress industry either by the United States Government or any other agency?

Mr. Weisman: I object to that.

Trial Examiner Diggs: That you know of.

12780 *By Mr. Haycraft.*

Q. That you know of.

Trial Examiner Diggs: Objection overruled.

Mr. Weisman: May I state my objection?

Trial Examiner Diggs: Yes.

Mr. Weisman: I object to that inquiry as to whether he knows of that or not. After all, to prove a negative by a witness such as this——

Trial Examiner Diggs (interrupting): Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Objection overruled.

A. To the best of my knowledge there are no adequate statistics of the volume of business in the dress industry gathered by the United States Government. The Census Bureau does collect statistics but for one reason or another—we do not need to go into those reasons—they do not reach every firm. For example, we found that for 1935 the census lifted 1738 contracting firms doing business in the United States in the dress field. Our own enumeration 12782
in New York never fell below 2128 contracting firms, and that is just for the New York Metropolitan area. If the number of firms which were on contractual relations with the Union and are doing business is larger than the census shows for the entire country, then of course something is wrong with the census figures. I think that answers your question.

By Mr. Haycraft.

Q. I ask you whether there was any other besides the United States Government figures, whether there is any other agency preparing such figures? A. During the existence of the Dress Code, the Code sold labels to manufacturers, and theoretically a manufacturer was supposed to 12783
put a label on each garment.

Mr. Weisman: I move to strike that out as not being responsive.

Mr. Haycraft: I think he should be allowed to complete his answer.

Trial Examiner Diggs: Let him complete the answer.

A. (Continuing) If the theory that I stated is correct, then we have figures issued by the Code on the number of labels sold, and each label would represent one dress which was manufactured by a manufacturer. In actual practice, however, a certain amount of chiseling has been going on, and so the chances are that the labels are somewhat lower than the number of dresses manufactured by the industry, but it should represent the best available figures on the unit production by price lines in the dress industry.

By Mr. Haycraft.

Q. Have you made an estimate of the dollar volume of
12785 dress business done in the United States from the available sources?

Mr. Weisman: I object to that.

Trial Examiner Diggs: I am going to let him answer yes or no.

The Witness: Yes.

By Mr. Haycraft.

Q. And were Commission's Exhibits 1030 and 1031 the estimate which you made? A. Yes.

Q. Now, will you testify as to the sources of the material which you used in making up your estimate which resulted in Commission's Exhibits 1030 and 1031? If you have work sheets with you, I should like to have you pro-
12786 duce them, at this time. A. The material used in the preparation of our estimates is of a different nature. In the first place we used the label sales by the Code Authority as a base. Secondly, we secured the volume of the business of a number of manufacturers and jobbers, dollar volume as well as label purchases. That answers the immediate question as to the source of the material.

Q. Have you your work sheets which you used in preparing Commission's Exhibits 1030 and 1031? A. Yes. Here they are (indicating).

Mr. Haycraft: I ask to have these marked for identification.

(The sheets referred to were thereupon marked for identification Commission's Exhibits 1044-A and B for Identification.)

By Mr. Haycraft.

Q. Showing you Commission's Exhibits 1044-A and B for Identification, I will ask you to state what that exhibit is?

Mr. Weisman: I object to that.

Trial Examiner Diggs: Are those your work 12788
sheets?

The Witness: Yes, sir.

Trial Examiner Diggs: I overrule the objection

By Mr. Haycraft.

Q. The work sheets you used in the preparation of Commission's Exhibits 1030 and 1031? A. That is right.

Q. The work sheet which I just now called your attention to was for 1934, Commission's Exhibit 1030? A. That is right.

Mr. Haycraft: I should like to have these papers marked respectively, Commission's Exhibits 1045 and 1046 for Identification.

12789

(The sheets referred to were thereupon marked Commission's Exhibits 1045 and 1046 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 1045 and 1046 for Identification and ask you if they are also work sheets used by you in the preparation of Commission's Exhibit 1030? A. Yes, sir.

Mr. Haycraft: I offer these work sheets in evidence, Mr. Examiner.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: As I understand, Commission's Exhibit 1030 at one time was admitted in evidence and subsequently it was stricken from the record, that is the status of the exhibit to-day?

Mr. Weisman: That is right.

Trial Examiner Diggs: Now, in view of that fact, I cannot see how counsel can undertake to
12791 offer in evidence these work sheets which form the basis for Commission's Exhibit 1030 when Exhibit 1030 is not in evidence itself.

Mr. Haycraft: The purpose of that, Mr. Examiner, is that Exhibit 1030 was rejected because there was insufficient substantiating data to show the source from which it was prepared, and that is the reason I am offering these exhibits in evidence, to supply the data which was absent from the former offer on the former occasion. After that, when I have completed that and after examining the witness with respect to these work sheets, then I will expect to re-offer Commission's Exhibits 1030 and 1031.

12792 Trial Examiner Diggs: You object to that, I take it?

Mr. Weisman: Yes, your Honor.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Counsel for the Commission has just advised me that the purpose of this offer is in order to afford him an opportunity of examining the witness concerning the data which

12793

appears on these two exhibits, to wit: Commission's Exhibits 1044 to 1046 for Identification, and, of course, he would be unable to examine him as to the contents unless the papers were in evidence and that makes it necessary for him to offer them in evidence.

Mr. Weisman: That very statement makes it necessary for your Honor, if you are going to follow the rules that have been laid down by this Commission and the Courts to exclude it.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

12794

Trial Examiner Diggs: I overrule the objection and I will admit this paper in evidence, for the purpose of affording the Commission's attorney an opportunity of showing by this witness the sources of data which appears upon these exhibits, 1044, 1045, 1046, and then when that shall have been done, and this original exhibit 1030 is again offered, of course, I will then pass upon the admissibility of that particular exhibit. I take it that this is a mere preliminary matter in order to permit counsel to couple up if he can and supply the deficiency which was suggested by the former Trial Examiner as the basis for his granting the motion to strike Commission's Exhibit 1030. And you may have an exception to that.

12795

(The sheets referred to, heretofore marked for identification Commission's Exhibits 1044-A and B, 1045 and 1046, were thereupon received in evidence.)

Mr. Weisman: Mr. Examiner, I want this statement on the record——

Trial Examiner Diggs (interrupting): Just a moment, until I see what it is. Off the record.

(Discussion off the record.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1045 and ask you where you obtained that paper? A. This page is entitled——

Trial Examiner Diggs (interrupting): Just tell where you got it.

The Witness: This represents data gathered by the "Code Authority."

By Mr. Haycraft.

Q. Did you prepare this paper yourself? A. Yes.

12797 Q. Where did you get the data from which the paper was prepared? A. Every week during the existence of the N.R.A.——

Trial Examiner Diggs (interrupting): Did you get it from the N.R.A.?

The Witness: Yes. But I am afraid that if I say yes or no, the answer is going to be incomplete.

By Mr. Haycraft.

Q. How did you get it? A. Every week during the existence of the Code——

Mr. Weisman (interrupting): I object to that.

Trial Examiner Diggs: Off the record.

12798 (Discussion off the record.)

By Mr. Haycraft.

Q. How did you get this data? A. Every week during the period of the Code's existence while labels were sold, we had received in our office a written report of the N.R.A., on the official stationery of the N.R.A.—I don't recall right now, but I think it was under the signature of the official in charge.

Mr. Weisman: Were you there then with your organization?

The Witness: I came later.

Mr. Weisman: That is enough, Mr. Examiner, in itself to have it excluded.

Trial Examiner Diggs: Does that answer your question, Mr. Haycraft?

By Mr. Haycraft.

Q. In other words, did you prepare this from the data which you obtained from the N.R.A.?

Mr. Weisman: I object to the question. 12800

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

A. Yes.

By Mr. Haycraft.

Q. Calling your attention to Commission's Exhibits 1044-A and 1044-B, I ask you where the data came from that is contained in that exhibit? A. There are two sorts of data on these sheets. In the first place the volume of business is marked on these sheets for a certain number of firms, as well as the labels purchased by these firms during the year 1934.

Q. Where did you get the label information?

Mr. Weisman: Just a moment. I move to strike 12801 out that previous answer as irresponsive to the question.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: I overrule the objection.

By Mr. Haycraft.

Q. Where was the label information obtained? A. From the Code Authority records.

Q. Were they taken from this Commission's Exhibit 1045? A. No. These two had nothing to do with each other. It has been copied directly from the Code Authority records by one of the men in my office.

Q. Where were the Code Authority records, at the time they were copied by your man? A. At the time, they were in the Code Authority office.

Mr. Weisman: I object to that.

12803 Trial Examiner Diggs: Off the record.

(Discussion off the record.)

By Mr. Haycraft.

Q. Who, in your organization, made the compilation or tabulation from the Code Authority records? A. Do you want the name of the person?

Q. Yes. A. I am afraid that offhand I could not recall. I have a memorandum at my office, because it had been quite some time ago.

Trial Examiner Diggs: Do not let us have a long time about it. Do you know or don't you know?

12804 The Witness: Offhand I would not want to commit myself.

By Mr. Haycraft.

Q. Who made this Exhibit 1044-A and 1044-B? A. A number of people were working on it, including myself. I have checked over all of the figures.

Q. Did you check it against the original sources? A. These figures have not been checked by me against the original sources. They have been checked by the individuals employed in the office.

12805

Q. In other words, you relied upon the individuals who did the work? A. That is right. It is impossible to make field surveys with the director going out.

Q. That is true on both pages? A. Yes, that is true. Both pages are part of the one thing.

Trial Examiner Diggs: What exhibit is that?

The Witness: Exhibit 1044-A and B.

By Mr. Haycraft.

Q. How did you determine the price lines indicated across the top? A. Each firm was classified according to the Code Authority classification.

12806

Q. Do you have a copy of the Code Authority classification showing the classification that they gave at that time? A. For the individual firms?

Q. Yes. A. May I speak off the record?

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

By Mr. Haycraft.

Q. Showing you Commission's Exhibit 1046, what is that paper? What is the source of it? A. This table represents the final operations in compiling the volume of business in 1934. You have there the number of labels——

Mr. Weisman (interrupting): I object to that.

12807

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

The Witness: The data was gotten from these two sheets.

Trial Examiner Diggs: What are these two sheets?

The Witness: 1044 and 1045.

By Mr. Haycraft.

Q. The number of labels were taken from what exhibit? A. From Exhibit 1045.

Q. The average price figures were taken from what exhibit? A. 1044.

Q. Referring to Exhibit 1046, where did you obtain the data listed in the average price column? A. This exhibit was taken from 1044 and represents a ratio——

Mr. Weisman (interrupting): No, he did not ask you that.

Trial Examiner Diggs: Where did you get it?

12809 *By Mr. Haycraft.*

Q. What does Exhibit 1044 represent?

Mr. Weisman: I object to that. The exhibit can speak for itself.

Trial Examiner Diggs: I will let him explain the exhibit. What does it represent?

The Witness: It represents the ratio between the dollar sales and label sales.

By Mr. Haycraft.

Q. In Commission's Exhibit 1044 and in Commission's Exhibit 1045, where did you get the figures then in column headed "sales" in Commission's Exhibit 1046? A. It is a
12810 product of the ratio I mentioned by the number of labels purchased in the specific price line as classified by the Code Authorities.

Q. In other words, you have taken the average price? A. That is right.

Q. Multiplied that by the number of labels? A. Yes.

Q. And you get the volume of sales? A. That is right.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

By Mr. Haycraft:

Q. Will you testify as to the procedure followed in arriving at the average price in the second column of Exhibit 1046? A. If I may ask a question?

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

A. In order to secure the dollar volume of business with the label sales as the indication of volume, we had to devise some method whereby we could translate label sales into dollar units. The procedure was as follows: If, for example, we knew what the ratios were for the industry as a whole between the sales volume and the number of 12812
labels sold in a specific price line, then we could take that figure and multiply it by the number of labels. It stands to reason that we could get the sales volume back. However, we could not do it for the industry as a whole, therefore we had to use the procedure known as sampling. By that method we were able to secure the dollar volume and the sales of labels purchased for the individual concerns. The size of that sample would indicate that whatever information was gotten was apt to represent the industry as a whole. This data for dollar sales and labels was broken up by price lines in accordance with the classification followed by the Code Authority.

By Mr. Haycraft: 12813

Q. Are you referring now to Exhibit 1044? A. And the results of it have been written into Exhibit 1044.

Q. Go ahead. A. We take one price line, as an example in the $4.75, all labels bought by the manufacturer in the samples have been totaled. Every one of the total dollar volumes has been totaled and the ratio between the dollar volume and the labels purchased has been secured. In this case it amounted to $4.72.

Q. Where do your find that on Exhibit 1046? A. You will find it on the 6th line of Exhibit 1046.

Q. And the price line in that exhibit is what? A. $4.75.

Mr. Weisman: If your Honor please, I object to this procedure because——

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Haycraft: I ask to have these papers marked for identification.

(Papers referred to were marked for identification Commission's Exhibits 1047-A and B, 1048 and 1049.)

12815

By Mr. Haycraft.

Q. I now show you Commission's Exhibits 1047-A and B, 1048 and 1049 for Identification and I ask you if they are the work sheets used by you in preparing Commission's Exhibit 1031? A. Yes, sir.

Q. I will ask you whether or not some of the data contained in the Commission's Exhibits 1047, 1048 and 1049 for Identification, was taken from the same sources as Commission's Exhibits 1044, 1045 and 1046? A. In part.

Q. The calculations being based thereon, is that correct? A. That is right.

Trial Examiner Diggs: Off the record.

12816 (Discussion off the record.)

By Mr. Haycraft.

Q. I will ask you where the data which you have referred to and which you used in preparing Commission's Exhibits 1044, 1045 and 1046, 1047, 1048 and 1049 for Identification, are data which you obtained and used in the ordinary course of your duties as research director of the Joint Board of Dressmakers Unions? A. Yes, sir.

Mr. Haycraft: That is all.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Are you through with this witness?

Mr. Haycraft: Yes.

Trial Examiner Diggs: Any cross-examination?

Mr. Weisman: I would first like to make my motions and then waive my cross-examination.

Trial Examiner Diggs: All right.

Mr. Weisman: Before proceeding, your Honor, I would like to move to strike from evidence Exhibits 1044-A and B, 1045 and 1046 which were conditionally admitted, and Commission's Exhibit 12818
1043, all of which were conditionally admitted into evidence, upon the ground that there is not a scintilla of evidence—I won't give the reasons.

Trial Examiner Diggs: I sustain the motion.

Mr. Martin: If your Honor please, before you rule——

Trial Examiner Diggs (interrupting): Off the record.

(Discussion off the record.)

Trial Examiner Diggs: The exhibits are stricken.

Mr. Weisman: May I make the further motion that all of the testimony of this witness, and the manner of his figuring them up, and the statement 12819
of the mechanics, so be likewise stricken from the record.

Trial Examiner Diggs: I am going to let the mechanics stay in because it may save us a lot of time in the future in case I am overruled and we should come back to it.

Mr. Weisman: I do not care to cross-examine this witness.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: This hearing is adjourned at 3.10 P. M., and will be resumed at 2 o'clock P. M., of October 18, 1937, at 45 Broadway, New York, Room 500.

(Thereupon, at 3.10 P. M. the hearing is adjourned as noted.)

12821

Room 500, 45 Broadway,
New York, N. Y.,
November 10, 1937.

Met, pursuant to adjournment at 3.30 o'clock P. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

APPEARANCES:

REUBEN J. MARTIN, attorney for the Federal Trade Commission.

MELVIN A. ALBERT and HERBERT KELLER, attorneys for respondents, 1450 Broadway, New York, N. Y.

12822

Trial Examiner Diggs: You may proceed, gentlemen.

Mr. Martin: Mr. Bergdahl, will you come around here please, sir.

Trial Examiner Diggs: This witness has already been sworn?

Mr. Martin: Yes, your Honor, this witness has testified before and has been sworn.

Trial Examiner Diggs: You may proceed.

HERBERT O. BERGDAHL, heretofore produced sworn and examined as a witness on behalf of the Commission, being recalled, testified further as follows:

Direct examination by Mr. Martin.

Q. Mr. Bergdahl, at the last hearing of this case you testified that you had formed an opinion as to the volume of business done by the entire dress industry, and also had formed an opinion as to the volume of business that was done by the members of the Fashion Originators Guild of America, and you testified that you had made a memorandum of that showing that opinion, which is Commission's Exhibits 941 and 942 for identification. Now, since the 12824
last hearing of this case, due to the unfortunate death of the Trial Examiner who was presiding over the case, we have had a new Trial Examiner. Commission's Exhibits 941 and 942, which is your opinion, have not been introduced in evidence and I would like for you, for the benefit of the Trial Examiner, to state on what you base your opinion as shown in Commission's Exhibits 941 and 942.

Mr. Albert: That is objected to, if it please the Court, as being repetitious, entirely immaterial and irrelevant, as having once been passed upon by the previous Examiner.

Trial Examiner Diggs: I overrule the objection. You may have an exception.

12825

Q. Will you go ahead, Mr. Bergdahl, and state for his Honor just what factors you took into consideration, what study, what research, on what you base your opinion as expressed in these exhibits? A. Well, prior to the time this hearing began, I had several years of experience with dress manufacturers and the dress industry both in low and better price lines, particularly since 1929. I have been in charge of a force of buyers—while it may not have been

the largest in the field, I think it is—whose duty it is to survey the market from top to bottom and keep the concerns whom we serve informed as to the conditions in the dress market, as to style and quality of merchandise and amount of merchandise bought and sold, and so forth. Now, at the time our stores became red carded it became my duty to find sources of supply for our stores that had been excluded from the F.O.G.A. houses. So we made a very extensive survey of the market to find all available houses. We have fifteen dresses—fifteen buyers and assistant buyers covering the dress market at various price ranges from $4.75 up, not including the basement buyers.

12827 I asked them to find all non-Guild houses that it was possible to find that we could do business with. This list was revised from time to time. Our buyers found it very difficult to obtain merchandise, as I have testified previously, and our store management——

Mr. Albert: If it please the Court——

Trial Examiner Diggs: I do not think you can show the mental operation of somebody else.

The Witness: How do you mean?

(Discussion off the record.)

The Witness: I will say we had difficulty in obtaining merchandise.

(Discussion off the record.)

The Witness: I got it from my buyers. I got

12828 it from conversation with manufacturers in the market and also by asking special agency, Harris & Serwer, to prepare a survey of the dress manufacturers in the market to tell us just exactly what proportion of the business was done in Guild houses as compared with the industry, according to the best figures and statistics we could obtain. Now, that is how we obtained the information. After getting the information, my own information and his information, we compared notes and formu-

lated an opinion as to what the comparative volumes were in the non-Guild as compared with the Guild houses, and those are the figures that I handed to you here last time.

Trial Examiner Diggs: By that you mean figures which appear in Commission's Exhibits 941 and 942-A, 942-B, 942-C, 942-D, 942-E, 942-F, 942-G, 942-H, 942-I and 942-J?

The Witness: Yes.

Q. Referring to Commission's Exhibit 941, can you be any more specific, Mr. Bergdahl, as to what the figures for the entire industry are based on? A. My recollection is that these figures are the figures that were given out by the N.R.A. as a result of the sale of labels to dress manufacturers. 12830

Q. And the figures as to the members of the Guild are the result of what? A. I explained that already.

Q. And Commission's Exhibits 921 and 942-A to 942-J represents your opinion as to the volume of business done by the industry and, as to the volume of business done by the F.O.G.A., is that correct? A. It did, yes.

Mr. Martin: If your Honor please, I now offer in evidence Commission's Exhibits 941 and 942-A to 942-J, inclusive.

Mr. Albert: That is objected to, if it please the Court, on the ground that no proper foundation whatsoever has been laid demonstrating the efficacy or the authority or the accuracy of these figures, any sales figures, and this offer of proof of these figures is more preposterous than the figures that were offered through Dr. Teper. 12831

Trial Examiner Diggs: I am going to overrule the objection and admit the exhibits in evidence. But in explanation of this ruling I want the record to show that this exhibit was prepared by the wit-

ness, as testified to by him, from certain data and information given him by a service agency, that some of the data was taken from certain circulars put out by the N.R.A. and that certain other information was acquired by conversation had with certain persons who have been indicated by the witness; and I think that all of these methods used in the preparation of these exhibits suggest that it is not entitled to be admitted in evidence—that is, would not be entitled to be admitted in evidence if we were sitting as a court, because there is no opportunity to cross-examine the representatives of
12833 the agency or the persons connected with the N.R.A. who prepared the data, but I am admitting it in order that the Commission may, if it so desires, have before it this exhibit and the information therein contained, and in the event that the Commission should determine that this exhibit is not entitled to be admitted in evidence, they will disregard it; but if I were to refuse its admission obviously the Commission would not have an opportunity to consider it. And so I have undertaken to adopt the least of two evils, and counsel for the respondents may have an exception.

(The certain papers referred to, heretofore marked for identification Commission's Exhibits
12834 941 and 942 were thereupon received in evidence as Commission's Exhibit 941 and Commission's Exhibits 942-A, 942-B, 942-C, 942-D, 942-E, 942-F, 942-G, 943-H, 942-I and 942-J, respectively.)

Mr. Martin: I have no further questions.

Trial Examiner Diggs: You may cross-examine.

Cross-examination by Mr. Albert.

Q. Mr. Bergdahl, have you the report given to you by Harris & Serwer? A. No, not here.

Q. Well, where in Exhibit 941 and Exhibit 942 is the report reflected, on what page? A. Well, in all of it.

Q. Is there any one figure in Exhibits 941 and 942 that you can point to—that is, a figure taken from the Harris & Serwer report? A. The report as given to you is the result of, as I stated previously, I think in collaboration between Mr.——

Q. Can you put your finger on a single figure in there which you got from this concern? A. I can put it on the 12836
first page.

Q. What figure? A. Take the first page.

Q. What figure in there is a figure given to you by Harris & Serwer? A. Take $41,870,000.

Q. What does that reflect? A. The amount of business done by the members, affiliates and protective affiliates of the F.O.G.A. from 16.75 and over.

Q. What investigation did you make of the accuracy of that figure? A. My knowledge of the industry.

Q. I asked what investigation you made, Mr. Bergdahl; I didn't ask for your conclusion.

Trial Examiner Diggs: Did you make any investigation, as a matter of fact?

The Witness: Yes, I did.

12837

Trial Examiner Diggs: What was it?

The Witness: I investigated the number of houses outside of the Guild with whom I could do business and found that they were so small, that the volume of business that you could do was so small, it was insignificant.

Q. Now, Mr. Bergdahl, will you please tell me what investigation you made to determine whether or not the sum

of $41,870,000 reflected the amount of business therein stated to have been done? A. I think I have explained that.

Q. Have you given the best explanation that you possibly can? A. Yes.

Q. Now, is that figure of $41,870,000 and 16.75 and over taken from Harris & Serwer reports? A. Yes.

Q. You are positive of that? A. Yes.

Q. Where is that Harris & Serwer report? A. I don't know now where it is.

Q. Is there any place that you know of that we can get that report to check on that figure?

12839 Trial Examiner Diggs: The witness says he doesn't know where it is.

Q. You know where Harris & Serwer is? A. Yes.

Q. Have they got it? A. It has an office in New York City—no, I think not.

Q. Has it been destroyed? A. It may have. However, I will not say. I will look for the figures and see.

Q. You knew you were coming here to-day to testify on the figures, did you not? A. I knew I was to come here to testify.

Q. You didn't know what you were to testify on? A. No.

Q. Who are Harris & Serwer? Do you know what business they are in? A. Yes.

12840 Q. What is the business? A. I think I know what their business is. I think they make surveys of market conditions for clients; that a part of their work is also doing advertising for clients. They have given reports out to the trade from time to time, as far as I know, stating conditions in the market and so forth.

Q. Mr. Bergdahl, did you make any estimate of total volume of business done in the industry or in the Guild

houses for 1934? A. Well, last Spring.I did. Last year when I was testifying, as I recall, I had arrived at a figure.

Q. When you were testifying where? A. Here.

Q. Did you have any knowledge of the figures that were prepared in the case of Filene against the Fashion Originators Guild of America? A. No, sir.

Q. None whatsoever? A. No, sir.

Q. Did you know that figures had been presented from Harris & Serwer——

Mr. Martin: That is objected to.

Trial Examiner Diggs: The objection is sustained.

(Discussion off the record.) 12842

Q. Prior to preparing Exhibits 941 and 942, Mr. Bergdahl, did you in any way use the figures in the Filene case as a possible——

Mr. Martin: That is objected to.

Trial Examiner Diggs: Objection sustained. I have already indicated I am not going to have the Filene case drawn in this case.

Mr. Albert: Exception.

Q. Now, who did you have a conversation with with respect to the Guild figures? A. I didn't have a conversation with anybody with respect to Guild figures—the Guild figures, as you stated it. 12843

Q. You have testified that you had certain conversations with members of the Guild in order to determine their total volume; isn't that so? A. Regarding their own volume.

Q. Yes. Well, with whom did you have conversations regarding their own volume?

Mr. Martin: If your Honor please, I object——

Trial Examiner Diggs: I overrule the objection. You have brought up this question. I think he is entitled to go into it.

A. Well, that happened about a year ago.

Trial Examiner Diggs: Do you remember now?

The Witness: I remember some of them.

Trial Examiner Diggs: State them.

Q. Who were some of them? A. I think Willie Bass.

Q. When was that conversation? A. I could not tell you. It was in 1936 some time.

12845 Q. The Spring or the Fall? A. I would say some time——

Trial Examiner Diggs: I am not going down into this minute detail about this thing—I am not going to let you ask who the people were.

The Witness: In the Summer, I think—let me see now—in the Spring of 1936, maybe late in the Fall—no, it was the Spring and early Summer of 1936.

Q. Yes. Who else did you speak with? A. Oh, I think I spoke with Joe Halbert.

Q. When did you speak with him? A. At the same time.

12846 Q. Summer of 1936?

Trial Examiner Diggs: He said the same time.

The Witness: I believe Milton Altmark. I think Al Lasher.

Q. When was the time with Mr. Altmark? A. All of these were spoken to at that time, as I recall.

Q. All of them in approximately the latter part of the Spring and the Summer of 1936?

Mr. Martin: I object to it. It is needless repetition.

Trial Examiner Diggs: Sustained.

The Witness: J. M. Silverman. Well, those are some that I remember.

Q. Do you remember any others? A. No, I don't at the present time.

Q. Do you say now that you spoke with everyone that is reflected in Commission's Exhibits 941 and 942.

Mr. Martin: Objected to. The witness has not stated that.

Mr. Albert: I am asking him if he did. 12848

A. I did not speak to everyone in the record.

Q. Now, with respect to those houses whose figures are reflected in Exhibits 941 and 942, whom you did not speak to, how did you obtain their figures? A. Well, from talking to my buyers, who had a pretty good idea of what manufacturers are doing.

Q. Which buyers gave you that information? A. Well, I have fifteen buyers. I discussed this with them many times.

Q. There are many more than that with whom you do business, aren't there? A. Yes, certainly. I am speaking of my own buyers. In fact in none of this testimony here —I think you are confused—none of those I had reference to are store buyers, probably several hundred. 12849

Q. You are referring to buyers on the A.M.C. staff? A. My staff.

Q. What are the names of those buyers? A. Mrs. Hawkins, Miss Fowler, Miss Magnee, Miss McVicker, Miss Ogle, Miss Evans, Mr. Schmeltzer. That is all—and their assistants, but those are the main ones.

Q. So out of fifteen buyers you only spoke with seven? A. No.

Q. Who else did you speak with? A. Leave it that way if you want it—seven I spoke to.

Q. Did you consult your other eight buyers? A. No.

Q. How long has Miss Hawkins been with your concern?

Mr. Martin: Objected to as irrelevant.

Trial Examiner Diggs: Objection sustained.

Mr. Albert: Exception.

Q. How long has Miss Flower been with your concern?

Mr. Martin: The same objection.

12851 Trial Examiner Diggs: I assume that you are repeating each one, and the same ruling applies to each one without encumbering this record.

Mr. Albert: Exception.

Q. What explanation did Miss Hawkins make with respect to the figures that she gave you?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is overruled.

A. I can't answer it——

Q. Can you answer it with respect to any of the other six with whom you testified you had a conversation? A. They were in the market constantly shopping dress manu-
12852 facturers.

Q. What firms, members of the Guild, did Miss Hawkins visit, do you know?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is overruled.

Mr. Martin: If your Honor please, this is——

Trial Examiner Diggs: I am overruling your objection for this reason: that you have opened up

this subject and said this witness—that he testified he received certain information from certain people, and it is proper on cross-examination to have his knowledge and all the facts concerning it.

A. I don't know; I couldn't answer that question.

Q. Would your answer be the same with respect to the other six of whom you have testified? A. Yes.

Q. Is it customary procedure for your buyers to ask manufacturers the total volume of their business? A. That is frequently the subject of conversation, whether it is asked or not.

Q. So that the figures given you by your buyers you have obtained as the result of its being the subject of conversation rather than as the result of a specific request? 12854
A. I didn't say that.

Q. Would you explain yourself, please?

Trial Examiner Diggs: I think this witness has stated the facts. He has stated that he conferred with his buyers. He talked to the trade. He saw certain data prepared by the N.R.A. He consulted and received information from some service agency. Now, he stated all those various things.

Q. Mr. Bergdahl, will you be kind enough to bring in on the adjourned date the Harris & Serwer figures which you have referred to, if you can locate them or have them, and in addition the resources compiled by the A.M.C. which you have referred to in your testimony as having 12855
been compiled by the red carding of the A.M.C. stores? A. If we have those lists, your Honor, I think it will be all right to bring them in. I wouldn't know until I look at them, if we have them or not—I think it will be all right to bring them in. I would like to ask counsel about that.

(Thereupon, at 5.30 o'clock P. M., November 10, 1937, the hearing was adjourned to reconvene on November 12, 1937 at 10 o'clock A. M.)

Room 500, 45 Broadway,
New York, N. Y.,
November 12, 1937.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

APPEARANCES:

REUBEN J. MARTIN, attorney for the Federal Trade Commission.

MELVIN A. ALBERT and HERBERT KELLER, attorneys for
12857 respondents, 1450 Broadway, New York, N. Y.

Trial Examiner Diggs: You may proceed.

HERBERT O. BERGDAHL, heretofore produced, sworn and examined as a witness on behalf of the Commission, being recalled, testified as follows:

Cross-examination (continued) by Mr. Albert.

Q. Now, Mr. Bergdahl, would you be good enough to tell me how long it took you to prepare Exhibits 941 and 942?

12858 Mr. Martin: Objected to on the ground that it is irrelevant and immaterial.

Trial Examiner Diggs: Objection sustained.

Q. When did you first start preparing Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained.

Q. Did you discuss the preparation of Exhibits 941 and 942 with Mr. Martin or Mr. Haycraft?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will overrule that. The answer is yes or no.

A. No.

Q. Did you have any conversations with Mr. Haycraft or Mr. Martin prior to the original offer of Commission's Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is sustained. 12860

Q. Were you asked by Government's counsel to prepare Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained.

Q. For what purpose did you prepare Commission's Exhibits 941 and 942? A. We prepared it, as I think I have already explained, for the purposes of determining how much of the market in the better end was controlled by the Guild houses.

Q. Now, how many—withdrawn. In the course of that investigation how many houses did you discover were not Guild houses? A. I couldn't tell you. 12861

Q. Have you any idea at all? Can you give me some rough estimate? A. No.

Q. Did you, Mr. Bergdahl, have anything to do with the preparation of the list of resources gotten up by the A.M.C. in or about April of 1936?

Mr. Martin: Objected to as improper cross-examination.

Trial Examiner Diggs: I sustain the objection for the reason that the inquiry concerning which counsel is now asking the witness may have formed a part, the basis for his preparation of Commission's Exhibits 941 and 942. The fact of the matter is that there is nothing contained in that particular inquiry which is reflected in either of these exhibits, and therefore it is not proper cross-examination. You may have an exception.

Q. Mr. Bergdahl, on your Exhibit 941—pardon me, Commission's Exhibit 941, you have a figure that the Guild
12863 members did approximately $41,870,000 worth of business in the 16.75 and over price class and that in that price class the entire industry did $45,500,000 worth of business, showing that the balance of the industry did approximately only $4,000,000 worth of business in the 16.75 class. Is that correct as a matter of computation? A. That is right.

Q. Now, then, in reaching that figure of $4,000,000, how many non-Guild houses doing 16.75 and over, did you take into consideration? A. All that we can find at the time and we made a thorough search, I think.

Q. Since preparing Commission's Exhibits 941 and 942 have you made any further search to determine its accuracy?

Mr. Martin: Objected to.
12864 Trial Examiner Diggs: I will overrule that.

A. I don't believe that we have. I might answer it further this way: that I did the best I could at the time this was prepared—it may have been afterward—to check available sources and knowledge of Guild houses and some conversation that I had with the Guild members, as I stated at the last hearing, to determine whether or not this was accurate.

Q. Well, in attempting to arrive at the figure of $4,000,000 for the rest of the industry, did you take into consideration Commission's Exhibits 450-H to P in your listing of non-Guild houses?

Mr. Martin: Objected to. He is trying to go back at the same question in a different form.

Trial Examiner Diggs: The objection is overruled.

Mr. Martin: Now, if your Honor please, I wish to renew my objection to that. It is exactly the same question that your Honor ruled on a few minutes ago.

Trial Examiner Diggs: Objection is overruled. 12866
You may answer, Mr. Witness.

A. I don't believe that this particular list was considered, although the extent of the production of dresses by some of the manufacturers on this list probably was considered in coming to the final conclusion.

Trial Examiner Diggs: The question is whether you used that list as a part of the data from which you made up Commission's Exhibits 941 and 942?

The Witness: I could not honestly say that, sir. I don't know.

Q. Well, now, you sent out Commission's Exhibit 450, did you not? A. It was sent out by our office, yes. 12867

Q. And it was compared by your office? A. Yes, sir.

Mr. Martin: Objected to.

Q. Well, now, wasn't the best evidence of the existence of non-Guild houses as a list for the purpose of arriving at their total volume your own list?

Mr. Martin: Objected to as improper cross-examination.

Trial Examiner Diggs: I am going to sustain the objection because you are asking this witness to make a determination now concerning a rule of evidence.

Q. Mr. Bergdahl, for your purposes of preparing Commission's Exhibits 941 and 942, was not your own list of resources, Commission's Exhibit 450, the best source for determining the number of non-Guild houses upon which to predicate the total volume of such houses?

Mr. Martin: Objected to.

Trial Examiner Diggs: I am going to sustain
12869 that. You are calling upon this witness to make a conclusion as to the best and what is not the best.

Q. Can you give me, Mr. Expert, an estimate of the volume of the Delphi?

Mr. Martin: Objected to.

Trial Examiner Diggs: I sustain the objection.

Q. Can you give me an estimate of the volume of the Delphi? A. No, sir.

Q. Can you give me an estimate of the volume of Colin Frocks for 1935? A. No, sir.

Q. From the research that you have made and from the study that you have made can you give me an approxi-
12870 mate estimate of the total volume of Martha Duff for 1935? A. At this time, no sir.

Q. When did you last know the total volume?

Mr. Martin: Objected to.

Trial Examiner Diggs: Let us finish the question.

Q. (Continuing) Total volume of the income tax figures of the United States.

Mr. Martin: Objected to as irrelevant and immaterial and no evidence in the record that this witness knows anything about the income tax figures.

Mr. Albert: Conceded—withdrawn.

Q. Now, Mr. Bergdahl, can you tell me when you last knew the total volume for 1935 of Colin Frocks?

Mr. Martin: Objected to as irrelevant and immaterial when he knew.

Trial Examiner Diggs: Objection sustained.

Q. Did you know the total volume for 1935 of Colin Frocks at the time that you prepared Commission's Exhibits 941 and 942? 12872

Mr. Martin: Objected to. He has already answered.

Trial Examiner Diggs: The objection is overruled because the witness is now asked whether he knew at the time he prepared it. The other question was whether he knew.

A. I am not sure that I did. I may have had an opinion. I don't recall.

Q. At the time that you prepared Commission's Exhibits 941 and 942, did you know the approximate value for 1935 of Shirley Adelman? 12873

Trial Examiner Diggs: Counsel is now reading from a long list of non-members of the Guild, which appears to be in Commission's Exhibit 450, and has already called the witness' attention to several firms. I am not going to permit the counsel to ask the same questions respecting each of these firms, because it is very evident from the witness' answer that he at the present time has no recollection

which is now sought to be elicited. Counsel may ask him a general question as to whether he knows the figures concerning any of these as a group, but I am not going to permit a detailed examination of this long group of concerns.

Mr. Albert: Exception.

Trial Examiner Diggs: You may have an exception.

Q. Mr. Bergdahl, did you at the time of the preparation of Commission's Exhibits 941 and 942 make any estimate of the total volume for 1935 of the non-Guild houses contained in Exhibits 450-H to P, as prepared by the A.M.C.?

12875

Trial Examiner Diggs: That is a yes or no answer.

A. We made an estimate, yes.

Q. What was the estimate? A. About $4,000,000.

Q. In making that estimate what did you find was the number of non-Guild houses and that was contained in Commission's Exhibits 450-H to P? A. I don't recall.

Q. Did you attempt to enumerate, in so far as total number is concerned, the non-Guild houses contained in Commission's Exhibits 450-H to P? A. No, sir.

Q. Well, without knowing the number approximately of non-Guild houses, how could you make an estimate of their total volume? A. I didn't say I didn't know.

12876

Q. What did you say? A. You have it on the record.

Mr. Albert: May I ask for common courtesy from the witness, your Honor?

Trial Examiner Diggs: I think the record speaks for itself.

(Remarks of counsel for respondents omitted from the record at direction of Trial Examiner.)

Q. Now, Mr. Bergdahl, do you not now as a matter of act know that there are over 100 non-Guild houses listed n Commission's Exhibits 450-H to P?

Mr. Martin: Objected to as irrelevant and immaterial.

Trial Examiner Diggs: Objection sustained. The exhibit speaks for itself. Whether it is known by the witness or not is immaterial.

Q. I show you Commission's Exhibits 450-H to P and sk you how many non-Guild houses are contained in that ist?

Mr. Martin: Objected to. That is irrelevant. 12878

Trial Examiner Diggs: Objection sustained. That is the same question and counsel will not undertake to ask the question twice.

(Remarks of counsel for respondents omitted from the record at direction of Trial Examiner.)

Q. Mr. Bergdahl, since there are over 100 non-Guild ouses listed in the A.M.C. list known as Commission's Exhibits 450-H to P, from your knowledge of the industry nd the research that you have made can you give me an pproximate of the amount of volume of those houses dur- ng 1935?

Mr. Martin: Objected to. He has already given it. 12879

Trial Examiner Diggs: The shortest cut will be to take a yes or no answer.

A. Yes.

Q. What is that volume? A. I estimate that as 4,000,000 or thereabouts, in the price line from 16.75 up. would also like to make it clear that some of the houses hat you refer to also make merchandise below 16.75 and

that is why I mentioned that—that in the brackets from 16.75 up. My estimate that these houses and any others that may not be on this list, that the volume would approximate $4,000,000 or less.

Q. Now, is that your personal estimate or is that predicated upon the figures which you have previously told us you received from the N.R.A. from Harris & Serwer and from buyers? A. That is based on every conceivable step of information that I could scratch together in several months of work on this subject during the time that I was preparing this.

Q. Did you scratch together any figures from the National Credit Association? A. No.

12881

Q. Are you positive of that? A. I couldn't answer that.

Q. Don't you know from whom you obtained the figures, whether or not you obtained them from an organization known as the National Credit Association? A. I told you whom I obtained the figures from. It is in the record.

Q. Did you obtain any figures—question withdrawn. Is the A.M.C. a member of the National Credit Association?

Mr. Martin: Objected to.
Trial Examiner Diggs: Objection sustained.

Q. Is the Retail Research Bureau a member of the National Credit Association?

12882

Mr. Martin: Objected to.
Trial Examiner Diggs: Objection sustained.

Q. Have you any connection with any organization that is a member of the National Credit Association?

Mr. Martin: Objected to.
Trial Examiner Diggs: Sustained.

Q. Do you know what the National Credit Association is?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained. Now, let me say to counsel right here that this whole line of cross-examination after my having ruled on two or three questions is subject to the same objection and to the same ruling, and it will be futile for you to follow it up any further.

Q. Now, as a matter of fact, Mr. Bergdahl, didn't you obtain some figures from National Credit Association?

12884

Mr. Martin: Objected to.

Trial Examiner Diggs: The witness has already answered that. Objection sustained.

Mr. Albert: Exception.

Trial Examiner Diggs: You may have it.

Q. Did you obtain any figures from the Department of Commerce?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will overrule that.

A. I did not.

Q. Did you obtain any figures from the Harvard Bureau of Research? A. I did not.

Q. Did you obtain any figures from the Columbia Bu- 12885
reau of Research? A. I did not.

Q. Did you make any attempt——

Trial Examiner Diggs: I will ask a question.

By Trial Examiner Diggs.

Q. Did you obtain any figures from any other sources than you already testified to in your cross-examination? A. No, sir.

Trial Examiner Diggs: Now, we will have no more question about any other sources.

Q. Now, on Commission's Exhibits 941-D to F, inclusive, I notice some pencil notation. Do you know what they are?

Trial Examiner Diggs: Counsel for the Commission has just stated that those notes were made by him in order to check up the record and therefore he will now eliminate them from the exhibit.

Mr. Albert: I wish to note my exception to any physical mutilation of a record in evidence.

12887 Trial Examiner Diggs: All right, you may have it. Just eliminate them from the exhibit.

Q. Now, Mr. Bergdahl, will you tell me in what price lines Aarons, Bernstein & Aarons, Inc., makes dresses?

Mr. Martin: Objected to as being irrelevant and immaterial.

Trial Examiner Diggs: I am going to sustain that objection because otherwise this examination will be interminable. It has nothing to do with the correctness of the estimates made by this witness and it opens a field that would be inexhaustible. You may have an exception.

12888 Q. Don't you know as a matter of fact Aarons, Bernstein & Aarons, doesn't make any dresses?

Mr. Martin: Objected to.

Trial Examiner Diggs: Overruled.

A. At the present time I don't recall what they made in 1935.

Q. Did you know in 1935 what they made? A. At the time we prepared this compilation I think we took into consideration all those things. I am sure we did.

Q. And in 1935 when you prepared this record it was ur belief that Aarons, Bernstein & Aarons did $400,000 16.75 dresses, is that correct? A. 16.75 and up merandise, whether they were costumes, suits or dresses.

Q. I show you Commission's Exhibit 942-F and ask you the figures reflected there does not intend to convey the formation for Aarons, Bernstein & Aarons $400,00 worth business in the 16.75 and up dress field?

Trial Examiner Diggs: The answer is yes or no.

A. Yes.

Mr. Albert: That is all on that.

12890

Q. I show you Commission's Exhibit 942-C and calling ur attention to Sam Davidson, Inc., on which exhibit said their volume of business was $250,000, $25,000 which was in 16.75 and up, $25,000 of which was 14.75 d up, and $200,000 of which was below. Can you tell now in what manner you determined that Sam David-, Inc., did $25,000 worth of business in the 16.75 and up d? A. No, I cannot at this time.

Q. Did you obtain that approximate figure from the R.A. figures or was it predicated upon your personal imate?

Mr. Martin: Objected to. He has already answered that.

12891

Trial Examiner Diggs: Overruled. He said he does not know now. You may answer.

A. It was predicated, as far as I recall, on my personal imate as consulting the various factors I have already ntioned here.

Q. Did you discover or learn in consulting either or the N.R.A. that Sam Davidson, Inc., listed under N.R.A. as a 10.75 house? A. No, I don't all any such discovery.

Q. Do you not now know as a matter of fact that Sam Davidson, Inc., does not make 16.75 dresses?

Mr. Martin: Objected to as irrelevant whether he makes them or not.

Q. Or did make them in 1935?

Trial Examiner Diggs: I will overrule the objection to the amended question.

A. I don't recall now what he did in 1935.

Q. Do you know what he makes now? A. No, sir.

12893

Trial Examiner Diggs: Have you any information such as has been sought to be elicited by counsel for the respondent concerning any of these concerns who are mentioned in this Commission's Exhibits 941 and 942?

The Witness: We did have at the time.

Trial Examiner Diggs: I mean, have you now any recollection about any of these matters?

The Witness: No, sir.

Q. Have you now any records, written records, of the information which formed the foundation for Commission's Exhibits 941 and 942? A. I looked for it as you requested and I couldn't find any.

Q. Did you request it of Harris & Serwer? A. Yes, I

12894 requested it from Mr. Serwer.

Q. And what was his answer? A. He said that he had broken up——

Mr. Martin: Objected to.

Trial Examiner Diggs: The question is, did he have the information?

The Witness: No.

Q. So that there are no records at the present time which can be investigated to determine the accuracy

of Commission's Exhibits 941 and 942; is that correct? A. I wouldn't know. How could I answer that?

Q. Mr. Bergdahl, in preparing Exhibits 941 and 942, did you at that time compare and in any manner reconcile the N.R.A. figures and the Harris & Serwer figures? A. I believe there was some comparison there. I have already stated that the N.R.A. figures were used in compiling this report. I do not say they were used in toto, but they were used.

Q. Do you know upon what basis and what factors were taken into consideration in the preparation of the N.R.A. figures?

Mr. Martin: Objected to. 12896

Trial Examiner Diggs: I overrule it. The Commission relies upon those figures—whether the integrity of this exhibit—and I think he has a right to inquiry into it.

A. No, sir.

Q. Do you know what factors were taken into consideration in the preparation of the Harris & Serwer figures? A. Well, I may know some of them.

Q. What are some of them? A. The names of the manufacturers in the Guild are some of them as furnished to us by your letter heads.

Q. In taking the N.R.A. figures and the Harris & Serwer figures, did you discover that there was a difference in the figures of approximately $25,000,000? 12897 A. No, sir, I didn't discover anything.

Q. Are you by explaining the "I" inferring that perhaps someone else on your staff perhaps did discover it? A. I am making no inferences except to myself.

Q. Did any of your staff discover it and report that discovery to you? A. I don't know. None of my staff made any report to me about it.

Q. Now, how many manufacturers did you take into consideration in so far as the total number is concerned in making the estimates contained in the Commission's Exhibits 941 and 942?

Mr. Martin: Objected to. It has already been answered.

Trial Examiner Diggs: The objection is overruled. You may answer.

A. I couldn't name a number.

Q. Well, a rough approximation. Did you consider 3,000 manufacturers in the industry? A. No, I couldn't
12899 name a number. I don't know.

Q. Can you give me the approximation—the approximate lowest number that you considered in arriving at the figure? A. No, sir, not at this moment I can't.

Q. Is there any record that you have, any memorandum or any person with whom you can check up to determine the number of manufacturers that were considered in arriving at the figures in Commission's Exhibits 941 and 942?

Mr. Martin: Objected to. It has already been testified that he has no record.

Trial Examiner Diggs: I think we have already gone far enough with this line and I will sustain the objection.

12900 Mr. Albert: Exception.

(At this point the Trial Examiner directed the physical deletion of certain remarks of the Examiner and of counsel for the respondent and the witness.)

Q. Now, Mr. Bergdahl, you have just asked the Examiner to query me as to whether or not—as to what period I was referring to when I asked you whether or

not you knew there was a difference between N.R.A. figures and the Harris & Serwer figure of $25,000,000. When you answered the question what period were you referring to? A. My figures have reference to 1935, the year 1935.

Q. And is that answer correct as to that year?

Mr. Martin: Let him finish. Have you finished, Mr. Bergdahl?

The Witness: That is right.

Q. And is your answer correct as to that year? A. The N.R.A. didn't hand out any figures after June, 1935, as I recall it, and therefore your question isn't to the point.

12902

(Further deletion of remarks by counsel for the respondent was directed by the Trial Examiner.)

Q. What N.R.A. figures did you use in reaching your estimate of volume for 1935? A. I told you I used N.R.A. figures. Up to the time—I didn't say—but I used N.R.A. figures as long as they were available and then I got other figures after that.

Q. When was the last N.R.A. figures that you used? A. The last one that was issued.

Q. When was that? A. I don't recall, I think it was June, 1935 or May, 1935.

Q. So there were figures issued by the N.R.A. in 1935? A. Yes.

12903

Mr. Martin: Objected to.

Trial Examiner Diggs: I sustain the objection of the repetition of that.

Q. Now, was there any period of time in your investigation of the figures in which you discovered that there was a discrepancy between the N.R.A. figures and the Harris & Serwer figures of $25,000,000? A. No sir.

(At this point another physical deletion was directed to be stricken from the record by the Trial Examiner.)

Q. Now, Mr. Bergdahl, will you be good enough to tell us——

Trial Examiner Diggs: There you go again with "be good enough." Strike the "good enough," let that appear in the record.

Q. Mr. Bergdahl, tell us in brief the mechanics by which you obtained these figures from your buyers and if you
12905 know how your buyers obtained the figures which they gave you? A. I didn't say I got figures from my buyers, as I recall it.

Q. What did you get from your buyers, Mr. Bergdahl?

Trial Examiner Diggs: The witness has already in response to his cross-examination of Thursday gone into this matter. We are not going into it any further now.

Q. Did you get any estimates of volumes from your buyers? A. No, sir.

Q. Mr. Bergdahl, do you recall saying yesterday that you obtained the figures reflected in Commission's Exhibits 941 and 942 from your buyers, from Harris &
12906 Serwer and from the N.R.A.?

Trial Examiner Diggs: That is not a proper form of question to ask the witness, whether or not he recalled something. The witness will not answer that.

Q. I read to you from page 8161 of the record and ask you if you——

Trial Examiner Diggs: You are not going to read to the witness from anything.

(Further deletion of remarks by counsel for the respondents at direction of Trial Examiner.)

Trial Examiner Diggs: You are not going to read to the witness from any page of the record, to which ruling counsel may have an exception.

Q. Now, did you ever—do you know anything about Jane Junior, Mr. Bergdahl——

Mr. Martin: Objected to, your Honor.

(Further deletion by direction of the Trial Examiner.) 12908

Trial Examiner Diggs: In response to a suggestion by counsel for the respondents I now state that this witness, as I understand it, has already testified that at the present time he has no recollection whatever concerning the dollar volume of business done by any of the persons whose names appear upon Commission's Exhibits 941 and 942. Is that correct, Mr. Witness?

The Witness: I think that is substantially correct, yes, sir.

Trial Examiner Diggs: Then I understand that counsel for respondents states that in view of that statement that he does not desire to follow up this line of examination. Is that correct? 12909

Mr. Albert: That is correct. No further questions.

Mr. Martin: I have no further questions.

Trial Examiner Diggs: You may be excused, Mr. Witness.

(Discussion off the record.)

Trial Examiner Diggs: This hearing is adjourned and will be resumed at 10 o'clock A. M. November 15.

12910

(Thereupon, at 11.45 o'clock A. M. November 12, 1937, the hearing in the above-entitled matter was adjourned to Monday, November 15, 1937, at 10 o'clock A. M.)

Room 901, 45 Broadway,
New York, N. Y.,
January 5, 1938.

12911

Met, pursuant to adjournment, 11 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: Are you all ready?

Mr. Martin: Yes.

Examiner Diggs: You may proceed, then.

Mr. Martin: If your Honor please, counsel for the Commission and counsel for the respondents have entered into a stipulation as to the volume—as to the sales volume of the members of the Guild for the year 1935.

12912

That has been made up into the form of an exhibit, showing a breakdown by dress business and other than dress business, and breakdown according to price lines. There are two columns. Column A represents the figures for these members of the Guild for the entire year 1935, regardless of whether or not they were in the Guild for the full year. Column B represents the figures for the same members, but takes into consideration only the actual period of 1935 during which the various members were in the Guild.

I would like to have this marked as Commission's Exhibit No. 1050 and offer this in evidence.

Examiner Diggs: All right.

Mr. Albert: No objection.

Examiner Diggs: I understand that counsel for the respondents agrees that this exhibit truly sets forth the facts which it purports to set forth——

Mr. Albert: That is correct.

Examiner Diggs (continuing): And is received in lieu of testimony, and it should have the same force and effect as if the witnesses testified to the facts contained in this exhibit. Is that correct?

Mr. Albert: That is correct. 12914

Examiner Diggs: The exhibit may be admitted in evidence.

(The paper referred to was thereupon received in evidence and marked Commission's Exhibit 1050.)

Mr. Martin: If your Honor please, the same sort of exhibit is being prepared for the years 1934 and 1933. Unfortunately, we did not have time to get that made up in time for the hearing this morning, but it has been agreed between counsel that as soon as that is completed, it may be offered into evidence on exactly the same basis as the figures for 1935 without objection.

We hope that that will be done Monday. If not, it will be prepared—it will be offered as soon as it is completed.

Examiner Diggs: That is the agreement, I understand, 12915 by counsel for the respondents?

Mr. Martin: That is correct.

Examiner Diggs: All right.

Mr. Martin: Now, if your Honor please, subject to the admission of those other two exhibits when they are completed, the Commission at this time rests its case in chief.

Examiner Diggs: Now, then, by an agreement between the Trial Examiner and counsel on both sides, the respond-

ents will begin the taking of their testimony at 10 o'clock A. M. January 10, 1938, in Room 901, 45 Broadway, New York.

Mr. Albert: On behalf of the respondents, Fashion Originators Guild and other respondents, I respectfully move that the proceedings instituted by the Federal Trade Commission be dismissed for failure of proof and for legal insufficiency of the allegations of the complaint.

Does your Honor care to hear argument?

Examiner Diggs: No. The Trial Examiner has no authority to pass upon that motion, and the same will be considered by the Commission either at the final argu-
12917 ment or before, in the event the Commission should grant the respondents a hearing before the final argument.

This hearing is adjourned, to be resumed at 10 o'clock A. M. on January 10, in Room 901, 45 Broadway, New York.

(Whereupon, at 11.30 o'clock A. M., January 5, 1938, the hearing in the above-entitled matter was adjourned to January 10, 1938, at 10 o'clock A. M., same place.)

Room 901, 45 Broadway,
New York, N. Y.,
January 10, 1938.

12918 Met pursuant to adjournment at 10 o'clock A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: Are you gentlemen ready?

Mr. Albert: Yes.

Mr. Post will take the stand.

12919

ALBERT M. POST, heretofore produced, sworn and examined as a witness on behalf of the respondents, being recalled, testified further as follows:

Direct examination (resumed) by Mr. Albert.

Q. Mr. Post, are you connected with the Fashion Originators Guild of America? A. I am.

Q. In what capacity? A. I am executive director.

Q. And when did you become such? A. I became executive director in October, 1934.

Q. Now, will you please recount briefly for us the positions which you have held in the ready-to-wear and dress industry since your connection with that industry? A. Well, I entered the business officially in March, 1914, going with William Filene & Company, of Boston; I served my apprenticeship in the retail business there, starting as a stock boy. I became—or entered the first executive position within a year or two, becoming the assistant buyer in the basement.

12920

Examiner Diggs: Just off the record a minute.

(Discussion off the record.)

Examiner Diggs: Counsel for the respondent has just stated that the reason for this apparent extensive qualification of this witness as an expert is intended for the purpose of laying the proper foundation to show this witness' familiarity with all the matters connected with this industry, in order that he may testify as to the chaotic condition of the industry before the putting in of facts about the practices complained of in the complaint, and that it is the purpose of the respondent to show that it was necessary to adopt this method which has been complained about, in order to prevent an evil which otherwise would

12921

have wrecked the industry, and that, in addition, that the motive in doing this was not for the purpose of violating the law, but was for the purpose of preserving the industry.

Am I right in that, Mr.——

Mr. Albert: Substantially correct, your Honor—sufficient for our purposes so far as this question is concerned.

Examiner Diggs: All right. Then my ruling is that that line of testimony is not admissible, because it is not an issue in this case. My view is that it makes no difference what the motives may have been or what the necessity for the action may have been.

12923 The simple question in this case is whether, conceding that the respondents have done the things charged in the complaint, those things constitute a violation of law. And that is the only issue in this case, and, therefore, I am going to refuse to permit the respondents to introduce any testimony along the lines indicated; that is to say, testimony showing the necessity for this action or the chaotic condition of the industry prior to its adoption. If you want to make a tender in the record now as to what you would prove——

Mr. Albert: May I be heard briefly, your Honor?

Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Albert: In the light of your Honor's ruling upon the issues which present themselves in this case, I re-

12924 spectfully move that your Honor strike from the record the entire testimony presented by the Federal Trade Commission in New York, in Boston, in Philadelphia, in Cleveland——

Examiner Diggs: You do not need to enumerate.

Mr. Albert: I want to make sure I am not leaving anything out, your Honor.

Examiner Diggs: I am going to stop this by stating, "and in all the places where the testimony was taken."

Mr. Albert: Except the bare proof that the department stores and retail shops who testified on behalf of the Commission were, at the times testified to, red carded by the Fashion Originators Guild of America.

Examiner Diggs: Motion is overruled.

You may have an exception.

Mr. Albert: Now, if your Honor pleases, in so far as particulars——

Examiner Diggs: Off the record.

(Discussion off the record.)

Examiner Diggs: For the purpose of permitting counsel for the respondents to consult with his clients and with his associates because of my ruling, this hearing is adjourned until 1 o'clock to-day. 12926

(Thereupon, at 11 o'clock A. M., a recess was taken until 1 o'clock P. M. of the same day.)

AFTERNOON SESSION.

(The recess having expired, the hearing in the above-entitled matter was reconvened at 1 o'clock P. M. of the same date, and further proceedings were had therein as follows:)

Mr. Weisman: I respectfully except to your Honor's ruling and except upon the ground that the purpose of this testimony is to show that the activities of the Guild tend merely to regulate competition and to thereby promote and not to suppress it. I do further object to this ruling and except to it on the ground that no Court can intelligently consider the activities of the Guild unless I am permitted to show the facts peculiar to the business to which the restraint is applied, the condition of the business before and after the restraint was imposed, the nature of the restraint and its effect, both actual and probable, by comparing what was the condition prior to the application of the restraint and subsequent to it. 12927

I further say that that cannot be passed upon by any other Court correctly unless we have before your Honor the history of the restraint, and the history of the restraint cannot be considered unless the factual, industrial and economic background to which the restraint is applied is before you. I say further that no Court can say whether this is a proper——

Examiner Diggs: Just a moment now, Mr. Weisman, you are arguing this matter out. You have gone over the line. Off the record, please.

(Discussion off the record.)

Mr. Weisman: There is one thing that I also want to
12929 make plain to your Honor and that is that we are not offering this testimony for the sole purpose or for the purpose of showing motive, because I do agree with the Court that good intention will not save an otherwise objectionable regulation or the reverse, but I say that it is necessary to have this before the Court because knowledge of intent will help the Court to interpret the facts and predict the consequences.

I further object to your Honor's—except to your Honor's ruling upon the ground that this is a proceeding under Section 5 of the Federal Trade Commission Act.

Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Weisman: The Courts have repeatedly held that
12930 the test to be applied in these proceedings is the test that is to be applied—my opinion is that the Commission cannot find whether or not this restraint is an unfair method of competition—that such fairness or unfairness cannot be decided without having before the Commission the evil sought to be cured thereby.

Examiner Diggs: Off the record.

(Discussion off the record.)

Examiner Diggs: Counsel has already made that statement in the early part of your statement. You made that

same statement. You are simply going and rehashing the same grounds over again.

Mr. Weisman: That under the pleadings in this case which had been accepted by the Federal Trade Commission, the matter of the justification for the imposition of the restraint was duly pleaded and no objection or motion made with regard thereto by the Commission.

Examiner Diggs: The objection is overruled. The ruling stands. You may have an exception.

Mr. Weisman: Yes. If the respondent were permitted to go on with the testimony, he would have by such testimony proved the following: 1—that prior to 1917, the ladies' ready-to-wear industry was of no large moment in 12932 the United States of America. That the individual dressmaker then held sway.

Secondly, that shortly after the war, the manufacture and sale of ladies' ready-to-wear dresses became really an industry.

I would offer to prove that some manufacturers—no—I would also show that the dollar volume of sales by manufacturers of ladies' ready-to-wear dresses prior to the advent of the Guild was generally in excess of $600,000,000.

Next, that prior to the advent of the Guild, the manufacturers of ladies' ready-to-wear dresses originated designs for the dresses they made. Those are known as style creators.

I would also offer to prove that prior to the advent of 12933 the Guild, there were a number of manufacturers who did not own—did not make their own designs—did not make their own designs but copied the designs of other manufacturers.

I would prove prior to the advent of the Guild, there was a well-defined line of demarkation between the two types of manufacturers. That those who designed and produced their own styles were accepted as and known in the industry as houses of original creations and that manu-

facturers who copied the designs of other manufacturers who originated them were known as copyists or style pirates.

I would also prove that prior to the advent of the Guild, the copying by one manufacturer of the designs of another was commonly called "Style Piracy" and "Design Piracy."

I would offer to prove and prove the difference between the term "style" and the term "design." That while they are frequently loosely used as the same thing, that in this industry they are not the same thing; that style as applied to a dress refers to its general characteristics such as the length of the skirt, the size of the sleeves, the height of
12935 the waist, etc., while design as applied to the dress includes all of the details involved in its make-up. That a style is a type while a design is an interpretation or an adaptation of the style.

I would also prove that a single style may be followed by any number of designs; that are—that of one style you can have an innumerable number of designs.

I would also offer to prove that a "fashion" is a style which has been popularly accepted and has a place in consumer acceptation. In other words, people want to buy.

I would offer to—I would prove that styles in ladies' dresses are usually set or fixed in the so-called style centers of the world other than New York.

I would prove that Paris is the principal style center for ladies' dresses.

12936 I would prove that the original designer for the purpose of obtaining style information—that is, information as to trends of the style generally as differentiated from the design which must be adapted to the New York or American woman, sends his designer or stylist to Paris where they receive knowledge of the style or what is known in the industry as "style inspiration." That from such observation, they observe the prevailing Parisian styles and fashions and determine their probable trends and avail-

ability for adaptation in the United States of America. That after making such observations and determinations, the stylist or designer for the creator prepares their own designs, creations, using merely the style for trend or inspiration.

That in doing this, they use the information they have obtained in Paris also their own knowledge of the probable requirements of their own customers, their own genius, their own experience and their own ideas as to what will meet the requirements and the demands of the buying public in America with—which they serve.

I would also prove that always since the commencement of this industry, such designs prepared in such 12938
fashion have been considered in the industry to be original creations of the designer even though they may not be novel in the sense that nothing like them has ever existed before. I would then prove the cost and method and practice in making up such original designs to the original creator. I would show that the designs which appeared to have a market-wide value are made up into samples; that when a collection of samples has been assembled, that many of them for one reason or another which could not be determined in advance of their assembly and in advance of going to the expense of making them up have to be discarded as unsalable or otherwise unsuitable.

I would then prove that the samples which are left 12939
after these eliminations have been made constitute the manufacturer's line which he shows to his customers.

I would also prove that in this industry there are five seasons to the year—the spring season, the summer season, the fall season, the winter season and the winter resort season.

I would prove that a manufacturer or creator—that is, a creating manufacturing—a creator manufacturer who produces original styles makes up his line of samples for

each season. I would prove that the cost of making up this line of samples for each manufacturer is between $25,000 and $50,000 per season, depending upon the diversity, scope and price range of his line.

I would prove that after this expenditure arrived at in this fashion, a manufacturer having prepared his line, it is now put on display in the manufacturer's showrooms, and it is there exhibited and shown to prospective retailers.

I would prove that prior to the creation of the Guild and because of style piracy among other things, the retail buyer purchased only at first a small number of dresses
12941 of any one design. I would then prove that if the particular dress that he purchased turns out to be a good seller, the retailer usually purchases more dresses of the same design; that these additional purchases are called re-orders and that the success or failure of the manufacturer's business is dependent upon his re-orders; that in the operation of the business of manufacturing and selling original dresses, no manufacturer can successfully or profitably continue in business upon the basis of his original orders.

I would also prove that the period between the first order of a dress—of a particular design and a last substantial re-order is called the style life of the dress. I would prove that the style life of a dress prior to the advent of the Guild was not more than three weeks.

12942 May I have a moment's rest from this, your Honor?

Examiner Diggs: Yes, I am perfectly willing you do.

(Thereupon a brief recess was taken.)

Mr. Weisman: I would prove that the manufacturer who is a copyist, or style pirate, does not send stylists, or designers, to Paris for inspiration; that instead, he copies the original designs of other manufacturers; that the copying of original designs is accomplished in different ways—sometimes it is done by bribing, and has been done

by bribing the employees of the creating manufacturer to disclose the confidential information and knowledge of the line.

I would prove that in the past it has been done by outright stealing—by breaking into the premises and burglarizing the premises of the original designs.

I would further prove that it has frequently been done through the fraud of persons coming into a showroom and purporting to be interested in purchasing garments, when in truth and in fact they appear only for the purpose of fraudulently obtaining knowledge, which they sketch down and then surreptitiously sell to these style pirates, or copists.

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I would prove that another means of doing this is through the fraudulent connivance of so-called resident buying offices and copyists; the resident buying offices calling for numbers on the original line for the avowed, though—for the avowed purpose of purchasing the goods of the manufacturer, but, in truth, for the purpose of turning these samples over for copying by the style pirates.

I would also prove that this stye piracy had been accomplished, to a large degree, by the copyists or style pirates bribing the contractors of the dress creator to deliver to them in advance even of delivery to the one whom he is working for, of the samples which the contractor was ostensibly making up and being paid for by the creator.

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I would prove that prior to the advent of the Guild, this style piracy was responsible for the chaotic condition of the dress industry, for the inability of those creating styles to continue to stay in business profitably, for the large number of bankruptcies which attended the industry, and that as a result of style piracy, the mortality of those who attempted to create—the business mortality of those who attempted to engage in the creation of styles was 25 per cent. per year.

I would prove that this style piracy, prior to the advent of the Guild, was the chief cause of cancellations and returns. In other words, a manufacturer would sell a dress as an original. It would have been surreptitiously, without his knowledge, copied down. It would thereupon compete with the original when attempted to be sold. As a result thereof, the dress would either be returned to the manufacturer—to the style creator, or the order, if not yet shipped, would have been—was cancelled.

I would prove that a further injury to the manufacturer was that this style piracy ruined and destroyed the reputation and good will of the style creators; that their
12947 reputation was built upon their claimed originality of design; that the style piracy, fraudulently and wrongly deprived them of the benefit of this good will.

I would also prove that it was injurious to the manufacturer of the original, in that by means of this piracy, the copyist manufacturer took what might be called a "free ride" upon the—at the expense of the creator; that he took the benefit of the large expenditure, of the use of the ingenuity, brain and genius, and appropriated them, through any one of the means I have before set forth.

I would also prove that it was injurious to the higher class creator, in that it resulted in the palming off of cheaper merchandise which looked the same as the original creation, but in truth and in fact, wasn't made in the same way, with the same care, with the same fine goods—and
12948 through its simulation destroyed the worth of the original.

I would also prove that the grave injury that this style piracy did to the manufacturer was that it resulted in hand-to-mouth buying by the retailer, in that the retailer never knew when a dress was going to be copied and appear in a cheaper fashion but sufficiently cleverly copied to fool or deceive a casual observer—so that the retailer was unwilling to place an order for a large number.

This, in turn, resulted in the inability of the manufacturer of the original creation to purchase goods in large bulk, to make up a large number of dresses, to regularly and steadily employ his help, to take advantage of large-group or large-volume purchases. But he, in turn, had to purchase from hand to mouth, thus paying larger sums for his merchandise.

I would also prove that this was injurious to the manufacturer in that it shortened the style life of a dress; that while a line took a number of months to design and to create, yet the minute it was copied down, it was then copied down further and further.

I would prove that it was no uncommon thing for a 12950
dress, originally produced fairly and honorably at, say, $79.50 retail, to be copied down by simulation to $16, thus completely destroying the worth, the investment of the creator of the original.

I would prove that style piracy was unfair to the creator in that it enabled copyists to avoid the heavy expense involved in the preparation of original designs. I would prove that style pirates, or copyists, manufacture their dresses in cheaper material and by cheaper labor than do creators of originals.

I would prove that such style piracy destroyed the style or design value of dresses which were copied. I would also prove that women will not buy dresses at good prices in one store, if dresses which look about the same, but in truth and in fact, are not the same, are offered for sale at 12951
another store at substantially a lesser price.

I would show that through this cause, copying substantially reduced the number and amount of reorders of the original creators. I would prove that the uncertainty with respect to reorders, arising from this style piracy, made it difficult, if not impossible, for original creators to so regulate their production as to enable them to employ labor continuously.

I would show that this style piracy was a progressive evil—that copying was done progressively; that the first copy of an original design would sometimes sell at 65 per cent. of the original, that then there would be a copy of the copy, which would sell down from that, and that there would then be a copy of the copy of the copy, and so on down the line. I would also prove that this copying of a copy affects the business of the first copyist adversely, and so on down the line—that the second copyist affects and injures the business of the first copyist, as the first copyist injures the business of the original creator.

I would also prove that prior to the advent of the Guild, this copying was of severe danger and injury to the re- 12953 tailer—that such design piracy injured and, in many cases, destroyed the reputation of the retailer for honesty, style-ability, and service; that these are important assets of the retailer.

Then I would prove that in numerous or innumerable cases, customers have bought a dress at one ethical store, which sold it as an original; that later, the dress was returned on the ground that she had seen the same dress at another store at a lower price; that this injured the reputation of the retailer, as it caused her to think that she was being improperly over-charged at the first store. Secondly, it destroyed the reputation of the first store with regard to its distinctive style-ascertainment abilities. Furthermore, the dress was never the same dress, but these 12954 dresses merely simulated the original.

I would also prove that these customers always—even when the matter was explained to them—held a resentment against the store that sold them the original. I would prove that the business was injurious to the retailer in that through style piracy, a large number of dresses which were sold didn't stay sold, but were returned; that this made it unable for the store to properly budget itself; that the style piracy was the greatest single factor in causing

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the retail establishments handling style merchandise to take large, excessive mark-downs; that as a result of this, prior to the advent of the Guild, and almost without exception, every mercantile establishment handling high class, or high styled dress creations, ran those departments at a distinct loss to itself, but it couldn't control it. And this loss was only attributable to the style piracy.

I would also prove that prior to the advent of the Guild, unethical or dishonest retailers, attempting to unfairly compete with ethical retailers who were handling style originations, would observe the advertisements of the ethical retailer, or the retailer handling style originals or style creations, and thereupon, by use of inferior copies priced at lower prices, would destroy the goodwill of the original —the retailer handling the original, destroy the value of the advertising and trade upon the original—the retailer who handled the original—upon his style-ability.

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I would show that the retailers, prior to the advent of the Guild, maintained large and expensive stylist experts in selecting styles; that the unethical retailer had no such force or the expense incident to it, and would merely resort to the practice of copying that which the other retailer—the first retailer was doing, but would do it by and with the use of copies, and thus seem in fact to undersell the ethical retailer, when in truth and in fact, he was offering or palming off an inferior garment.

I would prove that this great injury to the retailer was of great injury to the manufacturer; that the retailer was the outlet for the manufacturer; that the manufacturer, in the operation of his business, could be no more successful therein than were the people who handled his merchandise, and that by this destruction of the retailer, in turn, the manufacturer was gravely injured.

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I would also prove that before the advent of the Guild, this style piracy was injurious and harmful to the consumer. I would prove that in the first place, through testi-

mony—that this practice of copying of styles and style piracy left the consumer in a hopelessly impossible state of mind with regard to style. A person purchasing an original never knew that she was getting an original and that it might not be copied down to almost nothing.

I would also prove that frequently and in innumerable cases, the consumer would be imposed upon; that the various manufacturers in this industry have maintained and established, through advertisements, throughout the country, through many years of high styling, a standing, so that their particular dresses had a ready consumer acceptation; just as a French dress would be accepted by reason of it
12959 being designed and made by a couturier, so the designs of our American manufacturers were readily accepted; that these unethical retailers, taking advantage of the lack of knowledge of the consumer with regard to the mechanical operations in a dress, the merchandise that goes into it, directly palmed off a cheap and inferior copy as an original. They would copy a creator's dress, and sell the copy as the dress of the creator.

I would also prove that this unfair competition which arose by reason of style piracy, was unfair to the consumer in that, in the long run, the purchaser of the original creation had to pay a much higher price for the dress than if there were not such unfair competition, in that the cost and losses incident and which arose from this unfair and pernicious practice, had to be absorbed somewhere,
12960 and they were absorbed by those few who purchased these dresses.

We would also prove that the consuming public generally and completely was resentful against this copying; that in all price ranges, the consuming public desired to know that it had an original or that, if it were represented as an original, it was original.

I would also prove that the effect of this style piracy was tremendously injurious and detrimental to labor; that

style piracy was the greatest of all contributing factors to the sweat shop conditions which were so long incident to the dress business; that this arose as follows: that when a manufacturer copied down a dress, the only possible place where he could make a large saving in the cost of that dress was through the sweating of its of the labor that went into the dress.

We would prove that in almost every case, these copyists were in the habit, in order to compete solely on price, one with the other and all with us, of taking the dress and auctioning the labor off, and he who offered less, to do the work for less, got the order. This was so because the copyist, having no origination in style, nothing of value to offer other than the ability to copy cheaply, and since he couldn't buy his merchandise any cheaper, could only resort to one of two practices, in addition to wiping out the cost of designed dresses—of designing: a, substituting shoddy or inferior merchandise; b, sweating his labor and obtaining the labor at prices which did not give rise to an ability of the worker to support himself. 12962

We would also show that it was injurious to labor, in that this style piracy, more than any other factor, by shortening the style life of a dress, contributed and brought about the seasonal employment of labor, with a seasonal slack. A dress was brought out; it would be accepted. Whereupon, a great many people would be put to work at the sweat-shop prices to copy it. They would immediately destroy the value of the dress. They would immediately be laid off and have nothing to do until another good dress could be copied to advantage. 12963

I would prove that prior to the formation of the Guild, the dress industry was in the chaotic condition that I have described and that this chaotic condition was due to the prevalence of style piracy.

I would prove that the purposes for which the Guild was formed were only those as set forth in its certificate of incorporation, to wit——

Examiner Diggs: Wait a minute. Do not read that. That is in evidence.

Mr. Weisman: Then I would— Off the record.

Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Weisman: I would call each member of the Guild to prove that the sole and only reason that he joined the Guild and took part in its purposes and deliberations, were that in his opinion the elimination of style piracy was absolutely necessary and essential if such persons were to be able to continue in business.

Examiner Diggs: You are talking about the manufacturer now, are you?

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Mr. Weisman: Yes.

Examiner Diggs: All right. Go ahead. You may proceed.

Mr. Weisman: That in no event do any of them join the Guild, nor does the Guild red card anybody except in its efforts to curb style piracy.

Examiner Diggs: We will take a recess for a couple of minutes.

(Thereupon, a brief recess was taken.)

Examiner Diggs: The offer of proof is denied, and counsel for the respondents may have an exception.

We will adjourn now at 3:15 to meet at 11 A. M. on January 13, 1938.

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(Whereupon at 3:15 o'clock P. M., January 10, 1938, the hearing in the above-entitled matter was adjourned to January 13, 1938, at 11 o'clock A. M., same place.)

Room 500, 45 Broadway,
New York, N. Y.
January 13, 1938.

Met pursuant to adjournment at 11 o'clock A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: You may proceed, gentlemen.

Mr. Albert: If your Honor pleases, at this time, I wish 12968
to state had the respondent been permitted to do so it would have proved by competent evidence—and I now offer to prove, in addition to the previous proffer of proof, the following:

There is a distinction between the use of Paris importations as a basis for the theme of a design and the copying of a design of a dress as created by members of the Guild. Paris couturiers make it a business to create dresses in anticipation of the prevailing fashions for the express and specific purpose of showing their ideas to manufacturers from all over the world, who pay a fee for the privilege of viewing the dresses, and for the right thereafter to adapt the style theme as set by the Paris creators pursuant to their own conceptions of proper designs.

Manufacturers may also, and do, copy a Paris creation 12969
in the detail of its design, which copying is recognized as equitable and honorable in the industry and is encouraged by the Paris couturiers when paid their fee for the privilege. Style pirates, without authorization or consent or the payment of any fee, copy in detail the original designs of members of the Guild.

Original creators use an insignificant number of many details in the designs of Paris creations, the overwhelming

number of details in their own dresses being almost wholly of their own inspiration.

Members may not register as originals and receive protection on designs which might be considered as copies of imports. Unless a dress registered by a member is substantially different from a Parisian import of which it may be charged to be a copy, it is not protected by the Guild program. Members of the Guild, to a great extent, do create their own original designs, without any dependence on Paris inspiration of any nature. Although many manufacturers of original creations spend from $25,000 to $50,000 in the development of a line, a successful line may
12971 be produced at a designing cost not in excess of $2,500 for the line.

There is an ample supply of good designers ready, able and willing to work who may be availed of and employed by copyist manufacturers fully capable of designing a line that will be successful and profitable.

The most important element in a dress to a woman is its ability to distinctly reflect the style trend in its design and to be fashionable. Dress to a woman is not a mere covering or article of clothing, but is a source of great pleasure and a means of expressing her individual personality through adornment, particularly with the end in view that at all times creating not only a distinctive but a youthful appearance by reason of which American women abhor the thought of being regimented and required to in-
12972 effect wear a uniform through the duplication of the designs of the dresses, brought about by the evils of style piracy. Each woman believes herself to be a stylist and demands, in so far as possible, different and individual clothes and insists that her clothes follow the fashion trend. Workmanship, tailoring, material, needlework and other elements of the dress are secondary, and as a matter of course, are presumed to be of the character and quality indicated by the price of the dress.

The property right of a manufacturer in his original creation has been recognized by the United States Government in its establishment of a Design Patent Bureau which provides for the patenting of original designs in an attempt to give manufacturers an exclusive right to such designs. This attempt at protection, however, is impractical and fails of its purpose since the actual cost of patenting is prohibitive. To enforce the patent, it is necessary for the holder thereof to sue infringers throughout the country. The delay incident to obtaining a temporary injunction and a trial makes any attempted judicial action useless and unenforceable. Attorneys' fees are too costly and there is no protection during the period of attempted registration. 12974

The members of the Guild realize that style piracy was destroying their business and industry and that co-operative effort was necessary in order to protect themselves and by reason thereof voluntarily and willingly instituted the Guild program as protection against the thieving practices of unscrupulous competitors who were perpetuating a method of doing business which was slowly destroying the entire industry.

In recognition of the existence of the evil and because they believed the elimination of the evil of style piracy absolutely necessary to their continuance in business, the co-operating retailers located throughout the United States willingly and voluntarily subscribed to the Guild policy of elimination of style piracy. 12975

The Guild program has lately ameliorated the evil conditions which existed due to the evil of style piracy and has been the greatest single factor in stabilizing the industry to the benefit of manufacturer, retailer, consumer and laborer. The Guild program has resulted in increased competition on an ethical, fair, competitive basis and has resulted in a decrease of failures and of losses in the industry.

As a result of the Guild program, the necessity for and the practice of sweating labor has been considerably reduced, wages have been increased, slack seasons have been reduced and more continued and continuous employment of labor has resulted.

As a result of the program of the Guild, the public at large has been benefited in that women rely with greater confidence upon the integrity and the quality of the dresses which they purchase, and have been provided with a market for what they wish to purchase and which will satisfy them rather than being forced to purchase what they do not want because they have no other alternative.

12977 The Federal Trade Commission in other industries in which fashion is an important element has dominated style piracy therein as an unfair trade practice and violative of the property right of the creator of the fashions, predicated upon the advice and expressed wishes of a majority of the members of the industry affected. The style piracy thus characterized by the Federal Trade Commission is no different in substance or in effect than the style piracy condemned as an evil in the dress industry.

Examiner Diggs: Now you are making an argument. I have sought not to interrupt you; although a great deal of your so-called proffer of proof is argument; but now clearly you are going into an argument and I am not going to permit that. What I am going to do is to allow you to make your proffer of proof, which I think you have a right

12978 to make. I think you have a right to make any statement. Just state the facts that you propose to prove, that is all—not any comments or arguments about it.

Mr. Albert: In addition, by the voluntary co-operative action of the majority of the members of over 80 industries in which fashion was an important element; codes of fair trade practice formulated by members of such industries under the National Industrial Recovery Act recognized style piracy as an evil, condemned the same and provided

methods for the eradication thereof. The style piracy thus characterized in such industries is identical with that in the dress industry.

Mr. Martin: I move that that be stricken as argumentative.

Examiner Diggs: Let it stand; and I just say to counsel again, confine yourself to strict and legal proffer of proof.

Mr. Albert: This offer of proof is made without prejudice to such further offers of proof as may become necessary or be deemed necessary in the further trial of the instant proceedings, by reason of the rulings of the Examiner, and elements have been present at this time due to 12980
the difficulty of determining and anticipating what presentation of proof has been forbidden by the previous general and blanket ruling of the Examiner.

Examiner Diggs: The proffer of proof is denied and counsel for the respondent may have an exception.

Mr. Albert: Mr. Post.

ALBERT M. POST, heretofore sworn and examined on behalf of the respondents, being recalled, testified as follows:

Direct examination (resumed) by Mr. Albert.

Q. Mr. Post, will you explain the mechanics of the regis- 12981
tration of a style with the Fashion Originators Guild?
A. The registration with the Fashion Originators Guild is accomplished by the use of a two part form upon which has been transmitted a general description on one side which is accompanied by an affidavit establishing claim of origination and on the second side by a sketch of the style to be registered with complete detail, sometimes accompanied by a swatch of the materials to be used. That form is in two part arrangement perforated down the center and

as the offering manufacturer brings it to the Guild office, where it is registered by a means of perforation machine that runs in a serial number, dated with a stamp, torn in half, and the part that contains the sketch is returned immediately to the offending member while the part that has the general description and the affidavit is retained in our file. I believe that summarizes the mechanics of registration.

Q. Does the part that is returned to the offering manufacturer contain the stamp of the Guild? A. Yes, both of them do. It is perforated through the double sheaf of the form before they are delivered to the offering manufacturer.

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Q. Is any investigation or inquiry made by the Guild of the manufacturer at the time that that proffer is made by the manufacturer of this sketch which he is attempting to register? A. No.

Q. The sketch is automatically given a number and registered with the Guild, is that it? A. That is right. The numbers—I might clear that, Mr. Albert—the numbers are rather in sequence but not in sequence as to the particular manufacturer. In other words, the point is that on any given day the registrations run from the first number succeeding the last number of the previous day. That, among other things, disposes of any claim of improper registration as to date.

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Q. To what does that registration entitle the manufacturer with respect to the sketch registered or the dress registered? A. Well, speaking broadly for a moment, first the Guild program of design protection is confined to those numbers registered by Guild members. Speaking more specifically, however, the registration of and by itself merely establishes the claim of origination and the date upon which it was offered. Have I answered the point you were asking?

Q. In other words, you mean that any dispute or any claim that the dress registered is not entitled to protection or is not an original, is something put aside in the future, or the purpose of registering is merely to fix the date of the claim?

Mr. Martin: If your Honor please, let the witness testify.

Mr. Albert: Off the record. May I say this?

(Discussion off the record.)

Examiner Diggs: Read the question.

(The reporter thereupon read the question.)

Examiner Diggs: I think the witness should be asked to state just exactly what force and effect 12986
this registration has with respect to securing for the registrant the rights to the exclusive use of that design. I think that is the whole question.

Mr. Albert: Will the witness answer the question as reframed by the Examiner?

The Witness: I am not sure that I understand "force and effect," but I would say the answer is practically none. It merely establishes the claim to be determined subsequently by a style piracy committee. Nevertheless it does establish the basis of that claim. I assume it has some force and effect, but it does not actually establish any rights of his whatsoever.

By Mr. Albert. 12987

Q. What may be registered under the rules of the Guild, Mr. Post? A. The affidavit to which I have referred, which is on one part of the form, is required to establish a claim of original design. Therefore nothing may be registered unless it is the original conception and design and creation of the registering member or his staff. Negatively no imports, reproductions of models or reproductions of anybody's goods may be registered.

Q. When did this form of registration commence, Mr. Post? A. Early in 1933. Whether that was January, February or March, I can't say specifically, but about that time.

Q. Was this the first form of procedure adopted for the fixing of a claim of originality by the manufacturer? A. I would say that was the first form of procedure adopted, yes.

Q. Was there any other particular method which had been in use prior to the adoption of this style registration program? A. Yes, there were other methods.

12989 Q. In what manner is the claim of originality on the part of a manufacturer as reflected in his registration challenged?

The Witness: Will you repeat that question?

(The reporter thereupon read the question.)

Q. That is, if somebody claims that that dress is not an original how is a proceeding instituted to determine it? A. The claim that a garment is not an original comes up usually and so far as I know in all cases because of the claim that some other garment is a copy of it. Therefore the question of origination and the question of piracy are offered for hearing, consideration and adjudication before an impartial—I think we call that Impartial Retail Arbitration Committee on Style Piracy.

12990 Q. Mr. Post, will you relate for us the various means and methods since the inception of the Guild that have been used either by the Guild or by members for the determination of whether or not one dress is a copy of another, bringing us down to the present day and describing the methods that are presently in use by the Guild? A. All right. The first means by which garments were adjudged to be copies appears to be in the fall of 1932. We were incorporated in the spring of 1932. Under the original suggestion, the question of adjudication of copies was in-

tended to be done in each city by retail guilds which were anticipated would be organized. From that it appears that the next general plan and suggestion that was offered by the Guild for adjudication of claims of piracy involved the question of getting an outstanding person to act as arbiter, general and national arbiter, and the Guild, among other people, consulted with Dr. Julius Klein, who was at the time Assistant Secretary of Commerce and sought to interest him in this question and asked him to accept that position which he declined.

Q. About what time was this? A. Well, that was, according to my recollection, in the fall of 1932 and it possibly might have been in the early spring of 1933 but I don't think so; I think it was in the fall; I think it was in the fall. It is not clear in my mind at the moment. I know the incident and the general period but not the particular date. Then in the fall of 1932 came as I think—maybe I am repeating—but these plans for the retail guilds and the establishment in this first draft of contracts that had been worked out, the establishment of the principle of piracy adjudications within the cities by committees of retailers. Obviously that didn't work because of two reasons: Evidently because the guilds were not organized, and secondly, giving opportunity for a hearing for either the claimed piracy or the claimed originator. I could not be in many hundreds of cities at the same time when the question was coming up. So, therefore, in the spring—well I should say that for most of 1933—the results, the adjudications were generally gotten by consultation with the interested manufacturer from which resulted arbitration committees of some kind, depending upon what the dependents to the particular claim were satisfied with, both the Guild and non-Guild. There might have been and there were in some cases committees of manufacturers. Some cases they were entirely non-Guild manufacturers; some cases they were entirely Guild manufacturrs; some cases

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they were a combination of both. They were also committees passing final judgments and adjudications in those days that were solely retail committees; representatives of offices. In other words, the method—and I am trying to be careful about the word, I am not sure—the method was non-prescribed. It was generally the result of what appeared to be satisfactory to the interested people. That takes us through 1933, I believe, and part of 1934.

Q. How would the people get together at that period of time, Mr. Post? A. Well, when a claim would come up the Guild organization would get in touch with the interested manufacturers and ask them to take an arbitration
12995 of some form.

Q. And then the arbitration took the form that you have already testified to? A. Well, it took one of the forms of which I have testified to, yes.

Q. Go ahead.

Trial Examiner Diggs: What was the next step?

A. Sometime in 1934, I think about half way through the year, there developed an urge from various sources to establish a routine, a procedure and method that would be followed in all cases; and when I came with the Guild, which was in the fall of 1934, that question of establishing a routine had not as yet been completely solved. They were still proceeding, attempting to evolve a system or a routine.
12996 I consulted with manufacturers, members, retailers, all the people who were interested, and as a result there developed a system of adjudication by committees composed of equal numbers of retailers and manufacturers.

Trial Examiner Diggs: When was that?

The Witness: That was either the late fall of 1934 or the early spring of 1935. Then through the spring of 1935, and the summer of 1935, there were a continuation of these conferences. Someone, not

Mr. Bergdahl incidentally, although he testified as to that, made the suggestion that there be retail committees, solely retail committees, and that a clear routine be established by which these committees would be called, and so forth. The Guild gave consideration to that and started the first steps of their present system which was to establish retail panels.

Trial Examiner Diggs: And that was about the period you just last mentioned, was it?

The Witness: Now we are in the fall of 1935, I believe.

Trial Examiner Diggs: And that is the date that you first put into practice the method which is now being used? Is that right? 12998

The Witness: Not completely. During the fall of 1935 it was put in, yes. I had not as yet clarified a final step in formulating our present plans.

By Mr. Albert.

Q. Will you do that, Mr. Post? A. Well, after these retailer panels and panels of manufacturer—because I think I pointed out, perhaps I did not—at that time the plan was a combination of manufacturers and retailers; but in any event in the fall of 1935—October or November—I had a conference with Mr. Kerstein of William Filene & Sons Company, and Mr. Bergdahl, and Mr. Bergdahl raised the question as to whether part of the current—— 12999

Trial Examiner Diggs: Suppose we get down to just exactly what was done without going into the detail as to who suggested it and who did not suggest it. Let us get down to the facts. What was ultimately done? I think that is all we are interested in. Off the record.

Mr. Albert: I desire to go on the record and request that I go on the record to note my objection to the constant interruptions of the witness which are interrupting his train of thought that do not permit him to tell the story in a coherent manner in chronological order in which the events occurred. Some of the testimony——

Trial Examiner Diggs: Off the record.

(Statement off the record.)

(At the request of the witness the reporter read his preceding answer which was incomplete.)

The Witness (continuing): Difficulties and evasions with the A.M.C. stores was not due to the fact 13001 that they had——

Mr. Martin: I object to that, your Honor. Please excuse me for interrupting.

Trial Examiner Diggs: Put your objection on the record.

Mr. Martin: I object as to what these things have to do with the controversy with the A.M.C. or with anybody else. What I think that this witness is here to answer is he was asked the question——

Trial Examiner Diggs: Off the record. That is enough.

(Statement off the record by Mr. Martin.)

Trial Examiner Diggs: I overrule the objection in the economy of time and instruct the witness to 13002 confine his answer as near as he can to the statement of the dresses and when they were used. Now go ahead.

(The preceding portion of the witness's incomplete answer was thereupon read by reporter.)

The Witness: —no clear understanding as to how adjudications were being arrived at and he informed Mr. Kerstein that a plan of retail committees had been suggested, exclusively retail commit-

tees. Mr. Kerstein then said that he thought that all of the difficulty would be cleared up if the stores and the A.M.C. and other stores had confidence that these decisions were rendered by the committees that were impartial both as to that and as to selection and method of selection. Subsequent to that meeting I brought to the attention of the Board of Governors of the Fashion Guild a plan, which is the current plan, of adjudicating the question of piracy by exclusive retail committees. The method by which those committees function is as follows.

By Mr. Albert. 13004

Q. Before you get to that point, Mr. Post, will you explain, please, what the difficulty was that was referred to prior to the establishment of your retail piracy committees?

Mr. Martin: I object to it as irrelevant and immaterial.

Trial Examiner Diggs: I am going to let him answer, because we save time, I think.

A. Well, the difficulty prior to that conference was that we had in the meantime developed the plan of employing shoppers in the various cities. These shoppers were going into the stores and pointing out adjudged copies to the stores or the store personnel, and the stores would continue to sell these copies and blandly say, "Well, I don't think it is a copy" or "I don't know that it is a copy" and "Who said it was a copy?" or answer of that kind. That was what I referred to as the current difficulty in the fall of 1935 with this particular group of stores. 13005

Q. What was the work of these shoppers at this time?

A. The work of the shoppers at that time, and always has been, to locate in the stores in the stocks of the co-operat-

ing stores in their city such garments, bring them to the attention of the store and to report any piracy to remove them from the style.

Q. When was the— A. (interrupting) That, generally speaking, is their work. They were retained, handling our plans and forwarding to the Guild of plans from local stores that they believed a dress possessed by another retailer to be a copy, and as a matter of accumulating the work, the shopper would write in and tell us of it and on occasions where it was necessary to hold piracy meetings in their city, the shopper did the work of assembling the committee and securing the dresses and so forth and so on.

13007 Trial Examiner Diggs: That was before this last method of determination went into effect; I mean to say, their activities in getting together the committee?

The Witness: Yes, but before doing that, Mr. Examiner, there are occasions, as we will show later, where there are needs for local committees, rather than central committees in New York.

By Mr. Albert.

Q. Will you now, as long as we are on the subject of shoppers, Mr. Post, will you explain in what manner a shopper operates in a particular city with respect to the knowledge of the retailers in that city of the identity of
13008 the shopper? A. The shopper is known to the retailer. We write them at the time she is employed; we give her a letter identifying herself; we request her to call upon all the retailers in the city as long as she is calling there, and factually we have never employed a shopper in any city without consultation with several retailers. They have aided us if—as we are in Seattle, as you know—and if we need a girl in Seattle, the only way we can find her is if we know who happened to be the retailers.

Q. That brings us down to the creation of your retail piracy committees as they exist today. Will you explain that? A. Well, as the result of the approval of the Board of Governors of the Fashion Guild we immediately contacted all the New York stores.

Trial Examiner Diggs: Give us the date of that?

The Witness: Well, in the fall of 1935. We contacted all New York stores and all New York buying offices and asked them if they would supply us with a list of their personnel, buying personnel, marking the particular field or subdivision within the industry that each individual buyer had knowledge of and was interested in. As a result of that letter or 13010
conference, letter and conference and meetings, my recollection is that we had within a few weeks a panel of about three hundred names divided into five general groups—inexpensive dresses, better dresses, sports dresses, coats and suits, party dresses, I believe—I am not clear at the moment on that. I might say, in passing, because it ties up with this point, that of course as we have gone along those lists have been largely increased. We have never done any more than ask the co-operation of the stores and offices in that regard; but as we have gone along the lists, it must be at least 1500 names at this time. In addition, on that point, we now contact the New York offices and ask for out 13011
of town buyers who are in New York, as reported in the Women's Wear and trade papers and ask if they will take an hour a day on one of the days they are down to augment these committees. We only do that, however, in those cases where in response to a letter that we wrote to stores——

Trial Examiner Diggs: What do you mean by "augment these committees"? You started off talking about something else now.

The Witness: I explained that we had panels and that we had——

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Albert: It is to augment the panel of the committee, your Honor.

Trial Examiner Diggs: We are going to adjourn for lunch now. We will meet at 12:45.

(Whereupon, at 12:05 o'clock P. M., a recess was taken until 12:45 o'clock P. M. of the same date.)

13013

AFTERNOON SESSION.

(The recess having expired, the hearing in the above-entitled matter was reconvened at 12:45 o'clock P. M., of the same day, and further proceedings were had therein as follows.)

ALBERT M. POST, the witness for the respondents, resuming the stand, testified further as follows:

Direct examination (resumed) by Mr. Albert.

Q. Will you proceed with your explanation of the retail piracy committees, Mr. Post, please? A. They are com-
13014 posed of retailers whose names were given to us, divided as I have explained. Then, a week in advance five letters are sent out to five individuals whose names appear on these panels. The names are selected in rotation and each of these five divisions represent a classification of the industry with which that buyer is completely familiar. By sending out these requests for participation of personnel a week in advance, we accomplish the selection of a committee prior to any knowledge as to the garments to be

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submitted to the interested manufacturers. The day before the committee meets, the office telphones to follow up and be sure that the buyer is available. I am mistaken, the day before, we send a post-card, the morning of the meeting, we telephone to the office or the store of the buyer. The committees meet every businss day except Saturday at two o'clock in our office.

Q. Yes. A. That is the routine of seleeting the committees.

Q. Prior to their appearance at the Guild, are the members of the proposed committee for a particular day informed of the names of the parties involved in the adjudication upon which they are being called? A. No.

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Q. Now, what are the rights or privileges of the Guild manufacturer and of the non-member manufacturer with respect to the personnel of the committee? A. Well, skipping all the procedure by which the non-Guild manufacturer—the alleged copyist—is notified of the meeting and acquainted with the claim, and going directly to your question, the non-Guild manufacturer receives notice of the meeting by letter and telegram, I believe—certainly by telegram.

And when he comes to the meeting, if, with or without cause, he is not satisfied with the personnel of the committee or does not wish to entrust his case to them for adjudication, he may object to that committee and not submit the garment to them. The procedure from then on is that he is then offered the panel of the next ten names. 13017
In other words, the two committees—the combined two committees that are to be called the following day and the next day succeeding. If he objects and then he is asked if he has any feeling about any of the retailers and would prefer, with or without call, not to submit his garments to them.

If he rules out any two of the ten, then he is asked if he wants a special committee, and if so, he is given the

complete panel and asked if he can pick—I don't know exactly the number—but any given number of people from it that he would be satisfied with. If he does not wish to do that and says that there are no names or not a sufficient number of names on the total panel of 1500 retailers or thereabouts, that are satisfactory to him, he has the right of selecting an individual retailer, manufacturer or anybody else and——

Trial Examiner Diggs: Does he have to be a member of the Guild?

The Witness: No, sir.

Trial Examiner Diggs: Or one who signed the
13019 declaration of co-operation?

The Witness: No, sir, they need not be a retailer, manufacturer, or in any way identified with the industry.

A. (Continuing) The Guild selects one person and those two are asked to select three additional people. I wish to add at this point that that procedure has never been invoked by anyone. There has never been a need for it, but, nevertheless, the procedure does provide for that arrangement if no other method can be found of finding the committee satisfactory to the non-Guild or alleged copyist.

From that point on or assuming that a committee of some sort has been found to be satisfactory, either the
13020 regular committee or the subsequent committees that I have indicated, the garments and the interested manufacturers are presented to the committee. Both manufacturers offer their claims and the basis of their claims. Such things as orders, cutting tickets, deliveries, designing records, bills for trimmings, et cetera, are usually considered—are always considered, if offered. They are sometimes offered by both manufacturers to establish such claims as they may make to the origination of the garment.

By Mr. Albert.

Q. Would you include in that list of things which are offered to substantiate the claims, the advertisements of the respective parties? A. Yes, all such things including the registration form of the Fashion Guild Manufacturers which simply establishes his claim to the origination of the garment and the date upon which he made his claim.

The buyers serving as the committee, familiar with the markets and the facts and the conditions after hearing all the evidence, render their opinion. The opinion of the Committee is binding upon the Guild manufacturer without right for any reason to appeal. Incidentally, the piracy committees, as they came up in their normal course 13022
of rotation, must be accepted by the Guild member. He has no privilege of rejection similar to the non-Guild manufacturer.

Now, after the adjudication or the decision as to whether or not the garment is in fact a copy— I have just said the non-Guild manufacturer has no right of appeal. I mean the Guild manufacturer has no right of appeal. The non-Guild manufacturer, however, may appeal. Appeals are taken to committees of three merchandise managers, store owners or heads of New York offices.

Trial Examiner Diggs: Are they connected with the Guild in any way?

The Witness: Yes, they are co-operating retailers. 13023

Trial Examiner Diggs: Yes.

A. (Continuing) There is no rule as to whether they might be exclusively, but there has never been an occasion when a manufacturer has had a garment adjudged a copy, that he has not been satisfied with some three heads of New York offices, and when I say the heads of New York offices or store owners or merchandise managers in New York stores.

Now, in the event that the non-Guild manufacturer does not wish to appear before the Committee or does not come even if he may have indicated that he intended to come, the Guild manufacturer is precluded from any rights to appear before the Committee at all. The only thing that is offered to the committee in such a case are the two garments and such facts, both ways as either may have, and t[illegible]n in that regard they are usually ads, or claims or complaints of the stores involved on either side. What I mean by that is, the store possessing a garment which they don't believe is a copy or the store that is objecting to the garment because they think it is a copy.

13025 But the interested manufacturer is not permitted to appear before the committee. I believe that covers the routine in so far as the committees themselves go.

By Mr. Albert.

Q. Now, if the non-Guild manufacturer has not attended the meeting of the committee, what is the right of appeal? A. The right to appeal of a non-Guild manufacturer who has received notice of the meeting and does not appear is that he may have an appeal anyway the first time and the second time in any six-month period or the first time in any second six-month period after the same situation has been ignored by him twice in the previous six months' period.

13026 If the record, therefore, shows that the manufacturer does not intend to come to the meetings and it has been that consistent, then appeals are only granted to manufacturers if they attend the first meeting, but always, twice within the first six months' period of the Guild, contact with that manufacturer, and always once in any subsequent six months' period.

Q. You said he is allowed to appeal anyway, Mr. Post, but I do not think you made yourself quite clear. Do you mean that, unless the record is as you have stated it, he

has no right to appeal? A. No, I do not mean that. I say he has a right to appeal—to ask for and secure an appeal before a committee of the appeal—the merchandise managers and store owners, but that if a man doesn't attend, if an alleged copyist or an adjudged copyist doesn't attend the meeting and then subsequently comes up and says "I want a rehearing on this matter," if it is indicated that he never knew of the rule and had no contact with the Guild, why, he was granted it of course.

If again, within a six months' period the same situation happened, he is again granted a rehearing despite the fact that he did not appear at the first hearing even though he received, among other things, telegraphic notice of the meeting and knew of the complaint. 13028

He also had further knowledge of it which I haven't touched on because it is the thing I asked the question about before. After he has defaulted twice in appearance at the meeting, if within the six months' period he asks for a third rehearing, mind you I am not talking of the particular garment now, I am talking of subsequent garments, and it is obvious that he knows the procedure and is simply trying to evade it or get added delays by not appearing at the first meeting, then we do not grant an appeal unless it is an event that has happened more than six months since the previous two requests for a rehearing.

Q. Now, will you explain the mechanics of notifying a non-member whose dress has been charged to be a copy of a member, that a hearing will be held by the piracy committee and of the procedure and steps that are taken to secure his presence there, and to have a hearing upon the dress in the event that he refuses to submit the garment? 13029
A. When the Guild gets its complaint of an alleged copy and they come in from various sources—the shoppers receive them from the city—the retailers in their city or the retailers write us directly, we contact the involved manufacturer.

13030 *Albert M. Post—For Respondents—Direct.*

The complaints, when we know who the alleged copyist is, is one thing, and then there are complaints when we don't know, where a store advises the shopper that another store in their city has a dress which they consider to be a copy. And in that case, the shopper goes into the other store, having the alleged copy, and asks them who the manufacturer and model number is. Securing that information, he then goes to the alleged copyist. We show him a sketch—the registration form of the sketch, the second part which had been retained by the member.

We say to him, "Have you a dress like this"? If he says, "Yes," we say, that there is a complaint that this
13031 dress is a copy of a registered origination of a member of the Fashion Guild. We advise him that there will be a meeting, that there is a meeting daily and does he wish to submit his dress to that committee for adjudication. That is the simplest form. Sometimes we show him a dress—the sketch in the same matter and he says, "No, I have nothing like that." In that case, we visit the shopper in the city of origin of complaint and ask her to go back to the store that complained to verify whether the complaint was made on the correct garment—on the correct model number as to the original.

After that is verified, she goes back to the store alleged to possess the copy and asks them for the dress to verify whether or not, despite the manufacturer's statement that he has nothing like it, whether they say that they bought
13032 this particular garment from that manufacturer. If she advises us that there is no error in the name or model number, and that the garments appear to her to be the same and that the complaint appears to be justified, we then advise the alleged copyist again that despite his statement that he has no garment such as that, that blank store in such and such a city has such a dress which they say they bought from him. If he says then that he doesn't know anything about it and "I have no garment of that kind,"

we then wire the shopper to have an adjudication in that city and see, in the general procedure which is the same in principle as the one I have outlined in New York, secures the dresses and offers them to a retail committee in that city for adjudication.

When that decision is rendered, if it is adjudged to be a copy, the copyist manufacturer is then notified of that decision and offered an opportunity for rehearing in New York.

Like the question of an appeal, that is done only in two cases in any one six months' period—first six months' period, because again our experience has shown that if we followed it as a usual procedure, the manufacturers would 13034
not—would take advantage of the added time by always seeing that the first adjudications are held out of town. I think that that covers the situation. I am not sure now.

Q. If the copyist manufacturer that you have just been referring to is not a New York manufacturer, what opportunity is given to him for a hearing after the hearing in the local city not in New York? A. Well, if the alleged copyist manufacturer is an out-of-town manufacturer, the hearings are always held in the city of residence of the non-Guild alleged copyist. Therefore, our members are deprived of any opportunity to be present at the hearings, but we say that they may and they usually do—the copyist may and usually does—appear before the retail committees in his city. It seems to me there was some other part to your question that I forgot now. 13035

Q. Has the shopper any discretionary power with respect to the adjudication of copies? A. The shopper has absolutely no discretionary power as to the adjudication of copies.

Q. What are her duties and her functions in that regard? A. Her duties in regard to—in that regard—are merely to advise the Guild of such complaints as are made by co-operating retailers within her city. Subsequently

after adjudication, where she receives a sketch of the adjudged copies—picture of the dress with the model number, the manufacturer and such other information as we have obtained, from that point, on and upon receipt of her sketch, her duty is to go around and shop the co-operating stores within her city to locate such of those copies as she can; to bring them to the attention of the buyer or management of the department; to request their removal from sale.

Subsequently to report to the Guild any failure of a store to remove such copies from sale after notification. Those are her duties with the exception of what I have
13037 already mentioned in the unusual case where there is a piracy meeting to be held in her city.

Q. Now, Mr. Post, will you please trace the history and the development of the Guild from its formation to the present time? A. The formation of the Guild starts in the fall of 1931. At that time it was merely a small group of manufacturers who met at luncheons or in conferences to discuss the problems of their business and to seek each other's help and co-operation in finding solutions. As a result of these meetings and conferences which were the beginning of the Guild, it was decided to form an organization and incorporate.

Some time in either March or February, 1932, the Fashion Originators Guild was incorporated under the laws of
13038 the State of New York.

From that early spring of 1932 through until the fall of 1932, the work of the Guild was fundamentally an attempt —by publicity, letters, ads, articles, to create an interest in clothes, and designing—American designers, and things of that kind; to deal with such unfair or predatory practices as were believed to exist in the industry at that time.

But there was nothing more than a general hope that by high-lighting these problems through publicity, contact

with retailers, discussion, that there would develop or evolve some plan to actually deal with the facts for their existence.

In the fall of 1932 as a result of these letters, conferences, communications, et cetera, there appeared to be the beginnings of formal conferences with retail groups, retail merchants, manufacturers, government officials, throughout the country and there evolved the plan of retail bureaus.

I believe the first one was proposed in the fall of 1932 around September. Prior to that, the contact of the Guild with retail groups had been largely through existing trade associations or Chambers of Commerce in the various 13040
cities. It appears that the idea of a retail Guild was made necessary because these retail associations with whom these matters had previously been discussed——

(A discussion was then had off the record.)

Mr. Martin: I object, your Honor.

Trial Examiner Diggs: Objection overruled.

Mr. Martin: Note an exception.

Trial Examiner Diggs: All right, go ahead.

A. (Continuing) Were not primarily interested in ready-to-wear or the problems of ready-to-wear. From that beginning of consultation with retailers composed of retail Guilds, through the fall of 1932 and up to the early spring of 1933, these discussions, meetings, continued. I 13041
was at that time chairman of the Merchandising Division of the National Retail Dry Goods Association and a director of that association, and as such I contacted the Guild, worked with them on their plans.

More than that, I did the work of the Fashion Originators Guild or in connection with the Fashion Originators Guild and the stores on State Street, Chicago, which are generally known as the State Street stores although I am not sure whether they are an association or just an infor-

mal group. We held meetings in Chicago, discussed the Guild program, how to make it effective, its advantages to us and on several occasions, both formally as a representative of that group of stores in Chicago and further as merely a merchant seeking to find a means of improving our business, I consulted with the Fashion Guild, with retailers, with the officials of the Fashion Guild and evolved, or helped them evolve its program and plans.

I also kept the National Retail Dry Goods Association advised as to such progress and such plans. I also made arrangements for the appearance of Mr. Rentner who was then and now is president of the Fashion Guild, to address
13043 their annual convention and explain the Guild to the retailers who comprised the membership of the National Retail Dry Goods Association.

For many reasons, apparently the plan of organizing retail Guilds did not develop except in some few cases, but not a sufficient number or sufficient coverage to develop a workable, sound, practical plan.

So, therefore, in the spring of 1933, it was decided that co-operation from retailers should be a matter of individual decision rather than attempt to shorten the work by group contacts. Part of the suggested contracts which had been offered for the retail Guilds were taken out and re-arranged into what has been generally called a declaration of co-operation and stores were advised of the Guild
13044 program specifically to the point of style piracy and their co-operation was sought.

From that point on, starting with about the first of July, 1933, the Guild's program continued pretty much in its present form. As I understand your question, Mr. Albert, I have answered it as to the general story of the Guild. I have not included any instances or specifications as to the evolution or the problems that came up.

Q. Now, will you describe the evolution of the declaration of co-operation and its use. A. Well, the evolution of

13045

he declaration of co-operation is—start as I said with hose paragraphs in the original proposed contract with he retail Guild dealing with style piracy. And then dur- ng that late fall of 1932 and through the early spring of 933 when it was found that most stores were not inter- sted in the formation of retail Guilds, and were not par- icularly interested in entering into contractual relation- hips with the Guilds or any other association, the Guild aid that all it wished from retailers was acknowledgment f their policy regarding style piracy.

So that during the spring of 1933, the Guild received rom—oh, several hundred retailers, perhaps five hundred -various letters in which they advised us of their policy 13046
egarding style piracy and their feelings about the Guild nd its program.

When June came along, in 1933, it was suggested that n order to be sure that everybody knew exactly what they ere doing, that some form be prepared and the original orm declaration was drawn by the attorneys or the execu- ives of B. Altman & Company and Bloomingdales'.

Prior to that, as I said, there were shorter forms which ad been evolved by different people after which somebody, aving drawn a form and told other stores about it or old the Guild about it, other people may have used the ame form.

The declaration of co-operation is merely a simple form or a store to advise us as to its policy. There is no re- 13047
uirement that any——

Trial Examiner Diggs: I think the form speaks for itself. I do not think you need detail the contents of the form.

A. (Continuing) That any retailer sign any form of eclaration of co-operation. The requirement, method of he Guild was merely that it be advised as to the store's

policy. The declarations were simply designed in order to facilitate the store's giving us such advice and the more recent declarations have gone into some particulars in order to make clear the program of the Guild so that a store using such form will comprehend as concisely as we are able to present the matter, exactly what they are doing.

Trial Examiner Diggs: Let me ask you a question here. Let us assume that you go to a retailer and ask him to sign one of those declarations of co-operation and he says, "I will not sign it," and continues in that attitude. Will the members of
13049 your Guild continue to sell him?

The Witness: I don't think that is exactly a fair question.

Trial Examiner Diggs: Well, that is the question I want to ask you right now.

The Witness: Then repeat the question. Please repeat the question.

(The record was thereupon read.)

(A discussion was then had off the record.)

The Witness: If that is the way you wish to ask the question, the answer is yes.

Trial Examiner Diggs: Ask your next question.

By Mr. Albert.

13050 Q. In the event that a retailer—withdrawn. Is it necessary for a retailer to sign any declaration of co-operation of any kind? A. It is not.

Q. Is it sufficient for a retailer to state that he is in accordance with the policies of the Guild with respect to the services which it aims to accomplish and that he acts in a manner in keeping with his oral statement? A. It is.

Q. So that, if a retailer merely states that he is willing to co-operate and does co-operate, the members of the

Guild are perfectly willing and do sell him merchandise? A. That is correct. As a matter of fact, we have on record stores that simply send us a copy of their written policy and say, "This is the policy of our store and has been the policy of our store for some time," and that policy was clearly consistent with our program and was clearly opposed to the evil of style piracy, that was all we ever asked or expected from that store.

Q. In other words, the signature of the retailer is not the prerequisite to his doing business with members of the Guild? A. That is correct, it is not.

(At this point a short recess was taken.)

13052

By Mr. Albert.

Q. I show you Commission's Exhibit No. 367-A and B, Mr. Post and ask you what that exhibit is? A. That is one of the form declarations of co-operation.

Mr. Albert: Off the record.

Examiner Diggs: Off the record.

(Discussion off the record.)

By Mr. Albert.

Q. At what time was that form prepared and issued? A. It was prepared in the late fall of 1935, as a result of a suggestion that the program be clarified. To the best of my knowledge, it was never submitted to anyone until 13053 January, 1936.

Q. And to whom was it submitted at that time? A. I only have a recollection of two stores; one is R. H. White in Boston, the other is Strawbridge & Clothier in Philadelphia.

Q. Without giving us the details, will you relate generally, by reason of what facts that particular declaration of co-operation was sent for signature? A. Well, it was

sent to those two stores because they had advised us directly and through their New York office that they were not clear on what the Guild program was, and what they were supposed to do about it, so that the form was designed to clarify those points.

Mr. Albert: At this time, if your Honor please, I would like to offer in evidence the certificate of incorporation of the Fashion Originators Guild of America, Inc.

Trial Examiner Diggs: Do you concede that that is a copy, Mr. Martin.

Mr. Albert: That is a copy.

13055 Mr. Martin: Yes, if he says it is.

Trial Examiner Diggs: In other words, you have no objection?

Mr. Martin: I have no objection.

Trial Examiner Diggs: It may be admitted in evidence and marked Respondents' Exhibit No. 98.

(The certificate referred to was thereupon received in evidence and marked Respondents' Exhibits 98-A and B.)

By Mr. Albert.

Q. What customs and commercial usages has the Fashion Originators Guild in its program, in attempting to establish and maintain a uniformity and certainty? A. 13056 Well, the custom of honest advertising, the custom of originating goods, the custom of——

Q. Has it done anything— A. (Continuing) I can't think of any others.

Q. Has it done anything with respect to returns? A. Yes, that's what it tried to prevent—unfair returns.

Q. Has it done anything with respect to group showings and group buying? A. It hasn't done anything about group buying, but it has as to group showings.

Q. Has it attempted to accomplish anything with respect to premature clearing dates? A. Yes; attempted to support retailers when they have gotten together on things—I mean on dates.

Q. Has it attempted to do anything with respect to fashion shows? A. Yes.

Q. Has it attempted to do anything with respect to establishing arbitration in the industry? A. Yes, that was part of the original program—arbitration.

Q. Has it attempted to do anything with respect to style piracy? A. Yes, it has.

Q. Now, Mr. Post, will you trace the history and development of the program of the Guild with respect to its 13058
purposes, since the beginning of the Guild? A. I am afraid I don't understand you.

Q. Well, at one time the Guild permitted only certain manufacturers to become members, and thereafter permitted others?— A. That's not correct.

Q. (Continuing) Other manufacturers in certain price lines to become members. And it is the extension and broadening of the program of the Guild that I would like you to discuss now. A. Oh, I see what you mean. Well, originally the—when the Guild was organized, it was—it consisted of a small group. I don't recall how many there were in that group of incorporators, but it was less than fifteen; I know that. And they were all manufacturers within the better price range. By "better" I believe that that can be demarcated as making merchandise perhaps at 13059
$29.50 and up, speaking generally.

As the Guild, both as to organization and as to form, took fact, why, other manufacturers making merchandise not quite as expensive, became interested in it.

Trying to locate the period, I should say that in the fall of 1932 the manufacturers in the Guild—no, let me say the summer of 1932 that the manufacturers in the Guild were, according to my recollection, all better dress manu-

facturers, making goods at $22.50 and up generally. When I say "generally," I mean in season, for out of season they make goods in low prices. Their general line was $22.50 and up.

Now, somewhere during the late summer or early fall, coat manufacturers, textile firms became affiliated with the Guild. During that period there was a great deal of requests—there were a great many requests for inclusion in the Guild membership of manufacturers making goods in the price range of $10.50 to $16.50. However, no formal request was ever made of us either by manufacturers or any group of manufacturers.

13061 In the late fall of 1932 or the early—no, I am mistaken as to that. It must have been in the late spring of 1932 or the early fall of 1933—the previous 1932 should be 1933—a group of manufacturers who specialized in junior wear became affiliated with the Guild.

Also on or about that time, in other words some time in 1933—I am not clear at the moment which one came in first or just about when they did; I know they joined from April 1st to December 1st, 1933, these various groups—a group of sportswear manufacturers came in. Both of these latter groups made goods wholesaling at $6.75 and up generally.

In the summer of 1933 we had what I believe was the first of the so-called affiliate memberships as distinguished from regular membership—no, that wasn't membership,

13062 that was just affiliates. That was a group of $10.50 manufacturers who had recently organized under the name of the Dress Creators League. They affiliated themselves with the Fashion Guild for the purpose of registering their styles—for design protection. They were not, at that time, members of the Guild, and were not members until June—July, 1935. July, 1935 they became affiliates members.

In November, 1935 a group of $6.75, $7.75 and $8.75 manufacturers became affiliate members of the Guild.

Now, the only group that I think I have neglected is the knitwear group, that came in some time in 1934, I think, but I'd have to check the records to be sure on that.

Q. Will you— A. I just related the facts as to their membership, not the story of how they happened to, or anything of the kind. That's what I assumed your question was directed to.

Q. Yes. Now, will you relate for us the instances with respect to broadening of the Guild program to include the lower price lines? A. Well, starting with the original group and bringing them up to the fall of 1932, the membership was $22.50 and up.

Q. At that time was there ever any policy on the part 13064
of the Guild not to include the lower-priced lines at any time? A. No, the reverse was so.

Q. Will you explain the situation as it existed, with respect to the price lines at that time of the formation of the Guild? A. At that time the price lines were $22.50 and up on dresses. It was only within that price range that there was any group of manufacturers who desired to co-operate with each other and with their customers in attempting to eliminate or relieve the industry of the unfair competition and the difficulties which they were facing.

Individual manufacturers below the price range of $22.50 had indicated an interest, but nobody wanted to join, and the Guild didn't want anybody to join unless there was a fairly representative group. I mean by that, 13065
not represented as to numbers of volume, but simply enough people that had a common problem, because all these problems, while they were common to the industry as a whole, they took slightly different manifestations in each price range. Their business is highly specialized, and each problem applied itself to a particular branch of the industry with some slight demarcation of the problem—difference in the problem.

However, from the fall of 1932 in September or thereabouts, retailers who were seeking the successful application of the plan were urging the Guild to encourage membership in the price range of $10.50 to $16.50, which was the price range immediately below the existing price range of the Guild manufacturers at that time.

This information was conveyed to us by resolutions that were forwarded, by telegrams, by letters, by meetings and so on. They were the desire of the retailer to have design protection on $10.50 goods; it was general through the country, as indicated by the various cities who urged upon the Guild the acceptance of membership within that price
13067 line—those price lines. Requests came from San Francisco as well as New York—just hitting the two extremes—from New Orleans to Minneapolis.

Q. What was done about the situation of including the lower price lines at that time? A. Well, the $10.50 manufacturers got together and formed an independent organization, which was known as the Dress Creators League. But the Guild, while it never declined membership, because it never had any request for such membership, on the other hand, it never solicited membership, and indicated that it felt that the problem of organizing the industry was sufficiently difficult, not to further complicate it at the beginning by trying to cover too much ground or having too many members. So that, in fairness, the Guild did not encourage an extension of its program to cover
13068 the $10.50 people, although it was constantly being urged.

On the other hand, it never declined to do so, and that's proven, I think, among other things, by the acceptance of the junior group and the sportswear group, who made goods down to $6.75 or $7.75.

But the $10.50 people formed their own organization, known as the Dress Creators League, and attempted to work out a program which paralleled the Guild.

In June of 1933 again when these declarations of co-operation had been suggested—were under discussion, the Guild was again urged to accept particularly $10.50 manufacturers, on the claim that they were the big and important range to department stores—that was the price at which they bought most of their goods—dollar volume. And the Guild did agree that it would, as a preliminary step, establish a registration bureau by which non-members might register their styles in the same manner as Guild members, and have available to them the same mechanics, or such mechanics of adjudication as would—as would subsequently be evolved; that participation in the registration bureau did not involve membership and 13070
involved no obligation whatsoever except the payment of the fees and the living up to such rules as they—as were required by filing the affidavits and registering goods and so on and so forth.

Except for these additions of—divisions that I have mentioned, the Guild organization remained that way until 1935 when, as I have said previously, the Dress Creators League came in as a group along with a number of other $10.50 manufacturers, or $10.75 manufacturers, who were not members of the Dress Creators League.

Trial Examiner Diggs: Did they become full members then?

The Witness: No, they became protective affiliates. That means—— 13071

Mr. Martin: Was that the fall?

The Witness: No, that was July, 1935. Now, there is a long story as to the evolution of that, but I merely stated as to the fact.

By Mr. Albert.

Q. Well, now, will you give us the story of the evolution with respect to that inclusion of the lower price lines,

without reference to the various exhibits, and letters, which are in support of the proposition which we will have later?

Trial Examiner Diggs: I do not think we will go into that. I think there is enough in the record now. I think we have enough of the circumstances connected with it. This opens up a field that is entirely too broad. It will not throw any light on any of the issues in this case. You may have an exception to that ruling. Off the record.

(Discussion off the record.)

Mr. Albert: I move to strike all testimony on
13073 the part of all witnesses with respect to the expansion and broadening of the Guild program of the inclusion of price lines below $16.75, of testimony with respect to the declarations of co-operation and all testimony of all witnesses other than the express testimony that the stores, which those witnesses represented, were at any time red carded.

Trial Examiner Diggs: Objection is overruled. The motion is denied, and you may have an exception. Off the record.

(Discussion off the record.)

Trial Examiner Diggs: We will take a short recess.

(A brief recess was thereupon taken.)

13074 *By Mr. Albert.*

Q. Mr. Post, did the Fashion Originators Guild red card Filene's? A. Yes.

Q. Did the Fashion Originators Guild red card Strawbridge & Clothier? A. Yes.

Q. Did the Fashion Originators Guild red card R. H. White? A. Yes.

Q. Did the Fashion Originators Guild red card Abraham & Strauss? A. Yes.

Q. Did the Fashion Originators Guild red card Bloomingdales? A. Yes.

Q. Did the Fashion Originators Guild red card J. L. Hudson? Did the Fashion Originators Guild red card Dayton Company? A. Yes.

Q. Did the Fashion Originators Guild red card the Emporium? A. Yes.

Q. What were the circumstances surrounding the red carding of those stores, and will you outline the reason therefor? A. Well, the circumstances begin with the situation regarding cheaper merchandise. That situation dates back to the fall of 1932 when retailers throughout the country, including some of the stores that you have 13076
mentioned urged upon the Guild the acceptance of membership of manufacturers making merchandise in the price range of $10.50 to $16.50.

Such membership, however, was not accepted at that time and was not offered, although a registration bureau was set up in July or August, 1933 as being the first step to secure design protection of merchandise within that price range.

As there was no obligation of membership for firms in that price range who made use of the registration bureau, there was no practical accomplishment that satisfied anyone, and the $10.50 firms simply ceased to register their goods over a period of, I think it is about four months.

Subsequently in—I think it is either January or February of 1935—in any event, within a few months of my 1307
coming to New York to assume the responsibility of executive director of the Guild, I was invited to attend a meeting of the Association of Buying Offices.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: The question which has been propounded to this witness calls for a very simple answer, and that is, the reasons why these

various stores were red carded. The witness is attempting now to go into an elaborate detail of matters which I have already ruled out, and the witness now will confine his answer to the question and state the reasons, if any, which he may have in mind as to why these people were red carded, and I am going to limit this question to that answer. You may have an exception.

Mr. Albert: I except to your Honor's ruling.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: The witness will an-
13079 swer the question according to the outline which I have suggested.

Mr. Albert: Question withdrawn.

Trial Examiner Diggs: Ask your other questions, if you have any.

By Mr. Albert.

Q. Will you relate the circumstances under which these various stores previously mentioned, were red carded?

Mr. Martin: I object. Objected to as being irrelevant and immaterial.

Trial Examiner Diggs: I am going to confine the witness' answer to the same restrictions as I have indicated in my other statement. Of course,
13080 this is an attempt to do indirectly what I have not permitted you to do directly. Bearing this in mind, the witness will answer. I overruled the objection of counsel for the Commission, subject however, to my restricted—subject to the restrictions which I have stated in my response.

By Mr. Albert.

Q. State the facts why they were red carded. A. The fact is that certain of those stores had refused to remove from sale certain specific copies which had been brought to their attention—certain others of the stores had stated that regardless of the broad policy of the store, as told to us, that they wished to limit their co-operation to certain price lines and that certain others of those stores were incorporated as to their policy and intent—in a notification received by the Guild from their representative in New York stating that they would no longer co-operate within certain price ranges and that after making every possible attempt to contact the store and find out: A. as 13082
to whether that letter sent by their New York representative was authorized, and B. what the policy of the store was, regardless of that letter—these facts were presented to the membership of the Guild, and they voted to discontinue doing business with those stores.

Q. Were there any discussions had with any of the representatives of those stores prior to December of 1935 on the question of their co-operation?

Mr. Martin: Objected to.

Trial Examiner Diggs: Overruled. I will let him answer.

By Mr. Albert.

A. (Continuing) Either by correspondence or personally? A. Yes. 13083

Q. Will you relate for us—withdrawn. You have heard the testimony of Tiley—Messrs. Tiley, Bergdahl, Taylor, Sappington, Donovan, Miller and Segal, have you not, Mr. Post? A. I have, sir.

Q. And you have heard them testify with respect to the situation as it existed prior to the time when the instances which you have just related took place? A. I have, sir.

Q. Will you please tell us, in other words, what that situation was?

Mr. Martin: Now, I object to it, your Honor, on the ground that you have already ruled on that. He is asking exactly the same question.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: This is another attempt to do the very thing in another method—in another manner. But I ruled it cannot be done; that is to say, to go into these minute details concerning these various matters which I have already ruled
13085 out, and I sustain the objection, and counsel for the respondents may have an exception.

Mr. Albert: I move to strike the testimony of Mr. Tiley, Mr. Bergdahl, Mr. Taylor, Mr. Sappington, Mr. Donovan, Mr. Miller, Mr. Segal, Mr. Plaut, in so far as the same relates to the facts with respect to which I have just attempted to interrogate the witness on the point of the circumstances surrounding and leading up to the red carding of the various stores who have testified on the matter.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Motion is denied and you may have an exception. This witness has al-
13086 ready testified as to the reasons for the boycotting of these particular individuals who have been referred to.

Mr. Albert: At this time, if your Honor please, I would like to reserve an offer of proof with respect to the matter, inasmuch as I have been taken judicially by surprise by your Honor's ruling in order that the offer of proof may be as short as possible and yet contain all the matters necessary and relevant.

Trial Examiner Diggs: I am going to deny you any offer of proof in that instance, because I think it is so patent that it is not proper.

By Mr. Albert.

Q. Mr. Post, will you please explain what you mean by the use of the term "red carding"? A. Well——

Q. And what the mechanics are with respect to that term? A. Red carding simply means that there is a card system by which our members of the Guild are advised as to the policy of the various stores throughout the country. A red card simply signifies that that store has a policy of promoting copies, of not protecting design, or has consistently violated some previous statement of policy regarding the protection of design. 13088

Trial Examiner Diggs: And by that you mean, do you not, that they have refused to take off sale copies of the merchandise manufactured by members of the Guild?

The Witness: That would be included.

Trial Examiner Diggs: What else besides that would be included?

The Witness: Well, I said that they might have a policy of—have advised us that their policy was promoting copies in the instances of their having refused on a specific——

Trial Examiner Diggs: Any other grounds—— 13089

The Witness: I beg your pardon?

Trial Examiner Diggs: Are there any other grounds for which they are red carded?

Mr. Albert: I object to the question on the ground that the only claim made by the Commission with respect to——

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Objection overruled. You may answer that.

Mr. Albert: Exception.

The Witness: Well, if a store has conducted its business in violation of laws—for example, like the tenement laws—operates, say, apartment-house shop in zone territory and in violation of city ordinances or state laws, red cards are issued in that case.

Trial Examiner Diggs: Any others?

The Witness: I believe that's all.

Trial Examiner Diggs: Ask your next question.

13091 *By Mr. Albert.*

Q. Now, will you explain the mechanics by which a red card is issued?

Trial Examiner Diggs: You may answer.

A. The mechanics is that a card is printed on a—a notation is printed on a red card and sent out to all the members.

By Mr. Albert.

Q. Is the red card anything more to the members of the Guild than a method of notifying them of the fact that the retailer named thereon is unwilling to co-operate with
13092 the Guild in the furtherance of its program against style piracy? A. It is not. I have thought of a minor correction on the Examiner's question which I think ties up to your question, and I want to correct this. I believe that there may be some transactions where red cards were issued, although I know of none—recall none—that might involve one of the other practices which we consider to be unfair and predatory and destructive of the industry.

Now, I am trying to clear up that particular point, and I don't want any confusion on the record as to that.

(Discussion off the record.)

Trial Examiner Diggs: In view of the fact that counsel for the respondents has not, at this time, any available matter to be used in the examination of this witness, because of the fact that his line of testimony has been curtailed by certain rulings, I adjourn this hearing to 10 o'clock, January 14, at the same place.

(Thereupon, at 3.15 o'clock P. M., January 13, 1938, the hearing in the above-entitled matter was adjourned to 10 o'clock A. M., January 14, 1938.) 13094

Room 500, 45 Broadway,
New York, N. Y.,
January 14, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

13095

PROCEEDINGS.

Trial Examiner Diggs: You may proceed, gentlemen.

Mr. Albert: Please mark this for identification.

(The certain paper is thereupon marked for identification Respondents' Exhibit 99.)

Mr. Albert: If it please the Court, at this time I wish to offer into evidence Respondents' Exhibit 99 for Identifica-

tion, which is a communication addressed to the Fashion Originators Guild of America by the Federal Trade Commission signed by Otis B. Johnson, dated July 17, 1935.

Mr. Martin: That is objected to on the ground that it is irrelevant and immaterial to the issues in this case. It refers to a prior investigation and has no connection with this case at all.

Trial Examiner Diggs: Objection sustained. You may have an exception.

13097 ALBERT M. POST, heretofore sworn and examined on behalf of the respondents, being recalled, testified as follows:

Direct examination (resumed) by Mr. Albert.

Q. Mr. Post, since July 17, 1935, has the program or the activities of the Fashion Originators Guild in the furtherance of its program been changed or altered?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained. It makes no difference whether it has been or not. The date of the complaint is the date which fixes the status of this case.

Mr. Albert: I offer to prove that if the witness had been permitted to answer the question he

13098 would have answered that the program and activities of the Guild as it existed as of July 17, 1935, had not been changed or altered in any material respect down to the institution of the present proceedings and down to the present date.

Mr. Martin: I move the offer of proof be denied.

Trial Examiner Diggs: It is denied.

Mr. Albert: Off the record.

(Discussion off the record.)

Mr. Albert: Now, if it please the Court, I call upon the attorneys for the Commission to produce the original Exhibit No. 481 for which Commission's 481 now in evidence was substituted as here in the record and pursuant to which the record reveals the same was to be held intact for such use as the respondents might care to make of the exhibit in their case.

Mr. Martin: If your Honor please, I know of no such ruling as that. The exhibit in evidence as 481 is the original exhibit offered and received in evidence. I have not in my possession the paper referred to by counsel for the respondents, nor am 13100
I able to produce it.

(Discussion off the record.)

Trial Examiner Diggs: The matter of the exhibit referred to by counsel has been fully gone into in the record on pages 3512 and 3513, in which it appears that the exhibit now in evidence, marked Commission's Exhibit 481, is the exhibit which was ultimately admitted in evidence, and whatever may have appeared upon another paper is not in evidence and not proper that any reference should be made to it. I give counsel for the respondent an exception to this ruling.

(Discussion off the record.)

By Mr. Albert. 13101

Q. Now, Mr. Post, has the Guild at any time in the execution of its program attempted to in any manner fix prices at which either the manufacturer may sell dresses to the retailer or the retailer to the consumer? A. It has not in any way.

Q. Has the Fashion Originators Guild at any time required or advised or interested itself in the price at which

any manufacturer was to sell his dresses? A. It has not, directly or indirectly, or in any manner.

Q. And is it a fact that in so far as the Fashion Originators Guild is concerned any manufacturer may sell his dresses at any price, in any price line or in any manner in so far as the price is concerned which he deems fit. A. We have no interest in prices and he may do as he pleases.

Q. Has the Fashion Originators Guild of America at any time during its existence in any manner attempted to control or regulate the production on the part of is members? A. It has nothing whatever to do with production.

Q. Has the Fashion Originators Guild of America at
13103 any time since its inception attempted in any manner to allocate or parcel out customers to its members? A. It has not.

Q. Or to in any manner assign territory to its members? A. No, they have not.

Q. Has the Fashion Originators Guild of America at all times attempted to encourage and permit free and active competition among its members for the retail trade? A. They have.

Q. Has the Fashion Originators Guild of America at any time attempted to in any manner interfere, advise or direct manufacturers with respect to the quality of the material which they use? A. No, they have not.

Q. And as a matter of fact, has the Fashion Originators
13104 Guild of America since its inception strongly urged for the consideration of its members that the best of quality of materials be used wherever possible?

Mr. Martin: That is immaterial.

Trial Examiner Diggs: I sustain that objection. There is nothing in this complaint that could possibly have any relation to that.

By Mr. Albert.

Q. Has the Guild since its inception at any time acted in an arbitrary or unfair manner in the enforcement and furtherance of its program? A. It has not.

Q. At any time, Mr. Post, was there ever any understanding or secret agreement that lower price lines were not to be included in the Guild program?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will let him answer.

A. No.

By Mr. Albert. 13106

Q. Has the Fashion Originators Guild of America ever coerced or compelled manufacturers of ladies' garments to confine the sale of their merchandise to retail dealers who co-operate with the Guild? A. Well, members of the Fashion Originators Guild only sell their merchandise to stores who are co-operating with them.

Q. By that question I meant, is the sale confined to those who have expressed their co-operation in writing or will the Guild members sell their merchandise to any retailer even if he has not expressed his co-operation in writing, providing he does co-operate? A. Well, I wouldn't know. There is no such case. Anybody whose policy it is to co-operate has found it not objectionable or to state in writing. 13107

Trial Examiner Diggs: That statement is in the form of a declaration of co-operation, isn't it?

The Witness: No, sir, not exclusively.

Trial Examiner Diggs: Well, the instances in which it is are very few, aren't they, as compared to the ones in which they send these declarations of co-operation prepared for the Guild.

The Witness: Why I should say there were very few in comparison to the total number.

By Mr. Albert.

Q. As a matter of fact, at the present time isn't it a fact that the department stores which are members of the A.M.C., and of which testimony has been taken in this case, have presently signified their co-operation with the Guild without the use of a form of a declaration of co-operation and that the Guild is selling them? A. That is correct.

13109 Q. There has been used in this proceeding, Mr. Post, the term "apartment house selling." Will you explain, please, what the evil of the apartment house selling was or the program of the Guild was with respect to it and what amelioration of the condition has resulted from the Guild program.

Mr. Martin: Objected to.

Trial Examiner Diggs: I sustain that objection on the same ground that at the beginning of the hearing on the 10th I announced my ruling that it does not make any difference what the object sought to be accomplished. There is the question whether the act itself is unlawful. You may have an exception.

13110 *By Mr. Albert.*

Q. There have been used in this proceeding, Mr. Post, the terms "unfair and improper returns," "improper cancellation of orders," "consignment selling," "unfair and excessive discounts," "rebates and subsidized advertising" and "fashion shows." Will you explain, please, what the evils of those terms were or the program of the Guild was with respect to them and what amelioration of the condition has resulted from the Guild program?

Mr. Martin: That is objected to on the ground that your Honor has ruled upon that, that that is immaterial to the issues of this case.

Trial Examiner Diggs: I am going to sustain the objection, and at the outset I may state that counsel has combined these items in one question at the suggestion of the Trial Examiner. I am sustaining the objection because it makes no difference as to the motive involved with respect to the various items stated nor the result which it is sought to have the witness relate, which have flown from the action of the Guild. The simple question is whether the acts enumerated constituted unlawful practices. 13112 If they do, the motive is not important. If they do not, it must obviously follow that the motive is not in any way involved. Counsel may have an exception to this ruling.

(Discussion off the record.)

Trial Examiner Diggs: Counsel is now proposing to make a proffer of proof. Let the record show that counsel proposes to prove that the action of the respondents in relation to matters sought to be inquired into is done for the purpose of remedying evils existing in the trade and as a result of the action certain evils were remedied.

By Mr. Albert.

13113

Q. Mr. Post, does the Guild require or necessitate that retailers return garments which have been adjudged copies? A. They do not.

Q. Has the Guild any interest in what the retailer does with dresses which have been adjudged copies other than his compliance with his promise that he will not sell the same? A. We are interested to see that they are removed from sale.

Q. Does the Guild confine sales by its members to members of retail Guilds? A. No, it does not.

Q. Does the Guild restrict its manufacturers to purchasing textiles from the textile merchants group? A. It does not.

Q. Is the registration of textile designs with the Industrial Design Registration Bureau restricted to members of the textile affiliates?

Mr. Martin: Objected to. It is immaterial and irrelevant.

Trial Examiner Diggs: I will overrule it. Let him answer.

13115

A. No.

By Mr. Albert.

Q. Any manufacturer or textile man, whether a member of the Guild or not, may register such design?

Mr. Martin: Objected to.

Trial Examiner Diggs: That naturally follows. Go ahead and answer it.

A. A registration of design is not confined——

Trial Examiner Diggs: You have already said that. Now answer this question.

13116

The Witness: May I have the question.

(The reporter thereupon read the last question.)

Trial Examiner Diggs: The answer is yes or no.

The Witness: Yes.

By Mr. Albert.

Q. Mr. Post, I show you Commission's Exhibit 924, being a letter to you from Philip Reilly of the A.M.C. and ask if you will state the surrounding circumstances with

respect to the receipt of that letter by you, its despatch to you by Mr. Reilly and the incidents and events that followed the receipt of that letter.

Mr. Martin: I am going to object to that as being irrelevant and immaterial.

Trial Examiner Diggs: I sustain the objection. You may have an exception.

By Mr. Albert.

Q. I ask the same question, Mr. Post, with respect to Commission's Exhibits 863, 871, 872, 877, 875, 900, 906, 1018-A to E, inclusive, 912, 915, 916, 918 and 920.

13118

Mr. Martin: The same objection.

Trial Examiner Diggs: Objection sustained, for the reason that all of these exhibits have to do with the matter of including in the Guild's piracy program the lower price lines and the view expressed by me heretofore that the reasons for this are unimportant and the only question involved is whether or not the respondents applied their program to these items and the circumstances leading up to it are unimportant and immaterial; and counsel for the respondents may have an exception to this ruling.

Mr. Albert: Will you mark these for identification, please?

13119

(The three sheets referred to were thereupon marked for identification Respondents' Exhibits 100, 101 and 102, respectively.)

(Discussion off the record.)

Mr. Albert: If it please the Court, at this time I offer in evidence three letters, being Respondents' Exhibits 100, 101 and 102 for Identification, for the purpose of supporting the testimony of Mr.

Post to the effect that it is unnecessary for a retailer to sign any particular form of declaration of co-operation and demonstrating that a mere signification by a retailer in writing of his policy not to further style piracy is a sufficient declaration of his policy to make a co-operating retailer. In further support thereof, the respondent is prepared to introduce innumerable declarations of co-operations demonstrating that fact. A particular type of such declaration may be described as follows:

13121 The Wanamaker Store in Philadelphia, as its declaration of co-operation, merely send to the Guild a copy of its booklet in which appeared the printed statement that it was opposed to style piracy and would not do anything to assist in the sale of copies and would not sell copies. That is the substance of the paragraph.

That statement of the policy of the Wanamaker Store was and has been a sufficient declaration for the purposes of the Guild with its covering letter referring the Guild to that particular paragraph. So-called declarations of co-operations of this type have been in innumerable instances sent to the Guild and have been deemed satisfactory.

13122 Trial Examiner Diggs: You agree that this statement made by counsel correctly represents the fact, Mr. Martin?

Mr. Martin: I concede the fact that counsel for the respondents can produce numerous other letters signifying the intent of the writer to co-operate with the program of the Fashion Originators Guild.

Trial Examiner Diggs: I admit the three exhibits in evidence.

(The three letters referred to, heretofore marked for identification, were thereupon received in evidence as Respondents' Exhibits 100, 101 and 102, respectively.)

Trial Examiner Diggs: Suppose we adjourn for lunch. It is twelve o'clock and we will be back at 1 o'clock.

(Whereupon, at 12 o'clock noon, recess was taken until 1 o'clock P. M. of the same date.)

AFTERNOON SESSION

13124

(The recess having expired, the hearing in the above-entitled matter was reconvened at 1 o'clock P. M., the same date, and further proceedings were had therein as follows:)

ALBERT M. POST, the witness for the respondents, resuming the stand, testified further as follows:

Direct examination (resumed) by Mr. Albert.

Q. Mr. Post, with respect to the refusal of the members of the Fashion Originators Guild to sell Strawbridge & Clothier, are you familiar with the circumstances of that action? A. I am.

13125

Q. And are you familiar with the history of the relationship between Strawbridge & Clothier and the Fashion Originators Guild leading up to that action? A. I am.

Mr. Albert: Will you mark these for identification? In groups?

(The papers referred to by counsel were thereupon marked for identification Respondents' Exhibits 103 to 117 inclusive.)

13126 *Albert M. Post—For Respondents—Direct.*

By Mr. Albert.

Q. I show you Respondents Exhibits 103 to 117, inclusive, and ask you if this represents the record of the transactions between Strawbridge & Clothier and the Fashion Originators Guild in the ordinary course of the business between Strawbridge & Clothier and the Fashion Originators Guild? A. Yes.

Q. And do these letters to Strawbridge & Clothier and from representatives of Strawbridge & Clothier to you adequately and properly describe the events leading up to the red carding of Strawbridge & Clothier with such supplementary statements as are required by you in explana-
13127 tion thereof. A. They would.

Q. And do these exhibits contradict or tend to contradict the testimony of the representatives of Strawbridge & Clothier with respect to the reason for the red carding of Strawbridge & Clothier, their knowledge of the time of the red carding and of the incidents leading up thereto, and do they establish the fact that Strawbridge & Clothier voluntarily withdrew and canceled their previously declared declaration of co-operation against style piracy.

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained because this is being asked to make a determination and a conclusion and an analysis of the contents of certain papers that is going to be drawn from the papers
13128 themselves, if at all. It isn't competent for this witness to undertake to do it.

Mr. Albert: I offer in evidence Respondents' Exhibits 103 to 117, being correspondence in the ordinary course of business between Strawbridge & Clothier and the Fashion Originators Guild, consisting of various papers which are answers to and mention other exhibits presently in evidence.

Mr. Martin: Objected to on the ground that they are irrelevant and immaterial under the Examiner's ruling.

Trial Examiner Diggs: I am going to ask the witness a few questions.

By Trial Examiner Diggs.

Q. Strawbridge & Clothier or a representative of that firm testified that the Guild red carded them because they refused to disclose the name of the manufacturer from whom they had purchased an alleged copy of a garment manufactured by one of the members of the Guild. Do you remember that testimony? A. I do, sir. 13130

Q. Was that the reason they were red carded? A. That was not the reason they were red carded.

Q. What was the reason they were red carded? A. The reason that they were red carded was that they had consistently and over a period of time continued to sell copies of registered originations of the members of the Fashion Originators Guild and served notice that in the future their policy would be to sell copies of our goods.

Trial Examiner Diggs: I am going to sustain the objection to the introduction in evidence of these exhibits referred to, for several reasons. First, here we have fifteen exhibits which treat on a variety of subjects totally unrelated in many instances to the matters being inquired into, and 13131 many of them having no relevancy whatever to such matters; and the objection is further sustained for the reason that it is unimportant whether Strawbridge & Clothier were red carded because they refused to disclose the name of the dealer from whom they bought copies or whether they were red carded for having refused to discontinue selling copies. In either event, the fact

remains that they were red carded and the fact remains that the Guild members refused to sell them, and I think it is immaterial as to all this mass of detail concerning the various incidents connected therewith, and this ruling accounts for it.

These exhibits were offered in bulk by counsel for respondents because of an indication by the trial examiner that the exhibits were not admissible and it was to avoid the unnecessary consumption of time which would have been required if they had been offered severally. The respondent may have an exception.

13133

Mr. Albert: Likewise, your Honor, in the light of your Honor's ruling, with respect to Strawbridge & Clothier, and in order to save the time of the Commission and the record on the matter, I now wish to offer some proof with respect to Hudson's, Dayton's, Bloomingdales, Abraham & Straus, the Boston Store, Kerns, Foreman's, Lazarus, Shillito, the Emporium, Taylor's, Rike-Kumler, Filenes, R. H. White, Stix-Baer & Fuller.

Trial Examiner Diggs: Now, as I understand it, counsel offers in evidence the correspondence relating to these various firms which is mentioned for the purpose of showing the circumstances connected with the red carding of these firms to the same effect as it was proposed in the case of Strawbridge & Clothier.

13134

By Trial Examiner Diggs.

Q. Was each of these firms whose names have been mentioned by counsel actually red carded by the Guild? A. Yes, sir.

Q. Now, was a red card—were they red carded because they refused to refrain from selling of garments manufac-

tured by members of the Guild? A. That is correct. I say that is correct. The actual fact is that in some cases we had no conferences, but they had notified us through the Reilly letter as of such and such a date they would not remove copies of Guild dresses at such and such a price, and I am trying to make my answer complete.

Trial Examiner Diggs: Then I sustain the objection to the admission in evidence of these letters, for the same reasons as I sustained the objection of the former proof, and the same comment which I made with respect of that proof I also— may also be considered in the ruling. Counsel for the respondents may have an exception. 13136

Mr. Albert: If your Honor please, I at this time offer to prove that with respect to all retailers who have been red carded with respect to which there is any testimony in this record, regardless of the reasons for the red card, I am prepared to offer documentary proof as to the existence of the evil as to the reasonableness of the Guild's conduct and as to the fair manner in which the Guild considered each particular case with full opportunity to the retailer to present his case, and I am making the offer of proof in this manner in the light of your Honor's general ruling that the matters sought to be presented by this proof are immaterial and irrelevant. 13137

Trial Examiner Diggs: The offer of proffer is refused and so far as proving the fairness of the investigations and the affording of an opportunity to the people who were red carded to appear and give testimony, Mr. Post has testified very fully on all methods which were used in that respect; and for the reasons that I have indicated before, I don't think that those matters are relevant, and counsel for the respondents may have an exception to this ruling.

Mr. Albert: This is off the record.

(Discussion off the record.)

Trial Examiner Diggs: Counsel for the respondents has announced that because of the refusal of the Trial Examiner to admit certain testimony sought to be introduced on behalf of the respondents, that it has necessitated a recharting of the respondents' defense, and that this involves the preparation of certain exhibits the preparation of which will require considerable time, and that in order to avoid the expense and delay of continuing the case from day to day requests that the

13139 hearing be continued until January 24, 1938, and that in the event this is done, that the respondents will close their case on the 25th of January. In view of the statement of counsel for respondents and in the economy of time, the Trial Examiner feels that all interests will be best served by granting this request, and therefore this hearing is adjourned and will be resumed at 10 o'clock A. M., January 24, 1938, in Room 500, 45 Broadway, New York.

(Thereupon, at 2 o'clock P. M., January 14, 1938, the hearing in the above-entitled matter was adjourned to January 24, 1938, at 10 o'clock A. M., in Room 500, 45 Broadway, New York.)

13140

Room 500, 45 Broadway,
New York, N. Y.,

January 24, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

Trial Examiner Diggs: The attorney for respondents 13142
has just announced that Mr. Albert M. Post, the witness who was on the stand at the last hearing and who was to continue to testify this morning, is ill.

Due to that fact, and by agreement of counsel for both sides, this hearing is adjourned until 10 o'clock A. M. on Friday, January 28, 1938, and will be held in the office of the Federal Trade Commission, Washington, D. C.

(Thereupon, at 10.30 o'clock A. M., January 24, 1038, the hearing in the above-entitled matter was adjourned to January 28, 1938, at 10 o'clock A. M., at the office of the Federal Trade Commission, Washington, D. C.)

13143

13144 *Albert M. Post—For Respondents—Direct.*

Room 424, Federal Trade Commission Bldg.,
Washington, D. C.,
Tuesday, February 1, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

PROCEEDINGS.

13145 Examiner Diggs: The hearing is opened.

Mr. Martin: Will you mark these No. 1051 and 1052 for Identification for the Commission?

(Whereupon the papers referred to were marked Commission's Exhibits 1051 and 1052 for Identification.)

Mr. Martin: If your Honor please, at this time, in accordance with the stipulation entered into with counsel for the respondents I offer in evidence as Commission's Exhibit No. 1051 a tabulation of the volume of sales for the year 1934 of seventy-eight dress manufacturers who were at any time during 1934 members of the Fashion Originators Guild.

Column A shows the total volume of all such members
13146 for the entire year without regard to the fact that some members were members only a portion of the year.

Column B shows the total volume of such members for the period of the year 1934 that they were actual members.

I offer in evidence as Commission's Exhibit No. 1052 a similar tabulation for the year 1933 which shows the sales volume for the year 1933 of sixty-two members of the Fashion Originators Guild.

Column A represents the total volume for the entire year 1933 without regard to the fact that some of these sixty-two manufacturers were members for only a portion of the year.

Column B shows the total volume of these sixty-two members for the period only of 1933 during which they were members of the Guild.

Examiner Diggs: I understand it is stipulated between counsel that those figures set forth in these exhibits are correct and there is no objection to them being admitted? Is that correct?

Mr. Albert: No objection.

Examiner Diggs: They may be admitted in evidence. 13148

(Whereupon the said documents were marked Commission's Exhibits 1051 and 1052 in evidence.)

ALBERT M. POST, a witness on behalf of the respondents, having been previously sworn, was called to the stand and testified further as follows:

Direct examination by Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 118 for Identification and ask you if you know what that instrument is? A. I do.

13149

Mr. Albert: Will you mark these 118, 119 and 120 for Identification?

(Whereupon the said papers were marked Respondents' Exhibits 118, 119 and 120 for Identification.)

By Mr. Albert.

Q. What is it? A. It is the constitution and by-laws of the Fashion Originators Guild of America.

Mr. Albert: I offer Respondents' Exhibit No. 118 for Identification in evidence.

By Mr. Martin.

Q. In effect as of what date? A. Well, it is the current one. It is in effect currently and has been in effect. I am trying to see the dates of the amendment. It has been in effect for at least a year or so.

By Mr. Albert.

Q. And it includes all the section that have been in the Constitution since its inception, is that correct? A. Is

13151 what correct?

Q. It includes all the section that have been in the constitution since the inception of the Guild? A. Yes.

Mr. Martin: If your Honor please, I object to the introduction of this on the following grounds. It is quite obviously not the same constitution that was in effect at the time of the institution of this suit. According to Article Three, Section 4, the amendment, this is ratified May 28, 1936.

Examiner Diggs: Objection sustained to the admission of this constitution in evidence for the reason that upon its face it shows that a great portion of it consists of amendments which were made after the date of the filing of the complaint in this case.

13152 Counsel for the respondents may have an exception to that ruling.

Mr. Albert: I offer in evidence such articles and sections of Respondents' Exhibit No. 118 as clearly appear to have been in force and existence at the time of the institution of the complaint and most respectfully except to the Examiner's statement that the greater part of the sections were passed afterwards. I think it is just the contrary.

Examiner Diggs: I do not think it is proper to put any paper containing matters which I have referred to are interwoven into other matters and then ask for certain portions to be admitted. I think the proper thing to do is to have an exhibit which contains matter which is relevant and should be admitted. I refuse to admit those portions for the reasons I have stated. You may have an exception to that.

Mr. Albert: I except also on the ground that the previous practice of the Commission has been to put in complete exhibits and to ask for the admission of only portions of such exhibits into evi- 13154
dence. I wish to specifically offer, I offer in evidence Respondents' Exhibit 118 excepting Article Three, Sections 4, 6 and 8; Article Five——

Mr. Martin: If your Honor please——

Examiner Diggs: Off the record.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Counsel is attempting to do exactly what I have just indicated he may not do. I have already passed on that question and we are not going to take up any more time on it. I have given him an exception. I refuse to admit portions of this paper and we gain nothing by a repetition of this same practice.

13155

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 119, Mr. Post, and ask you if you know what that is? A. I do.

Q. What is it? A. These are the rules and regulations of the Fashion Originators Guild.

Q. From what time to what time? A. From the inception of the Guild up to date.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 119.

Mr. Martin: I object to the admission of this on two grounds. First, it does not purport to be all of the rules and resolutions as it is headed, "Important rules and resolutions."

I object secondly, on the ground that it has been testified by the witness Post that these are the rules and regulations in effect since the beginning of the Guild down to the present date.

There is nothing on the exhibit which shows the particular dates that any of these rules went in
13157 effect and there is no way of telling which of these rules have been passed subsequently and adopted subsequent to the institution of this action.

Examiner Diggs: Let me ask the witness a question.

By Examiner Diggs.

Q. Do you know when those various regulations which are set forth in this exhibit were passed or agreed to by the Guild? A. You mean, do I know each one specifically? As to the date?

Q. Yes. A. Well, I know them but I cannot at this moment testify to that.

Q. Do you know whether any of them were put into effect or agreed upon after April, 1936? A. Yes.
13158 Q. Were they? A. Yes.

Examiner Diggs: I am going to rule that no regulations which take effect after the date of the institution, of these proceedings are relevant, and I am going to confine the exhibit only to such regulations as were in effect at the time and prior to the date of filing of the complaint.

Mr. Albert: Now, if it please the Court, I move to strike all of the testimony introduced by the Federal Trade Commission in behalf of its affirmative case with respect to matters, facts and issues and incidents occurring after the institution of the Federal Trade Commission's complaint.

Examiner Diggs: The motion is denied. Those matters may be admissible in order to show a continuance of the practice.

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 119, page 2, under the heading of "Group Showing" and ask 13160
you whether or not that resolution was in force and effect at the time of the institution of the Commission's complaint? A. It was.

Examiner Diggs: Now, just a minute. I am not going to take up the time of this hearing by having counsel interrogate the witness on each item of this exhibit. The proper thing to do is to make up an exhibit, in order to meet the ruling, which contains your regulations which were in effect at the time of the issuance of the complaint and prior thereto. I am not going to extend this hearing, as it will be if tis practice is extended. You may have an exception to that.

13161

By Mr. Albert.

Q. I show you, Mr. Post, Respondents' Exhibit No. 118 and ask you whether or not Article 1, Section 1, was in force and effect at the time of the institution of the complaint?

Examiner Diggs: I now state to counsel it is useless for him to undertake, to continuously under-

take to do things indirectly which I said he could not do directly. I will not not tolerate this any further.

By Mr. Albert.

Q. I show you Respondents' Exhibit No. 120, Mr. Post, and ask you if you know what that is? A. I do.

Q. What is it? A. The Shoppers Manual.

Q. And will you explain generally what that is and what you mean by Shoppers Manual? A. It is the book containing instructions and advices and specimen forms used by the Guild in its shopping services. This book is
13163 sent out to the shoppers to acquaint them with the Guild and their jobs.

Q. And was that manual in force and effect at the time the Commission commenced its complaint? A. I believe so.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 120.

By Examiner Digys.

Q. This was in force and effect in the same shape it now appears in? A. I can't answer that. I don't know.

By Mr. Martin.

13164 Q. Does it contain all of the general instructions issued to the shoppers up to the present date? A. Yes.

Mr. Martin: The same objection is made to this exhibit as to the two previous ones on the ground that it contains instructions which are currently in use and matter arising after the institution of this complaint.

By Examiner Diggs.

Q. Are there any instructions contained in here which have been put in force and effect since the filing of this complaint? A. I am afraid I cannot answer that.

Examiner Diggs: I sustain the objection unless it is shown this record which is now sought to be introduced in evidence contains the instructions to shopper which were in force and effect at the date of or prior to the date of the filing of the complaint. I do not think it is admissible and the witness evidently doesn't know whether it contains matter which was inserted subsequent to the date of the complaint or not. I sustain the objection and you may have an exception. 13166

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 121 for Identification and ask whether or not you know what that is? A. I do.

Q. What is it? A. It is the report I prepared of firms available to the A.M.C. during the period of red carding of 1936 and 1937.

Q. And will you tell us please, what investigation you made with respect to those resources? A. Well, we made a complete investigation of all the directories, trade books, chambers of commerce, all such information that was available anywhere in the country. 13167

Q. And as a result of such investigation, Mr. Post, what did you find? A. Well, in a total, that for that period there were 423 firms that were available who made goods at $16.50 or up who were not members of the Guild and therefore, available for any firms who were or were not co-operative retailers in the Fashion Guild Program.

Q. How many firms were there available to the A.M.C. pursuant to Commission Exhibit 450-H? A. Ninety-eight.

Q. How many out-of-town manufacturers did you find available to the A.M.C.? A. 148.

Q. That is New York? A. I am sorry, 150.

Q. And were there any others you found available to the A.M.C.? A. Well, there were seventeen firms who were members of the Fashion Guild during some time of that period that were available to the A.M.C. or any other non-signatory retailer during the preiod of the same time they were not members of the Fashion Guild. And then, of course, there were 148 New York firms that we located that were in business that were not included either in a guild membership or A.M.C. list, which is known as Commission's Exhibit 450. This is the sum total of those
13169 manufacturers, of the verified sources. The list was considerably larger but we were not able to verify all of the people or all of the names available.

Q. What was the total number of resources available to the A.M.C. during the period of red carding? A. You mean of $16.50 and up?

Q. Yes. A. Well, we located about 750, I think, but we were not able for reasons of time to verify any more than this.

Q. How many did you verify as actually being in existence by your records, investigation and examination? A. 423.

Q. Now I show you approximately sixty-three directories and guides, including as a typical example, "Fair-
13170 child's Women's Wear," the "Women's Wear Daily," "Dress Buyers Directory," "Nugent's Directory," "The Review," "Where to Buy in Los Angeles," "The Spring Directory of Style Creators of Chicago," "The Boston Market," "Review Buyers Directory," "The Fashion Buyers Guide," "The Buyers Informant," "Sheldon's Manufacturing Trade," "Women's Wear Daily," "The Buyers' Secretary," and I ask you whether or not the sixty-two directories here on the desk, some of which I have named, were

in regular use and effect for the period covered by your investigation revealing and reflecting the existence of the number of manufacturers available to the A.M.C. with respect to which you have testified as reflected in Respondents' Exhibit No. 121? A. Yes. Except that those directories cover the three-year period and this particular study covers just this one year here in total. If you mean when you say the period I investigated, you don't mean particularly investigated as to this single exhibit.

Q. And have you records with you which will reveal the names of the 423 firms reflected in Respondents' Exhibit No. 121? A. I have.

Q. And if called upon to do so can you identify each of the 423? A. I can. 13172

Examiner Diggs: I do not think it is proper examination. I think we have gone far enough on this.

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer in evidence approximately sixty-three directories used as a basis for compiling Respondents' Exhibit No. 121.

Mr. Martin: Are you offering Exhibit No. 121 in evidence?

Mr. Albert: You're right, I'm sorry. I offer in evidence Respondents' Exhibit No. 121.

Mr. Martin: That is objected to as being incompetent. The witness has already testified that the total number of manufacturers were 423. This exhibit here is simply a reiteration of his testimony and we have no chance, no way in the world for cross-examination as to who composed the supposed number of manufacturers. 13173

(Whereupon there was a discussion off the record.)

Examiner Diggs: Counsel withdraws the exhibit.

Mr. Albert: I now offer in evidence approximately sixty-three directories used as a basis for the testimony of Mr. Post with respect to the existence of 423 firms available to the A.M.C. during the period of red carding.

Examiner Diggs: Any objection?

Mr. Martin: Yes, sir, I object to that.

Examiner Diggs: I sustain the objection on several grounds. First, there is no testimony showing the authenticity of these records. In the second
13175 place you are encumbering the record with all these booklets which serve no good purpose. The witness has already testified concerning his investigations and I do not think those books lend anything to it. You may have an exception.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Post, have you made a notation of the names of the 423 firms with respect to which you have testified, including their addresses? A. I have.

Q. Do you know those names without referring to any notation you have made? A. I could not recite them. Is that what you mean?

Q. Yes. Will you refresh your recollection from such
13176 notes as you may have with respect to the names of those manufacturers and let us have the names of the 423 names of the 423 manufacturers who were in existence during the period previously referred to by you?

(Whereupon there was a discussion off the record.)

Examiner Diggs: Does counsel mean to say he is going to have this witness recited in this record 423 names?

Mr. Albert: Yes.

Examiner Diggs: Well, I am not going to permit this to be done. I am going to ask the witness a few questions myself.

By Examiner Diggs.

Q. Mr. Post, these cards which I hold in my hand were prepared by you, were they, or under your supervision? A. They were, sir.

Q. And do those cards contain the names of the 423 manufacturers about whom you testified? A. They do.

Q. And you know of your personal knowledge after investigation that the persons whose names appear on these cards were manufacturers whose stock was available to the 13178
A.M.C. during the period which you have testified? A. I do, sir.

Examiner Diggs: I will admit those cards in evidence but I will not admit the witness to detail those 423 people.

Mr. Albert: May they go in as one exhibit?

Examiner Diggs: Yes, one exhibit.

Mr. Albert: That will be respondents' exhibit.

Examiner Diggs: I understand you offer in evidence these cards which have been marked Respondents' Exhibit No. 122, is that correct?

Mr. Albert: Yes.

Examiner Diggs: Any objection?

Mr. Martin: No objection. 13179

Examiner Diggs: They may be admitted in evidence and marked Respondents' Exhibit No. 122.

(Whereupon the said exhibit was marked Commission's Exhibit 122 in evidence.)

By Mr. Albert.

Q. Now, Mr. Post, have you made an investigation to determine the number of manufacturers making goods including the $16.50 price line in 1935? A. I did.

Q. And as a result of that investigation with respect to which you have previously testified how many manufacturers did you find making dresses including a $16.50 price line in 1935 in New York? A. 321.

Q. And how many out of town? By that meaning out of New York. A. 183.

Q. And the total thereof being 504? A. Yes.

Q. How many manufacturers were there in the Guild
13181 in any part of 1935 making $16.50 or over merchandise? A. Any part of 1935 there were 111 New York manufacturers.

Q. And how many were there out of town? A. And out-of-town manufacturers were ten, making a total of 121.

Q. And what is the percentage of firms in the Guild compared to the total of any part of 1935 making $16.50 and over merchandise?

Examiner Diggs: That is a matter of mathematics. I don't think we will go over that. The figures will speak for themselves.

By Mr. Albert.

Q. How many manufacturers were there in the Guild
13182 for the entire year of 1935 making $16.50 or over merchandise? A. Seventy-six.

Q. In New York? A. In New York, yes. And five out of town. Making a total of eighty-one.

Q. And that information was obtained in the same manner that you obtained the previous information, by examination of directories and Code Authority records? A. That is correct.

Q. And that examination was made either by yourself or directly under your supervision? A. Yes.

Q. And the examination of the directors and the Code Authority——

Mr. Martin (interposing): Now, suppose you ask him and not tell him, Mr. Albert?

Examiner Diggs: I do not think you ought to lead the witness.

By Mr. Albert.

Q. (Continuing) —and the records——

By Examiner Diggs. 13184

Q. (Interposing) Let me ask you this: Did you check up and find that the information was correct? A. I did most of the work myself; yes.

By Mr. Albert.

Q. And where was this information obtained from? A. From the same directors that we had here a few moments ago plus the Code records because the Code was in existence in 1935 and not in 1936.

Q. Did you make an examination of the Code Authority records of the dress industry under the National Industrial Recovery Act for the purpose of determining the number of firms registered by the Dress Code Authority for the year 1934 at the officially designated prices given by the Code? A. I did. 13185

Q. And generally where did you obtain such information? A. Specially I obtained it from the Code Authority records and the records of the certified public accountants who were responsible for the audits of that record.

Mr. Albert: Will you mark this Respondents' Exhibit No. 123 for Identification?

(Whereupon the said paper was marked Respondents' Exhibit 123 for Identification.)

By Mr. Albert.

Q. From the official reports of the Code Authority? A. That is correct.

Q. Now, Mr. Post, will you be good enough to explain the headings of Respondents' Exhibit No. 123 for Identification?

(Whereupon there was a discussion off the record.)

13187 Mr. Albert: I offer in evidence Respondents' Exhibit No. 123.

Mr. Martin: I object to it as being irrelevant and incompetent and hearsay. There are no means afforded the Commission of checking the truth of it and it is not the best evidence.

Examiner Diggs: I subscribe to everything that counsel for the Commission has stated but in view of the fact I have admitted an exhibit for him, to wit, Bergdahl, Commission's Exhibit No. 941, an exhibit which was prepared from sources similar to the sources used by this witness and by the same method. I admitted when I admitted that, I stated I did not think it was competent. But I admitted it and I will admit this on the same theory and

13188 think it is subject to the same vice as the other. It may be admitted and counsel's objection is overruled.

(Whereupon the said exhibit was marked Respondents' Exhibit 123 in evidence.)

Mr. Albert: I offer into evidence, if it pleases the Court, the 504 cards bearing the names of the manufacturers who were in business in 1935 in the

price line of $16.50 or over, to which Mr. Post has previously testified.

Examiner Diggs: Are these cards which are being handed me, which were marked Respondents' Exhibit 124 for Identification, prepared by you or under your direction?

The Witness: Yes, sir.

Mr. Albert: Will you mark this Respondents' Exhibit No. 124?

(Whereupon the said exhibit was marked Respondents' Exhibit 124 for Identification.)

By Examiner Diggs. 13190

Q. And do they contain the names of the various manufacturers described by counsel? A. That is correct.

Q. This is a correct list? A. Yes.

Q. Did you check up to find out if it is correct? A. Yes.

Examiner Diggs: Any objection?

Mr. Martin: No objection.

Examiner Diggs: It may be admitted and it will be marked Respondents' Exhibit No. 124 in evidence.

(Whereupon the said exhibit was marked Respondents' Exhibit 124 in evidence.)

13191

By Mr. Albert.

Q. Mr. Post, directing your attention to Commission's Exhibits 450-A and 941, have you in any way attempted to determine the volume of business done by the firms mentioned in Commission's Exhibit 450-A and to which Mr. Bergdahl had reference in Commission's Exhibit No. 941? A. Yes, I did.

Q. What did you do for that purpose? A. We secured information on all the firms listed on there as to the volume of business done through the existing credit agencies and secured the financial statements.

Q. How many firms doing business in the price lines of $16.75 and up did you obtain credit ratings on? A. I should say about forty or fifty.

Q. As a result of your investigations have you been able to make any estimate of the volume of business done by any of the firms listed in Commission's Exhibit No. 450-A? A. Yes.

Q. Will you explain what that is? A. Commission's Exhibit No. 450 listed all those manufacturers. And we
13193 found, first of all, there were ninety-eight manufacturers, individual manufacturers, listed as making $16.50 or up goods. Of those ninety-eight firms sixty-one, according to Exhibit No. 450, made goods at $16.75 and up. In other words, their names are not listed prior to 450-H, 450-H being the page of Commission's Exhibit No. 450 where the $16.75 price starts. Of the sixty-one firms in that category we were able to get financial statements on twenty-five of them that gave the actual volume. All the financial statements do not include volume figures. Of these twenty-five firms, the total of their volume was $3,919,919. That made an average business for the twenty-five firms of $156,000 and from there we projected an estimate for the sixty-one firms.

13194 Q. Have you the names of the twenty-five firms to which you refer? A. Oh, yes.

Examiner Diggs: We will adjourn for lunch until 2 o'clock.

(Whereupon the hearing in the above-entitled matter was adjourned at 11.45 to reconvene at P. M.)

AFTERNOON SESSION.

(At 2.15 P. M., pursuant to the taking of the recess, the hearing in the above-entitled matter was reconvened.)

ALBERT M. POST resumed.

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 125 for Identification and ask you what that exhibit contains? A. That is the names of the sixty-one firms appearing on Commission's Exhibit 450-H and the subsequent letters who are listed on that exhibit as being manufacturers 13196
making the $16.50 or higher goods. It also contains the volume of twenty-five of those sixty-one as reported by the credit agencies.

Q. To what credit agencies do you refer? A. Dun & Bradstreet and the National Credit.

Q. Do those credit agencies report those figures as they are contained in Respondents' Exhibit No. 125 for Identification? A. Yes, except for this, in some few cases there were parts of the year reported. In other words, eight months of the year, or something like that. And there were about six of them, if I remember correctly. And those were computed on the basis we have heretofore used on these exhibits, so many twelfths multiplied by twelve. 13197

Mr. Albert: Will you mark that for identification?

(Whereupon the exhibit was marked Respondents' Exhibit 125 for Identification.)

Mr. Albert: I offer in evidence Respondents' Exhibit No. 125 for Identification.

Mr. Martin: It is objected to on the ground that it is hearsay. Secondly, on the ground it does not

show for what period the figures given are to be taken, whether it is the year 1933, 1934, 1935 or 1936, or for what portion or any portion of those periods. And thirdly, on the ground it has no probative value.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I will pass on this objection after counsel finishes examining the witness.

By Mr. Albert.

Q. Mr. Post, for what years are the figures opposite the
13199 various firms that you obtained from the credit agencies as named in Respondents' Exhibit No. 125? A. For the year 1935.

Q. And they so represent the dollar volume for that year? A. Yes.

Mr. Martin: May I ask a few questions?

By Mr. Martin.

Q. Do those credit reports make due allowance for returns? A. They say, "net volume."

Q. Do they make due allowances for piece good sales? A. I do not know.

Q. Do they make allowances for suits? A. I do not know.

13200 Q. Do they make allowances for coats? A. No. I believe they report the volume done.

Examiner Diggs: Well, I am going to overrule the objection and let this exhibit in for what it is worth. The way the record stands the witness Bergdahl in Exhibit No. 450 gave a list of certain dealers who are now set forth in this exhibit, Respondents' Exhibit No. 125. Then in Bergdahl's

Exhibit No. 941 he attempted to testify as to the approximate volume of business done by non-members only during the year 1935.

Mr. Martin: No, by the entire industry.

Examiner Diggs: Well, put it that way, "By the entire industry in 1935."

Now counsel for the respondent proposes to show that twenty-five, that the list contained in Respondents' Exhibit No. 125, in so far as there are any figures, shows a greater volume for the people so indicated than the total approximate volume found by the witness Bergdahl. Now I think it is competent for counsel for the respondent to make 13202
that showing.

I overrule the objection and the paper will be admitted in evidence. And counsel for the Commission may have an exception.

By Mr. Albert.

Q. Now, Mr. Post, have you ever attempted to obtain figures for other houses listed on Commission's Exhibit No. 450-H in the same manner as you obtained figures for the firms listed on Respondents' Exhibit No. 125? A. I have.

Q. And how many other firms have you obtained figures for and what are their classification as to the price line? A. There were ninety-eight firms in total and sixty-eight 13203
firms accounted for as not making below $16.75. That left thirty-seven firms making $16.75 and below. Of those thirty-seven firms we were able to secure figures on seventeen of them.

Mr. Albert: Will you mark this Respondents' Exhibit No. 126 for Identification?

(Whereupon the said paper was marked Respondents' Exhibit 126 for Identification.)

By Mr. Albert.

Q. And are the seventeen firms you referred to, together with the credit agency volume reported on them, reflected in Respondents' Exhibit No. 126 for Identification? A. Yes.

Q. And are the figures set forth in Respondents' Exhibit No. 126 for Identification, the volume for those firms for 1935 as reported by Dun and Bradstreet's and the National Credit Agency? A. With the same qualifications as I made on the previous exhibit, No. 125, that some few of those firms who are not reported for the full year 1935 but were reported for a specified number of months. And
13205 in those cases we computed the annual volume of so many twelfths multiplied by twelve.

Mr. Albert: I offer Respondents' Exhibit No. 126 in evidence.

By Mr. Martin.

Q. Where did you get those figures from? A. The same source, Dun & Bradstreet.

Q. Are they actual figures or the estimated figures from what they gave you? A. They are the actual figures.

Q. Do they take into consideration piece goods sales? A. They are the sales reported of those manufacturers, address manufacturers.

Q. Do they take in coats or suits? A. I doubt if they
13206 made coats. I don't know that. The record does not show that they do.

Q. Do you know whether or not any allowance has been made for those, if they made them? A. The figures are the annual volume done by those firms.

Q. Including everything that they manufactured and sold? A. Including everything they manufactured and sold, or sell.

Mr. Martin: Same objection, Judge.

Examiner Diggs: Same ruling. Admitted for the same reasons. The paper will be admitted in evidence and counsel for the Commission may have an exception.

(Whereupon the said exhibit was marked Respondents' Exhibit 126 in evidence.)

Mr. Albert: Will you mark this Respondents' Exhibit No. 127 for Identification (stack of sheets)?

(Whereupon the above indicated paper was marked Respondents' Exhibit 127 for Identification.) 13208

By Mr. Albert.

Q. Now, Mr. Post, I show you Respondents' Exhibits 127-A to blank for Identification and ask you to explain what that exhibit is and what it contains? A. These are the sheets that were taken from the official records of the National Industrial Recovery Authority or Agency, as it was called, indicating the purchase of labels by all manufacturers registered under the Dress Code Authority and the information as to their price designation for the year 1934. The sheets are made up from their records but are segregated so that each sheet or collection of sheets shows all the manufacturers or their records by each individual price designation. 13209

Q. These sheets show the name of the manufacturer, the designated Code price range, the Code rating, and the number of labels purchased by each manufacturer named for the year 1934? A. That is correct. And it has a summary at the bottom of each price range.

Q. And those sheets are——

Mr. Martin: Now, please don't lead him.

(Whereupon there was a discussion off the record.)

By Mr. Albert.

Q. Are those sheets an accurate transcript of the records as contained in the official information or Government report as prepared by the National Industrial Recovery Authority for the Dress Code? A. Well, the total of these sheets become the official report, if that is what you mean. The records are available but were never issued as individual reports. The total, the summarization of these records were issued as an official report and were so published by the Government.

Q. The name of the manufacturer, the designated price range and the number of labels purchased as reflected in
13211 Respondents' Exhibit No. 127-A to blank for Identification is an accurate copy and transcript of the same record as it appears in United States Official Government report prepared under the supervision of the National Industrial Recovery Authority for the Dress Code Authority which was prepared by them pursuant to law? A. That is correct.

Mr. Albert: I offer Respondents' Exhibit No. 127-A to blank for Identification in evidence.

Mr. Martin: I object.

Examiner Diggs: Objection sustained for the reason that these papers can serve no useful purpose for the mere fact that some concern bought some labels does not prove anything. They may
13212 or may not have used the labels. I will give you an exception to that ruling.

Mr. Albert: Will you mark these?

(Whereupon the papers indicated were marked Respondents' Exhibits 128 and 129 for Identification.)

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 128 for Identification and ask you to relate generally what that exhibit contains. A. This exhibit contains, first, the official record of the National Industrial Recovery Administration of the purchase of labels under the Dress Code Authority for the year 1934 by the designated price at which those labels were sold to dress manufacturers. I do not mean the price they paid for them but I mean the price merchandise they made, by the method they used for designating prices. It then goes on to show the number of labels purchased by members of the Guild in each of the price designated classification during the year 1934. 13214
That is to say, all members, all manufacturers who are members of the Guild for the full year. And it shows in the next column the per cent. of that to the total purchased. And the final tabulation on this exhibit shows the number of labels bought by Guild members during the period of their membership in the Guild by each of the prices designated, and what that total of labels purchased is to the grand total purchased in 1934 under the entire Code Authority.

Q. I show you Respondents' Exhibit No. 129 for Identification, Mr. Post, and ask you what that exhibit is and what it contains? A. That is the exhibit that shows the labels.

(Whereupon there was a discussion off the record.) 13215

Examiner Diggs: Right here I am going to shorten this hearing. I do not think it is necessary we should repeat all this testimony. I have already indicated I am not going to admit the exhibits in evidence. I have already refused to admit one bearing on the same question. No good purpose is to be served by this interrogation. I am going to

give counsel his exception to my ruling but nothing is to be gained by following this any further. Make your tender and I will pass on it.

Mr. Albert: I offer Respondents' Exhibits Nos. 128 and 129 into evidence.

Mr. Martin: I object.

Examiner Diggs: Objection sustained and counsel for the respondent may have an exception.

Mr. Albert: Will you mark this, please?

(Whereupon the paper indicated was marked Respondents' Exhibit 130 for Identification.)

13217. *By Mr. Albert.*

Q. I show you Respondents' Exhibit No. 130 for Identification, Mr. Post, and ask you to explain what figures are contained on that exhibit and the manner of computing the same? A. The figures contained in this exhibit are the figures of sales volume for the entire dress industry for 1934, broken down into four direct categories and the subsequent category indicated as the house dress industry. The method of computation was to take the records of the National Industrial Recovery Authority and establish through the known factors the degree of error that would result from a simple multiplication of the purchases of labels by the Code designated prices when compared with the known net volume of the interested manufacturers.

13218

By Examiner Diggs.

Q. May I ask the witness a question right here? In other words, these computations, are they predicated upon the labels sold or furnished by the N.R.A. to the various manufacturers? A. Yes, sir.

Q. Then that obviously comes within the same ruling as I made before, ruling the testimony out with respect to this.

Mr. Albert: Do I understand your Honor——

Examiner Diggs: Off the record.

Mr. Albert: May I have this on the record?

Examiner Diggs: Let us have it off. Let us see what it is first.

(Whereupon a discussion was had off the record.)

Mr. Albert: Is it your Honor's ruling that you will permit no statement of an analysis by Mr. Post of his figures contained in Respondents' Exhibit No. 130 demonstrating the total dollar volume in the 16.75 and up of the entire industry, which figure is predicated in any way upon the figures of 13220
labels sold as recorded by the National Industrial Recovery Authority?

Examiner Diggs: To make my position clear: I am going to refuse to permit the witness to testify and I am also going to refuse to permit in evidence any exhibit which has to do with the matter of labels furnished by the N.R.A. as being used as a basis for making a determination as to the volume of manufactured goods or sales.

Mr. Albert: No matter what that explanation may be?

Examiner Diggs: No. For the broad reason as I stated before, that the mere fact that the N.R.A. furnishes labels is no indication they were used or any indication that the goods were manufactured. 13221

Counsel may have an exception to that. And that applies to all those exhibits he is now referring to.

Mr. Albert: Will you mark these, please?

(Whereupon the indicated papers were marked Respondents' Exhibits 131, 132 and 133 in evidence.)

Mr. Albert: Now, Mr. Post——

(Whereupon there was a discussion off the record.)

Mr. Albert: If your Honor please, I now wish to offer in evidence Respondents' Exhibits 131, 132 and 133 for Identification, which exhibits respectively show the total dollar volume of the industry in 1933 of the various price lines and the total dollar volume done by Guild members in the respective price lines for the entire year, and the total dollar volume done by Guild members for the year 1933 for the period of their membership.

13223 Respondents' Exhibit 132 is the same exhibit reflecting the figures for 1934.

And Respondents' Exhibit No. 133 is the same figures for 1935.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I understand that counsel for the respondent has offered in evidence Respondents' Exhibits Nos. 131, 132 and 133, which are similar to those exhibits—which are in substance similar to those Exhibits 128, 129 and 130 in so far as the basis for the calculation concerned. That is, that in these last exhibits the basis upon which the calculations are made is the number of labels furnished by the N.R.A. And for the reason which I have

13224 indicated before I have excluded this entire line of testimony. I have refused to admit those exhibits in evidence and counsel may have an exception. Now you have your record absolutely clear.

By Mr. Albert.

Q. Now, Mr. Post, have you an opinion as to the total volume of business done in the dress industry in the year 1935? A. Yes.

Q. And upon what do you predicate that opinion? A. Well, the opinion is based upon a long and thorough knowledge of this business and the long study of the available sources of information, research, study, all kinds of reports.

Q. Will you mention what has been encompassed within your research? A. Well, the first thing, of course, were the records of the National Industrial Recovery Authority; records of the Department of Commerce; such records as we were able to secure from the Department of Labor; from the financial agencies which serve these industries; from figures compiled by the Federal Research Bureau; from figures compiled by the National Retail Trade Associations; figures compiled by the chambers of commerce; figures compiled by the chambers of commerce and the various trade associations within the industry; figures that we used in various investigations, legislative, judicial and administrative and that have been used in sworn testimony over a period of years. 13226

I have a feeling that is not the complete story but that is all that occurs to me at the moment. We went into every factor we could possibly find, as records of state and judicial hearings, administrative hearings, sworn testimony.

Examiner Diggs: Just don't go over them all. You have that already.

13227

By Mr. Albert.

Q. Now, specifically, have you used any particular record in forming your opinion as to the total volume of business done in the industry for 1935? A. Well, as to my opinion, no. I have used all the records. I compiled a report which was based upon one record but my opinion is based upon all of them.

Q. Is your opinion as to the total volume greater than the volume attempted to be placed into evidence by Respondents' Exhibit No. 133 for Identification? A. Oh, yes, substantially.

Q. What is your personal opinion as to the total dollar volume of the industry in the 16.76 and up during the year 1935?

Mr. Martin: That is objected to.

Examiner Diggs: Objection sustained. It would have been sustained to all of this line of testimony if it had been made. I do not think it is proper for the witness to give an opinion as to what the
13229 volume of business is. You may have an exception.

Mr. Albert: I ask that the testimony of Bergdahl with respect to the total volume of the industry be stricken.

Examiner Diggs: I cannot carry his testimony in my head. I don't remember what Mr. Bergdahl's testimony is and I am not going to pass upon a motion of that sort without sufficient information to use as a basis.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I deny the motion.

By Mr. Albert.

13230 Q. Now, Mr. Post, will you state as the result of your research and investigation what you found to be the total volume of the dress industry in the various price lines in respect to which we have been taking testimony, for the year 1935?

Mr. Martin: I object to that.

(Whereupon there was a discussion off the record.)

Examiner Diggs: The objection is overruled for the reason that the witness Bergdahl was permitted to say the very thing this witness is asked to do and while I do not think it was admissible at the time in the Bergdahl case, I did admit that and, therefore, I think this respondent may be given the same opportunity. So you may answer.

Mr. Albert: May I say something off the record?

(Whereupon there was a discussion off the record.)

Examiner Diggs: This hearing is adjourned until 10 o'clock to-morrow morning at this same place. 13232

(Whereupon the hearing in the above-entitled matter at 3.30 was adjourned to Wednesday, February 2, 1938.)

Room 424, Federal Trade Commission Bldg.,
Washington, D. C.,
Wednesday, February 2, 1938.

Met, pursuant to adjournment, at 10.15 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.) 13233

PROCEEDINGS.

ALBERT M. POST, a witness on behalf of the respondents, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Albert.

Q. Mr. Post, as a result of your researches and the investigations you personally have made or which have been

made under your personal supervision and direction, how many manufacturers have you found to have existed in the dress industry in 1934, and for the purpose of refreshing your recollection I show you Respondents' Exhibit No. 123. A. Well, in the total industry I found between thirty-two and thirty-four hundred manufacturers—thirty-four to thirty-five hundred probably.

Q. And the directories which were referred to yesterday were one of the sources of your information, is that correct? A. Yes.

(Whereupon there was a discussion off the record.)

13235 Examiner Diggs: Yesterday when counsel for the respondent sought to introduce in evidence sixty-five directories containing the names of manufacturers of various garments the offer was refused but no number was given these exhibits. For the purpose of clearing up the record I now direct the reporter to mark these exhibits Respondents' Exhibits Nos. 134 to 198 for Identification. I have already sustained an objection to the admission of these documents in evidence and have given counsel for the respondents' counsel an exception.

By Mr. Albert.

Q. Mr. Post, do any one of these directories contain
13236 the names of more than 2800 individual separate manufacturers?

Mr. Martin: Objected to. The best evidence of that would be not what he says the directories contain but the directories themselves.

Examiner Diggs: I sustain the objection. The directories have been refused admission in evidence.

Mr. Albert: Exception.

13237

By Mr. Albert.

Q. Now, Mr. Post, predicated upon the research and investigations which you have told us about yesterday, please state what you find to be the total volume of dresses sold in the industry for the years under discussion?

Mr. Martin: I object to that question. The ruling yesterday was that he could give his opinion as to what was the number but now he is trying to bring in something again based upon his investigations and research showing these sales of labels as to what he found to be the volume for the industry.

(Whereupon there was a discussion off the record.)

13238

Examiner Diggs: I am going to overrule the objection.

A. In 1933 it is my opinion——

Examiner Diggs: Now, wait a minute. It is not a question of opinion. The question is what did you discover as the result of your investigation to be the volume of business? That is the question.

A. I found the volume for 1933 to be $680,000,000. For 1934, $775,000,000. And for 1935, $830,000,000.

By Mr. Albert.

13239

Q. Will you tell us, Mr. Post, upon what facts you predicate that conclusion as to the total volume done?

(Whereupon there was a discussion off the record.)

Mr. Martin: I object.

Examiner Diggs: I am going to overrule the objection and take the answer.

A. The basis of that information is contained in the Government bulletin printed by the——

By Mr. Albert.

Q. (Interposing) Give us the exact title of the bulletin, Mr. Post, please. A. It is the United States Department of Commerce, Bureau of the Census, Census of Manufacturers for 1935, "Women's Wear Apparel."

Q. Booklet No. 14? From the U. S. Government Printing Office? A. Pamphlet No. 14, United States Printing Office, prepared under the supervision of Laverne Beales, Chief Statistician.

13241 Q. And what did you find with respect to the volume in that U. S. Government booklet? A. They report——

Mr. Martin (interposing): I object.

Examiner Diggs: I think the book speaks for itself. I sustain the objection.

(Whereupon there was a discussion off the record.)

Examiner Diggs: In order to avoid the necessity of putting this pamphlet in evidence it is agreed, between counsel for both sides that page 4 of the pamphlet referred to contains the figure of $476,203,527, for a total of 1,676 manufacturers.

By Mr. Albert.

13242 Q. What other figures and research, Mr. Post, form the foundation for your estimate of the total volume?

(Whereupon there was a discussion off the record.)

A. The figures of the National Credit Association.

Q. Where are those figures reported? A. They were reported in a booklet known as the Development of the Dress

Industry and then they were subsequently reported in recent years by correspondence, investigation and reports that they gave us.

Q. What is the figure contained in that report that you used as the basis for your estimate?

Mr. Martin: I object.

Examiner Diggs: Objection sustained.

Mr. Albert: Exception.

Examiner Diggs: The report is the best evidence.

Mr. Albert: Mark this for identification, please?

(Whereupon the said document was marked Respondents' Exhibit 199 for Identification.)

13244

By Mr. Albert.

Q. I show you Respondent's Exhibit No. 199 for Identification and ask you what that is? A. That is the booklet just referred to as entitled the Development of the Dress Industry published by the National Credit Association.

Q. I notice that that booklet has a figure for 1981. Is there a method of projecting that figure to determine the volume of 1935?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 199 for Identification.

Mr. Martin: Objection.

13245

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer to prove if the witness had been permitted to answer the question, the objection to which was sustained, the witness would have replied that there was a method of projecting the figure for 1931 to establish a figure for 1935.

Examiner Diggs: The proffer is refused.

Mr. Albert: Not stricken?

Examiner Diggs: No. It stands on the record but I refuse the proffer.

By Mr. Albert.

Q. What other records were used by you, Mr. Post, or information as a basis for your estimate? A. The published statements and reports of the Government and the N.R.A. not based upon label sales.

Q. And what report is that? A. One report made by the Assistant Deputy Administrator Judson Ford and an-
13247 other by John Keating whose title at the moment I do not know. He started in as counsel up there and became Assistant Director.

Q. And what was the figure that they reported for 1935?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained. The report is the best evidence, of course.

By Mr. Albert.

Q. What is the name of the report to which you refer, Mr. Post? A. "Results of the Administration of the Dress Code Fair Practice Provisions from May to December 1934."

Q. What is the date of that report? A. January 10
13248 1935.

Q. By whom was it issued? A. Judson Ford.

(Whereupon there was a discussion off the record.)

Mr. Martin: I object to the admission of any figures shown in a report gotten out by the—a report entitled "Results of the Administration of the Dress Code Fair Trade Practice Provisions from

May to December 1934, inclusive." I do not think these figures are admissible but I stipulate that the report estimates the annual volume of all markets in the United States at $600,000,000.

(Whereupon there was a discussion off the record.)

Examiner Diggs: As I have indicated before, I think the report is admissible and therefore I overrule the objection and the figures stated by counsel may be taken as appearing in this report.

By Mr. Albert.

Q. Are there any other figures or reports, Mr. Post, that you used as a basis for your estimate? A. Well, there are no other figures that I have used for the basis of this previous testimony which I just gave as to the volume. 13250

Mr. Albert: Will you mark this, please?

(Whereupon the indicated document was marked Respondent's Exhibit 200 for Identification.)

By Mr. Albert.

Q. Now, Mr. Post, Mr. Bergdahl mentioned in connection with Commission's Exhibit No. 941 a report by Harrison & Serwer as the basis for his estimate. I show you Respondents' Exhibit No. 200 for Identification and ask you if that is the Harrison & Serwer report referred to? A. That is the Harrison & Serwer report. 13251

Mr. Martin: I move that the answer be stricken as obviously this witness cannot know.

Examiner Diggs: Objection sustained.

By Mr. Albert.

Q. Is there any other report issued by Harrison & Serwer for the year 1934 other than Respondents' Exhibit No. 200?

Mr. Martin: Objected to as irrelevant and immaterial.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Objection sustained. It has not been shown that this witness possesses sufficient information to answer that question.

By Mr. Albert.

Q. Mr. Post, do you know whether Respondents' Exhibit No. 200 is the report to which Mr. Bergdahl referred, and if so please tell us what the basis of your knowledge is?

13253 (Whereupon there was a discussion off the record.)

A. I do know.

Q. What is the basis of your knowledge, Mr. Post? A. We got in touch with both Harrison & Serwer and the A.M.C. As a matter of fact they suggested that Harrison & Serwer prepared——

Mr. Martin: Objection.

Examiner Diggs: Objection sustained. The witness is undertaking to relate a conversation with somebody.

The Witness: That is the basis of how I know.

13254 *By Mr. Albert.*

Q. Will you tell us whom you had the conversation with, Mr. Post? A. Mr. Kaplan, attorney for Filene's Company. Mr. Serwer of Harrison & Serwer and Mr. Phil Reilly of the A.M.C.

Q. The Phil Reilly who is referred to in the testimony previously as executive director of the A.M.C.? A. That is the same Mr. Reilly.

Q. And what is the conversation you had with Mr. Reilly?

Mr. Martin: Objection.

Examiner Diggs: Objection sustained.

By Mr. Albert.

Q. What information did you obtain as the result of the conversation with Mr. Reilly and Mr. Kaplan, attorney for Filene's?

Mr. Martin: I object.

Examiner Diggs: Objection sustained. Obviously you are getting into a field you must know you cannot do that. 13256

Mr. Albert: I asked him—after what went in for the Commission out in the Middlewest as to conversations?

Examiner Diggs: It did not go in there when I was there.

(Whereupon there was a discussion off the record.)

By Mr. Albert.

Q. Did you have any conversation with Mr. Bergdahl about the Harrison & Serwer report? A. I did.

Q. What was that conversation?

Mr. Martin: I object. 13257

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

By Mr. Albert.

Q. Mr. Post, did you have a conversation with Mr. Bergdahl with respect to the Harrison & Serwer figures mentioned by him?

Mr. Martin: Objected to.

By Mr. Albert.

Q. (continuing) as forming a basis for Commission's Exhibit No. 941?

Mr. Martin: I object.

Examiner Diggs: I am going to sustain the objecton.

Mr. Albert: I offer to prove, if the witness had been permitted to answer the question, he would have answered that he had a conversation with Mr. Bergdahl; that he was informed by Mr. Bergdahl that Respondents' Exhibit No. 200 for Identification was the Harrison & Serwer Report to which Mr.
13259 Bergdahl referred as the basis for his figures in compiling Commission's Exhibit No. 941.

Mr. Martin: I move that the offer of proof be denied.

Examiner Diggs: It is denied.

By Mr. Albert.

Q. Now, Mr. Post, what is Respondents' Exhibit No. 200?

Mr. Martin: Objected to.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Go ahead. Give the answer.

13260

A. That is the Harrison & Serwer Report.

Q. No, no—what generally, does it contain?

Mr. Martin: Objected to.

Examiner Diggs: Sustained.

By Mr. Albert.

Q. Without mentioning figures, Mr. Post, will you tell us what the Harrison & Serwer report contains?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer to prove——

(Whereupon there was a discussion off the record.)

Examiner Diggs: I refuse to permit any further offers of proof or questions concerning this exhibit.

Mr. Albert: Exception.

By Mr. Albert.

Q. Mr. Post, is there an estimate of total volume for 1934 in the dress industry known as the Harrison & Serwer Report? 13262

Mr. Martin: Objected to.

Examiner Diggs: Now I have already told counsel I do not propose to have any more questions about this Exhibit. Objection sustained.

By Mr. Albert.

Q. Now, Mr. Post, there is in evidence an exhibit known as Commission's Exhibit No. 941 purporting to be an estimate of the total volume of the dress industry for 1935. Predicated upon your research and investigation will you tell us what is wrong with that report? 13263

Mr. Martin: Objected to. It is too general.

Examiner Diggs: I sustain the objection to this extent: He may not state what is wrong but he may state what, in his opinion, is wrong.

By Mr. Albert.

Q. If you can qualify your answer in accordance with the Examiner's statement, do so. A. Well, first, in my

opinion the total volume recorded for Guild members is substantially wrong. The second thing that is wrong, taking the total figures, in my opinion is the total for the industry. The figures here are entirely inadequate, which obviously makes the percentage in the third column wrong. I have addressed my remarks so far merely to the totals in the three tabulations here. Going back to the items, the same comment that applied to the grand totals applies to each of the items. They are from 50 to 75 per cent. out.

Q. Commission's Exhibit No. 941 shows that members of the Guild in the 16.75 and over price line did approximately $741,870,000 total volume. How does that figure
13265 compare with the actual figures found by the Commission, of the Guild? A. Well, you have that in an exhibit. I don't know. I wouldn't trust my memory on it.

Examiner Diggs: I think that is a matter to be determined by consulting the exhibit. I do not think we will have the witness making these calculations.

(Whereupon there was a discussion off the record.)

By Mr. Albert.

Q. Now, Mr. Post, did you have any conversation with Mr. Bergdahl with respect to Commission's Exhibit No. 941 which was introduced through Mr. Bergdahl and which represents his estimates of the total volume?

13266 Mr. Martin: I object.

Examiner Diggs: Objection sustained:

Mr. Albert: I offer to prove, if the witness had been——

Examiner Diggs: I won't accept any offer of proof on that sort of thing. It is very evident if this sort of practice is allowed this case could never come to a conclusion. We could go on forever. And

I am going to shorten it at least to that extent. I am not going to accept any offer of proof on any such matters.

(Whereupon there was a discussion off the record.)

By Mr. Albert.

Q. What did Mr. Bergdahl say to you about his preparation of Commission's Exhibit No. 941?

Mr. Martin: I object.

Examiner Diggs: Objection sustained.

Mr. Albert: Exception. I offer to prove——

Examiner Diggs: Do not take the offer. I have already made myself clear to counsel. I do not think it is necessary to repeat it any more. 13268

By Mr. Albert.

Q. Is there any other source of information upon which you predicated your estimate of total volume for the dress industry for 1935, Mr. Post? A. Yes.

Q. What is that source? A. The information published by the Union as to the percentage of change between the industry in 1934 as compared with 1935 and the supplemental figures on the same point by the Federal Reserve Bank and the figures published by the National Retail Dry Goods Association.

Q. To what Union do you refer? A. The union which is organized in the dress industry. 13269

Q. Can you give it to us by name?

Examiner Diggs: It doesn't make any difference what it is called.

The Witness: It is the Union in the industry.

Mr. Albert: There is only one in the dress industry.

13270 *Albert M. Post—For Respondents—Direct.*

By Mr. Albert.

Q. What is the percentage of change to which you have referred, and will you explain, Mr. Post, about the use of that percentage of change and how by the use of it you may project a known figure for 1934, or 1933, to obtain the total value for 1935?

Mr. Martin: That is objected to.

Examiner Diggs: I am going to let him answer. Go ahead.

By the Witness.

13271 A. Well, the method is to take a known figure and if you know what the percentage of change is, to apply that known percentage of change to the known figure and your resulting answer is the figure for the following year.

By Mr. Albert.

Q. By the use of arbitrary figures, Mr. Post, will you explain, using a figure for 1934, what percentage of change is used to obtain your figure for 1935, using the arbitrary figure for the percentage of change so that we may graphically have it in the record? A. Assuming that the volume is a million dollars for 1934 and the percentage of change is ten per cent. increase, obviously that is a hundred thousand dollar increase in money and you add that $100,000

13272 to the known 1934 volume of one million dollars and therefore get the resulting answer of $1,100,000. That is the method that is used.

Q. And do you know the names of the booklets or reports in which the percentage of change in the total industry between 1934 and 1935 was reported either by the Department of Commerce or the N.R.D.G.A. or the Union or the Federal Reserve Board? A. I am afraid I don't understand your question.

Q. You stated that the percentage of change in the industry had been published? A. That's right.

Q. Do you know the names of the booklets in which the percentage of change was published and from which you could figure? A. No.

Q. How can these booklets be obtained?

Examiner Diggs: I am not going to have this inquiry followed any further. We have wasted enough time on it already. Go to something else.

(Whereupon there was a discussion off the record.)

By Mr. Albert. 13274

Q. Is there any other source of information that you use in making your estimate of the total volume for 1935, Mr. Post? A. Well, the information is printed.

Examiner Diggs: It is a question of Yes or No. Is there any other information?

The Witness: Yes.

Examiner Diggs: What is it?

The Witness: The publicly printed trade journals that published those reports.

Examiner Diggs: Is there anything else?

By Mr. Albert.

Q. Is there any other compilation of figures which you have used prepared by any association for the purpose of arriving at your estimate of the total volume for 1935? 13275
A. Well, I used the figures of the chambers of commerce that were published.

Q. Do you use the figures of any Guild?

Mr. Martin: If your Honor please that is objected to.

(Whereupon there was a discussion off the record.)

13276 *Albert M. Post—For Respondents—Direct.*

Examiner Diggs: This sort of examination must be shortened and I am going to attempt to do it.

By Examiner Diggs.

Q. Mr. Witness, will you recite now all the sources in addition to the ones you have already mentioned which you have used in order to arrive at these conclusions which you have stated? A. I show you Respondents' Exhibit.—

Q. (interposing) Now wait a minute. Answer that question.

(Whereupon there was a discussion off the record.)

13277

By the Witness.

A. Yes. There was the information based upon our records of our own members.

By Mr. Albert.

Q. By your own members whom do you mean? A. Members of the Fashion Originators Guild.

Q. And was there any report prepared by the Fashion Originators Guild? A. There was.

Q. How is that report known in the record for reference? A. It is referred to as Respondents' Exhibit No. 133.

13278 Q. For Identification? A. For Identification.

Q. It was previously offered in this hearing? A. That's right.

Q. And what is the figure contained in the Fashion Originators Guild report, which formed part of the basis for your estimate, for the total volume of the industry for 1935?

Mr. Martin: Objected to.

Examiner Diggs: This is not a case where the usual rules apply because we are not asking him

now to recite the contents of a paper where the paper should be admitted but we are asking him for a specific figure. I overrule the objection to that extent.

The Witness: Will you repeat the question please?

(Whereupon the question was read by the reporter.)

A. You wish the amount?

By Mr. Albert.

Q. Yes, of the total industry and the total Guild figure. 13280
A. The amount of the total industry is 708 million dollars. And the Guild figure is 87 million dollars. Those are the figures that are contained in Commission's Exhibit No. 1050. The latter is the figure that is contained in Commission's Exhibit No. 1050.

Q. What is the total dollar volume for the industry in the 16.75 and up found by the Fashion Originators Guild which was used by you as a basis for computing your figures?

Mr. Martin: If your Honor please, I object to this, the Exhibit is in evidence. It speaks for itself.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I sustain the objection. I per- 13281
mitted this witness just a moment ago to state a particular figure which was used by him. I did that for the reason that this simply showed the figure used and that I did not intend and it does not show the source or the attempted source from which it was obtained. I am going to let this inquiry be pursued no further because you are attempting to

do indirectly a thing I said you could not do directly when this was offered in evidence. You may have an exception. Go ahead to something else.

By Mr. Albert.

Q. What is the figure, Mr. Post, which you used as the basis for your estimate as contained in Respondents' Exhibit No. 199?

Mr. Martin: I object.

Examiner Diggs: Objection sustained. I am not going to allow this inquiry any further.

13283 *By Mr. Albert.*

Q. Now, Mr. Post, predicated upon your estimates and the research which you have made will you give us the breakdown of your figures in the various price lines as to your estimate of the volume of business done on these price lines?

Mr. Martin: That is objected to.

Examiner Diggs: I overrule that objection and will take the answer.

By the Witness.

A. For the year 1933 on the 16.75 and over, 82 million dollars. 10.75 to under 16.75, 98 million dollars. 6.75 to
13284 under 10.75, 120 million dollars. Below 6.75 is 380 million dollars—for a total of 680 million dollars for 1934—16.75 and over, 90 million dollars. 10.75 to under 16.75, 100 million dollars. 6.75 to under 10.75, 135 milion dollars. Below 6.75, 450 million dollars—for a total of $775,000,000. And for 1935, at 16.75 and over, 105 million dollars. 10.75 to under 16.75, 110 million dollars. 6.75 to under 10.75, 140 million dollars. Below 6.75, 475 million dollars—for a total of $830,000,000.

Mr. Albert: I offer to prove the statistical method used by the Fashion Originators Guild in arriving at the computations contained in Respondents' Exhibit No. 131, 132 and 133 for identification.

Examiner Diggs: Which is based in part, as I understand it, upon these labels furnished by the N.R.A., is that correct?

Mr. Albert: That is correct.

Examiner Diggs: Then the proffer is refused.

Mr. Albert: Will you mark these?

(Whereupon the indicated documents were marked Respondents' Exhibits 201 and 202 for Identification. 13286

By Mr. Albert.

Q. Mr. Post, we have introduced figures with respect to the Guild volume for the year 1935 in this case. Have you as executive director of the Guild in any other case introduced figures differing from those volume figures?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

By Mr. Albert.

Q. Did you testify in the case of William Filene & Sons Company against The Fashion Originators Guild of America in the First District Federal United States Court of Boston? 13287

Mr. Martin: Objected to.

Examiner Diggs: I not only sustain the objection but I now state to counsel I am not going to admit any matters having anything to do with the Filene case in this record as I have stated time and time again.

Mr. Albert: Will you mark this please.

13288 *Albert M. Post—For Respondents—Direct.*

(Whereupon the said document was marked Respondents' Exhibit 203 for Identification.)

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 203 for Identification and ask you what this is? A. A transcript of the record.

Q. Of what record? A. Of the record of the suit of William Filene's Sons Company versus Fashion Originators Guild.

Q. Is that the official transcript of the testimony of that case? A. It is.

13289

Mr. Martin: I object.

Examiner Diggs: Wait a minute. I want to listen.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 203 for Identification.

Examiner Diggs: Objection sustained.

Mr. Albert (continuing): Not for the purpose of demonstrating the truth or falsity of the testimony therein contained but for the purpose of revealing to the Court by the testimony that the issues and matters passed upon by the United States District Court in Boston of the United States Circuit Court of Appeals for the Circuit are identical with the issues and matters which are before the Federal

13290 Trade Commission.

Mr. Martin: I renew my objection.

Examiner Diggs: Objection sustained.

By Mr. Albert.

Q. Mr. Post, I show you Respondents' Exhibit No. 201 for Identification and ask you what that is? A. It is the record of design production for members of the Fashion Originators Guild by the years 1934 to 1937, inclusive.

Q. Is that the statistical compilation the result of complaints passed upon by the Fashion Originators Guild? A. No, that is the number of registrations, statistical information and the number of registrants. I'm sorry; it also indicates the net number of copies; yes.

Q. And was that prepared under your supervision? A. Yes, it was.

Q. And is that an accurate recapitulation of the facts therein contained with respect to the adjudications? A. It is an accurate record for those four years.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 201.

13292 Mr. Martin: I object to it as irrelevant and immaterial and as already having been ruled on by his Honor when he announced that he would refuse to admit any testimony which would tend to show evils corrected by the Guild policy.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Counsel for the respondent states that the purpose of this exhibit is to show the good effects of the Guild's program. Am I right on that?

The Witness: That is right.

Examiner Diggs: Then the objection is sustained.

By Mr. Albert.

13293 Q. I show you Respondents' Exhibit No. 202 for Identification, Mr. Post, and ask you what that is? A. That is a tabulation of style piracy which goes along with the previous exhibit except this completes the information. We only had it for two years and therefore had to make a separate report.

By Examiner Diggs.

Q. The purpose of it is the same, Mr. Albert?

Mr. Albert: Yes, sir.

Mr. Martin: I object.

Examiner Diggs: I sustain the objection to that, too.

(Whereupon there was a discussion off the record.)

Examiner Diggs: We will adjourn to three o'clock. (Whereupon the hearing in the above entitled matter, at 11:50 was recessed until three o'clock P. M.)

13295

AFTERNOON SESSION.

(At 3:05 P. M. the hearing in the above entitled matter was resumed and further testimony taken therein as follows:)

ALBER M. POST (resumed).

Direct examination (continued).

Mr. Albert: Are we convened, your Honor?

Examiner Diggs: Yes, you may proceed.

13296 Mr. Albert: The witness is yours, Mr. Martin.

Cross-examination by Mr. Martin.

Q. Mr. Post, did you make any investigation to determine the number of non-Guild manufacturers available to the red carded stores and especially available to the A.M.C. stores after they were red carded? A. I did.

Q. What investigation did you make? A. We made an investigation of all the manufacturers that are recorded

through all the trade directories and such supplementary information as was obtained through chambers of commerce, Code Authority records, and such additional information as we were able to acquire through conferences with buyers and people who are in the market. From that we compiled our list and subsequently it was transmitted into the exhibits.

Q. How many non-Guild manufacturers did you find were available?

Mr. Albert: May I ask that the question specify whether Mr. Martin is referring to the $16.75 manufacturers or to the entire trade?

13298

By Mr. Martin.

Q. To the entire trade. How many non-Guild manufacturers did you find were available in the different price ranges, the total number? A. You mean in all the price range?

Q. In all the prices ranges? A. Well, somewhere between 3300 and 3500.

Q. Who were not members of the Guild? A. No, I'm sorry. That's the total. You have to take off about 150, speaking roughly. There never was that many. I am using round figures.

Q. Would you say there were 3150? A. No, I would say there were more than that.

Q. Would you say there were 3200? A. No, I would 13299
say there was between 3300 and 3500.

Q. Well then, you do not wish to take off the 150, is that correct? A. I'm sorry Mr. Martin, you are quite right. I am getting mixed up. Yes, that would be right.

Q. 3150? A. Yes, that's right.

Q. Yesterday, I believe, you referred to 423 manufacturers available to those stores. In what price range were those manufacturers available? A. Those were the manu-

facturers who were available in the $16.75 or up pric range whom we were able to verify.

Q. How did you determine that these manufacturer these 423 manufacturers, were in the $16.75 price rang and up, were available? Did you use the same methods a you have testified to before? That is, were their name taken from trade directories and supplemental informatio the same as you answered to the first question?. A. That' right.

Q. Were any of those manufacturers personally inte viewed? A. Yes.

Q. How many of them were interviewed? A. Well,
13301 would simply have to give my best guess on it. Aroun 50 probably.

Q. About 50 out of 423? A. That's right.

Q. And the rest of these names were simply taken fro trade directories and information in the directories wa taken as correct? A. Well, that is not quite right. I hav been in this business a long time and I have bought a lo of merchandise and I think I have rather an intimat knowledge of the market and the people in it. I can te you a good deal about these manufacturers from person contacts.

Q. Do you know all of those 423 manufacturers? A Well, I don't believe I know all of them, no. I know great many. I have bought from a great many.

Q. Did you make any investigation to determine th
13302 type of garment that these manufacturers made? A. know that. Those that I know I know the type of garmen they make.

Q. Which ones do you know the type of garment the made? A. I should say I have bought from and had pe sonal contact with about 50 per cent. of the manufacturer

Q. In other words you have bought from approximatel 211 of these 423 manufacturers? A. Well, that is m

opinion Mr. Martin. You seem to be tying it down to exact figures. You understand I am giving——

Examiner Diggs: Just don't argue. Just make your statement.

By Mr. Martin.

Q. Do you know whether those manufacturers made daytime dresses, evening dresses, street dresses or half sizes? A. Those that I know I do know.

Q. Which ones do you know? That's what I am trying to find out.

Mr. Albert: That is objected to unless Mr. Martin refers to Respondents' Exhibit No. 122 in evidence. 13304

Examiner Diggs: The objection is overruled. He has the right to test this witness's knowledge concerning the sources of his information as testified to by him on his direct examination. He is not confined to any particular card.

By Mr. Martin.

Q. Do you know of your own personal knowledge that all of these manufacturers were actually in business at the time this compilation, or at the time to which this compilation relates? A. All those manufacturers were verified as being in business.

Q. How were they verified? A. Through many sources: A. The credit sources. B. The directories. C. The telephone books. D. The New York buying offices. E. In some cases by personal visits and reports of representatives who called on these manufacturers and called on the people who do business with them. 13305

Q. Do you assume— A. (Interposing) That is what I meant by "vertification" when I used that word before, yesterday, when I used it yesterday.

Q. Did you assume from the fact that a manufacturer's name was listed in a book he was as a matter of fact engaged in the manufacture and sale of women's garments at the period of time referred to? A. No, not generally. We did in some cases.

Q. Did you make any investigation to determine the financial responsibility of those 423 manufacturers?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

13307 *By Mr. Martin.*

Q. Do you know of your own personal knowledge that these 423 manufacturers, alleged manufacturers, were actually engaged in the manufacture of women's dresses and garments and were available to those red-carded stores? Do you know that of your own personal knowledge? A. As I understand the words "personal knowledge," the answer is yes.

Q. Well, how do you understand the words "personal knowledge"? A. Well, information that I have in part secured myself or information that has been secured in the natural performance of my position or secured through agents or employees of Filene, or, rather, Fashion Originators Guild of America. I consider that and I under-

13308 stand it to be of my personal knowledge.

Q. So your statement was based on information that was brought to you plus some investigations of your own, is that correct? A. That is correct.

Q. Do you know whether these manufacturers were equipped to turn out goods in volume?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I think we ought to confine this discussion as to whether or not they did in fact turn them out.

By Mr. Martin.

Q. Do you know, Mr. Post, whether these manufacturers, whether the product of these manufacturers was generally handled by stores of the type of the A.M.C. stores?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will overrule that objection.

A. I definitely know.

By Mr. Martin.

Q. Were they or were they not the type of manufacturers handled by the A.M.C. stores? A. A great many of those manufacturers were being used, are being used and have been used by the A.M.C. stores over a period of time. 13310

Q. How many of them would you say have been used? A. Well, I will be conservative and say at least fifty.

Q. At least fifty out of 423. Do you know, Mr. Post, whether the garments manufactured by those 423 manufacturers were known as high style garments?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: Of course, I cannot anticipate just what the object of this is. I overrule the objection and we will take the answer.

Mr. Albert: May I note my exception, your Honor, in that the question opens up the whole question of the principle upon which the Guild is formed, upon the protection of style. 13311

Examiner Diggs: You may have an exception.

The Witness: Will you repeat the question?

(Whereupon the question was read by the reporter.)

Mr. Albert: I further object unless the question includes the definition of what the questioner means by "high style."

Examiner Diggs: The objection is overruled.

A. I know that there are a number of manufacturers among those 423 who are known as producers of high style merchandise.

Q. Do you know anything of your own personal knowledge concerning the workmanship, the style and the fit of garments manufactured by these 423 manufacturers, Mr. Post?

13313 Mr. Albert: I object to that as immaterial.

Examiner Diggs: The objection is overruled. It may go to the question as to whether or not these alleged available resources would meet with the requirements of those people. I think it is pertinent. You may have an exception.

Mr. Albert: Exception.

A. I have stated I used these manufacturers. I know the A.M.C. does. I used to be associated with the A.M.C. as you know. I know they are making and have made a product which is acceptable to those stores, and which stores I have been associated with, on every basis within the categories that they fall.

Q. How many of them would you say met those require-
13314 ments? A. Well, if you want me to look through the list I will be very glad to.

(Whereupon there was a discussion off the record.)

A. There are 150 to 200. Ninety-eight would appear on the A.M.C. list and on the Commission's Exhibit 450.

(Whereupon there was a discussion off the record.)

A. (Continuing the previous answer) That is, that there are that many that I know of as being resources of the A.M.C. I am not dealing with any manufacturers that I may also know about that I do not know whether or not they were used by the A.M.C. That is the distinction in my answer. I may have knowledge myself of 300 of those manufacturers but I cannot say that the A.M.C. bought from all 300 of them.

Q. Are you familiar with Gordon Frocks? A. No, sir.

Q. Of Los Angeles? A. No, sir.

Q. Do you know what they make? A. No, sir.

Q. Are you familiar with the La Parisienne of San Francisco? A. No. I know only in the out of town manufacturers those people from whom I bought. 13316

Q. I understand that your testimony is that with regard to the manufacturers who are located outside the City of New York but are included in this list of manufacturers available your personal knowledge is limited to those from whom you may have bought or had business dealings with yourself? A. Well, with the last qualification to your question I will say, "Yes." Because, for example, living in Chicago, as I did, I had knowledge of most of the Chicago manufacturers although I did not buy from all of them. I used to go around with the buyers occasionally to see what they were making and they used to come out to the store to show me.

Q. Are you familiar with the T. H. Costume Company? A. No. 13317

Q. Are you familiar with the Ben Linde? A. Linde?

Q. Right. A. Is that a New York manufacturer?

Q. I don't know.

Mr. Albert: May it appear that Mr. Martin is reading from Respondents' Exhibit No. 122?

Examiner Diggs: Oh, I don't think it is necessary to have it appear what he is reading from. I

do think we are wasting a lot of time on this line of examination.

Mr. Martin: If your Honor please, I simply want to find out this. This witness testified there are 423 manufacturers who were available. I want to find out how much he knows about those manufacturers.

Examiner Diggs: Go ahead.

Mr. Martin: I am trying to be just as brief as I can.

By Mr. Martin.

13319 Q. In answer to your question, Mr. Post, the card which is in evidence, Respondents' Exhibit No. 122 does not give his address. Are you familiar with that? A. I think that makes him a New York firm. I believe that's it, the firm I have in mind, that makes women's dresses in the price range of 12.75 to $19.75, of a tailored type.

Q. Are you familiar with Raymond Costumes? A. No, I am not.

Q. Are you familiar with Saik & Linda? A. Yes.

Q. What do they make? A. They make a tailored type of dress similar to Linde except that they style a little bit lower. They style the $10.75. I don't believe they go any higher than $16.75.

Q. Do you know anything about where the majority of
13320 that business would be?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will sustain that objection.

Mr. Martin: If your Honor please, he has testified that these are $16.75 and up.

Examiner Diggs: Off the record.

(Whereupon a discussion was had off the record.)

Examiner Diggs: Read the question.

(Whereupon the question was read by the reporter:)

Mr. Martin: What is the answer?

Mr. Albert: Objection withdrawn.

A. Well, the major part of that business would be below the $16.75 price range.

By Mr. Martin.

Q. Are you familiar with the firm of B. S. Simon? A. Simon or Salmon?

Q. Simon & Company. A. May I see that card please? (Looking at card) No. 13322

Q. Is it not a fact that your knowledge as to the type of garment manufactured, the price range, the quality of workmanship, the size and the availability of these 423 manufacturers is based for the great part on information such as directories, telephone books, and personal statements rather than your own personal knowledge? A. Yes.

Q. Do you know how many manufacturers making $49.75 goods and over are in the year 1934 located in New York? A. You mean manufacturers who made $49.75 and up goods exclusively?

Q. Yes. A. No, I don't know that.

Q. Do you know how many manufacturers making $49.75 and up goods were members of the Guild in 1934? A. I know there was no manufacturer, a member of the Guild, who made $49.75 and up goods exclusively. 13323

Q. In the Guild? A. That's right.

Q. There was no manufacturer? A. There was no manufacturer.

Q. Then Respondents' Exhibit No. 123 which lists one manufacturer in that price range is incorrect? A. Oh, no, it is absolutely correct.

Q. Well, will you explain that please? A. Gladly That is the listing based upon the manufacturers of th code designated price. That does not mean that the manufacturer listed as a 49.75 and up manufacturer mad $49.75 and up goods exclusively. That merely means tha was the lowest regular price at which he made goods and for that reason he was designated as a $49.75 manufacturer by the Code Authority at the time their records were compiled under the Industrial Recovery Act.

Q. And there was only one such manufacturer who belonged to the Guild? A. On their records there was only one such manufacturer.

13325 Q. Who was that manufacturer? A. Netty Rosenstein

Q. Who is Hattie Carnegie? Was she a member of the Guild in the year 1934? A. Yes.

Q. Did she make $49.75 and up goods? A. They made $49.75 and up and $49.75 and lower.

Q. Well, she would not buy labels for $49.75 garments and put them on lower-priced ones, would she?

Examiner Diggs: Let us not get into this labeling anymore. I have kept it out of this all along.

Mr. Albert: I have no objection and I make no objection.

Examiner Diggs: I object to going into these labels again.

13326 *By Mr. Martin.*

Q. Was Jo Copeland a member of the Guild in 1934? A. Yes, sir.

Q. Did she make $49.75 and up? A. Well, the answer will be the same to all of them. That has nothing to do with that report. If you want to know, for example Hattie Carnegie, was designated by the code at a price of $22.75 because that was the lowest price at which they regularly made goods. Jo Copeland, I am trusting to

memory, I believe they were designated as $39.75 manufacturer for the same reason. But that again does not mean any of those manufacturers did not make goods below the designated price.

Q. Was Germaine Mounteill a member of the Guild in 1934? A. Yes.

Q. Under what classification did they come? A. I think we have the worksheets here. I will be glad to look up all these for you if you wish.

Q. Well, it is a matter of fact no manufacturer manufactured 49.75 garments and up? A. I know they manufactured $49.75 and up garments, certainly. My recollection is they were designated as either $39 or $29.75. 13328

Q. Referring to Respondents' Exhibit No. 123 I note that under the heading "Total number of manufacturers in each price designation" there are listed nine in the $49.75 and up group. Do you know the names of those nine? A. Yes.

Q. Will you give them to me, please, sir? A. You have those work sheets, haven't you, those code records and work sheets? (Addressing Mr. Keller)

Mr. Martin: I just want that one question, your Honor, to find out who those nine are.

A. The $49.75 manufacturers are Madame Frances, Barbara Costume, Nettie Rosenstein, Gerald G. Freeman, Banshaoff, Madame Francine, Nancy, Inc., Pinciaroente, Anna McCormick. Those are names appearing on our 127 for Identification. 13329

By Mr. Martin.

Q. Do you know how many manufacturers making $16.75 and up who were available to the red carded stores at the time the A.M.C. was red carded were located out of New York? A. Well, I believe all of these nine, because you said $16.75.

Q. No. Referring to those. Strike out that whole question. Going back to your testimony yesterday as to the 423 manufacturers making $16.75 goods and up. A. Yes.

Q. Who were available to the A.M.C. stores. How many of them were located outside of the City of New York, do you recall? A. It is on the exhibit. I don't recall at the moment. If you show me the exhibit.

Q. It is not on any exhibit.

(Whereupon there was a discussion off the record.)

Mr. Martin: Strike out that question. I will ask another question.

13331

By Mr. Martin.

Q. I understood you to testify yesterday, Mr. Post, that at the time the A.M.C. stores were red carded there were 321 $16.75 and up manufacturers in the City of New York and 183 outside of the City of New York? A. No, that was in 1935.

Q. The 504 total I understand then refers to 1935? A. That's right.

Q. And the correct number referring to the period at which the A.M.C. stores were red carded was 423, is that correct? A. No, that is not quite correct. There were 504 manufacturers who were available in 1935 making $16.75 and up goods and then I went on to testify of those

13332 121 were Guild members, which would reduce it roughly to 380 non-Guild manufacturers. Now, in 1936 which deals with the period you refer to at the time the A.M.C. stores were red carded there were a total of 423 manufacturers available none of whom were Guild members. There is a difference in the set up.

Q. Now, I think I have that correct. Now, of that 423 non-Guild manufacturers available to the red carded stores in 1936 how many of them were located outside of the City of New York? A. 160.

Q. What investigation of those 160 did you make? A. Well, in cities where we had employees and organizations we shopped them. We investigated through the chambers of commerce, through buying offices and through retailers in various cities to whatever extent we were able to within the time we had to compile all this information.

Q. Did you make any investigation as to the type of garment, the fit, the quality of workmanship, the financial stability, the size and standing of those and their ability to turn out garments in quantity?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will overrule it and take the answer. 13334

A. Yes, I think we did.

Q. And the investigations that you made were as you testified in your previous answer? A. Yes.

Mr. Martin: I believe that is all I have, your Honor.

Redirect examination by Mr. Albert.

Q. Mr. Post, in answer to Mr. Martin's question with respect to the existence of manufacturers in the 49.75 price line you referred to Respondents' Exhibit No. 127 for Identification. Has that exhibit the names of all houses in the designated price lines as listed by the code? A. It has. 13335

Mr. Albert: I reoffer Respondents' Exhibit No. 127 for Identification.

Examiner Diggs: I sustain the same objection as I sustained before to the exhibit.

(Whereupon there was a discussion off the record.)

Mr. Albert: No further questions, Mr. Post.

Examiner Diggs: You may be excused, Mr. Witness.

Mr. Albert: I would like to be sworn, your Honor.

MELVIN A. ALBERT was called as a witness on behalf of the respondents and, having been duly sworn, testified as follows:

Direct examination by Mr. Keller.

13337 Q. Your full name is Melvin A. Albert? A. Yes.

Q. Mr. Albert, are you the attorney who has presented the case on behalf of the respondents in this proceeding and have you represented it in these hearings? A. Yes.

Q. Have you been present at all the hearings during which the respondents' case was presented? A. Yes.

Q. And during which the present Trial Examiner presided? A. Yes.

Q. Is the record as typewritten and presented by the official stenographers for the Federal Trade Commission a true and accurate record of the proceedings?

Mr. Martin: I object to that.

Examiner Diggs: Objection sustained.

Mr. Keller: Off the record, if you wish.

13338 (Whereupon a discussion was had off the record.)

Examiner Diggs: You may have an exception.

Mr. Keller: Exception.

By Mr. Keller.

Q. Now, Mr. Albert, during some of the days that the respondents presented its case, did you request the Municipal Stenographic Service of No. 2 Lafayette Street, New York, certified shorthand reporters, to be present?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained. You may have an exception to that.

By Mr. Keller.

Q. And did they at your request take a transcript of the proceedings which took place on those days?

Mr. Martin: Objected to.

Examiner Diggs: Sustained.

Mr. Martin: I object to all questions along this line.

Examiner Diggs: Objection sustained.

13340

Mr. Keller: Off the record for a moment.

(Whereupon there was a discussion off the record.)

Mr. Keller: Will you mark these, please?

(Whereupon the indicated documents were marked Respondents' Exhibits 204 to 208 for Identification.)

By Mr. Keller.

Q. Mr. Albert, I show you Respondents' Exhibits No. 204 to 208, inclusive, and ask you whether or not those represent a true and correct transcript of the testimony as taken by the Municipal Stenographic Service of 2 Lafayette Street, New York City, certified shorthand reporters? A. Yes.

13341

Mr. Martin: I object to it.

Examiner Diggs: I sustain the objection and the answer will be stricken.

Mr. Keller: I offer Respondents' Exhibits Nos. 204 to 208 for Identification in evidence.

Mr. Martin: I object to their reception.

Examiner Diggs: Objection sustained and they will not be admitted. And I may add, in order to make the record complete, that the ruling would be the same if the reporter were present and undertook to testify that this was a correct transcript of his record.

(Whereupon a discussion was had off the record.)

By Mr. Keller.

Q. Mr. Albert, did the present Examiner physically strike from the record certain questions put to witnesses
13343 on cross-examination of Commission's witnesses and on direct examination of respondents' witnesses?

Mr. Martin: Objection.

Examiner Diggs: Sustained.

By Mr. Keller.

Q. Did the present Examiner physically strike answers made by witnesses to questions put by you both on direct examination of respondents' witnesses and on cross-examination of Commission's witnesses?

Mr. Martin: Same objection.

Examiner Diggs: Sustained.

13344 *By Mr. Keller.*

Q. Did the present Examiner physically strike objections made by you to questions put by counsel for the Commission and to ruling made by the present Examiner?

Mr. Martin: Objection.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I am sustaining the objection upon the broad ground that I will not permit coun-

sel to ask any questions of this witness which tend or have for their purpose the impeachment of this record.

So far as this present question is concerned, the fact of the matter is that the Trial Examiner has afforded counsel an opportunity to make his objections but has properly refused to permit him to argue his objections on the record.

But my ruling goes to the extent that it is not proper to interrogate the witness concerning any matters which have for their purpose the impeachment of the record and I now advise counsel that is the ruling in order that he may understand in 13346
advance as to what the position is in this respect.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Because in the first place, as will be readily seen, take the last question asked, it would open up an issue in this case which would necessitate the taking of testimony to rebut the testimony given in respect thereto. And I do not think it is proper that such collateral issues should be raised.

Mr. Keller: I offer to make a proffer of proof on this question.

Examiner Diggs: I am going to deny you your proffer of proof without hearing it. I deny the 13347
proffer of proof without the proffer being made for the reason that if the ruling is correct it must follow that the proffer of proof would serve no useful purpose and if I am not correct then the whole matter is taken up for review anyway. Are there any further questions?

Mr. Keller: No further questions.

Mr. Albert: If it please your Honor, I now move to dismiss the proceedings upon the ground that

the Federal Trade Commission has failed to prove a case against the respondents upon the law and upon the facts as previously made. And for the additional reason that the proceedings at the present time are void and of no effect by reason of the fact that the present Trial Examiner is the third Trial Examiner in the proceedings. That in so far as his report upon the proceedings is concerned with respect to the vast majority of the pages of the record the same will represent a ruling in the nature of an appellate ruling upon the proceedings in as much as the Examiner was not present at

13349 the time the testimony was given to observe the witnesses; to weigh their testimony as to its credibility in the light of his observation of them; and that his decision rests, and will rest primarily, upon a mere reading of the record.

I also move to dismiss upon the ground that the constitutional right of the respondents to a fair trial has been violated in that the actions of the Federal Trade Commission have been arbitrary and unreasonable and that a fair, complete and true record of the proceedings and of the testimony given and the questions asked and answered has not been recorded for review by an appropriate tribunal.

13350 Examiner Diggs: The Trial Examiner has no authority to pass upon the motion and so the motion will stand to be disposed of by the Commission upon having its attention called to the same by counsel for the respondents. Do I understand you rest?

Mr. Albert: Respondents rest.

Examiner Diggs: Does the Government rest?

Mr. Martin: If your Honor please, I may have a little evidence which I wish to put in in rebuttal. I cannot determine that at this time.

Examiner Diggs: All right. Then this case will be adjourned and if it develops that there will be any further hearings they will be held upon five days notice to counsel for both sides.

(Whereupon at 4.30 P. M. the hearing in the above-entitled matter was adjourned as above indicated.)

UNITED STATES OF AMERICA 13352

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINARORS GUILD OF AMERICA, INC., et al.	Docket No. 2769.

ORDER CLOSING TAKING OF TESTIMONY.

The taking of testimony in the above-entitled proceeding 13353 closed as of this date.

CHARLES F. DIGGS,
Trial Examiner.

FD:EJS
March 16, 1938.

13354 *Statement of Exhibits.*

Commission's Exhibits 1-A to 1-T.

Constitution and By-Laws of Fashion Originators Guild of America, Inc.

Commission's Exhibits 2-A and 2-B.

List of Members of Fashion Originators Guild of America, Inc.

Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-E.

13355 Declarations of Co-operation in use in various forms.

Commission's Exhibits 4-A to 4-F.

Contract between the Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc., dated as of August 26, 1935.

Commission's Exhibits 5-A to 5-F.

Contract between Michigan Avenue Guild of Chicago and Fashion Originators Guild of America, Inc., dated May 10, 1935.

Commission's Exhibits 6-A to 6-E.

13356

Contract between The Ladies' Ready to Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., dated September 30, 1935.

Commission's Exhibits 7-A to 7-E.

Copy of speech made by Maurice Rentner to National Retail Dry Goods Association Convention on January 16, 1934.

13357

Commission's Exhibit 8.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 20, 1932, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 9.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 6, 1932, held at the Garment Center Capital Club.

Commission's Exhibits 10-A to 10-C.

13358

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of October 31, 1932, held at the Waldorf-Astoria Hotel.

Commission's Exhibits 11-A to 11-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of November 14, 1932, held at the Waldorf-Astoria Hotel.

Commission's Exhibits 12-A to 12-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of November 28, 1932, held at the Waldorf-Astoria Hotel.

13359

Commission's Exhibits 13-A to 13-D.

Minutes of Membership Meeting of Fashion Originators Guild of America, Inc., of January 26, 1933, held at the Waldorf-Astoria Hotel.

Commission's Exhibits 14-A to 14-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 17, 1933, held at the Waldorf-Astoria Hotel.

Commission's Exhibit 15.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 23, 1933, held at the Waldorf-Astoria Hotel.

13361 **Commission's Exhibit 16.**

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of April 8, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 17.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of April 22, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 18.

Minutes of Fashion Originators Guild of America, Inc.
13362 Membership Meeting of May 5, 1933, held at the St. Regis Hotel.

Commission's Exhibits 19-A and 19-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 12, 1933, held at the Waldorf-Astoria Hotel.

13363

Commission's Exhibit 20.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 28, 1933, held at the Waldorf-Astoria Hotel.

Commission's Exhibits 21-A and 21-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of July 31, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 22.

13364

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of September 4, 1933, held at Garment Center Capital Club.

Commission's Exhibit 23.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of October 25, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 24-A and 24-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of November 6, 1933, held at Fashion Originators Guild of America, Inc.

13365

Commission's Exhibit 25.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of December 1, 1933, held at Fashion Originators Guild of America, Inc.

13366 *Statement of Exhibits.*

Commission's Exhibits 26-A and 26-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of December 28, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 27.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of April 3, 1934, held at Fashion Originators Guild of America, Inc.

13367 **Commission's Exhibit 28.**

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 23, 1934, held at Adam Gimbel's office.

Commission's Exhibit 29.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of December 16, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 30.

Minutes of Fashion Originators Guild of America, Inc.
13368 Membership Meeting of January 2, 1935, held at the Hotel New Yorker.

Commission's Exhibits 31-A and 31-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 2, 1935, held at Specialty Stores Association.

13369

Commission's Exhibit 32.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of May 4, 1935, held at Specialty Stores Association.

Commission's Exhibit 33.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 10, 1935, held at the Waldorf-Astoria Hotel.

Commission's Exhibits 34-A to 34-C.

13370

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 21, 1935, held at the Hotel New Yorker.

Commission's Exhibits 35-A and 35-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of June 29, 1932, held at Garment Center Capital Club.

Commission's Exhibit 36.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of December 3, 1935, held at the 13371 Waldorf-Astoria Hotel.

Commission's Exhibits 37-A and 37-B.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of December 3, 1935, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 38-A to 38-D.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 17, 1936, held at the Waldorf-Astoria Hotel.

Commission's Exhibit 39.

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 19, 1936, held at Fashion Originators Guild of America, Inc.

13373 **Commission's Exhibit 40.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of March 3, 1932, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 41-A and 41-B.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 17, 1933, held at the Garment Center Capital Club.

Commission's Exhibit 42.

Minutes of Meeting of Board of Governors of Fashion
13374 Originators Guild of America, Inc., of June 16, 1933, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 43.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 15, 1933, held at Garment Center Capital Club.

13375

Commission's Exhibit 44.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of August 4, 1933, held at the Garment Center Capital Club.

Commission's Exhibits 45-A and 45-B.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 13, 1933, held at the Garment Center Capital Club.

Commission's Exhibit 46.

13376

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 18, 1933, held at the Garment Center Capital Club.

Commission's Exhibit 47.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of October 11, 1933, held at the Garment Center Capital Club.

Commission's Exhibit 48.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of October 17, 1933, held at the Garment Center Capital Club.

13377

Commission's Exhibit 49.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of November 4, 1933, held at Fashion Originators Guild of America, Inc.

13378 *Statement of Exhibits.*

Commission's Exhibit 50.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of January 31, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 51-A and 51-B.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 22, 1934, held at Fashion Originators Guild of America, Inc.

13379 **Commission's Exhibit 52.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 11, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 53.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 18, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 54.

Minutes of Meeting of Board of Governors of Fashion
13380 Originators Guild of America, Inc., of May 3, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 55.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 21, 1934, held at Fashion Originators Guild of America, Inc.

13381

Commission's Exhibit 56.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 13, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 57-A to 57-C.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of August 28, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 58.

13382

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 17, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 59.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of November 22, 1934, held at the Hotel New Yorker.

Commission's Exhibits 60-A to 60-C.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., on January 24, 1935, held at the Hotel New Yorker.

13383

Commission's Exhibit 61.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of March 20, 1935, held at the Hotel Ritz-Carlton.

Commission's Exhibit 62.

Minutes of Meeting of Board of Governors of Fashio
Originators Guild of America, Inc., of April 8, 1935, held
at the Hotel Ritz-Carlton.

Commission's Exhibits 63-A and 63-B.

Minutes of Meeting of Board of Governors of Fashio
Originators Guild of America, Inc., of April 30, 1935, held
at the Hotel New Yorker.

13385 **Commission's Exhibits 64-A and 64-B.**

Minutes of Meeting of Board of Governors of Fashio
Originators Guild of America, Inc., of June 4, 1935, held
at the Hotel New Yorker.

Commission's Exhibits 65-A to 65-C.

Minutes of Meeting of Board of Governors of Fashio
Originators Guild of America, Inc., of September 16, 193
held at the Hotel Waldorf-Astoria.

Commission's Exhibits 66-A and 66-B.

Minutes of Meeting of Board of Governors of Fashio
13386 Originators Guild of America, Inc., of October 21, 193
held at the Hotel Waldorf-Astoria.

Commission's Exhibits 67-A and 67-B.

Minutes of Meeting of Board of Governors of Fashio
Originators Guild of America, Inc., of December 3, 193
held at the Hotel Waldorf-Astoria.

Commission's Exhibits 68-A to 68-C.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 13, 1936, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 69-A and 69-B.

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 18, 1936, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 70. 13388

Minutes of a Meeting of the Executive Committee on Piracy, held on August 16, 1933, at Fashion Originators Guild of America, Inc.

Commission's Exhibit 71.

Minutes of Meeting of Grievance Committee of July 27, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 72.

Minutes of Meeting of Grievance Committee of September 7, 1934, held at Fashion Originators Guild of America, Inc. 13389

Commission's Exhibit 73.

Minutes of Meeting of Grievance Committee of September 24, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 74.

Minutes of Meeting of Grievance Committee of December 20, 1934, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 75.

Minutes of Meeting of Grievance Committee of January 7, 1935, held at Fashion Originators Guild of America, Inc.

13391 **Commission's Exhibit 76.**

Report of Grievance Committee of January 12, 1935, given over the telephone.

Commission's Exhibit 77.

Minutes of Meeting of Grievance Committee, held on January 23, 1935, at Fashion Originators Guild of America, Inc.

Commission's Exhibit 78.

Minutes of Meeting of Grievance Committee of January 28, 1935, held at Fashion Originators Guild of America, Inc.

13392

Commission's Exhibit 79.

Minutes of Meeting of Grievance Committee of March 21, 1935, held at Fashion Originators Guild of America, Inc.

13393

Commission's Exhibits 80-A and 80-B.

Minutes of Meeting of Grievance Committee of March 29, 1935, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 81-A to 81-C.

Minutes of Meeting of Grievance Committee of June 20, 1935, held at Fashion Originators Guild of America, Inc.

13394

Commission's Exhibits 82-A and 82-B.

Minutes of Meeting of Grievance Committee of July 31, 1935, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 83-A and 83-B.

Minutes of Meeting of Grievance Committee of September 25, 1935, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 84.

Minutes of Meeting of Grievance Committee of October 29, 1935, held at Fashion Originators Guild of America, Inc.

13395

Commission's Exhibits 85-A and 85-B.

Minutes of Meeting of Grievance Committee of December 20, 1935, held at Fashion Originators Guild of America, Inc.

Commission's Exhibit 86.

Minutes of Meeting of Grievance Committee of January 2, 1936, held at Fashion Originators Guild of America, Inc.

Commission's Exhibits 87-A and 87-B.

Minutes of Meeting of Grievance Committee of January 27, 1936, held at Fashion Originators Guild of America, Inc.

13397 **Commission's Exhibit 88.**

List of Non-Guild Manufacturers.

Commission's Exhibits 89-A to 89-C.

List of Red Carded Retailers as of July 6, 1936.

Commission's Exhibit 90-A.

Procedure on Style Piracy adopted at Membership Meeting of December 3, 1935.

Commission's Exhibit 90-B.

13398 Minutes of Meeting of Executive Committee on Style Piracy of December 3, 1935.

Commission's Exhibits 91-A to 91-C.

List of Members and their price ranges as shown on applications as of April 16, 1936.

Commission's Exhibit 92.

Resident Office Declarations of Co-operation.

13399

Commission's Exhibits 93-A and 93-B.

List of Resident Offices signed on regular and special Declarations of Co-operation as of April 16, 1935.

Commission's Exhibits 94-A to 94-I.

Recapitulation of Red Cards as of March 20, 1936.

Commission's Exhibit 95.

List of Officers and Directors of Fashion Originators Guild of America, Inc., as of April 16, 1936.

13400

Commission's Exhibits 96-A to 96-F.

Instructions to Shoppers.

Commission's Exhibit 96-G.

Declaration of Co-operation by Retail Store.

Commission's Exhibits 97-A to 97-N.

Correspondence and report on complaint that P & R Shop of Brooklyn is getting merchandise from L. & D. Beilinson, C. H. D. Robbins, Aywon, and B. Tobias.

13401

Commission's Exhibits 98-A to 98-M.

Transaction clearing through Guild office, November, 1935, Sutton-Donen, Jack Sutton Dress Shop, Charles F. Donen.

Commission's Exhibits 99-A and 99-B.

Circular letter of June 16, 1933, and memo. of Guild.

Commission's Exhibits 99-C and 99-D.

Resolution and its significance.

Commission's Exhibit 99-E.

Form of Declaration of Co-operation enclosed in E
hibits 99-A and 99-B.

Commission's Exhibits 100-A and 100-B.

13403 Letters re evasion, circular letter of April 9, 1936.

Commission's Exhibits 101-A and 101-B.

Copy of agreement between Protective Affiliates and t
Fashion Originators Guild of America, Inc.

Commission's Exhibits 102-A to 102-X.

Monthly reports on returns, November, 1935, Decembe
1935, and January, 1936.

13404 **Commission's Exhibit 103.**

Letter of C. F. Roycroft to J. M. Golby, dated Se
tember 4, 1935.

Commission's Exhibits 104-A and 104-B.

Letter of J. M. Golby to C. F. Roycroft, dated October
1935.

13405

Commission's Exhibit 105.

Letter of Hochshild, Kohn & Co. to A. M. Post, dated October 1, 1935.

Commission's Exhibit 106.

Letter of Wolf, Cohn, Inc., to Fashion Originators Guild of America, Inc., dated October 1, 1935.

Commission's Exhibit 107.

Letter of Munroe-Michel, Inc., to Fashion Originators Guild of America, Inc., dated October 1, 1935.

13406

Commission's Exhibit 108.

Memorandum of A. M. Post to J. M. Golby, dated October 1, 1935.

Commission's Exhibit 109.

Memorandum by A. M. Post re telephone conversation with Mr. Engel of Jane Engel and Chez Rosette, dated October 1, 1935.

Commission's Exhibits 110-A and 110-B.

13407

Letter of A. M. Post to C. F. Roycroft, dated October 1, 1935.

Commission's Exhibit 111.

Telegram of Dolly Winants of Mary McLean, Inc., to Fashion Originators Guild of America, dated October 1, 1935.

13408 *Statement of Exhibits.*

Commission's Exhibit 112.

Telegram from The Clothes Line to Fashion Originato Guild of America, Inc., dated October 1, 1935.

Commission's Exhibit 113.

Telegram from C. F. Roycroft of The Ladies' Ready Wear Guild of Baltimore to A. M. Post, dated October 1935, re Jane Engel and Chez Rozette.

Commission's Exhibit 114.

13409 Letter from C. F. Roycroft to A. M. Post, dated Oct ber 2, 1935, re Jane Engel and Chez Rosette.

Commission's Exhibit 115.

Reply to Commission's Exhibit 114 by A. M. Post C. F. Roycroft of The Ladies' Ready to Wear Guild Baltimore, dated October 4, 1935.

Commission's Exhibit 116.

Letter of J. M. Golby to C. F. Roycroft, dated Noven ber 4, 1935.

13410 **Commission's Exhibit 117.**

Letter of C. F. Roycroft to J. M. Golby of Fashio Originators Guild of America, Inc., dated December 1 1935.

Commission's Exhibit 118.

Letter of J. M. Golby to C. F. Roycroft, dated Decem ber 24, 1935.

13411

Commission's Exhibit 119.

Letter of J. M. Golby to C. F. Roycroft, dated October 21, 1935.

Commission's Exhibit 120.

Letter of J. M. Golby to C. F. Roycroft, dated January 14, 1935.

Commission's Exhibit 121.

Letter of J. M. Golby to Rose E. Phillips, dated January 14, 1935.

13412

Commission's Exhibit 122.

Signed Declaration of Co-operation of Rose E. Phillips, dated January 14, 1935.

Commission's Exhibit 123.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated January 22, 1935.

Commission's Exhibit 124.

13413

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated February 1, 1935.

Commission's Exhibit 125.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated February 1, 1935.

Commission's Exhibit 126.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated February 6, 1935.

Commission's Exhibit 127.

Letter of J. M. Golby to Rose E. Phillips on letterhead of Fashion Originators Guild of America, Inc., dated March 12, 1935.

13415 **Commission's Exhibit 128.**

Letter of J. M. Golby to Lee's, Inc., on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

Commission's Exhibit 129.

Letter of J. M. Golby to Sloan-Strobel on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

Commission's Exhibit 130.

13416 Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

Commission's Exhibit 131.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 27, 1935.

Commission's Exhibit 132.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated March 28, 1935.

Commission's Exhibit 133.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 29, 1935.

Commission's Exhibit 134. 13418

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated April 5, 1935.

Commission's Exhibit 135.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated April 13, 1935.

Commission's Exhibit 136.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated April 30, 1935. 13419

Commission's Exhibit 137.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated May 1, 1935.

13420 *Statement of Exhibits.*

Commission's Exhibit 138.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated May 3, 1935.

Commission's Exhibit 139.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated July 5, 1935.

13421 **Commission's Exhibit 140.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated July 8, 1935.

Commission's Exhibits 141-A to 141-C.

Letter of A. M. Post to Allan Metzger of the Maison Annette on letterhead of Fashion Originators Guild of America, Inc., dated August 1, 1935.

Commission's Exhibit 142.

13422 Letter of C. F. Roycroft to J. Goldston on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated May 22, 1935.

Commission's Exhibit 143.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 23, 1935.

Commission's Exhibit 144.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 27, 1935.

Commission's Exhibit 145.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 28, 1935.

Commission's Exhibit 146. 13424

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 27, 1935.

Commission's Exhibit 147.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 28, 1935.

Commission's Exhibit 148.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 29, 1935. 13425

Commission's Exhibit 149.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated October 25, 1935.

13426 *Statement of Exhibits.*

Commission's Exhibit 150.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated October 29, 1935.

Commission's Exhibit 151.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated October 30, 1935.

13427

Commission's Exhibit 154.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimroe, dated November 5, 1935.

Commission's Exhibit 155.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated November 6, 1935.

13428

Commission's Exhibit 156.

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated November 9, 1935.

Commission's Exhibit 157.

Letter of J. M. Golby to C. F. Roycroft on letterhead of ashion Originators Guild of America, Inc., dated Novem- r 11, 1935.

Commission's Exhibit 158.

Letter of C. F. Roycroft to J. M. Golby on letterhead he Ladies' Ready to Wear Guild of Baltimore, dated ovember 25, 1935.

13430

Commission's Exhibit 159.

Letter of J. M. Golby to Weinstein & Co. on letterhead Fashion Originators Guild of America, Inc., dated No- mber 27, 1935.

Commission's Exhibit 160.

Letter of J. M. Golby to Bertram S. Rice on letterhead Fashion Originators Guild of America, Inc., dated No- mber 27, 1935.

13431

Commission's Exhibit 161.

Letter of J. M. Golby to C. F. Roycroft on letterhead of ashion Originators Guild of America, Inc., dated De- mber 10, 1935.

13432 *Statement of Exhibits.*

Commission's Exhibit 164.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated December 24, 1935.

Commission's Exhibit 165.

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated January 27, 1936.

13433 **Commission's Exhibit 166.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated January 29, 1936.

Commission's Exhibit 167.

Telegram from A. M. Post to Roy H. Bjorkman, Inc., dated June 26, 1935.

Commission's Exhibit 168.

Letter from Roy H. Bjorkman to J. M. Golby on letterhead of Roy H. Bjorkman, Inc., dated June 27, 1935.

13434

Commission's Exhibit 169.

Day Letter Telegram from A. M. Post to Roy H. Bjorkman, dated June 27, 1935.

Commission's Exhibit 170.

Day Letter Telegram from A. M. Post to Roy H. Bjorkman, dated June 28, 1935.

Commission's Exhibit 171.

Letter from Roy H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated June 28, 1935.

Commission's Exhibits 172-A and 172-B. 13436

Letter from Roy H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated August 19, 1935.

Commission's Exhibits 173-A to 173-D.

Letter of A. M. Post to Roy H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated August 21, 1935.

Commission's Exhibit 174.

Letter of A. M. Post to Roy H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated September 12, 1935. 13437

Commission's Exhibit 175.

Letter of J. M. Golby to Roy H. Bjorkman, c/o Minneapolis Guild, on letterhead of Fashion Originators Guild of America, Inc., dated October 21, 1935.

Commission's Exhibit 176.

Letter of R. H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated October 29, 1935.

Commission's Exhibit 177.

Letter of J. M. Golby to R. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated October 31, 1935.

Commission's Exhibit 178.

13439 Letter of J. M. Golby to Ed. A. Fletcher, c/o Michigan Avenue Guild, on letterhead of Fashion Originators Guild of America, Inc., dated April 15, 1935.

Commission's Exhibit 179.

Letter of Herbert & Cooper, Inc., to George Gleason, c/o Saks Fifth Avenue, Chicago, Illinois, re Clare Weinberger, on letterhead of Herbert & Cooper, Inc., dated April 17, 1935.

Commission's Exhibit 180.

Telegram from Myron Herbert to Clare Weinberger,
13440 c/o Gert Anne Shop, dated April 2, 1935.

Commission's Exhibit 181.

Letter from Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated May 1, 1935.

Commission's Exhibit 182.

Letter of Ed. Fletcher to Mrs. Emma R. Beatie on letterhead of Michigan Avenue Guild, dated April 5, 1935.

Commission's Exhibit 183.

Letter of Mrs. Emma Beatie to Ed. Fletcher on letterhead of Emma Beatie, Inc., dated April 3, 1935.

Commission's Exhibit 184.

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated August 15, 1935.

Commission's Exhibit 185.

Letter of Ed. Fletcher to J. M. Golby re Dore Modes 13442
on letterhead of Michigan Avenue Guild, dated July 23, 1935.

Commission's Exhibit 186.

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated July 19, 1935.

Commission's Exhibit 187.

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated July 17, 1935. 13443

Commission's Exhibit 188.

Letter of Ed Fletcher to J. M. Golby re Dore Modes on letterhead of Michigan Avenue Guild, dated July 16, 1935.

13444 *Statement of Exhibits.*

Commission's Exhibit 189.

Letter of J. M. Golby to Ed. Fletcher re Mrs. J. Rosenberg on letterhead of Fashion Originators Guild of America, Inc., dated August 19, 1935.

Commission's Exhibit 190.

Letter of Ed. Fletcher to J. M. Golby re Rosenberg v. Viola Cohn on letterhead of Michigan Avenue Guild, dated August 15, 1935.

13445 **Commission's Exhibit 191.**

Letter of Ed. Fletcher to J. M. Golby re Jan Cotton on letterhead of Michigan Avenue Guild, dated October 19, 1935.

Commission's Exhibit 192.

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated May 20, 1935.

Commission's Exhibit 193.

Letter of Ed. Fletcher to Clare Weinberger, c/o Clare Anne Shop, on letterhead of Michigan Avenue Guild,
13446 dated May 8, 1935.

Commission's Exhibit 194.

Letter of Clare Weinberger to Ed. Fletcher on letterhead of Clare Anne Shoppe, dated May 4, 1935.

Commission's Exhibit 195.

Telegram from George M. Gleason to J. M. Golby, dated May 2, 1935.

Commission's Exhibit 196.

Letter of Ed. Fletcher to Clare Weinberger on letterhead of Michigan Avenue Guild, dated May 2, 1935.

Commission's Exhibit 197.

Resignation of Clare Anne Shop from Michigan Avenue Guild on billhead of Michigan Avenue Guild, dated May 1, 1935.

Commission's Exhibit 198.

Letter of Ed. Fletcher to J. M. Golby re Bessie Barnett on letterhead of Michigan Avenue Guild, dated November 11, 1935. 13448

Commission's Exhibit 199.

Letter of J. M. Golby to Ed. Fletcher re Barnett on letterhead of Fashion Originators Guild of America, Inc., dated November 8, 1935.

Commission's Exhibit 200.

Letter of Ed. Fletcher to Mr. J. M. Fahey, Manager, The Embassy, re Bessie Barnett, on letterhead of Michigan Avenue Guild, dated November 2, 1935. 13449

Commission's Exhibit 201.

Letter of The Embassy to Ed. Fletcher re Barnett on letterhead of The Embassy, dated November 1, 1935.

Commission's Exhibit 202.

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated October 15, 1935.

13450 *Statement of Exhibits.*

Commission's Exhibit 203.

Letter of J. M. Golby to Ed. Fletcher re Bessie Barnett on letterhead of Fashion Originators Guild of America, Inc., dated October 11, 1935.

Commission's Exhibit 204.

Letter of Harriet Stein Studio to Ed. Fletcher on letterhead of Hotel Belmont, dated January 14, 1935.

Commission's Exhibit 205.

13451 Letter of Ed. Fletcher to J. M. Golby re Stein on letterhead of Michigan Avenue Guild, dated January 4, 1935.

Commission's Exhibit 206.

Letter of Ed. Fletcher to Miss Harriet Stein on letterhead of Michigan Avenue Guild, dated January 3, 1935.

Commission's Exhibit 207.

Letter of Ed. Fletcher to Miss Harriet Stein on letterhead of Michigan Avenue Guild, dated December 31, 1934.

Commission's Exhibit 208.

13452 Letter of Ed. Fletcher to J. M. Golby re Arthur Weiss on letterhead of Michigan Avenue Guild, dated January 17, 1935.

Commission's Exhibit 209.

Letter of J. M. Golby to Ed. Fletcher re Arthur Weiss on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935.

13453

Commission's Exhibit 210.

First page of letter of J. M. Golby to George Gleason, President of Michigan Avenue Guild, re Fred A. Block, on letterhead of Fashion Originators Guild of America, Inc., dated May 21, 1935.

Commission's Exhibit 211.

Second page of Commission's Exhibit 210.

Commission's Exhibit 212.

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935. 13454

Commission's Exhibit 213.

Letter of Fred A. Block to J. M. Golby on letterhead of Fred A. Block, dated January 9, 1935.

Commission's Exhibit 214.

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated January 7, 1935.

13455

Commission's Exhibit 215.

Letter of Ed. Fletcher of Michigan Avenue Guild to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated January 4, 1935.

Commission's Exhibit 216.

Letter of Ed. Fletcher to Fred A. Block on letterhead of Michigan Avenue Guild, dated December 31, 1934.

Commission's Exhibit 217.

Letter of J. M. Golby to Ed. Fletcher re Fred A. Block on letterhead of Fashion Originators Guild of America, Inc., dated November 14, 1934.

Commission's Exhibit 218.

Letter of Ed. Fletcher to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated November 12, 1934.

13457

Commission's Exhibit 219.

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated October 4, 1935.

Commission's Exhibit 220.

Letter of J. M. Golby to Miss Helen Kindler re Fred A. Block on letterhead of Fashion Originators Guild of America, Inc., dated October 4, 1935.

Commission's Exhibit 221.

13458 Letter of Ed. Fletcher to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated October 1, 1935.

Commission's Exhibit 222.

Copy of Letter of Miss Kindler to J. M. Golby re Fred A. Block, dated October 2, 1935.

Commission's Exhibit 223.

Letter of Secretary of Michigan Avenue Guild to George Gleason re Heffernan, dated April 22, 1935.

Commission's Exhibit 224.

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated January 4, 1935.

Commission's Exhibit 225.

Application of Mrs. Frances Malsh to Michigan Avenue Guild, dated December 21, 1934. 13460

Commission's Exhibit 226.

Reply Letter of Michigan Avenue Guild by Ed. Fletcher to Mrs. Frances Malsh, dated January 24, 1935.

Commission's Exhibit 227.

Letter of Ed. Fletcher of Michigan Avenue Guild to J. M. Golby on letterhead of Michigan Avenue Guild, dated December 21, 1934.

Commission's Exhibit 228.

13461

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated December 18, 1934.

Commission's Exhibit 229.

Letter of J. M. Golby to Ed. Fletcher re Malsh on letterhead of Fashion Originators Guild of America, Inc., dated August 23, 1934.

Commission's Exhibit 230.

Letter of Ed. Fletcher to J. M. Golby re Malsh on letterhead of Michigan Avenue Guild, dated August 22, 1934.

Commission's Exhibit 231.

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated January 8, 1935.

Commission's Exhibit 232.

13463 Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated January 4, 1935.

Commission's Exhibit 233.

Application for Membership of Emily Naser to Michigan Avenue Guild, dated December 8, 1934, signed by both Emily Naser and Jack Naser.

Commission's Exhibit 234.

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated November 10, 1934.

13461

Commission's Exhibit 235.

Letter of Ed. Fletcher to John T. Shayne & Co., dated June 17, 1935.

Commission's Exhibit 236.

Letter of A. H. Marshall to A. M. Post on letterhead of Marshall & Marshall, dated June 13, 1935.

Commission's Exhibit 237.

Letter of A. M. Post to T. J. Considine in care of John T. Shayne & Co., undated.

Commission's Exhibit 238.

Letter of A. M. Post to Ed. Fletcher re John T. Shayne & Co. on letterhead of Fashion Originators Guild of America, Inc., dated May 21, 1935.

Commission's Exhibit 239. 13466

Letter of Ed. Fletcher to A. M. Post re John T. Shayne & Co., dated May 14, 1935.

Commission's Exhibit 241.

Letter of J. M. Golby to T. J. Considine in care of John T. Shayne & Co., dated January 11, 1935.

Commission's Exhibit 242.

Letter of J. M. Golby to George M. Gleason of Michigan Avenue Guild on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935. 13467

Commission's Exhibits 243-A to 243-J.

Compilation of Resolutions embodying regulations binding upon members of Textile Division of Fashion Originators Guild of America, Inc.

13468 *Statement of Exhibits.*

Commission's Exhibit 245.

Letter of A. M. DeLisser of Textile Division of Fashion Originators Guild of America, Inc., to Mr. Grossleight, dated January 27, 1936.

Commission's Exhibit 246-A.

Minutes of Regular Meeting of June 16, 1933, of Textile Members of Fashion Originators Guild of America, Inc.

13469

Commission's Exhibit 246-B.

Minutes of Regular Meeting of October 18, 1933, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-C.

Minutes of Regular Meeting of November 7, 1934, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-D.

13470

Minutes of Special Meeting of January 8, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-E.

Minutes of Special Meeting of January 25, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13471

Commission's Exhibit 246-F.

Minutes of Special Meeting of February 11, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-G.

Minutes of Special Meeting of February 20, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-H.

13472

Minutes of Regular Meeting of March 5, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-I.

First page of Minutes of Regular Meeting of March 19, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-J.

Second page of Minutes of Regular Meeting of March 19, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13473

Commission's Exhibit 246-K.

First page of Minutes of Regular Meeting of April 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13474 *Statement of Exhibits.*

Commission's Exhibit 246-L.

Second page of Minutes of Regular Meeting of April 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-M.

Minutes of Regular Meeting of May 8, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-N.

13475 First page of Minutes of Regular Meeting of June 6, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-O.

Second page of Minutes of Regular Meeting of June 6, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-P.

Minutes of Regular Meeting of June 25, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13476

Commission's Exhibit 246-Q.

Minutes of Regular Meeting of July 16, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-R.

First page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13477

Commission's Exhibit 246-S.

Second page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-T.

Third page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-U.

13478

Fourth page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-V.

Fifth page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-W.

Minutes of Meeting of August 21, 1935, of Textile Associates Committee.

13479

Commission's Exhibit 246-X.

First page of Minutes of Regular Meeting of September 28, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-Y.

Second page of Minutes of Regular Meeting of September 28, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-Z.

First page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13481

Commission's Exhibit 246-AA.

Second page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-BB.

Third page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-CC.

13482 Minutes of Meeting of January 20, 1936, of Embroidery Group of the Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibit 246-DD.

First page of Minutes of Meeting of January 22, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

13483

Commission's Exhibit 246-EE.

Second page of Minutes of Meeting of January 22, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibit 247.

Minutes of Meeting of February 3, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibits 248-A and 248-B.

13484

Minutes of Regular Meeting of February 21, 1936, of Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibits 249-A and 249-B.

Minutes of Meeting of February 3, 1936, of Screen Print Group affiliated with Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibit 250.

Form of Declaration of Co-operation in use by Textile Division of Fashion Originators Guild of America, Inc.

13485

Commission's Exhibit 251.

Telegram of J. M. Golby to George Gleason, Michigan Avenue Guild, dated May 2, 1935, re resignation of Salta Knitting Mills, Inc.

Commission's Exhibit 252.

Letter to Members of Michigan Avenue Guild, dated May 4, 1935, by George Gleason advising that Salta Knitting Mills, Inc., resigned.

Commission's Exhibits 253-A and 253-B.

Letter of J. M. Golby to George Gleason, dated May 31, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13487

Commission's Exhibit 254-A.

Letter of Michigan Avenue Guild to A. M. Post, Fashion Originators Guild of America, Inc., dated May 24, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 254-B.

List of Non-Guild Manufacturers annexed to 254-A.

Commission's Exhibit 255.

Letter of A. H. Marshall to George Gleason, dated May 25, 1935, on letterhead of Marshall & Marshall.

13488

Commission's Exhibits 256-A and 256-B.

Two-page letter of A. M. Post to A. H. Marshall, dated May 27, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibits 257-A to 257-C.

Memorandum to Board of Governors of Fashion Originators Guild of America, Inc., signed by A. M. Post re Michigan Avenue Guild contract.

Commission's Exhibit 258.

Letter of Ed. Fletcher to J. M. Golby, dated June 10, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 259.

Letter of J. M. Golby to Ed. Fletcher, dated June 13, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 260.

Letter of Ed. Fletcher to J. M. Golby, dated June 17, 1935, on letterhead of Michigan Avenue Guild. 13490

Commission's Exhibit 261.

Declaration of Co-operation of Morris B. Sacks to Fashion Originators Guild of America, Inc., dated June 20, 1935.

Commission's Exhibit 262.

Letter of J. M. Golby to Ed. Fletcher, dated June 21, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13491

Commission's Exhibits 263-A and 263-B.

Two-page letter of A. H. Marshall to A. M. Post, dated June 25, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 264.

Letter of Ed. Fletcher to J. M. Golby, dated June 27, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibits 265-A and 265-B.

Letter of J. M. Golby to A. H. Marshall, dated June 27, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 266.

Letter of A. H. Marshall to J. M. Golby, dated July 1, 1935, on letterhead of Marshall & Marshall.

Commission's Exhibit 267.

13493 Letter of A. M. Post to A. H. Marshall, dated July 3, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 268.

Letter of A. H. Marshall to A. M. Post, dated July 6, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 269.

Letter of A. M. Post to A. H. Marshall, dated July 8, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13494

Commission's Exhibit 270.

Letter of J. M. Golby to Ed. Fletcher, dated July 11, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 271.

Letter of Marshall to A. M. Post, dated July 16, 1935, on letterhead of Michigan Avenue Guild.

13495

Commission's Exhibit 272.

Letter of A. M. Post to A. H. Marshall, dated July 26, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 273.

Letter of Marshall to A. M. Post, dated July 26, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 274.

13496

Letter of J. M. Golby to Ed. Fletcher, dated August 2, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 275.

Letter of Ed. Fletcher to J. M. Golby, dated August 6, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 276.

Letter of Ed Fletcher to J. M. Golby, dated August 6, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 277-A.

13497

Letter of J. M. Golby to Ed. Fletcher, dated August 13, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibits 277-B to 277-F.

Copy letter of Weisman, Quinn, Allan & Spett, signed by Herbert S. Keller, to Fashion Originators Guild of America, Inc., dated August 12, 1935.

13498 *Statement of Exhibits.*

Commission's Exhibit 278.

Letter of Ed. Fletcher to J. M. Golby, dated August 15, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibit 279.

Letter of J. M. Golby to Ed. Fletcher, dated August 19, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 280.

13499 Letter of Ed. Fletcher to J. M. Golby, dated September 7, 1935, on letterhead of Michigan Avenue Guild.

Commission's Exhibits 281-A and 281-B.

Report for the month of February, 1936, entitled "Manufacturers and Number of Complaints Handled for Them."

Commission's Exhibits 282-A and 282-B.

Report for month of March, 1936, entitled "Manufacturers and Number of Complaints Handled for Them."

13500 **Commission's Exhibit 283.**

Advertisement in Women's Wear Daily of January 6, 1936, inserted by Textile Division of Fashion Originators Guild of America, Inc.

Commission's Exhibit 284.

Advertisement in Women's Wear Daily of December 23, 1935, by Industrial Design Registration Bureau of National Federation of Textiles, Inc.

13501

Commission's Exhibit 285-A to 285-E.

List of dress manufacturers who signed Declaration of Co-operation to buy only registered textiles.

Commission's Exhibit 286.

Return invoice, "The Palace," dated September 27, 1935.

Commission's Exhibit 287.

Credit return invoice of Jordan, Marsh & Co., dated October 9, 1935.

13502

Commission's Exhibit 288.

Post card, return goods notice, Marshall Field to Melba Dress, dated October 10, 1935.

Commission's Exhibit 289.

Return goods notice of Kresge to Melba Dress, dated October 17, 1935.

Commission's Exhibit 290.

Return goods notice of Marshall Field to Melba Dress, dated October 10, 1935.

13503

Commission's Exhibit 291.

Credit charge of Marshall Field to Melba Dress, dated October 19, 1935.

Commission's Exhibit 292.

Letter of Melba Dress to Marshall Field on letterhead of Melba Dress, dated October 8, 1935.

Commission's Exhibit 293.

Letter of Marshall Field to Melba Dress, dated October 10, 1935.

Commission's Exhibit 295.

13505 Return invoice of Snellenberg, Lot No. 215, dated October 19, 1935.

Commission's Exhibit 296.

Letter of Klines to Melba Dress re return of seven dresses, dated October 11, 1935.

Commission's Exhibit 297.

Receipt for return of Klines, No. 39954, dated September 27, 1935.

Commission's Exhibit 298.

13506 Receipt for return of Klines, No. 38113, dated September 23, 1935.

Commission's Exhibit 299.

Letter of Carson, Pirie, Scott & Co. to Melba Dress, dated August 4, 1935, on their own letterhead.

13507

Commission's Exhibit 300.

Return invoice from Carson, Pirie, Scott & Co. to Melba
Dress, dated October 18, 1935.

Commission's Exhibit 301-A.

Letter from The Palace Clothing Co. to Melba Dress,
ated October 25, 1935.

Commission's Exhibit 301-B.

Credit memorandum from The Palace to Melba Dress
nclosed in Exhibit 301-A. 13508

Commission's Exhibit 302.

Letter of Leah Rubinstein to Melba Dress, dated Octo-
er 28, 1935.

Commission's Exhibit 303-A.

Order from Frank & Seder to Melba Dress, dated Au-
ust 10, 1935.

Commission's Exhibit 303-B.

Letter from Frank & Seder to Melba Dress, dated No- 13509
ember 1, 1935.

Commission's Exhibit 303-C.

Letter from Melba Dress to Frank & Seder, dated No-
ember 2, 1935.

13510 *Statement of Exhibits.*

Commission's Exhibit 304.

Order from Philip Sapadin, with warranty clause, to Samuel Hoffman, Inc., dated August 29, 1935.

Commission's Exhibit 306.

Order of Gimbel Bros. to Noxall Waist & Dress Co., dated September 17, 1935.

Commission's Exhibit 307.

13511 Return memorandum of R. H. White to Noxall Waist & Dress Co., dated October 30, 1935.

Commission's Exhibit 308.

Letter of Noxall Waist & Dress Co. to R. H. White, dated November 1, 1935.

Commission's Exhibit 309.

Letter of R. H. White to Noxall Waist & Dress Co., dated November 11, 1935.

Commission's Exhibit 310.

13512 Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 5, 1935.

Commission's Exhibit 311.

Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 8, 1935.

Commission's Exhibit 312.

Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 12, 1935.

Commission's Exhibit 313.

Letter from Kaufmann's to Noxall Waist & Dress Co., dated October 5, 1935.

Commission's Exhibit 314.

Carbon Copy of letter from Noxall Waist & Dress Co. to Kaufmann's, dated October 14, 1935. 13514

Commission's Exhibit 315.

Letter of Kaufmann's to Noxall Waist & Dress Co., dated October 15, 1935.

Commission's Exhibit 316.

Letter of Joseph Horne Co. to Noxall Waist & Dress Co., dated October 4, 1935.

Commission's Exhibit 317.

Carbon copy of letter from Noxall Waist & Dress Co. to Joseph Horne Co., dated October 5, 1935. 13515

Commission's Exhibit 318.

Return invoice from Lurie's to Noxall Waist & Dress Co., dated October 9, 1935.

13516 *Statement of Exhibits.*

Commission's Exhibit 319.

Letter from Lurie's to Noxall Waist & Dress Co., dated October 9, 1935.

Commission's Exhibit 320.

Carbon copy of letter from Noxall Waist & Dress Co. to Lurie's, dated October 14, 1935.

Commission's Exhibit 321.

13517 Return slip from Schunemans & Manheimers to Noxall Waist & Dress Co., dated February 10, 1936.

Commission's Exhibit 322.

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated February 13, 1936.

Commission's Exhibit 323.

Notice from Railway Express to Noxall Waist & Dress Co. that goods returned by Schunemans & Mainheimers were in New York, dated March 14, 1936.

Commission's Exhibit 324.

13518 Letter from Schunemans & Manheimers to Noxall Waist & Dress Co., dated March 16, 1936.

Commission's Exhibit 325.

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated March 18, 1936.

13519

Commission's Exhibit 326.

Letter from Schunemans & Manheimers to Noxall Waist & Dress Co., dated April 11, 1936.

Commission's Exhibit 327.

Carbon copy of letter from Noxall Waist & Dress Co. to Railway Express, dated April 14, 1936.

Commission's Exhibit 328.

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 14, 1936.

13520

Commission's Exhibit 329.

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 19, 1936.

Commission's Exhibit 330.

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 28, 1936.

Commission's Exhibit 331.

Carbon copy of letter from Kaufmans Department Stores to Trussel Dress Co., dated October 9, 1935.

13521

Commission's Exhibit 332.

Carbon copy of letter from The Jones Store to Trussel Dress Co., dated October 26, 1935.

Commission's Exhibit 333.

Carbon copy of letter from Trussel Dress Co. to The Jones Store, dated October 30, 1935.

Commission's Exhibit 334.

Carbon copy of letter from John Wanamaker, Philadelphia, to Trussel Dress Co., dated November 8, 1935.

Commission's Exhibit 335.

13523 Carbon copy of letter from Fashion Originators Guild of America, Inc., to Trussel Dress Co., dated June 24, 1936.

Commission's Exhibit 336-A.

Letter from Wm. Filene Sons Co. to Excellent Dress Co., dated November 6, 1935.

Commission's Exhibit 336-B.

Letter from Excellent Dress Co. to Wm. Filene Sons Co., dated November 6, 1935.

Commission's Exhibit 349.

13524

Invoice credit from Wm. Filenes' Sons Co. to Excellent Dress, dated November 8, 1935.

Commission's Exhibit 352-B.

Carbon copy of letter from Lombardy Frocks, Inc., to Wm. Filenes' Sons Co., dated October 15, 1935.

Commission's Exhibit 352-C.

Notice of return from Wm. Filenes' Sons Co. to Lombardy Frocks, Inc., undated.

Commission's Exhibit 352-D.

Notice of return from Wm. Filenes' Sons Co. to Lombardy Frocks, Inc., undated.

Commission's Exhibit 357.

List of Guild houses with whom Wm. Filenes' Sons Co. did business during 1935-1936. 13526

Commission's Exhibit 358.

Letter to Guild manufacturers to send merchandise on order during hearing of Filenes' injunction action, dated March 9, 1936.

Commission's Exhibit 359.

Fashion Originators Guild of America, Inc., notice to Wm. Filenes' Sons Co. that Silver Pom Garment is copy, dated November 23, 1935.

Commission's Exhibit 360. 13527

List of dresses returned to manufacturers by R. H. White at request of Fashion Originators Guild of America, Inc., from September 25, 1935, to January 31, 1936.

Commission's Exhibit 361-A.

Letter from Fashion Originators Guild of America, Inc., to R. H. White, dated November 7, 1935.

Commission's Exhibit 361-B.

Letter from Fashion Originators Guild of America, Inc., to R. H. White, dated November 7, 1935.

Commission's Exhibit 362.

Strawbridge & Clothier Declaration of Co-operation, dated June 30, 1933.

Commission's Exhibit 363.

Carbon copy of letter of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June
13529 30, 1933.

Commission's Exhibit 364.

Carbon copy of letter of Strawbridge & Clothier to A. M. Post, dated February 6, 1936.

Commission's Exhjbit 366.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated February 4, 1936.

Commission's Exhibit 367-A.

New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail
13530 store.

Commission's Exhibit 367-B.

New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store.

Commission's Exhibit 368.

Letter from Roth, Jackson & Immerman to Strawbridge & Clothier, dated June 29, 1933.

Commission's Exhibit 369.

Letter from Bender & Hamburger to Strawbridge & Clothier, dated June 29, 1933.

Commission's Exhibit 370.

Letter from Myron Herbert & Charles Cooper to Strawbridge & Clothier, dated June 27, 1933.

Commission's Exhibit 371.

Letter from Kallman & Cohn, Inc., to Strawbridge & Clothier, dated June 29, 1933.

13532

Commission's Exhibit 372.

Letter from Cohn & Holt to Strawbridge & Clothier, dated June 29, 1933.

Commission's Exhibit 373.

Letter from Milgrim to Strawbridge & Clothier, dated June 29, 1933.

Commission's Exhibit 374.

Letter from Edward Gerrick Co., Inc., to Strawbridge & Clothier, dated June 28, 1933.

Commission's Exhibit 375. 13533

Letter from Fashion Originators Guild of America, Inc. (Goldston), to Strawbridge & Clothier, dated January 24, 1934.

Commission's Exhibit 376.

Letter from Fashion Originators Guild of America, Inc. (Goldston), to Strawbridge & Clothier, dated January 25, 1934.

13534 *Statement of Exhibits.*

Commission's Exhibit 377-A.

Sketch enclosed in Commission's Exhibit 377-B.

Commission's Exhibit 377-B.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated June 18, 1934.

Commission's Exhibit 378-A.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated June 21, 1934.

13535 **Commission's Exhibit 378-B.**

Letter from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June 23, 1934.

Commission's Exhibit 379.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated July 1, 1934.

Commission's Exhibit 380-A.

Letter from J. M. Golby to Strawbridge & Clothier, dated July 28, 1934.

Commission's Exhibit 380-B.

13536 Reply from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated August 14, 1934.

Commission's Exhibit 381-A.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated January 24, 1935.

13537

Commission's Exhibit 381-B.

Reply from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated February 1, 1935.

Commission's Exhibit 382-A.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated September 14, 1935.

Commission's Exhibit 382-B.

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated September 13, 1935.

13538

Commission's Exhibit 382-C.

Sketches attached to Commission's Exhibit 382-B.

Commission's Exhibit 382-D.

Sketches attached to Commission's Exhibit 382-B.

Commission's Exhibit 382-E.

Sketches attached to Commission's Exhibit 382-B.

Commission's Exhibit 383.

13539

Form letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier—Bon Ray Dance Frock, dated October 10, 1935.

Commission's Exhibit 384.

Form letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, undated—LaRue Dresses, Inc.

Commission's Exhibit 385.

Form letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated October 29, 1935—Spectator Sports.

Commission's Exhibit 386.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 8, 1935.

Commission's Exhibit 387-A.

13541 Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 23, 1935.

Commission's Exhibit 387-B.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 23, 1935.

Commission's Exhibit 388.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 25, 1935.

Commission's Exhibit 389.

13542 Carbon copy of letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated November 29, 1935.

Commission's Exhibit 390.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated December 2, 1935.

13543

Commission's Exhibit 391.

Letter from Fashion Originators Guild of America, Inc. (J. Goldston), to Charles Taylor of Strawbridge & Clothier, dated December 16, 1935.

Commission's Exhibit 392-A.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated December 26, 1935.

Commission's Exhibit 392-B.

13544

Reply letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated December 28, 1935.

Commission's Exhibit 393-A.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 13, 1936.

Commission's Exhibit 393-B.

Reply letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated January 17, 1936.

Commission's Exhibits 394-A and 394-B.

13545

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 18, 1936.

Commission's Exhibit 395.

Carbon copy of letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated January 20, 1936.

13546 *Statement of Exhibits.*

Commission's Exhibits 396-A and 396-B.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 18, 1936.

Commission's Exhibit 397.

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 27, 1936.

Commission's Exhibits 398-A and 398-B.

13547 Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 29, 1936.

Commission's Exhibits 398-C and 398-D.

November 5, 1935, form letter re piracy from A. M. Post to retail stores.

Commission's Exhibits 398-E and 398-F.

Copy of letter from A. M. Post to H. O. Bergdahl, dated November 21, 1935.

Commission's Exhibits 399-A and 399-B.

13548 List of manufacturers, members of the Fashion Originators Guild of America, Inc., Spring, 1935.

Commission's Exhibit 400.

Table of orders, February 15, 1936, to March 5, 1936, date placed, where and amounts, Department 331 of Strawbridge & Clothier.

13549

Commission's Exhibit 401.

Table of cost of goods that Strawbridge & Clothier couldn't get from January 18, 1936, to January 31, 1936.

Commission's Exhibit 402.

Comparative increase or decrease for Department 350 of Strawbridge & Clothier—1936 as against 1935—in percentages.

Commission's Exhibit 403.

13550

Retail price line comparison, 1935 vs. 1936—Department 350 of Strawbridge & Clothier.

Commission's Exhibit 410.

List of Fashion Originators Guild of America, Inc., manufacturers and amount of business transacted—February 1, 1935, to January 31, 1936—with Strawbridge & Clothier.

Commission's Exhibit 411.

Price line comparison—February-June, 1935-1936—Department 331 of Strawbridge & Clothier.

13551

Commission's Exhibit 412.

Retail price line comparison—February-June, 1935-1936—Department 338 of Strawbridge & Clothier.

Commission's Exhibit 413.

Retail price line comparison—February-June, 1935-1936—Department 358 of Strawbridge & Clothier.

13552 *Statement of Exhibits.*

Commission's Exhibit 414.

Retail price line comparison—February-June, 1935-1936—Department 371 of Strawbridge & Clothier.

Commission's Exhibit 415.

Figures on loss of business (copy made from Tiley) February-June, 1935-1936, of Strawbridge & Clothier.

Commission's Exhibit 416.

13553 Carbon copy of letter from Strawbridge & Clothier t E. H. D. Robbins, dated March 5, 1936.

Commission's Exhibit 417.

Carbon copy of letter from Strawbridge & Clothier t Herman Biespeil, dated March 5, 1936.

Commission's Exhibit 418.

Carbon copy of letter from Strawbridge & Clothier t Frank-Starr Friedlander, dated March 5, 1936.

Commission's Exhibit 419.

13554 Carbon copy of letter from Strawbridge & Clothier t Robinson Brothers, dated March 5, 1936.

Commission's Exhibit 420.

Carbon copy of letter from Strawbridge & Clothier t Harry Frank, dated March 5, 1936.

Commission's Exhibit 421.

Carbon copy of letter from Strawbridge & Clothier to Henry Gans, dated March 5, 1936.

Commission's Exhibit 422.

Carbon copy of letter from Strawbridge & Clothier to Goldstein & Entin, dated March 5, 1936.

Commission's Exhibit 423.

Carbon copy of letter from Strawbridge & Clothier to Gardner Schwartz, dated March 5, 1936. 13556

Commission's Exhibit 434.

Recapitulation of returns, Department 491 of Strawbridge & Clothier, from August 12, 1935, to January 16, 1936.

Commission's Exhibit 435.

Return invoice from Strawbridge & Clothier to Brenner & Weinstein, dated December 23, 1935.

Commission's Exhibit 436.

Return invoice from Strawbridge & Clothier to Tobia Dress, dated December 16, 1935. 13557

Commission's Exhibit 437.

Return invoice from Strawbridge & Clothier to Jomax Frocks, dated December 16, 1935.

Commission's Exhibit 438.

Return invoice from Strawbridge & Clothier to Pal
Frocks, dated September 11, 1935.

Commission's Exhibit 439.

Return invoice from Strawbridge & Clothier to N
Emporium Dress, dated December 5, 1935.

Commission's Exhibit 440.

13559 Return invoice from Strawbridge & Clothier to Ap
Dress, dated January 16, 1936.

Commission's Exhibit 441.

Return invoice from Strawbridge & Clothier to Silv
Prom Dress, dated August 12, 1935.

Commission's Exhibit 442.

Copy of return invoice from Strawbridge & Clothier
Lucky Style, dated October 16, 1935.

Commission's Exhibit 443.

13560 Copy of return invoice from Strawbridge & Clothier
Puritan Dress, dated November 26, 1935.

Commission's Exhibit 444.

Copy of return invoice from Strawbridge & Clothier
Feihberg & Weisen, dated September 11, 1935.

13561

Commission's Exhibit 445.

Copy of return invoice from Strawbridge & Clothier to Tiljane Costume, dated September 11, 1935.

Commission's Exhibit 446.

Copy of return invoice from Strawbridge & Clothier to Gladdy True Size, dated September 11, 1935.

Commission's Exhibits 450-A to 450-P.

List of sixteen pages constituting a list of resources sent to Strawbridge & Clothier by the American Merchandising Corporation.

13562

Commission's Exhibits 451-A and 451-B

Form letter from Maurice Rentner to A. H. Burchfield of Joseph Horne Co., dated March 23, 1932.

Commission's Exhibit 452.

Reply to 451 from A. E. Oxenreiter of Joseph Horne Co. to Fashion Originators Guild of America, Inc., dated March 29, 1932.

Commission's Exhibit 453.

13563

Answer to 452 from Fashion Originators Guild of America, Inc., to A. E. Oxenreiter of Joseph Horne & Co.

Commission's Exhibits 454-A to 454-M.

Letter from Maurice Rentner to H. C. Gutsche of Joseph Horne Co. with form of agreement annexed, dated December 16, 1932.

Commission's Exhibits 455-A and 455-B.

Letter from Fashion Originators Guild of America, Inc., to H. C. Gutsche of Joseph Horne Co., dated June 19, 1933, Exhibit M of Filenes-Temp. N. Y.

Commission's Exhibits 456-A and 456-B.

Memorandum of Guild's resolution and its significance adopted at Fashion Originators Guild of America, Inc., meeting on June 12, 1933.

13565 **Commission's Exhibit 457.**

Declaration of Co-operation of Joseph Horne Co. signed by W. H. Burchfield, Vice-President.

Commission's Exhibit 458.

Carbon copy of letter from Joseph Horne Co. to Fashion Originators Guild of America, Inc., dated June 27, 1933

Commission's Exhibit 460.

List of returns from February 21, 1935, to June 23, 1936, of Joseph Horne Co.

13566 **Commission's Exhibit 470.**

List of houses from whom purchases were made in 1935 and Spring of 1936 by William Taylor Son & Co. of Cleveland, Ohio.

Commission's Exhibit 471.

List of purchases of Guild houses by William Taylor Son & Co. of Cleveland, Ohio.

Commission's Exhibit 472.

Amount of orders outstanding at time of red card by William Taylor Son & Co. of Cleveland, Ohio.

Commission's Exhibit 473.

Figures showing loss and effect of red card on the business, 1936 or 1935, of William Taylor Son & Co.

Commission's Exhibit 474.

Telegram addressed to Fashion Originators Guild of America, Inc., from The Bailey Co., The Lindner Co., The Halle Bros. Co., William Taylor Son & Co., The Higbee Co., The May Co. of Cleveland, Ohio. 13568

Commission's Exhibit 475.

Original Declaration of Co-operation from J. L. Hudson Co. to Fashion Originators Guild of America, Inc., received on June 22, 1933.

Commission's Exhibit 476.

Letter from Fashion Originators Guild of America, Inc., to J. L. Hudson Co. returning to J. L. Hudson Declaration of Co-operation, dated February 14, 1936. 13569

Commission's Exhibit 477-A.

A carbon copy of registered letter of J. L. Hudson Co. to Fashion Originators Guild of America, Inc., dated February 27, 1936, acknowledging letter of February 14, 1936.

Commission's Exhibit 477-B.

Return receipt for the registered letter (477-A).

13570 *Statement of Exhibits.*

Commission's Exhibit 478-A.

List of Guild houses from whom J. L. Hudson Co. bought dresses during fiscal year 1935 (to January 31, 1936).

Commission's Exhibit 478-B.

List of suit Guild houses as 478-A.

Commission's Exhibit 478-C.

List of Guild Houses used in better coats and evening wraps as Commission's Exhibit 478-A.

13571

Commission's Exhibit 479-A.

J. L. Hudson Co. list of outstanding orders with Fashion Originators Guild of America, Inc., members as of February 15, 1936.

Commission's Exhibits 479-B and 479-C.

List of merchandise on order with Guild houses at time of red carding as of February 15, 1936, by J. L. Hudson Co.

Commission's Exhibits 480-A and 480-B.

Letter from Maurice Rentner of Fashion Originators Guild of America, Inc., to L. B. Sappington of J. L. Hud-
13572 son Co., dated June 16, 1933.

Commission's Exhibits 480-C and 480-D.

Memorandum on Guild's Resolution and its significance adopted June 12, 1933.

Commission's Exhibit 481.

Memorandum from Tauff to Sappington, analysis of Department 338 of J. L. Hudson Co., dated August 3, 1936

13573

Commission's Exhibits 482-A and 482-B.

Memorandum from Tauff to Sappington—analysis of Department 351, J. L. Hudson Co. (only figures went into evidence—remainder to remain as 482-A and 482-B for Identification).

Commission's Exhibits 483-A and 483-B.

Effect of red carding in Jr. Miss Department of J. L. Hudson Co. Memorandum from Dunham to Sappington, dated August 1, 1936 (only figures went into evidence—remainder to remain as 483-A and 483-B for Identification).

13574

Commission's Exhibit 484.

Net price sales in dress departments of J. L. Hudson Co. for year 1935.

Commission's Exhibit 485.

Comparative study of Fashion Originators Guild of America, Inc., affected departments showing percentages comparing February to July, 1935 and 1936.

Commission's Exhibit 486.

13575

Telegram dated June 17, 1933, from H. O. Bergdahl to J. L. Hudson Co.

Commission's Exhibit 487.

Copy of letter from L. B. Sappington of J. L. Hudson Co. to J. Goldston of Fashion Originators Guild of America, Inc., dated January 31, 1935.

13576 *Statement of Exhibits.*

Commission's Exhibit 488-A and 488-B.

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated February 4, 1936, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 489.

Telegram from L. B. Sappington of J. L. Hudson Co. to H. O. Bergdahl, dated May 8, 1935.

Commission's Exhibit 490.

13577 Telegram from H. O. Bergdahl to L. B. Sappington of J. L. Hudson Co., dated May 8, 1935.

Commission's Exhibits 491-A and 491-B.

Copy of letter from L. B. Sappington of J. L. Hudson Co. to H. O. Bergdahl, dated May 9, 1935.

Commission's Exhibits 492-A to 492-C.

Letter from A. M. Post to M. F. Dowley of J. L. Hudson Co., dated November 18, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13578 **Commission's Exhibits 493-A and 493-B.**

Memorandum from G. R. McDonald to M. F. Dowley of J. L. Hudson Co., dated November 16, 1935.

Commission's Exhibits 494-A and 494-B.

Copy of letter from Oscar Webber of J. L. Hudson Co. to H. O. Bergdahl, dated December 5, 1935.

Commission's Exhibit 495.

Request for return slip from Fashion Originators Guild of America, Inc., to J. L. Hudson Co., No. 2330.

Commission's Exhibit 496 for Identification.

Letter from H. L. Bergdahl to L. B. Sappington of J. L. Hudson Co., dated April 10, 1935.

Commission's Exhibits 497-A to 497-C for Identification.

Letter from H. L. Bergdahl to Oscar Webber of J. L. Hudson Co., dated December 4, 1935. 13580

Commission's Exhibits 498-A to 498-E.

Copies of order blanks of J. L. Hudson Co. with Fashion Originators Guild of America, Inc., warranty stamp thereon.

Commission's Exhibits 499-A to 499-C.

Letter from A. M. Post to Oscar Webber of J. L. Hudson Co., dated February 11, 1936, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 500. 13581

Telegram from Fashion Originators Guild of America, Inc., to Mr. Wilton, buyer of dress department of J. L. Hudson Co.

Commission's Exhibits 501-A and 501-B.

Copy of letter from L. B. Sappington to A. M. Post of Fashion Originators Guild of America, Inc., dated February 8, 1936.

13582 *Statement of Exhibits.*

Commission's Exhibit 502.

Telegram from A. M. Post of Fashion Originators Guild of America, Inc., to L. B. Sappington of J. L. Hudson Co., dated February 10, 1936, in reply to Exhibits 501-A and 501-B.

Commission's Exhibit 503.

Copy of telegram from Oscar Webber of J. L. Hudson Co. to A. M. Post of Fashion Originators Guild of America, Inc., dated February 10, 1936, in reply to Exhibit 502.

13583

Commission's Exhibit 504.

Analysis of piece sales at various prices for Department 358 of J. L. Hudson Co. for 1935.

Commission's Exhibit 505.

Analysis of piece sales at various prices for Department 369 of J. L. Hudson Co. for 1935.

Commission's Exhibit 506.

Analysis of piece sales at various prices for Department 338 of J. L. Hudson Co. for 1935.

13584

Commission's Exhibit 507.

Analysis of piece sales for Department 369 at various prices for the years 1935 and 1936.

Commission's Exhibit 508.

Net piece sales for all departments of J. L. Hudson Co. for the spring of 1935.

Commission's Exhibit 509.

Net piece sales for all departments of J: L. Hudson Co. for the spring of 1936.

Commission's Exhibit 510.

List of Fashion Originators Guild of America, Inc., houses with whom Department 371 Junior Miss Department of J. L. Hudson Co. did business in 1935.

Commission's Exhibit 511.

Telegram from W. E. Simmons of J. L. Hudson Co. to 13586
Bernard Appel, Inc., of Boston, Mass., dated March 4, 1935.

Commission's Exhibit 512.

Telegram from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 5, 1935, in reply to Exhibit 511.

Commission's Exhibit 513.

Copy of letter from W. E. Simmons of J. L. Hudson Co. to Bernard Appel, Inc., dated March 14, 1935.

13587

Commission's Exhibit 514.

Letter from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 15, 1935, on letterhead of Bernard Appel, Inc.

13588 *Statement of Exhibits.*

Commission's Exhibits 515-A and 515-B.

Letter from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 27, 1935, on letterhead of Bernard Appel, Inc.

Commission's Exhibits 517-A and 517-B.

Letter from J. Goldston to L. B. Sappington of J. L. Hudson Co., dated March 16, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13589 **Commission's Exhibit 518.**

Letter from L. B. Sappington of J. L. Hudson Co. to J. Goldston of Fashion Originators Guild of America, Inc.

Commission's Exhibit 519.

Letter from J. Goldston to L. B. Sappington of J. L. Hudson Co., dated March 25, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibits 520-A and 520-B.

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated April 2, 1935, on letterhead of Fashion
13590 Originators Guild of America, Inc.

Commission's Exhibit 521.

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated April 3, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13591

Commission's Exhibit 522.

Report of arbitrators that Appel garment is copy of creation by Townley Frocks, Inc., which copy was enclosed in Exhibit 521.

Commission's Exhibit 523.

List of manufacturers who make better dresses, taken from Fairchild's Directory for fall of 1936 by type and price lines.

Commission's Exhibit 525.

13592

List of $10.75 dress houses taken from Fairchild's Directory for fall of 1936.

Commission's Exhibit 526.

Letter from A. M. Post to Ernst Kern & Co., dated February 7, 1936, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 527-A.

Declaration of Co-operation in Anti-Piracy between Mandel Bros. and the Fashion Originators Guild of America, Inc.

13593

Commission's Exhibit 527-B.

Copy of letter from Mandel Bros. to Fashion Originators Guild of America, Inc., dated June 23, 1933, in which Exhibit 527-A was enclosed.

Commission's Exhibits 528-A and 528-B.

Letter from A. M. Post to Mandel Bros., dated November 6, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 529.

Copy of letter from Henry Wyzanski of Mandel Bros. to A. M. Post of Fashion Originators Guild of America, Inc., dated September 13, 1935.

Commission's Exhibits 530-A to 530-B.

13595

Letter from A. M. Post to Henry Wyzanski of Mandel Bros., dated September 18, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibits 531-A and 531-B.

Copy of telegram from Henry Wyzanski of Mandel Bros. to A. M. Post of Fashion Originators Guild of America, Inc., dated June 12, 1936.

Commission's Exhibit 536.

13596

Letter on the letterhead of Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, dated July 8, 1933, addressed to Fashion Originators Guild of America, Inc., signed "Ed. Schuster & Co., Inc., by Ralph T. Friedmann, Merchandise Manager."

Commission's Exhibit 537.

Postcard addressed to Mr. Ralph T. Friedmann, c/o Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, postmarked New York, N. Y., July 21, 1933, 7.00 P. M.; dated on the reverse side July 21, 1933, from Fashion Originators Guild of America, Inc., by J. M. Golby, Executive Secretary.

Commission's Exhibit 538.

Copy of letter dated March 21, 1935, addressed to Mr. Al. Post, Fashion Originators Guild of America, Inc., signed in typewriting, Ralph T. Friedmann.

Commission's Exhibits 539-A, 539-B, 539-C, 539-D, 539-E and 539-F.

539-A, 539-B and 539-C, letter on letterhead of Fashion Originators Guild of America, Inc., dated March 23, 1935, addressed to Mr. Ralph T. Friedmann, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director. 13598

539-D, card form, date line blank, addressed to Fashion Originators Guild of America, Inc., containing various other blank lines for information as to amount of check enclosed, store name, address, etc.

539-E and F, two-page mimeographed form letter on the letterhead of Fashion Originators Guild of America, Inc., typewritten signature Fashion Originators Guild of America, Inc., Executive Secretary.

Commission's Exhibits 540-A and 540-B.

13599

Letter on letterhead of Fashion Originators Guild of America, Inc., dated July 1, 1935, addressed to Mr. Ralph T. Friedmann, Edward Schuster & Co., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., by Albert M. Post, Executive Director.

Commission's Exhibit 542.

Tabulation headed "Returns of dresses to vendors because Guild stated dresses were copies."

Commission's Exhibits 543-A, 543-B and 543-C.

Letter on letterhead of Fashion Originators Guild of America, Inc., dated September 5, 1935, addressed to Mr. Louis Libman, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director, with a postscript following, which appear the typewritten initials "A.M.P."

13601

Commission's Exhibit 544.

Copy of letter dated September 17, 1935, addressed to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., with typewritten signature "Ed. Schuster & Co., Inc., Louis Liberman."

Commission's Exhibits 545-A and 545-B.

Letter on letterhead of Fashion Originators Guild of America, Inc., addressed to Mr. Louis Leiberman, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, dated January 13, 1936, signed by Albert M. Post, Executive Director.

13602

Commission's Exhibit 546.

Copy of letter dated January 20, 1936, addressed to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., typewritten signature "Louis Liberman."

Commission's Exhibits 547-A, 547-B and 547-C.

Letter on letterhead of Fashion Originators Guild of America, Inc., addressed to Mr. Louis Liberman, Schuster's, N. 3rd at Garfield, Milwaukee, Wisconsin, dated January 23, 1936, typewritten signature "Albert M. Post."

Commission's Exhibit 548.

Telegram dated New York, N. Y., February 5th, addressed "Louis Liberman, Schuster's—from Albert M. Post, Fashion Originators Guild of Ama., Inc."

13604

Commission's Exhibit 549.

Newspaper clippings, one headed "Dress Guild Cancels 3 Store Agreements," with pencil notation "N Y Times—2/12/36"; the other headed "Urges Further Study by Critics of FOGA" with typewritten notation "Women's Wear."

Commission's Exhibit 550-A.

Letter on letterhead of Fashion Originators Guild of America, Inc., dated February 11, 1936, addressed Ed. Schuster & Co., Inc., N. 3rd at Garfield, Milwaukee, Wisconsin, signed by Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director.

13605

Commission's Exhibit 550-B.

Form headed "Declaration of Co-operation in Anti-Piracy Between (blank)—(Print store's name)—and The Fashion Originators Guild of America, Inc.").

Commission's Exhibit 551.

Tabulation headed "Exhibit C. Orders for dresses which were outstanding as of February 11, 1936, from Guild members, which manufacturer failed to complete and which were then canceled."

Commission's Exhibit 552.

Tabulation headed "Summary of dresses on hand in six retail price lines February 10 to July 6, 1935, and 1936,
13607 combined for Departments 57 and 63."

Commission's Exhibit 553-A.

Letter on letterhead of Sheila-Lynn, Inc., 1400 Broadway, New York, dated July 31, 1936, addressed Ed. Schuster Co., Milwaukee, Wisconsin, signed Sheila-Lynn, Inc., by Myra Horowitz.

Commission's Exhibit 553-B.

13608 Blank form of Declaration of Co-operation in Anti-Piracy between Retail Store and Fashion Originators Guild of America, Inc.

13609

Commission's Exhibits 555-A and 555-B.

Two typewritten sheets, is entitled "List of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63—Misses Dresses."

Commission's Exhibit 557.

Typewritten page headed "Declaration of Co-operation in Anti-Piracy between Boston Store, Milwaukee, Wisconsin, and The Fashion Originators Guild of America" with typewritten signature at bottom "By W. L. Rowse—Store Name Boston Store, Milwaukee, Wisconsin."

13610

Commission's Exhibit 558.

Typewritten page headed "Return Made by Boston Store to Vendors Dresses Alleged to be Copies from Sept. 1935 to Feb. 1936."

Commission's Exhibit 560.

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated April 10, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

13611

Commission's Exhibit 561.

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated April 15, 1935, addressed to Mr. W. L. Rowse, The Boston Store, Milwaukee, Wisconsin, signed "H. O. Bergdahl."

Commission's Exhibits 562-A and 562-B.

Letter dated May 13, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

Commission's Exhibits 563-A and 563-B.

Letter dated July 3, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

Commission's Exhibit 564.

Letter dated October 4, 1935, addressed to Mr. N. B.
13613 Goldstein, Boston Store, signed "H. O. Bergdahl."

Commission's Exhibits 565-A and 565-B.

Copy of letter dated November 19, 1935, addressed to Mr. Vactor Chambers, Associated Merchandising Corporation, 1440 Broadway, New York City, typewritten signature "Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director."

Commission's Exhibit 566.

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated November 25, 1935, addressed to
13614 Mr. W. L. Rowse, The Boston Store, Milwaukee, Wisconsin, signed "H. O. Bergdahl."

Commission's Exhibits 567-A, 567-B, 567-C, 567-D, and 567-E.

567-A—Mimeographed letter dated November 27, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H.O.B."

567-B, 567-C, 567-D and 567-E—Mimeographed pages headed "F.O.G.A. QUESTIONS AND REPLIES."

Commission's Exhibit 568.

Letter, mimeographed on letterhead of Fashion Originators Guild of America, Inc., dated January 6, 1936, addressed to Boston Store, Herzfeld-Phillipson, Milwaukee, Wisconsin, signed in typewriting "Fashion Originators Guild of America, Inc.," mimeographed signature "Jack Goldston."

Commission's Exhibit 572.

Letter on letterhead of Fashion Originators Guild of America, Inc., dated June 17, 1935, addressed to Mr. W. L. Rowse, Boston Store, Milwaukee, Wisconsin, signed "Fashion Originators Guild of America, Inc., J. M. Golby, Executive Secretary." 13616

Commission's Exhibits 573-A and 573-B.

Typewritten pages headed "List of Members of The Fashion Originators Guild of America, Inc., From Whom Purchases Have Been Made During the Period February 1, 1935 to July 31, 1936."

13617

Commission's Exhibit 575.

Photostat of page 12, The Milwaukee Journal of Wednesday, August 21, 1935, containing advertisement of Boston Store.

13618 *Statement of Exhibits.*

Commission's Exhibit 576.

Photostat of page 20, The Milwaukee Journal of Thursday, September 19, 1935, containing advertisement of Boston Store.

Commission's Exhibit 577.

Photostat of page 5, The Milwaukee Sentinel of Saturday, October 5, 1935, containing advertisement of Boston Store.

13619 **Commission's Exhibit 578.**

Photostat of page 2, The Milwaukee Journal of Friday, October 18, 1935, containing advertisement of Boston Store.

Commission's Exhibit 579.

Photstat of page, from where taken not shown, numbered in upper left-hand corner "VII," Sunday, October 2, 1935, containing advertisement of Boston Store.

Commission's Exhibit 580.

13620 Photostat of page 8, Milwaukee Sentinel, Saturday, November 2, 1935, containing advertisement of Boston Store.

Commission's Exhibit 581.

Photostat of page 7, Milwaukee Sentinel, Wednesday, December 25, 1935, containing advertisement of Boston Store.

13621

Commission's Exhibit 582.

Photostat of page 9, The Milwaukee Journal, Friday, December 27, 1935, containing advertisement of Boston Store.

Commission's Exhibit 583.

Photostat of page (number not given) of The Milwaukee Journal, Friday, January 31, 1936, containing advertisement of Boston Store.

Commission's Exhibit 584.

13622

Photostat of E-page 3, Milwaukee Sentinel, Sunday, March 1, 1936, containing advertisement of Boston Store.

Commission's Exhibit 585.

Photostat of page 21, The Milwaukee Journal, Friday, March 20, 1936, containing advertisement of Boston Store.

Commission's Exhibit 586.

Photostat of page 15, The Milwaukee Journal, Sunday, March 15, 1936, containing advertisement of Boston Store.

Commission's Exhibit 587.

13623

Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936."

Commission's Exhibit 588.

Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936."

Commission's Exhibit 589.

Copy of a letter dated August 14, 1936, addressed to Mr. Barney Gisnet, care of Louise Mulligan, 337 South Franklin Street, Chicago, Illinois, typewritten signature The Herzfeld-Phillipson Co., Merchandise Manager, F. C. Dillon.

Commission's Exhibit 590.

Letter on the stationery of Louise Mulligan, Incorporated, 337 South Franklin, Chicago, dated August 15, 1936, addressed to The Herzfeld-Phillipson Company,
13625 Milwaukee, Wisconsin, attention of F. C. Dillon, and signed "Louise Mulligan, Inc., Barney Gisnet."

Commission's Exhibit 591.

Report headed "Louise Mulligan Dress Sales, Department 374," dated August 22, 1936, giving the price lines and sales for the period August to December, 1935, as compared with January to March, 1936, and the totals.

Commission's Exhibit 592.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated December 28, 1932.

13626

Commission's Exhibit 593.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated December 30, 1932.

Commission's Exhibit 594.

Copy of letter from J. M. Golby to R. H. Bjorkman, dated January 2, 1933, on letterhead of Fashion Originators Guild of America, Inc.

13627

Commission's Exhibit 595.

Telegram to Fashion Originators Guild of America, Inc., from R. H. Bjorkman re sending minutes of Retail Guilds, dated January 7, 1933.

Commission's Exhibit 597.

Letter dated December 24, 1932, from J. M. Golby to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc.

13628

Commission's Exhibits 598-A to 598-H.

Letter from J. M. Golby to R. H. Bjorkman with Uptown Retail Guild, minutes enclosed.

Commission's Exhibit 599-A.

Letter from Perry Snyder of Powers Mercantile Co. to R. H. Bjorkman, dated January 17, 1933.

Commission's Exhibit 600.

Certificate of Organization of Minneapolis Retail Fashion Guild. 13629

Commission's Exhibits 601-A and 601-B.

Declaration of Co-operation between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.

Commission's Exhibit 602.

Letter from members of Minneapolis Ready to Wear Association to Fashion Originators Guild of America, Inc., dated February 1, 1933.

Commission's Exhibit 603.

Copy letter from R. H. Bjorkman to J. M. Golby of Fashion Originators Guild of America, Inc., dated February 1, 1933.

13631

Commission's Exhibit 604.

Letter from D. J. Larson of Dayton Company to R. H. Bjorkman, dated January 25, 1933.

Commission's Exhibit 605.

Letter from Dayton Company unsigned to Fashion Originators Guild of America, Inc., dated January 24, 1933.

Commission's Exhibit 606.

Letter from J. M. Golby to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated

13632 February 6, 1933.

Commission's Exhibits 607-A and 607-B.

Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, dated February 2, 1933.

13633

Commission's Exhibits 608-A and 608-B.

Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, dated February 4, 1933.

Commission's Exhibit 609.

Letter from J. M. Golby to R. H. Bjorkman, dated February 7, 1933.

Commission's Exhibit 610.

13634

Telegram from Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated March 1, 1933.

Commission's Exhibit 611.

Copy letter from R. H. Bjorkman to Fashion Originators Guild of America, Inc., dated June 21, 1933.

Commission's Exhibit 612.

Letter from R. H. Bjorkman to J. M. Golby, dated July 29, 1933.

Commission's Exhibits 613-A and 613-B.

13635

Letter from J. M. Golby to R. H. Bjorkman, dated August 3, 1933.

Commission's Exhibit 614.

Copy letter from J. M. Golby to R. H. Bjorkman, dated August 4, 1933.

Commission's Exhibits 615-A and 615-B.

Copy letter from R. H. Bjorkman to J. M. Golby, dated August 7, 1933.

Commission's Exhibit 616.

Copy letter from R. H. Bjorkman to J. M. Golby, dated August 9, 1933.

Commission's Exhibit 617.

13637 Letter from J. M. Golby to R. H. Bjorkman, dated August 9, 1933, in reply to Exhibit 616.

Commission's Exhibit 618.

Letter from Louis Mallas, Chairman Junior Miss Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated October 25, 1933.

Commission's Exhibit 619.

Telegram from J. M. Golby of Uptown Retail Guild Annex of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated November 13, 1933.

13638 **Commission's Exhibit 620.**

Copy letter from R. H. Bjorkman to J. M. Golby, dated November 14, 1933.

Commission's Exhibits 621-A to 621-G.

Letter from J. M. Golby to R. H. Bjorkman, dated January 5, 1934, with resolutions of Fashion Originators Guild of America, Inc., on consignment selling and loss of merchandise, fashion shows, and cancellations enclosed.

Commission's Exhibits 622-A to 622-C.

Letter from J. M. Golby to R. H. Bjorkman, dated February 2, 1934, with copies of Uptown Retail Guild minutes enclosed.

Commission's Exhibit 624.

Copy Resolution of Uptown Retail Guild, dated February 17, 1934.

Commission's Exhibits 625-A and 625-B.

Copy letter from R. H. Bjorkman to J. M. Golby of 13640
Fashion Originators Guild of America, Inc., dated June 5, 1934.

Commission's Exhibit 626.

Letter from J. M. Golby to R. H. Bjorkman, dated June 7, 1934.

Commission's Exhibits 627-B and 627-C.

Letter from J. M. Golby to R. H. Bjorkman, dated June 7, 1934.

Commission's Exhibit 627-D. 13641

List of Names of Manufacturers submitted to Uptown Retail Guild.

Commission's Exhibits 627-E and 627-F.

Minutes of Meeting of Board of Governors of Uptown Retail Guild, held June 5, 1934.

Commission's Exhibit 628.

Letter from Fashion Originators Guild of America, Inc., Miss Herschman to R. H. Bjorkman, dated June 11, 1934.

Commission's Exhibit 629.

Letter from R. H. Bjorkman to Fashion Originators Guild of America, Inc., dated June 14, 1934.

Commission's Exhibits 630-A and 630-B.

13643 Copy letter from Chairman of Minneapolis Fashion Guild to J. M. Golby, dated June 23, 1934.

Commission's Exhibit 631.

Letter from J. M. Golby to R. H. Bjorkman, dated June 25, 1934.

Commission's Exhibit 632.

Letter from Sam Dietsch, Chairman, Coat Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 29, 1934, on letterhead of Fashion Originators Guild of America, Inc.

13644

Commission's Exhibits 633-A and 633-B.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated July 31, 1934.

Commission's Exhibit 634.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated July 27, 1934.

Commission's Exhibit 635.

Fashion Show Resolutions, dated July 31, 1934.

Commission's Exhibit 636.

Telegram from Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 6, 1934.

Commission's Exhibit 637.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 16, 1934. 13646

Commission's Exhibits 638-A and 638-B.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated August 18, 1934.

Commission's Exhibit 639.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 21, 1934.

Commission's Exhibit 640.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated August 23, 1934. 13647

Commission's Exhibit 641.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 27, 1934.

Commission's Exhibit 642.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 27, 1934.

Commission's Exhibit 643.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated November 12, 1934.

Commission's Exhibit 644.

13649 Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated January 31, 1935.

Commission's Exhibit 645.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated February 1, 1935.

Commission's Exhibits 647-A and 647-B.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated February 15, 1935.

13650

Commission's Exhibit 650.

Form letter from J. M. Golby to R. H. Bjorkman re appointment of shopper, dated February 28, 1935.

Commission's Exhibits 653-A to 653-C.

Letter to J. M. Golby from R. H. Bjorkman on letterhead of Roy H. Bjorkman, Inc., dated March 21, 1935.

Commission's Exhibits 654-A to 654-C.

Letter to J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated March 26, 1935.

Commission's Exhibit 657.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated April 18, 1935.

Commission's Exhibit 658.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated April 16, 1935. 13652

Commission's Exhibit 660.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated April 22, 1935.

Commission's Exhibit 665.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, on letterhead of Fashion Originators Guild of America, Inc., dated June 22, 1935,

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Commission's Exhibits 666-A and 666-B. 13653

Copy of telegram from A. M. Post of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 27, 1935.

Commission's Exhibit 667.

Copy of letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 27, 1935.

Commission's Exhibit 669.

Copy of telegram from R. H. Bjorkman to A. M. Post, dated June 28, 1935.

Commission's Exhibits 672-A to 672-D.

Proposed Declaration of Co-operation in Anti-Piracy between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc., dated day of 1935.

13655 **Commission's Exhibits 674-A and 674-B.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated July 3, 1935.

Commission's Exhibit 675.

Copy of letter from R. H. Bjorkman to J. M. Golby, dated July 6, 1935.

Commission's Exhibit 676.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated July 11, 1935.

13656 **Commission's Exhibit 677.**

Letter from A. M. Post to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated July 12, 1935.

Commission's Exhibits 678-A and 678-B.

Letter from A. M. Post to R. H. Bjorkman on stationery of Fashion Originators Guild of America, Inc., dated July 19, 1935.

Commission's Exhibits 682-A and 682-B.

Letter from A. M. Post to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated September 12, 1935.

Commission's Exhibit 683.

List of Minneapolis stores signed with Fashion Originators Guild of America, Inc., dated September 12, 1935.

Commission's Exhibits 685-A and 685-B.

Registered letter from J. M. Golby to R. H. Bjorkman 13658
on stationery of Fashion Originators Guild of America, Inc., dated September 16, 1935.

Commission's Exhibits 686-A and 686-B.

Copy of registered letter from R. H. Bjorkman to A. M. Post, dated September 18, 1935.

Commission's Exhibit 687.

Letter from J. M. Golby to R. H. Bjorkman, dated September 21, 1935.

Commission's Exhibit 688. 13659

Letter from J. Jesse Hyman to R. H. Bjorkman on letterhead of Atkinsons of Minneapolis, dated September 24, 1935.

Commission's Exhibit 689.

Copy of letter from J. Jesse Hyman to J. M. Golby, dated September 27, 1935.

Commission's Exhibit 690.

Letter from J. M. Golby to R. H. Bjorkman on stationery of Fashion Originators Guild of America, Inc., dated October 21, 1935.

Commission's Exhibit 691.

Copy of letter from R. H. Bjorkman to A. M. Post, dated October 29, 1935.

Commission's Exhibit 692.

13661 Copy of letter from A. M. Post to Virginia C. McDonald, dated May 16, 1936.

Commission's Exhibit 693.

Letter from A. M. Post to R. H. Bjorkman, dated May 16, 1936.

Commission's Exhibits 694-A and 694-B.

Copy of letter from R. H. Bjorkman to A. M. Post, dated June 2, 1936.

Commission's Exhibits 695-A to 695-E.

13662 Signed Agreement of Minneapolis Fashion Guild with Fashion Originators Guild of America, Inc., dated August 26, 1935.

Commission's Exhibit 696.

Letter from P. J. Reilly of Associated Merchandising Corporation to The Dayton Co., dated June 21, 1933, enclosing Guild Agreement.

Commission's Exhibit 697.

Resolution of American Merchandising Corporation Garment Merchandising Managers concerning Anti-Piracy Agreement with Fashion Originators Guild of America, Inc.

Commission's Exhibit 701.

Copy of letter from C. J. Larson of The Dayton Co. to Fashion Originators Guild of America, Inc., dated July 1, 1933.

Commission's Exhibits 702-A and 702-B. 13664

Letter from Fashion Originators Guild of America, Inc., to Phillips of The Dayton Co., dated August 3, 1933 (same as Respondents' Exhibit 120).

Commission's Exhibits 703-A and 703-B.

Proposed Agreement between Fashion Originators Guild of America, Inc., and Minneapolis Guild of Fashion Retailers.

Commission's Exhibits 705-A, 705-B and 705-C.

Letter from A. M. Post to D. Donovan of The Dayton Co., dated May 3, 1935, on stationery of Fashion Originators Guild of America, Inc. 13665

Commission's Exhibit 706.

Copy of letter from D. Donovan to A. M. Post, dated May 8, 1935.

Commission's Exhibit 707.

Telegram from D. Donovan to C. J. Larsen of The Dayton Co., dated May 13, 1935.

Commission's Exhibit 708.

Letter from Maurice Rentner to The Dayton Co., attention of Miss Johnstone, dated February 21, 1936, on letterhead of Maurice Rentner, Inc.

Commission's Exhibit 709.

13667 Letter from Milton Altmark, Inc., to The Dayton Co., dated February 18, 1936.

Commission's Exhibit 710.

Letter from N. E. Friedland of Associated Merchandising Corporation to Miss N. Johnstone of The Dayton Co., dated February 18, 1936.

Commission's Exhibit 711.

Letter from Fred A. Block, Inc., to The Dayton Co., dated August 27, 1936.

13668 **Commission's Exhibit 712.**

Letter from Grace Ashley to Miss F. McKenney of The Dayton Co., dated August 29, 1936.

Commission's Exhibit 713.

Junior Dresses (Subdeb Dept.), Spring, 1935-1936—Comparison of Unit Sales (Dept. 371) of The Dayton Co.

Commission's Exhibit 714.

Record of estimated loss in traveling expense and time, Spring, 1936.

Commission's Exhibit 715.

Booklet, "Quality Street," Fall, 1935, with imprint of The Dayton Co.

Commission's Exhibit 716.

Ad, Minneapolis Journal, dated July 16, 1935, of The Dayton Co. 13670

Commission's Exhibit 717.

Ad, Minneapolis Journal, dated August 2, 1935, of The Dayton Co.

Commission's Exhibit 718.

Ad, Minneapolis Journal, dated August 21, 1935, of The Dayton Co.

Commission's Exhibit 719.

Ad, Minneapolis Journal, dated August 30, 1935, of The Dayton Co. 13671

Commission's Exhibit 720.

Ad, Minneapolis Journal, dated August 23, 1935, of The Dayton Co.

Commission's Exhibit 724.

Ad, Minneapolis Tribune, dated October 3, 1935, of The Dayton Co.

Commission's Exhibit 725.

Ad, Minneapolis Journal, dated October 18, 1935, of The Dayton Co.

Commission's Exhibit 726.

13673 Ad, Minneapolis Tribune, dated October 22, 1935, of The Dayton Co.

Commission's Exhibit 727.

Ad, Minneapolis Journal, dated November 8, 1935, of The Dayton Co.

Commission's Exhibit 728.

Ad, Minneapolis Journal, dated November 22, 1935, of The Dayton Co.

Commission's Exhibit 729.

13674 Ad, Minneapolis Journal, dated December 11, 1935, of The Dayton Co.

Commission's Exhibit 730.

Ad, Minneapolis Journal, dated December 19, 1935, of The Dayton Co.

Commission's Exhibit 731.

Ad, Minneapolis Tribune, dated December 25, 1935, of The Dayton Co.

Commission's Exhibit 732.

Ad, Minneapolis Tribune, dated December 25, 1935, of The Dayton Co.

Commission's Exhibit 733.

Ad, Minneapolis Journal, dated February 26, 1936, of The Dayton Co. 13676

Commission's Exhibit 734.

Article appearing on page 6 of August, 1936 issue of "Golfer & Sportsman," by Virginia McDonald, entitled "Fashions for Fashionables."

Commission's Exhibit 735.

Letter on letterhead of Fashion Originators Guild of America, Inc., addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois, and signed "Fashion Originators Guild of America, Inc., by J. M. Golby, Executive Secretary," and dated August 20, 1934. 13677

Commission's Exhibit 736.

Copy of order, headed "David Crystal, Incorporated, 530 Seventh Avenue, New York," dated December 12, 1934, and reads: "Make for Frances Malsh, 5120 Harper Avenue, Chicago," and is signed by Frances Malsh.

Commission's Exhibit 737.

Letter on stationery of David Crystal, Inc., 498 Seventh Avenue, New York, dated December 19, 1934, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois, signed "David Crystal, Inc.," and initialed "FN:FR."

Commission's Exhibit 738.

Letter on stationery of David Crystal, Inc., 498 Seventh Avenue, New York, dated December 27, 1934, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois, signed "David Crystal, Inc.," and initialed "LDL:FR."

13679

Commission's Exhibit 739.

Copy of an order on stationery of Feigenbaum & Adelson, Inc., Penthouse, 530 Seventh Avenue, New York, dated August 1, 1935, reading, "Ship to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois."

Commission's Exhibit 740.

Letter on stationery of Feigenbaum & Adelson, Inc., 530 Seventh Avenue, New York City, dated August 2, 1935, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois; signed, "Feigenbaum and Adelson, Inc.," and initialed "ED."

13680

Commission's Exhibits 741-A and 741-B.

Two-page letter on the letterhead of Frances Malsh, The Sadonia, 5120 Harper Avenue, Chicago, dated August 1, 1935, addressed to Fashion Originators Guild of America, Inc., New York, and signed "(Mrs.) Frances Malsh."

13681

Commission's Exhibits 742-A and 742-B.

Two-page letter on the letterhead of Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, dated August 12, 1935, addressed to Mrs. Frances Malsh, The Sadonia, 5120 Harper Avenue, Chicago, Ill., signed "Fashion Originators Guild of America, Inc., J. M. Golby, Executive Secretary."

Commission's Exhibit 743.

Letter on the letterhead of Sport-Craft, Inc., 498 Seventh Avenue, New York, dated January 15, 1936, addressed to Florence Hertz and Hazel Lang, 1113 Hyde Park Boulevard, Chicago, Illinois, signed (in typewriting) "Sport-Craft, Inc.," and initialed "HR:LK," with printing, "Harry Rubin."

13682

Commission's Exhibits 744-A to 744-H.

By-laws of Michigan Avenue Guild of Chicago (adopted March 2, 1933; amended November 7, 1933, October 24, 1934, and December 17, 1935).

Commission's Exhibit 745.

Headed, "Michigan Avenue Guild of Chicago, Inc., No. 669 North Michigan Avenue. Whitehall 6500," being list of officers, board of directors, advisory board, executive committee, publicity and advertising, arbitration committee, wholesale relationship committee, State Street contact committee.

13683

Commission's Exhibits 746-A and 746-B.

Two-page document headed, "Rules and Regulations of the Michigan Avenue Guild of Chicago, Inc., in force as of January 2, 1936."

13684 *Statement of Exhibits.*

Commission's Exhibits 747-A to 747-E.

Five-page document headed, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held December 17, 1932," signed (in typewriting) "L. R. Pearson, Temporary Secretary," and "Approved: Harry H. Blum" and others, "constituting all of the members."

Commission's Exhibits 748-A and 748-B.

Two-page document headed, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held December
13685 23rd, 1932," signed (in typewriting) "L. R. Pearson, Secretary. Approved: Harry H. Blum" and others, "constituting all of the members."

Commission's Exhibits 749-A and 749-B.

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held December 30, 1932," signed (in typewriting) "A. H. Marshall, Temporary Secretary. Approved: Harry H. Blum" and others, "constituting all of the members."

Commission's Exhibits 750-A and 750-B.

Two-page document entitled, "Minutes of Meeting of
13686 the Michigan Avenue Guild of Chicago, held January 5, 1933," signed (in typewriting "L. R. Pearson, Secretary. Approved: Clarence A. Powell" and others, "constituting all of the members."

Commission's Exhibits 751-A and 751-B.

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held February 3, 1933," signed (in typewriting) "L. R. Pearson, Secretary. Approved: Edward Blum" and others, "constituting all of the members."

Commission's Exhibits 752-A and 752-B.

Two-page document entitled, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held February 10, 1933," signed (in typewriting) "L. R. Pearson, Secretary. Approved: C. Powell" and others. 13688

Commission's Exhibits 753-A to 753-C.

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held February 21, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 754-A, 754-B and 754-C.

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held March 2, 1932," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibit 755. 13689

One-page document headed, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held March 16, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 756-A and 756-B.

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held April 1st, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13690 *Statement of Exhibits.*

Commission's Exhibits 757-A and 757-B.

Two-page document entitled "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held April 29, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 758-A and 758-B.

Two-page document entitled, "Minutes of Meeting of Members of the Michigan Avenue Guild of Chicago, held May 25, 1933, at 8:00 P. M., at the Drake Hotel, Chicago, Illinois," signed (in typewriting) "L. R. Pearson, Secretary."

13691

Commission's Exhibits 759-A and 759-B.

Two-page document entitled, "Minutes of Meeting of Members and Prospective Members of the Michigan Avenue Guild of Chicago, held June 24, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibit 760.

One-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held July 6, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13692

Commission's Exhibits 761-A and 761-B.

Two-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held August 24, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 762-A and 762-B.

Two-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held September 12, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 763-A, 763-B and 763-C.

Three-page document, entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 2, 1933," signed (in typewriting) "L. R. Pearson, Secretary." 13694

Commission's Exhibits 764-A, 764-B and 764-C.

Three-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 11, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 765-A to 765-B.

Four-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 21, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13695

Commission's Exhibits 766-A to 766-E.

Five-page document entitled, "Minutes of Meeting of Members of Michigan Avenue Guild of Chicago, held October 23, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 767-A to 767-D.

Four-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held November 7, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 768-A and 768-B.

Two-page document entitled, "Minutes of Meeting of the Directors of Michigan Avenue Guild of Chicago, held November 14, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13697

Commission's Exhibits 769-A to 769-C.

Three-page document, entitled "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held November 28, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 770-A to 770-C.

Three-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held December 5, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13698

Commission's Exhibit 771.

One-page document entitled, "Minutes of the Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago," signed (in typewriting) "George Gleason, Chairman."

13699

Commission's Exhibits 772-A to 772-C.

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held December 27, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

Commission's Exhibits 773-A to 773-D.

Four-page document entitled, "Minutes of Annual Meeting of the Michigan Avenue Guild of Chicago, held December 29, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13700

Commission's Exhibits 774-A to 774-B.

Two-page document entitled, "President's Annual Report, read at General Meeting—December 29, 1933," signed (in typewriting) "Clarence Powell, President."

Commission's Exhibits 775-A to 775-E.

Five-page document entitled, "Minutes of Directors' Meeting of the Michigan Avenue Guild of Chicago, held December 29, 1933," signed (in typewriting) "Edw. A. Fletcher, Secretary."

Commission's Exhibits 776-A to 776-D.

13701

Four-page document entitled, "Minutes of Meeting of Board of Directors of Michigan Avenue Guild of Chicago, held at the office of George M. Gleason, 840 North Michigan Avenue, Chicago, Illinois, on February 20, 1934, at 9:30 in the morning," signed (in typewriting) "Edw. A. Fletcher, Secretary."

Commission's Exhibits 777-A and 777-B.

Two-page document entitled, "Minutes of Special Meeting of Board of Directors of Michigan Avenue Guild of Chicago, held February 28th, 1934," signed (in typewriting) "Edward A. Fletcher, Secretary."

Commission's Exhibits 778-A, 778-B and 778-C.

Three-page document entitled, "Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held March 3rd, 1934, at 9.30 A. M.," signed (in typewriting) "Edward A. Fletcher, Secretary."

13703

Commission's Exhibits 779-A to 779-C.

Three-page document entitled, "Minutes of Meeting of Board of Directors and Advisory Board of Michigan Avenue Guild of Chicago, held at the office of Mr. George M. Gleason, 840 North Michigan Avenue, Chicago, Illinois, on March 22nd, 1934, at 7:00 P. M.," signed (in typewriting) "Edw. A. Fletcher, Secretary."

Commission's Exhibits 780-A and 780-B.

Two page document entitled, "Minutes of General Meeting of all Members of the Michigan Avenue Guild, held April 9th, 1934, at the Drake Hotel, Chicago," signed (in typewriting) "Edw. A. Fletcher, Secretary."

13704

Commission's Exhibits 781-A to 781-C.

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held April 14, 1934, at 9:00 A. M. at Mr. Gleason's office, 840 North Michigan Avenue, Chicago. Signed by Edw. A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman

13705

Commission's Exhibits 782-A to 782-C.

Minutes of Special Meeting of Executive Committee, held April 20, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman.

Commission's Exhibits 783-A to 783-D.

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held April 27, 1934, at Mr. Gleason's office, 840 North Michigan Avenue. Signed by Edw. A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee. 13706

Commission's Exhibits 784-A and 784-B.

Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Monday, April 30, 1934, at 10 A. M. Signed by Edw. A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 785-A to 785-C.

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held May 1, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee. 13707

Commission's Exhibit 786-A to 786-E.

Minutes of a Joint Meeting of the Board of Directors and the Executive Committee of the Michigan Avenue Guild, held May 7, 1934, at 10 A. M., at Mr. Gleason's office, 840 North Michigan Avenue, Chicago, Illinois. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President; F. L. Cole, Chairman, Executive Committee.

Commission's Exhibits X-786-A to X-786-C.

13709 Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held May 11, 1934, at Mr. Gleason's office, 840 North Michigan Avenue. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 787-A to 787-D.

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Tuesday, May 29, 1934, at 10 A. M., at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 788-A to 788-D.

13710 Minutes of a Joint Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Thursday, June 28, 1934, at the office of Mr. George M. Gleason. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 789-A to 789-C.

Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, held July 31, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary, and Frank L. Cole, Chairman of Executive Committee.

Commission's Exhibits 790-A to 790-F.

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held August 24, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President. 13712

Commission's Exhibits 791-A and 791-B.

Minutes of Meeting of Executive Committee of the Michigan Avenue Guild of Chicago, held August 31, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

Commission's Exhibits 792-A and 792-B.

Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held Tuesday, September 18, 1934, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee. 13713

Commission's Exhibits 793-A and 793-B.

Minutes of Luncheon Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held September 24, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

Commission's Exhibits 794-A to 794-C.

Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held October 5, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

Commission's Exhibits 795-A to 795-F.

Minutes of Supper Meeting of the Board of Directors of the Michigan Avenue Guild of Chicago, held at The Drake Hotel, Parol B. East Mezzanine, on Wednesday, October 24, 1934, at 6.30 P. M. Signed by Edward A. 13715 Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 796-A to 796-I.

Minutes of General Meeting of the Michigan Avenue Guild of Chicago, held at The Drake Hotel on October 24, 1934, at 8.30 P. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 797-A to 797-E.

Minutes of Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, 13716 held Wednesday, December 5, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 798-A to 798-I.

Minutes of General Meeting of Members of the Michigan Avenue Guild held at The Drake Hotel, Friday, December 28, 1934, at 8.30 P. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

13717

Commission's Exhibits 799-A to 799-C.

Minutes of Annual Meeting of the Board of Directors of the Michigan Avenue Guild, held December 28, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 800-A to 800-E.

Minutes of Meeting of Executive Committee, held on January 4, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

13718

Commission's Exhibits 801-A to 801-F.

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, held January 29, 1935, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, Chairman.

Commission's Exhibits 802-A to 802-D.

Minutes of Special Meeting of the Board of Directors of the Michigan Avenue Guild of Chicago, held February 19, 1935, at Mr. Gleason's office at 9.30 in the morning. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

13719

Commission's Exhibits 803-A and 803-B.

Copy of letter on the letterhead of Fashion Originators Guild of America, Inc., to Mr. George M. Gleason, Chicago, Illinois, dated February 15, 1935, signed by J. M. Golby, Executive Secretary, and containing after said signature an enrollment blank.

Commission's Exhibits 804-A to 804-D.

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held April 8, 1935. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 805-A to 805-D.

Minutes of Meeting of Board of Directors and Executive Meeting of the Michigan Avenue Guild of Chicago, held April 17, 1935, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason,
13721 President.

Commission's Exhibit 806.

Copy of Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, containing clearing sale regulations on suits, signed by Edward A. Fletcher.

Commission's Exhibit 807.

Copy of Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, containing spring clearance sales regulations for coats and dresses, signed by Edward A. Fletcher, Secretary.

13722

Commission's Exhibit 808.

Copy of Form letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, entitled, "Important Notice Regarding 'Mail Announcements' and 'Racks' Spring Clearance Sale." Signed by Edward A. Fletcher, Secretary.

Commission's Exhibits 809-A to 809-G.

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held May 3, 1935, at 9.30, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 810-A to 810-L.

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held Friday, May 10, 1935, at 10 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President. 13724

Commission's Exhibits 811-A to 811-F.

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held Friday, June 14, 1935, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

Commission's Exhibits 812-A to 812-D.

Minutes of Meeting of Executive Committee, June 24, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman, Executive Committee. 13725

Commission's Exhibits 813-A to 813-D.

Minutes of Joint Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild of Chicago, held Tuesday, July 30, 1935, at Saks Fifth Avenue, 840 North Michigan Avenue, Chicago, Illinois. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

Commission's Exhibits 814-A to 814-E.

Minutes of Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild of Chicago, held October 4, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

Commission's Exhibits 815-A and 815-B.

Document entitled, "Statistics on Copied Merchandise Returned to Manufacturers who copies—During Month of September," containing a list of original manufacturers, style numbers, copyists and number of returns.

13727

Commission's Exhibit 816.

Mimeographed page headed, "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago, Illinois, Whitehall 6503," dated January 14, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

Commission's Exhibit 817.

Mimeographed page headed, "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago," dated January 14, 1935, addressed "To All Members," signed (in typewriting) "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago."

13728

Commission's Exhibit 818.

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 1, 1934, addressed "Dear Member," signed (in typewriting) "Secretary, Michigan Avenue Guild."

13729

Commission's Exhibit 819.

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 11, 1935, addressed "All Members," signed "Edward A. Fletcher, Secretary, Michigan Avenue Guild."

Commission's Exhibits 820-A and 820-B.

Two-page mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 19, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

13730

Commission's Exhibit 821.

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated June 15, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

Commission's Exhibit 822.

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated June 29, 1935, addressed "To All Members," signed "Michigan Avenue Guild of Chicago, Inc., Edw. A. Fletcher, Secretary" (in typewriting).

13731

Commission's Exhibit 823.

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated October 29, 1935, addressed "To All Members," signed "Edward A. Fletcher, Secretary, Michigan Avenue Guild."

13732 *Statement of Exhibits.*

Commission's Exhibit 824.

Mimeographed copy of letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated November 4, 1935, addressed "Gentlemen," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

Commission's Exhibit 825.

13733 Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated November 13, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary."

Commission's Exhibit 826.

Copy of a letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, marked "Exhibit 'A,'" dated September 10, 1935, addressed to Mr. H. W. Rieger, Secretary, State Street Council, No. 209 South State Street, Chicago, Illinois, signed (in typewriting) "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

13734

Commission's Exhibit 828.

Copy of letter dated May 17, 1934, addressed to Mr. Alexander H. Marshall, c/o Messrs. Marshall & Marshall, No. 10 South LaSalle Street, Chicago, Illinois, signed (in typewriting) "Secretary, Michigan Avenue Guild."

13735

Commission's Exhibits 829-A to 829-J.

Typewritten copy of Agreement entered into between the Michigan Avenue Guild of Chicago and the Fashion Originators Guild of America, Inc., under date of December 17, 1932.

Commission's Exhibits 830-A and 830-B.

Two-page document on the letterhead of Fashion Originators Guild of America, Inc., addressed to L. E. Klein, with reference to a copy of Style No. 330, signed by A. M. Post, Executive Director.

13736

Commission's Exhibit 831.

Letter on the letterhead of KLEIN'S, Peoria, Illinois, dated April 27, 1935, addressed to Fashion Originators Guild of America, Inc., signed by "Comptroller".

Commission's Exhibits 832-A and 832-B.

Copy of two-page letter on the letterhead of Fashion Originators Guild of America, Inc., dated April 29, 1935, addressed to KLEIN'S, Peoria, Illinois, attention of Mr. H. W. Lund, Controller, signed by J. M. Golby, Executive Secretary.

13737

Commission's Exhibit 833.

Declaration of Co-operation in anti-piracy between KLEIN'S and the Fashion Originators Guild of America, Inc., signed KLEIN'S by L. E. Klein.

13738 *Statement of Exhibits.*

Commission's Exhibit 834.

Copy of a letter on the letterhead of Affiliated Buying Corporation, New York City, dated May 6th, 1935, addressed to Mr. Louis Klein, Klein's, Peoria, Illinois, signed by AFFILIATED BUYING CORPORATION, H. G. Flanagan.

Commission's Exhibit 835.

Copy of a letter on the letterhead of Klein's, Peoria, Illinois, dated May 8, 1935, addressed to Fashion Originators Guild of America, Inc., New York City, signed by "Controller".

13739

Commission's Exhibit 836.

Copy of a letter on the letterhead of Fashion Originators Guild of America, Inc., dated June 27, 1935, addressed to The D. W. Klein Company, Peoria, Illinois, Attention Mr. L. E. Klein, signed by J. M. Golby, Executive Secretary.

Commission's Exhibit 837.

Copy of letter on the letterhead of AFFILIATED BUYING CORPORATION, New York City, dated July 9, 1935, addressed to Mr. L. E. Klein, Klein's, Peoria, Illinois, signed
13740 by Harry G. Flanagan.

Commission's Exhibit 838.

Copy of a letter on the letterhead of AFFILIATED BUYING CORPORATION, New York City, dated July 29, 1935, addressed to Mr. H. W. Lund, Klein's, Peoria, Illinois, signed by Harry G. Flanagan.

Commission's Exhibit 839. — 13741

Copy of a letter on the letterhead of Fashion Originators Guild of America, Inc., dated July 30, 1935, addressed to Klein's, 222 South Adams Street, Peoria, Illinois, signed by J. M. Golby, Executive Secretary.

Commission's Exhibit 840.

Copy of a telegram dated February 17th, 1936, addressed to A. M. Post, Executive Director, Fashion Originators Guild of America, Inc., signed by Mandel Brothers, Carson, Pirie, Scott & Company, Marshall Field & Company, Chas. A. Stevens & Company, Davis Company, The Fair, Maurice Rothschild, W. A. Weiboldt Store, Boston Store, The Hub, Sally Frocks. — 13742

Commission's Exhibit 841.

Copy of a letter over the signature of Neil Petree, President, Retail Dry Goods Association of New York, dated February 17, 1936, addressed to Mr. A. M. Post, Fashion Originators Guild of America, Inc.

Commission's Exhibit 842.

Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, dated September 11, 1933. — 13743

Commission's Exhibits 843-A to 843-G.

Agreement of Ladies Ready-to-Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., dated September 27, 1933.

13744 *Statement of Exhibits.*

Commission's Exhibit 844.

Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, dated September 18, 1933.

Commission's Exhibits 845-A and 845-B.

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated November 17, 1933.

Commission's Exhibits 846-A to 846-C.

13745 Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated January 25, 1934.

Commission's Exhibits 847-A to 847-D.

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated April 9, 1934.

Commission's Exhibits 848-A and 848-B.

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated June 16, 1934.

Commission's Exhibits 849-A and 849-B.

13746 Minutes of Membership of Ladies Ready-to-Wear Guild of Baltimore, dated February 25, 1935.

Commission's Exhibits 850-A to 850-C.

Minutes of Meeting of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated August 5, 1935.

Commission's Exhibits 851-A to 851-C.

By-Laws, Rules, Regulations and Agreements of Ladies Ready-to-Wear Guild of Baltimore.

Commission's Exhibits 852-A to 852-G.

Minutes of Membership Meeting, dated September 30, 1935.

Commission's Exhibits 853-A and 853-B.

Letter dated November 15, 1933, from J. M. Golby of Fashion Originators Guild of America, Inc., to Chas. E. Hutzler of Hutzler Bros. & Co.

Commission's Exhibit 854.

Letter dated January 20, 1934, from J. M. Golby of 13748
Fashion Originators Guild of America, Inc., to C. F. Roycroft of Ladies Ready-to-Wear Guild of Baltimore.

Commission's Exhibits 855-A and 855-B.

Form letter signed Coat & Suit Division of Fashion Originators Guild of America, Inc., dated March 29, 1934.

Commission's Exhibits 856-A and 856-B.

Letter dated February 15, 1935, from J. M. Golby to Maison Annette.

Commission's Exhibit 857-A. 13749

Copy of letter dated October 12, 1935, from Roycroft to Baltimore Guild.

Commission's Exhibit 857-B.

Copy of letter from Roycroft to A. M. Post, dated October 14, 1935.

13750 *Statement of Exhibits.*

Commission's Exhibits 858-A and 858-B.

Minutes dated October 12, 1935, of Ladies Ready-to-Wear Guild of Baltimore.

Commission's Exhibits 859-A to 859-H.

Articles of Constitution, Rules and Regulations and Agreement with Fashion Originators Guild of America, Inc., of Ladies Ready-to-Wear Guild of Baltimore.

Commission's Exhibit 860.

13751 List of member shares of Associated Merchandising Corp.

Commission's Exhibits 861-A and 861-B.

Letter from Maurice Rentner on letterhead of Maurice Rentner, Inc., to B. Forman, dated December 6, 1932.

Commission's Exhibit 862.

Copy of letter, H. I. Kleinhaus, Association of Buying Offices, Inc., sent to M. Rentner, dated March 30, 1935.

Commission's Exhibit 863.

13752 Copy of letter, H. I. Kleinhaus, Association of Buying Offices, Inc., sent to Mr. Rentner, dated April 5, 1935.

Commission's Exhibit 864.

Circular letter entitled "Developments in Fashion Originators Guild of America, Inc.," by H. O. Bergdahl, to Associated Merchandising Corp. Managers, dated April 10, 1935.

13753

Commission's Exhibit 865.

Letter from A. M. Post to Association of Buying Offices, Inc., dated April 23, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 866.

Copy letter from H. I. Kleinhaus to M. Rentner, dated April 27, 1935.

Commission's Exhibit 867.

13754

Minutes of Meeting, Special Committee of Association of Buying Offices, Inc., dated May 4, 1935, appointed to confer with Fashion Originators Guild of America, Inc. and Bert Reinitz.

Commission's Exhibit 869.

Letter from Reinitz, dated May 9, 1935, to Association of Buying Offices, Inc.

Commission's Exhibit 870.

Proposed letter for the purpose of being mailed to all retailers by Mr. Reinitz.

13755

Commission's Exhibit 871.

Two-page letter from H. I. Kleinhaus to Bertram Reinitz, dated May 13, 1935.

Commission's Exhibit 872.

Two-page memo from H. O. Bergdahl to Garment Merchandise Managers, Associated Merchandising Corp., dated May 13, 1935.

Commission's Exhibit 873.

Two-page letter from A. M. Post to Association of Buying Offices, Inc., dated June 21, 1935.

Commission's Exhibit 874.

Two-page letter dated July 1, 1935, from A. M. Post to H. O. Bergdahl.

Commission's Exhibit 875.

13757 Two-page letter dated July 3, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.

Commission's Exhibit 876.

Letter to H. O. Bergdahl from A. M. Post, dated July 22, 1935.

Commission's Exhibit 877.

Copy two-page letter from H. O. Bergdahl to A. M. Post, dated July 22, 1935.

Commission's Exhibit 878.

13758 Three-page letter from A. M. Post to H. O. Bergdahl, dated August 2, 1935, on letterhead of Fashion Originators Guild of America, Inc.

Commission's Exhibit 879.

Letter from A. M. Post to H. O. Bergdahl, dated August 12, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13759

Commission's Exhibit 880.

Five-page copy letter from A. M. Post to C. S. Goshen, c/o Bullock's Wilshire.

Commission's Exhibit 881.

Copy three-page letter from A. M. Post to Mr. Milburn The Emporium, dated August 12, 1935.

Commission's Exhibit 882.

Letter from A. M. Post to H. O. Bergdahl, dated August 21, 1935, on letterhead of Fashion Originators Guild of America, Inc. 13760

Commission's Exhibit 883.

Copy letter from A. M. Post to Taylor of Strawbridge & Clothier, dated August 21, 1935.

Commission's Exhibit 884.

Letter from Chas. C. Taylor of Strawbridge & Clothier to A. M. Post, dated August 28, 1935.

Commission's Exhibit 886.

13761

Copy telegram from John Shillito Co. to Starr-Friedlander, dated March 3, 1936.

Commission's Exhibit 887.

Copy telegram from Frank Starr-Friedlander, Inc., to John Shillito Co., dated May 3, 1936.

Commission's Exhibit 888.

Copy telegram dated March 12, 1936, from Louise Mulligan, Inc., to John Shillito Co.

Commission's Exhibit 889.

Letter from P. J. Reilly to Louis Hutzler, dated June 28, 1933.

Commission's Exhibit 890.

13763 Letter from Mr. L. Hutzler to Mr. P. J. Reilly, dated June 26, 1933.

Commission's Exhibit 891.

Letter from Theodore B. Griffith of L. S. Ayres & Co. to P. J. Reilly, dated June 24, 1933.

Commission's Exhibit 893.

Letter from W. H. Burchfield of Jos. Horne & Co to P. J. Reilly, dated June 24, 1933.

Commission's Exhibit 894.

13764 Original Declaration of Co-operation from Hutzler Bros. to Fashion Originators Guild of America, Inc., dated June 30, 1933.

Commission's Exhibit 895.

Copy Declaration of Co-operation from Stix, Baer & Fuller to Fashion Originators Guild of America, Inc., dated July 10, 1933.

Commission's Exhibit 896. 13765

Letter from A. M. Post to H. O. Bergdahl, dated November 23, 1935.

Commission's Exhibit 897.

Blank form of Declaration of Co-operation between Retailer and Fashion Originators Guild of America, Inc., enclosure in letter, Exhibit 896 above.

Commission's Exhibit 898.

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to H. O. Bergdahl, dated August 14, 1934. 13766

Commission's Exhibit 899.

Newspaper clipping, Women's Wear, dated March 21, 1935.

Commission's Exhibit 900.

Form letter from Association of Buying Offices, Inc., to A. M. Post, dated August 3, 1935.

Commission's Exhibit 901.

Copy letter dated August 8, 1935, from H. O. Bergdahl to A. M. Post. 13767

Commission's Exhibit 902.

Copy letter dated July 25, 1935, from Floyd C. Dillon of The Emporium to H. O. Bergdahl.

Commission's Exhibit 903.

Copy letter dated July 29, 1935, M. Knee of Bullocks to H. O. Bergdahl.

Commission's Exhibit 904.

Two-page letter dated August 9, 1935, from A. M. Post of Fashion Originators Guild of America, Inc., to H. O. Bergdahl.

Commission's Exhibit 905.

13769 Two-page letter dated September 21, 1935, from A. M. Post to F. & R. Lazarus, Inc.

Commission's Exhibit 906.

Memo dated October 4, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp., headed "Style Piracy Returns."

Commission's Exhibit 907.

Letter from A. M. Post to H. O. Bergdahl, dated October 8, 1935, re returns of Associated Merchandising Corp.

13770 **Commission's Exhibit 908.**

Letter from A. M. Post to H. O. Bergdahl, dated October 9, 1935.

Commission's Exhibit 909.

List headed, $6.75, $7.75 and $8.75 firms applying for membership in Fashion Originators Guild of America, Inc., dated October 4, 1935.

13771

Commission's Exhibit 910.

Two-page letter from A. M. Post to H. O. Bergdahl, dated October 25, 1935.

Commission's Exhibit 911.

Letter from A. M. Post to H. O. Bergdahl, dated October 31, 1935.

Commission's Exhibit 912.

Copy two-page letter to A. M. Post from H. O. Bergdahl, dated November 16, 1935. 13772

Commission's Exhibit 913.

Two-page letter from A. M. Post to H. O. Bergdahl, dated November 18, November 19, 1935.

Commission's Exhibit 914.

Three-page letter from A. M. Post to H. O. Bergdahl, dated November 21, 1935.

Commission's Exhibit 915.

Letter from H. O. Bergdahl to A. M. Post, dated November 18, 1935. 13773

Commission's Exhibit 916.

Five-page mimeographed copy letter from H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., dated November 27, 1935.

13774 *Statement of Exhibits.*

Commission's Exhibit 918.

Letter from H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., dated December 5, 1935.

Commission's Exhibit 920.

Three-page letter from H. O. Bergdahl to Oscar Webber of J. L. Hudson Co., dated December 4, 1935.

Commission's Exhibit 924.

13775 Copy letter from P. J. Reilly to A. M. Post, dated February 14, 1936.

Commission's Exhibit 925.

Three-page letter from A. M. Post to Reilly, dated February 17, 1936.

Commission's Exhibit 926.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re F. & R. Lazarus.

Commission's Exhibit 927.

13776 Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Associated Merchandising Corp.

Commission's Exhibit 928.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Rike-Kumler Co.

Commission's Exhibit 929.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re John Shillito Co.

Commission's Exhibit 930.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Herzfeld-Philipson Co.

Commission's Exhibit 931. 13778

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Bloomingdale Bros., Inc.

Commission's Exhibit 932.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Abraham & Straus.

Commission's Exhibit 933.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Emporium. 13779

Commission's Exhibit 934.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Wm. Filene's Sons Company.

Commission's Exhibit 935.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re J. L. Hudson Co.

Commission's Exhibit 936.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re H. C. Capwell Co.

13781 **Commission's Exhibit 937.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Dayton Co.

Commission's Exhibit 938.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Stix, Baer & Fuller.

Commission's Exhibit 939.

Notification to Members of non-cooperation with Fash-
13782 ion Originators Guild of America, Inc., re Strawbridge & Clothier, Philadelphia, Pa.

Commission's Exhibit 940.

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Ardmore, Pa.

13783

Commission's Exhibit 941.

Comparative Dollar Volume for 1935 of Fashion Originators Guild of America, Inc., and Affiliates as against entire Industry.

Commission's Exhibit 942-A.

Dollar Volume for 1935 of Junior Miss Members of Fashion Originators Guild of America, Inc.

Commission's Exhibit 942-B.

13784

1935 Recapitulation Sheet Members, Affiliates and Protective Affiliates.

Commission's Exhibit 942-C.

1935 Dress Volume—Protective Affiliates.

Commission's Exhibits 942-D, 942-E, 942-F, 942-G and 942-H.

1935—Dollar Volume of Dress Members.

Commission's Exhibits 942-I and 942-J.

1935—Dollar Volume of Sportswear Members.

13785

Commission's Exhibit 943.

Letter from A. M. Post to John Block, dated January 10, 1936.

Commission's Exhibit 944.

Copy letter from John Block to A. M. Post, dated January 13, 1936.

Commission's Exhibit 945.

Three-page letter from A. M. Post to John Block, dated January 15, 1936.

Commission's Exhibit 946.

Copy letter from John B. Swinney to Jack Goldston, dated July 3, 1936.

Commission's Exhibit 947.

13787 Letter from J. Goldston to J. B. Swinney, dated July 2, 1936.

Commission's Exhibit 948.

Letter from I. Himelhoch of Himelhoch Bros. & Co. to J. B. Swinney, dated June 29, 1936.

Commission's Exhibit 949.

Copy telegram from J. B. Swinney to Himelhoch Bros. & Co., dated June 29, 1936.

Commission's Exhibit 950.

13788 Copy letter from J. B. Swinney to Himelhoch Bros. & Co., dated June 27, 1936.

Commission's Exhibit 951.

Copy letter from Jack Goldston to J. B. Swinney, dated June 24, 1936.

Commission's Exhibit 952.

Memo from J. B. Swinney to Buyer of Junior Dresses.

13789

Commission's Exhibit 953.

Telegram from Himelhoch Bros. & Co. to Specialty Stores Association, Attention of J. B. Swinney, dated June 26, 1936.

Commission's Exhibit 954.

Notification to Shoppers by J. Goldston, undated, re Style No. 826 of Harris Dress Co.

Commission's Exhibit 955.

13790

Notification to Shoppers by J. Goldston, undated, re Style No. 829 of Harris Dress Co.

Commission's Exhibit 956.

Seven-page list entitled "Recapitulation of Red Cards Issued," dated October 22, 1935.

Commission's Exhibit 959.

Letter dated November 7, 1935, from J. M. Golby to Protective Affiliates in $6.75 $7.75 and $8.75 price range.

Commission's Exhibit 960.

13791

Sample form of letter which manufacturers may send to retailers who have not signed Declaration of Co-operation.

Commission's Exhibit 961.

Letter from J. M. Golby to David Rosenthal of Rosenthal & Kalman, dated November 26, 1935.

Commission's Exhibit 962.

Extract of Minutes of meeting of Fashion Originators Guild of America, Inc., dated December 3, 1935, concerning classics.

Commission's Exhibit 964.

Piracy Report, dated January 24, 1936, signed by J. Goldston.

Commission's Exhibit 965.

13793 Sketch No. 175, dated January 30, 1936, re Style No. 415 of Rosenthal & Kalman.

Commission's Exhibit 966.

Piracy Report, dated February 4, 1936 re Style No. 415 of Rosenthal & Kalman.

Commission's Exhibit 967.

Additional Piracy Report dated February 4, 1936, re Style No. 415 of Rosenthal & Kalman.

Commission's Exhibit 968.

13794 Advertisement of The Emporium in San Francisco Shopping News.

Commission's Exhibit 969.

Piracy Report, dated February 14, 1936, re Style No. 415 of Rosenthal & Kalman.

13795

Commission's Exhibit 970.

Letter from J. Goldston to Rosenthal & Kalman, dated February 26, 1936.

Commission's Exhibit 971.

Piracy Report, dated March 2, 1936 re Style No. 415 of Rosenthal & Kalman.

Commission's Exhibit 972.

Form letter from J. M. Golby to Protective Affiliates, dated February 13, 1936.

13796

Commission's Exhibit 973.

Telegram from A. M. Post to Rosenthal & Kalman, dated February 17, 1936.

Commission's Exhibit 974.

Form letter from J. M. Golby to Members of Fashion Originators Guild of America, Inc., dated February 17, 1936.

Commission's Exhibit 975.

13797

Form letter from J. M. Golby "To Members & Affiliates," re Blue Cards, dated February 18, 1936.

Commission's Exhibit 976.

Form of Declaration of Co-operation.

13798 *Statement of Exhibits.*

Commission's Exhibit 977.

Two-page Agreement between Fashion Originators Guild of America, Inc., and Protective Affiliates in $6.75, $7.75 and $8.75 price range.

Commission's Exhibit 978.

Telegram from Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, dated February 28, 1936.

Commission's Exhibit 979.

13799 Telegram from Fashion Originators Guild of America, Inc., to Rosenthal & Kalman, dated March 2, 1936.

Commission's Exhibit 980.

Two-page letter from J. M. Golby to Rosenthal & Kalman, dated March 16, 1936.

Commission's Exhibit 981.

Piracy Report, dated December 24, 1935, re Style No. 410 of Rosenthal & Kalman.

Commission's Exhibit 982.

13800 Letter from Jack Goldston to Rosenthal & Kalman, dated February 17, 1936.

Commission's Exhibit 983.

Piracy Report, re Style No. 409 of Rosenthal & Kalman, dated March 2, 1936.

13801

Commission's Exhibit 984.

Piracy Report, re Style No. 391 of Rosenthal & Kalman, dated March 2, 1936, and numbered 837.

Commission's Exhibit 985.

Letter from J. Goldston to Rosenthal & Kalman, dated February 25, 1936.

Commission's Exhibit 986.

Piracy Report, re Style No. 409 of Rosenthal & Kalman, dated February 1, 1936.

13802

Commission's Exhibit 987.

Piracy Report, re style No. 415 of Rosenthal & Kalman, dated February 28, 1936.

Commission's Exhibit 988.

Letter from J. Goldston to Rosenthal & Kalman, dated February 20, 1936.

Commission's Exhibit 989.

Form letter, dated February 19, 1936, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.

13803

Commission's Exhibit 990.

Form letter, dated February 22, 1936, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.

Commission's Exhibit 991.

Two-page form letter, dated February 29, 1936, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.

Commission's Exhibit 992.

Form letter, undated, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc., entitled "Acknowledgment Form for Members."

13805 **Commission's Exhibit 993.**

Notification to members re showing B. Foreman or Dayton Company.

Commission's Exhibit 994.

Form letter from J. M. Golby to members and affiliates of Fashion Originators Guild of America, Inc., dated May 11, 1936.

Commission's Exhibit 995.

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated November 4, 1935.

13806

Commission's Exhibit 996.

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated November 13, 1935.

Commission's Exhibit 997.

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated December 3, 1935.

Commission's Exhibit 998.

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated February 11, 1936.

Commission's Exhibit 999. 13808

Form letter entitled "First Letter with Declaration on Names" sent in by Fashion Originators Guild of America, Inc., signed by J. M. Golby.

Commission's Exhibit 1000.

Follow-up letter on names sent in by Dress Creators League Members and Affiliates, undated.

Commission's Exhibit 1001.

Form letter to retailers by J. M. Golby, undated.

Commission's Exhibits 1002-A to 1002-J. 13809

Correspondence and file on Goodwins.

Commission's Exhibit 1002-A.

Authorization for "red card" of Goodwins and Davidson Bros., dated January 7, 1936.

13810 *Statement of Exhibits.*

Commission's Exhibit 1002-B.

Letter from A. M. Post to Goodwins, dated January 7, 1936.

Commission's Exhibit 1002-C.

Report of refusal or failure to co-operate from Detroit Shopper re Goodwins, dated January 2, 1936.

Commission's Exhibit 1002-D.

13811 Letter from J. Goldston to Mrs. Miller, Detroit Shopper of Fashion Originators Guild of America, Inc., dated December 26, 1936.

Commission's Exhibit 1002-E.

Report of refusal or failure to co-operate from Detroit Shopper re Goodwins, dated December 26, 1935.

Commission's Exhibit 1002-F.

Letter from J. M. Golby to Mrs. Miller, dated December 5, 1935.

13812 **Commission's Exhibit 1002-G.**

Letter from Davidson Bros. (Goodwins) to Fashion Originators Guild of America, Inc., dated December 5, 1935.

Commission's Exhibit 1002-H.

Letter from J. M. Golby to Mrs. Miller, dated November 25, 1935.

13813

Commission's Exhibit 1002-I.

Authorization for red card notice of non-co-operation re Davidson Bros.

Commission's Exhibit 1002-J.

Letter from J. M. Golby to Goodwins, dated September 6, 1935.

Commission's Exhibit 1002-K.

Letter from Mrs. Miller to J. Goldston, dated July 9, 1935.

13814

Commission's Exhibit 1002-L.

Declaration of Co-operation with Fashion Originators Guild of America, Inc., of Goodwins, dated July 30, 1935.

Commission's Exhibit 1003-A.

Letter from J. H. Green, Secretary, Retail Merchants Association of Pittsburgh, Pa., to J. M. Golby, dated March 24, 1934.

Commission's Exhibit 1003-B.

13815

Reply from J. M. Golby to J. H. Green, dated March 26, 1934.

Commission's Exhibit 1004.

Letter from Irene Blunt, Director, Industrial Design Registration Bureau to the Trade, dated December 17, 1935.

Commission's Exhibit 1005-A.

Letter from Miss Lapidus to Jack Goldston, dated November 1, 1935.

Commission's Exhibit 1005-B.

Letter from J. M. Golby to I. J. Shearer & Bro., dated November 6, 1935.

Commission's Exhibits 1006-A and 1006-B.

13817 Letter from J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., dated August 8, 1935.

Commission's Exhibit 1006-C.

Letter from J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., dated August 21, 1935.

Commission's Exhibit 1006-D.

Letter from J. A. Leavell of Marie Leavell to J. M. Golby, dated August 24, 1935.

Commission's Exhibit 1006-E.

13818 Letter from J. M. Golby to J. A. Leavell, dated August 26, 1935.

Commission's Exhibit 1006-F.

Letter from J. M. Golby to Herbert Nurse of Dreyfuss & Sons, dated August 26, 1935.

13819

Commission's Exhibit 1006-G.

Letter from J. M. Golby to Ben Wittenberg of La Mode Co., dated August 26, 1935.

Commission's Exhibit 1006-H.

Letter from J. M. Golby to Herman Phillipson of Phillipsons, Inc., dated August 26, 1935.

Commission's Exhibit 1006-I.

Letter from J. M. Golby to E. P. Simmons of Sanger Bros., dated August 26, 1935.

13820

Commission's Exhibit 1006-J.

Letter from B. H. Wittenberg to J. M. Golby, dated August 29, 1935.

Commission's Exhibit 1006-K.

Letter from E. P. Simmons of Sanger Bros. to J. M. Golby, dated August 29, 1935.

Commission's Exhibits 1006-L and 1006-M.

Letter from J. M. Golby to H. Stanley Marcus, dated September 3, 1935.

13821

Commission's Exhibit 1007.

Report of refusal or failure to co-operate re Ed. Shuster Co. by Dorothy Horowitz, Shopper, dated January 10, 1936.

13822 *Statement of Exhibits.*

Commission's Exhibit 1008-A.

Letter from E. Bell of Esterlene Frocks on letterhead of Wheeler's Shoe Store, Inc., stationery to Fashion Originators Guild of America, Inc., dated January 27, 1936.

Commission's Exhibit 1008-B.

Letter from J. M. Golby to Herbert S. Keller, dated January 31, 1936.

Commission's Exhibits 1008-C and 1008-D.

13823 Letter from Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., dated February 1, 1936.

Commission's Exhibit 1008-E.

Letter from Fashion Originators Guild of America, Inc., to Esterlene Frocks, dated February 4, 1936.

Commission's Exhibit 1009-A.

Letter from Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., dated January 24, 1936.

13824

Commission's Exhibits 1009-B and 1009-C.

Letter from Weisman, Quinn, Allan & Spett to Florence Hertz, dated January 24, 1936.

Commission's Exhibit 1009-D.

Letter from Fashion Originators Guild of America, Inc., to Herbert S. Keller, dated January 22, 1936.

13825

Commission's Exhibit 1009-E.

Letter from Sportcraft, Inc., to Fashion Originators Guild of America, Inc., dated January 21, 1936.

Commission's Exhibit 1009-F.

Letter from Hertz-Lang to Sportcraft, Inc., dated January 18, 1936.

Commission's Exhibit 1009-G.

Letter from Sportcraft, Inc., to Fashion Originators Guild of America, Inc., dated January 20, 1936. 13826

Commission's Exhibit 1009-H.

Letter from Hertz-Lang to Sportcraft, Inc., undated.

Commission's Exhibit 1009-I.

Authorization for red card of Hertz-Lang, dated January 8, 1936.

Commission's Exhibit 1009-J.

Letter from E. A. Fletcher of Michigan Avenue Guild to Fashion Originators Guild of America, Inc., dated January 6, 1936. 13827

Commission's Exhibit 1010.

Copy letter from A. M. Post of Fashion Originators Guild of America, Inc., to Ernst Kern Co., dated February 7, 1936.

13828 *Statement of Exhibits.*

Commission's Exhibit 1011-A.

Report on refusal or failure to co-operate, dated February 7, 1936, re J. L. Hudson & Co., by Mrs. Miller, Shopper.

Commission's Exhibit 1011-B.

Copy day letter from Fashion Originators Guild of America, Inc., to Shopper, dated February 8, 1936.

Commission's Exhibit 1011-C.

13829 Letter from Fashion Originators Guild of America, Inc., to Shopper, dated February 10, 1936.

Commission's Exhibit 1011-D.

Letter from Shopper to J. Goldston, dated February 10, 1936.

Commission's Exhibits 1011-E and 1011-F.

Letter from Shopper to A. M. Post, dated February 12, 1936.

Commission's Exhibit 1011-G.

13830 Authorization for red card, dated February 13, 1936, of J. L. Hudson & Co.

Commission's Exhibit 1012-A.

Telegram from Miss Brady, Shopper, to J. Goldston, re R. H. White, undated.

13831

Commission's Exhibit 1012-B.

Memorandum from Miss Brady, Shopper, to A. M. Post and J. Goldston, dated February 4, 1936.

Commission's Exhibit 1012-C.

Telegram from Miss Brady to Fashion Originators Guild of America, Inc., dated February 4, 1936.

Commission's Exhibit 1012-D.

Memorandum from A. M. Post to Miss Brady, dated February 5, 1936.

13832

Commission's Exhibit 1012-E and 1012-F.

Report on refusal to co-operate of R. H. White, dated February 6, 1936.

Commission's Exhibit 1012-G.

Letter, dated February 6, 1936, from Weisman, Quinn, Allan & Spett to A. M. Post.

Commission's Exhibit 1012-H.

Letter dated February 6, 1936, from J. M. Golby to B. F. Raphael of R. H. White Co., dated February 6, 1936.

13833

Commission's Exhibit 1012-I.

Authorization for red card, dated February 6, 1936, of R. H. White Co.

Commission's Exhibit 1013-A.

Report on refusal to co-operate, dated January 2, 1936, of The Boston Store, by Dorothy Horowitz, Shopper.

Commission's Exhibit 1013-B.

Letter from Bender & Hamburger, Inc., to Fashion Originators Guild of America, Inc., dated January 4, 1936.

Commission's Exhibit 1013-C.

13835 Letter from Fashion Originators Guild of America, Inc., to The Boston Store, dated January 6, 1936.

Commission's Exhibit 1013-D.

Letter from Fashion Originators Guild of America, Inc., to The Boston Store, dated January 13, 1936.

Commission's Exhibit 1013-E.

Letter from Herzfeld-Phillipson & Co. on letterhead of The Boston Store to Fashion Originators Guild of America, Inc., dated January 15, 1936.

13836 **Commission's Exhibit 1013-F.**

Letter from A. M. Post to The Boston Store, attention Mr. Rowse, dated January 17, 1936.

Commission's Exhibit 1013-G.

Report on refusal to co-operate, dated February 17, 1936, of Herzfeld-Phillipson Co., by Dorothy Horowitz.

13837

Commission's Exhibit 1014-A.

Report on refusal to co-operate, dated November 7, 1935, The Dayton Company, by Virginia McDonald, Shopper.

Commission's Exhibit 1014-B.

Memorandum from Fashion Originators Guild of America, Inc., to Miss McDonald, Shopper, dated November 11, 1935.

Commission's Exhibit 1014-C.

13838

Report on refusal to co-operate, dated November 22, 1935, re The Dayton Company.

Commission's Exhibit 1014-D.

Letter from A. M. Post to Miss McDonald, Shopper, dated November 23, 1935.

Commission's Exhibit 1014-E.

Report on refusal to co-operate, dated November 26, 1935, re The Dayton Company.

Commission's Exhibits 1014-F and 1014-G.

13839

Letter from Fashion Originators Guild of America, Inc., to Mrs. Chase of The Dayton Company, dated December 2, 1935.

Commission's Exhibits 1015-A and 1015-B.

Letter from Grace Sinclair, Shopper, re Stix, Baer & Fuller, to J. Goldston, dated November 18, 1935.

13840 *Statement of Exhibits.*

Commission's Exhibit 1015-C.

Report on refusal to co-operate, dated November 18, 1935, of Stix, Baer & Fuller.

Commission's Exhibit 1015-D.

Memorandum from Fashion Originators Guild of America, Inc., to Miss Sinclair, Shopper, dated November 19, 1935.

Commission's Exhibit 1016.

13841

Declaration of Co-operation of McGlenn's of Minneapolis.

Commission's Exhibit 1017.

Declaration of Co-operation of Carolellan's of Salt Lake City.

Commission's Exhibit 1018-A.

Telegram from H. C. Capwell Co. to Fashion Originators Guild of America, Inc., dated October 23, 1935.

Commission's Exhibit 1018-B.

13842

Copy telegram to H. C. Capwell Co. from A. M. Post, dated October 22, 1935.

Commission's Exhibits 1018-C and 1018-D.

Copy letter from A. M. Post to Mr. Dinklespiel of H. C. Capwell Co., dated October 12, 1935.

13843

Commission's Exhibit 1018-E.

Letter from A. M. Post to H. O. Bergdahl, dated October 12, 1935.

Commission's Exhibits 1019-A and 1019-B.

Letter to Mrs. A. M. Levy of John Shillito & Co. from A. M. Post, dated January 11, 1936.

Commission's Exhibit 1019-C.

Letter from Mrs. A. M. Levy to A. M. Post, dated January 9, 1936.

13844

Commission's Exhibits 1020-A to 1020-D.

Letter from A. M. Post to Ben Raphael of R. H. White Co., dated October 25, 1935.

Commission's Exhibit 1020-E.

Letter from B. Raphael to A. M. Post, dated October 30, 1935.

Commission's Exhibit 1021-A.

Letter from Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., dated November 9, 1935.

13845

Commission's Exhibit 1021-B.

Copy letter from Wm. Filene's Sons Co. to Constantine Dress Co. of Boston, dated November 7, 1935.

Commission's Exhibit 1021-C.

Letter from J. Goldston to A. Wright of Wm. Filene's Sons Co., dated December 5, 1935.

13846 *Statement of Exhibits.*

Commission's Exhibit 1021-D.

Letter from Wright of Wm. Filene's Sons Co. to A. M. Post, dated December 3, 1935.

Commission's Exhibits 1021-E and 1021-F.

Letter from A. M. Post to A. Wright of Wm. Filene's Sons Co., dated November 27, 1935.

Commission's Exhibit 1021-G.

13847 Letter from A. M. Post to Miss Brady, Shopper, dated November 27, 1935.

Commission's Exhibit 1021-H.

Letter from A. M. Post to A. Wright of Wm. Filene's Sons Co., dated December 12, 1935.

Commission's Exhibit 1021-I.

Memorandum from A. M. Post for the file, dated January 29, 1936.

Commission's Exhibit 1022-A.

13848 Letter from J. Goldston to Earl Miller of Wm. Taylor Son & Co., dated March 21, 1935.

Commission's Exhibit 1022-B.

Letter from Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., dated March 23, 1935.

13849

Commission's Exhibits 1022-C and 1022-D.

Letter draft from A. M. Post to Richard G. Roth of Wm. Taylor Son & Co., dated July 24, 1935.

Commission's Exhibit 1022-E.

Telegram from J. Goldston to E. Miller of Wm. Taylor Son & Co., dated September 5, 1935.

Commission's Exhibit 1022-F.

Letter of Mrs. Joseph, Shopper, to J. Goldston, dated September 5, 1935.

13850

Commission's Exhibit 1022-G.

Letter from E. Miller to J. Goldston, dated September 5, 1935.

Commission's Exhibit 1022-H.

Letter from J. M. Golby to W. E. Miller, dated October 3, 1935.

Commission's Exhibit 1022-I.

Letter from W. E. Miller to J. Goldston, dated October 2, 1935.

13851

Commission's Exhibit 1022-J.

Letter from Fashion Originators Guild of America, Inc., to W. E. Miller, dated January 21, 1936.

13852

Commission's Exhibit 1022-K.

Letter from Mrs. Joseph to J. Goldston, dated January 20, 1936.

Commission's Exhibit 1022-L.

Letter from Broadway Dance Frocks, Inc., to Wm. Taylor Sons & Co., dated January 16, 1936.

Commission's Exhibit 1023-A.

Authorization for red card re Strawbridge & Clothier, dated February 6, 1936.

13853

Commission's Exhibit 1023-B.

Letter from Miss Joyce, Shopper, to J. Goldston, dated February 8, 1936.

Commission's Exhibit 1023-C.

Memorandum of phone conversation by A. M. Post re Strawbridge & Clothier, dated February 10, 1936.

Commission's Exhibit 1023-D.

Memorandum from Fashion Originators Guild of America, Inc., to Miss Joyce, dated February 5, 1936, re Strawbridge & Clothier.

13854

Commission's Exhibit 1023-E.

Return receipt for registered letter to Strawbridge & Clothier.

Commission's Exhibit 1023-F.

Report of refusal or failure to co-operate by Strawbridge & Clothier, dated February 3, 1936.

13855

Commission's Exhibit 1023-G.

Letter from Miss Joyce to J. Goldston, dated February 7, 1936.

Commission's Exhibit 1023-H.

Summary of a few of the 11,000 stores which have indicated their desire to co-operate with Fashion Originators Guild of America, Inc.

Commission's Exhibit 1023-I.

13856

Letter from A. M. Post to H. J. Tiley of Strawbridge & Clothier, dated February 7, 1936.

Commission's Exhibit 1023-J.

Letter from Miss Joyce to A. M. Post, dated January 30, 1936.

Commission's Exhibit 1023-K.

Letter from Miss Joyce to A. M. Post, dated January 24, 1936.

Commission's Exhibit 1023-L.

13857

Letter from Miss Joyce to A. M. Post, dated January 17, 1936.

Commission's Exhibit 1023-M.

Letter from J. Goldston to Miss Joyce, dated May 21, 1935.

13858 *Statement of Exhibits.*

Commission's Exhibit 1023-N.

Letter from Miss Joyce to J. Goldston, dated May 20, 1935.

Commission's Exhibit 1023-O.

Letter from J. Goldston to Miss Joyce, dated September 4, 1935.

Commission's Exhibit 1023-P.

13859 Letter from J. Goldston to Miss Joyce, dated August 28, 1935.

Commission's Exhibit 1023-Q.

Letter from Miss Joyce to J. Goldston, dated August 27, 1935.

Commission's Exhibit 1023-R.

Letter from Fashion Originators Guild of America, Inc., to Miss Joyce, dated November 14, 1935.

Commission's Exhibit 1023-S.

13860 Letter from Miss Joyce to J. Goldston, dated November 13, 1935.

Commission's Exhibit 1023-T.

Telegram from A. M. Post to Miss Joyce, dated November 13, 1935.

Commission's Exhibit 1023-U. 13861

Memorandum from J. Goldston to Miss Joyce, dated October 11, 1935.

Commission's Exhibit 1023-V.

Memorandum from J. Goldston to Miss Joyce, dated November 7, 1935.

Commission's Exhibit 1024-A.

Letter from Miss Lapedus to J. Goldston, dated September 3, 1935.

Commission's Exhibit 1024-B. 13862

Telegram from A. M. Post to Hutzler Bros., dated September 4, 1935.

Commission's Exhibits 1024-C to 1024-H.

Letter to Chas. Hutzler from A. M. Post, dated September 7, 1935.

Commission's Exhibit 1024-I.

Letter from Chas. Hutzler to A. M. Post, dated September 4, 1935.

Commission's Exhibit 1024-J. 13863

Copy telegram from A. M. Post to Chas. Hutzler, dated September 4, 1935.

Commission's Exhibits 1024-K and 1024-L.

Copy letter from A. M. Post to Chas. Hutzler, dated September 30, 1935.

Commission's Exhibit 1024-M.

Letter from A. M. Post to Miss Lapedus, undated.

Commission's Exhibit 1024-N.

Letter from A. M. Post to Chas. Hutzler, dated October 3, 1935.

Commission's Exhibit 1024-O.

Letter from A. M. Post to L. R. Bonwit, dated October 3, 1935.

13865

Commission's Exhibit 1024-P.

Letter from Miss Lapedus to J. Goldston, dated October 21, 1935.

Commission's Exhibit 1024-Q.

Letter memorandum from J. Goldston to Miss Lapedus, dated September 23, 1936.

Commission's Exhibit 1024-R.

Letter from Miss Lapedus to J. Goldston, dated August 22, 1936.

13866

Commission's Exhibit 1025-A.

Letter from J. Goldston to Miss Lapedus, dated January 6, 1936.

Commission's Exhibit 1025-B.

Letter from Miss Lapedus to J. Goldston, dated January 3, 1936.

Commission's Exhibit 1026.

Letter memorandum from Miss Tuttle of Fashion Originators Guild of America, Inc., to Miss Lapedus.

Commission's Exhibit 1027-A.

Letter from Fashion Originators Guild of America, Inc., to The Gaxton Co., attention S. Lampell, dated January 30, 1934. 13868

Commission's Exhibit 1027-B.

Letter from Miss Lampell of The Gaxton Co. to Fashion Originators Guild of America, Inc., J. M. Golby, dated January 29, 1934.

Commission's Exhibit 1027-C.

Letter from Fashion Originators Guild of America, Inc., J. M. Golby, to Miss Lampell of The Gaxton Co., dated January 23, 1934.

13869

Commission's Exhibit 1028-A.

Letter from Fashion Originators Guild of America, Inc., to Martin B. Kohn of Hochshild-Kohn, Inc., dated March 19, 1934.

Commission's Exhibit 1028-B.

Letter from Fashion Originators Guild of America, Inc., to Hochshild-Kohn, Inc., dated March 14, 1934.

13870

Commission's Exhibit 1029.

Letter from J. Goldston to The Hub Co. of Baltim attention Mr. Pollack, re defense of lawsuits.

Commission's Exhibit 1030.

Dollar volume of business of Dress Industry of Un States for 1934, compiled by Research Department Dress Joint Board.

Commission's Exhibit 1031.

13871

Dollar volume of business of Dress Industry of Uni States for 1935, compiled by Research Department Dress Joint Board.

Commission's Exhibit 1032.

Recapitulation of card files, about April 1, 1936.

Commission's Exhibit 1033.

Recapitulation of registration of styles of members Fashion Originators Guild of America, Inc., from Jun 1935, to December 17, 1936.

Commission's Exhibit 1034.

13872

Application of Rosenthal & Kalman, Inc., for prote tion against style piracy.

Commission's Exhibit 1035.

Declaration of Co-operation of Ernst Kern Co., date June 18, 1936.

13873

Commission's Exhibit 1036.

Declaration of Co-operation of Holman's Department Store, Pacific Grove, dated April 8, 1936.

Commission's Exhibit 1037.

Two-page letter from Holman's Department Store to Weinberg, Weinberg & Alpern, dated December 28, 1935.

Commission's Exhibit 1038.

Letter to Holman's Department Store from Weinberg, Weinberg & Alpern, dated January 2, 1936.

13874

Commission's Exhibit 1039.

Letter from Weinberg, Weinberg & Alpern to Fashion Originators Guild of America, Inc., Inc., dated January 2, 1936.

Commission's Exhibit 1040.

Two-page letter from J. M. Golby of Fashion Originators Guild of America, Inc., to W. R. Holman of Holman's Department Store, dated January 3, 1936.

Commission's Exhibit 1050.

13875

Total sales volume of 162 dress manufacturers who were during 1935 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business."

Commission's Exhibit 1051.

Total sales volume of seventy-eight dress manufacturer who were during 1934 members of Fashion Originator Guild of America, Inc., broken down into "Dress Busi ness" and "Other Than Dress Business."

Commission's Exhibit 1052.

Total sales volume of sixty-two dress manufacturer who were during 1933 members of Fashion Originator Guild of America, Inc., broken down into "Dress Busi
13877 ness" and "Other Than Dress Business."

RESPONDENTS' EXHIBITS.

Respondents' Exhibit 4.

Order of R. H. White on Noxall Waist & Dress Co., dated September 9, 1935.

Respondents' Exhibit 5.

Order of Kaufmann's on Noxall Waist & Dress Co., dated September 18, 1935.

13878

Respondents' Exhibit 6.

Order of Joseph Horne on Noxall Waist & Dress Co., dated September 13, 1935.

Respondents' Exhibit 7.

Credit memorandum of Noxall Waist & Dress Co. to Luries, dated September 24, 1935.

Respondents' Exhibit 8.

Original letter of co-operation, Wm. Filene's Sons Co., signed by Arthur W. Wright, dated June 29, 1933.

Respondents' Exhibit 9.

Copy of letter from Fashion Originators Guild of America, Inc., to Mr. Wright of Wm. Filene's Sons Co. acknowledging receipt of Respondents' Exhibit 8, dated July 1, 1933.

Respondents' Exhibit 10.

Letter from Wm. Filene's Sons Co. over signature of Arthur W. Wright to Fashion Originators Guild of America, Inc., dated July 5, 1933. 13880

Respondents' Exhibit 11.

Letter from Fashion Originators Guild of America, Inc., signed by J. M. Golby to A. W. Wright of Wm. Filene's Sons Co., dated July 7, 1933.

Respondents' Exhibit 12-A.

Letter from A. W. Wright of Wm. Filene's Sons Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated August 9, 1933.

Respondents' Exhibit 12-B. 13881

Instructions to dress buyers by A. W. Wright, dated August 8, 1933, enclosed in Respondents' Exhibit 12-A.

Respondents' Exhibit 12-C.

Letter from A. W. Wright of Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., dated August 8, 1933.

Respondents' Exhibits 12-D and 12-E.

Form letter of J. M. Golby of Fashion Originators Guild of America, Inc., to trade, dated August 3, 1933.

Respondents' Exhibit 17.

Letter from H. J. Tily of Strawbridge & Clothier to A. M. Post of Fashion Originators Guild of America, Inc., dated February 8, 1936.

Respondents' Exhibit 18-A.

Letter from A. M. Post to H. J. Tily, dated February 7,
13883 1936.

Respondents' Exhibit 18-B.

Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild of America, Inc., either by direct letter or by signing the Declaration of Co-operation.

Respondents' Exhibit 19.

Notification re refusal to co-operate of Strawbridge & Clothier, dated February 6, 1936.

Respondents' Exhibit 20.

13884 Copy of warranty stamp suggested by the Fashion Originators Guild of America, Inc., to be used by the retailer.

Respondents' Exhibit 24.

Letter of W. E. Miller of Wm. Taylor & Son to Fashion Originators Guild of America, Inc., listing outstanding orders at time of stipulation entered in Filene suit against Fashion Originators Guild of America, Inc., dated March 11, 1936.

Respondents' Exhibit 25.

Letter of W. E. Miller of Wm. Taylor & Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 21, 1936.

Respondents' Exhibit 26.

Letter of W. E. Miller of Wm. Taylor & Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 16, 1936.

Respondents' Exhibit 27.

Letter of W. E. Miller of Wm. Taylor & Son to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 23, 1936. 13886

Respondents' Exhibit 28.

Telegram of W. E. Miller of Wm. Taylor & Son to A. M. Post, dated March 13, 1936.

Respondents' Exhibit 29.

Telegram of W. E. Miller of Wm. Taylor & Son to A. M. Post, dated March 12, 1936.

Respondents' Exhibit 30.

Copy of letter from J. M. Golby of Fashion Originators Guild of America, Inc., to W. E. Miller of Wm. Taylor & Son, dated March 19, 1936. 13887

Respondents' Exhibit 31.

Copy of telegram from A. M. Post to W. E. Miller of Wm. Taylor & Son, dated March 12, 1936.

Respondents' Exhibit 32.

Copy of telegram from A. M. Post to W. E. Miller Wm. Taylor & Son, dated March 13, 1936.

Respondents' Exhibit 33.

Letter from Wm. Taylor & Son to J. Goldston Fashion Originators Guild of America, Inc., dated Mar 4, 1935.

Respondents' Exhibit 34.

13889 Original Declaration of Co-operation, signed C. Strong, General Manager of Wm. Taylor & Son, date June 30, 1933.

Respondents' Exhibit 35.

Letter from W. E. Miller of Wm. Taylor & Son to J. M Goiby of Fashion Originators Guild of America, Inc dated August 9, 1933.

Respondents' Exhibit 37.

Letter from P. J. Reilly to A. M. Post, dated Febru ary 14, 1936.

13890

Respondents' Exhibit 38-A.

Telegram from Wm. Taylor & Son to Fashion Origi nators Guild of America, Inc., dated February 17, 1936.

Respondents' Exhibit 38-B.

Two-page night letter from Fashion Originators Guild of America, Inc., to Wm. Taylor Son & Co., dated Feb ruary 16, 1936.

13891

Respondents' Exhibit 39.

Letter from R. G. Roth of Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., dated February 21, 1936.

Respondents' Exhibits 40-A and 40-B.

Letter to R. G. Roth of Wm. Taylor Son & Co. from A. M. Post of Fashion Originators Guild of America, Inc., dated February 26, 1936.

Respondents' Exhibit 41.

13892

Two-page advertisement by Fashion Originators Guild of America, Inc., in Women's Wear Daily, dated February 24, 1936.

Respondents' Exhibits 43-A and 43-B.

Two-page letter from A. M. Post of Fashion Originators Guild of America, Inc., to Mr. McDonald of J. L. Hudson Co., dated November 12, 1936.

Respondents' Exhibit 44.

Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, announcing itself in favor of protection of styles.

13893

Respondents' Exhibit 45.

Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, announcing co-operation of Dress Creators League of America with Fashion Originators Guild of America, Inc., on style piracy, dated August 9, 1933.

Respondents' Exhibit 46.

Letter of Associated Buying Offices signed by H. Bergdahl and M. J. Greenebaum as a special commit to Fashion Originators Guild of America, Inc., dated gust 3, 1935.

Respondents' Exhibit 52.

Telegram from Wyzanski of Mandel Bros. of Chic to New York office, dated May 14, 1936.

13895 **Respondents' Exhibit 53.**

Telegram from P. J. Reilly to Stanley Stone of T Boston Store, dated March 10, 1936.

Respondents' Exhibit 54.

Telegram from L. C. Dillon of The Boston Store to M. Post, dated March 12, 1936.

Respondents' Exhibit 55.

Telegram from A. M. Post to L. C. Dillon of The Bost Store, dated March 12, 1936.

13896 **Respondents' Exhibit 56.**

Telegram from L. C. Dillon to A. M. Post, dated Mar 12, 1936.

Respondents' Exhibit 57.

Telegram from A. M. Post to L. C. Dillon, dated Mar 13, 1936.

13897

Respondents' Exhibit 58.

Letter from Roy H. Bjorkman to J. M. Golby, dated July 2, 1935.

Respondents' Exhibit 59.

Letter from Roy H. Bjorkman to A. Sapero of Shapiro & Baer, dated July 2, 1935.

Respondents' Exhibits 60-A and 60-B.

Declaration of Co-operation with Fashion Originators Guild of America, Inc., signed by Minneapolis Guild of Fashion Retailers, Roy H. Bjorkman, Chairman. 13898

Respondents' Exhibit 62.

Letter from D. Donovan of The Dayton Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated June 7, 1934.

Respondents' Exhibit 63.

Letter from D. Donovan of The Dayton Co. to H. O. Bergdahl of The Associated Merchandising Corporation, dated July 12, 1935.

13899

Respondents' Exhibits 64-A and 64-B.

Two-page letter from H. O. Bergdahl to D. Donovan, dated August 28, 1936.

Respondents' Exhibit 65.

Blank form for Piracy Committee Report.

Respondents' Exhibit 66.

Blank form of report of refusal or failure to co-operate.

Respondents' Exhibits 67-A, 67-B and 67-C.

Removal slips from old form of Shoppers' Return Book.

Respondents' Exhibits 68-A, 68-B and 68-C.

Sample forms for shopper's report on shopping.

13901

Respondents' Exhibit 69.

General letter from J. Goldston to shoppers, dated April 2, 1936.

Respondents' Exhibit 70.

Sample sketch of copy and notification to shopper of dress of Feinberg & Weisen.

Respondents' Exhibit 71.

Sample sketch of copy and notification to shopper, No. 1020, Worthmore Co.

13902

Respondents' Exhibit 72.

Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, dated November 7, 1935.

13903

Respondents' Exhibit 73.

Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, dated November 20, 1935.

Respondents' Exhibit 74.

Letter from H. W. Lund, Controller of Klein's of Peoria, Illinois, to Henry Junge, Jr., of the Federal Trade Commission, Chicago office, dated December 16, 1935.

Respondents' Exhibit 75.

13904

Letter of J. M. Golby to C. F. Roycroft of Ladies' Ready to Wear Guild of Baltimore, dated October 31, 1935.

Respondents' Exhibit 76.

Minutes of Board of Control of Ladies' Ready to Wear Guild of Baltimore, dated September 23, 1933.

Respondents' Exhibit 77.

Declaration of Co-operation in form of a letter of John Shillito & Co., dated July 1, 1933.

Respondents' Exhibit 78.

13905

Letter from L. R. Minster, Vice-President of John Shillito & Co., to Fashion Originators Guild of America, Inc., dated February 29, 1936.

Respondents' Exhibit 79.

Copy of two-page letter from A. M. Post to Irving Plaut of John Shillito & Co., dated May 21, 1935.

Respondents' Exhibit 80.

Telegram from Fashion Originators Guild of America, Inc., to L. R. Minster of John Shillito & Co., dated March 12, 1936.

Respondents' Exhibit 81.

Telegram from L. R. Minster of John Shillito & Co. to Fashion Originators Guild of America, Inc., dated March 12, 1936.

13907 **Respondents' Exhibit 82.**

Copy of advertisement of John Shillito & Co. inserted in Cincinnati Enquirer, dated November 6, 1935.

Respondents' Exhibit 86.

Two-page letter to M. Rentner from B. Foreman of B. Foreman Co. constituting their declaration of co-operation, dated December 29, 1932.

Respondents' Exhibit 88.

Declaration of Co-operation of the Associated Merchandising Corporation signed by H. O. Bergdahl, received
13908 July 5, 1933.

Respondents' Exhibit 89.

Letter from H. O. Bergdahl to J. M. Golby, dated October 19, 1934.

13909

Respondents' Exhibit 90.

Advertisement inserted by Raphael Weill & Co., "The White House," in the San Francisco Shopping News, dated October 15, 1934.

Respondents' Exhibit 91.

Advertisement inserted by Abraham & Straus in New York Herald-Tribune, dated March 10, 1935.

Respondents' Exhibit 92.

13910

Letter from J. M. Golby to H. O. Bergdahl of Associated Merchandising Corporation, dated October 29, 1935.

Respondents' Exhibit 93.

Five-page report and notes of Mr. Rosensweig of Associated Merchandising Corporation, Assistant Buyer, dated March 4, 1936.

Respondents' Exhibit 97.

First application of Rosenthal & Kalman to Fashion Originators Guild of America, Inc., for protection against style piracy.

13911

Respondents' Exhibits 98-A and 98-B.

Certificate of Incorporation of Fashion Originators Guild of America, Inc.

Respondents' Exhibit 100.

Letter from H. J. Tily of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June 30, 1933.

Respondents' Exhibit 101.

Declaration of Co-operation of Associated Merchandising Corporation on behalf of Bullock's, signed by H. O. Bergdahl, received July 5, 1933.

Respondents' Exhibit 102.

Declaration of Co-operation in form of letter from C. J. Larsen of The Dayton Co. to Fashion Originators Guild of America, Inc., dated July 1, 1933.

13913 **Respondents' Exhibit 122.**

Card catalogue of Dress Manufacturers, 1934.

Respondents' Exhibit 123.

Recapitulation of available resources, 1934, taken from Official Records of Dress Code Authority, N.R.A.

Respondents' Exhibit 124.

Card catalogue of Dress Manufacturers, 1935.

Respondents' Exhibit 125.

13914 List of non-Guild manufacturers and their dollar volume from credit agencies making merchandise $16.75 and up wholesale.

Respondents' Exhibit 126.

Names of firms appearing on Commission's Exhibit 450-H making merchandise, wholesale cost, under $16.50 per garment as well, and their dollar volume derived from credit agencies.

Order and Stipulation as to Exhibits.

13915

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

FASHION ORIGINATORS'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.; Petitioners, v. FEDERAL TRADE COMMISSION, Respondent.	DOCKET 16581	13916

Upon the annexed stipulation of counsel for the parties herein,

IT IS ORDERED that the exhibits certified as a part of the record in this case be not printed but that they be accepted and filed as physical exhibits to be used at the argument, in the briefs of counsel and in the decision of this case, as though the said exhibits had been printed. 13917

HARRIE B. CHASE,
U. S. C. J.

Jan. 18, 1940.

13918

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

FASHION ORIGINATORS'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.,

Petitioners,

13919

v.

FEDERAL TRADE COMMISSION,

Respondent.

IT IS HEREBY STIPULATED by and between the attorneys for the Federal Trade Commission and the attorneys for the petitioners, that the exhibits in the record now before this court be not printed, but that the originals of these exhibits may be filed physically with the court and may be used in the argument or printed as an appendix to the briefs of counsel, the same as though said exhibits had been printed.

Dated this 17th day of January, 1940.

13920

W. T. KELLEY,
Chief Counsel for Federal Trade Commission.

MARTIN A. MORRISON,
Assistant Chief Counsel for Federal Trade Commission.

EVERETT F. HAYCRAFT,
Attorney for Federal Trade Commission.

WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Petitioners.

Stipulation as to Omissions from Record.

13921

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

FASHION ORIGINATOR'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.,

Petitioners,

against

FEDERAL TRADE COMMISSION,

Respondent.

13922

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the Federal Trade Commission and the attorneys for the petitioners as follows:

(a) On or about June 25, 1936, petitioners moved for a stay of hearings in the within matter pending a decision of the United States Court in the case of *William Filene's Sons Company* vs. *Fashion Originators Guild of America, Inc.*, which motion was denied by an order entered June 29, 1936.

13923

(b) At the conclusion of the Commission's case petitioners moved to dismiss the complaint, which motion was denied by orders dated August 18, 1937 and September 14, 1937.

(c) All exhibits were physically offered for identification and marked in evidence when admitted.

(d) Counsel for the Federal Trade Commission and counsel for the petitioners made objection appropriate in form as to the competency, relevancy and materiality of all evidence propounded and in opposition to exhibits admitted into evidence and took exception appropriate in form to the exclusion of all evidence and exhibits excluded.

(e) In printing the record in the above-entitled matter the following portions of the transcript of the record shall be eliminated therefrom and not be printed as a part of the record except that if dispute arise with respect to any matter, the original minutes shall govern:

13925

1. Answer of Marshall Field & Co.
2. Answer of Ladies' Ready-to-Wear Guild of Baltimore.
3. Answer of Michigan Avenue Guild of Chicago.
4. Answer of Lit Bros., Inc.
5. Answer of Joseph Horne Co.
6. Answer of Bullock's, Inc.
7. Answer of Emporium Capwell Corporation.
8. Answer of Minneapolis Fashion Guild.
9. Answer of G. H. Conze.
10. Answer of John Wanamaker.
11. Answer of Allied Stores Corporation.
12. Answer of Lindner Company.
13. Notice of motion to dismiss on behalf of G. H. Conze, June 9, 1936.

13926

14. Order denying motion to dismiss on behalf of G. H. Conze.
15. Notice of motion to dismiss on behalf of G. H. Conze, dated December 29, 1936.
16. Order denying motion to dismiss on behalf of G. H. Conze.
17. Petition to dismiss by Fashion Originator's Guild of America, Inc., received August 12, 1937.

18. Exhibit A annexed to Guild's motion to dismiss, dated August, 1937.
19. Exhibit B annexed to Guild's motion to dismiss, dated August, 1937.
20. Exhibit C annexed to Guild's motion to dismiss, dated August, 1937.
21. Exhibit D annexed to Guild's motion to dismiss, dated August, 1937.
22. Exhibit E annexed to Guild's motion to dismiss, dated August, 1937.
23. Exhibit F annexed to Guild's motion to dismiss, dated August, 1937.
24. Exhibit G annexed to Guild's motion to dismiss, dated August, 1937. 13928
25. Exhibit H annexed to Guild's motion to dismiss, dated August, 1937.
26. Exhibit I annexed to Guild's motion to dismiss, dated August, 1937.
27. Order of Federal Trade Commission denying petition to dismiss, dated August 18, 1937.
28. Petition of Fashion Originator's Guild of America, Inc., for rehearing on motion to dismiss, received by Federal Trade Commission on August 27, 1937.
29. Order denying petition to dismiss, dated September 14, 1937.

29a. Pages A, B, C, preceding page 1.

30. Page 49, from "Mr. Weisman: Wait a minute" to "Examiner Bennett: All right, go ahead. Proceed, please", page 59. 13929
31. Page 77 to top of page 105, in which Commission's Exhibits 13 to 87, inclusive, were marked for identification.
32. Page 106, from "Mr. Weisman: Now, just a moment", to page 109, "Mr. Weisman: Excuse me".

33. Pages A, B, C, D, preceding page 148.

34. Pages 150 to 161, inclusive, in which Commission's Exhibits 90-A to 96-G were offered in evidence.

35. Page 165, from "Mr. Weisman: Just a moment", to page 171, "Commission's Exhibit 97-N for Identification" being identification of Commission's Exhibits 97-A to N for Identification.

36. Page 192, "Mr. Haycraft: I ask that this document be marked for identification", to page 194, "By Mr. Haycraft", being marking of Exhibits 98-A to M for Identification.

37. Page 206, "Mr. Weisman: Are there any such on the list", to page 260, identifying Exs. 103 to 242.

13931

38. Pages A, B, C, preceding page 261.

39. Pages 263 to 266 up to "Commission's Ex. 120 was marked as an exhibit and received in evidence."

40. Page 268, "Mr. Haycraft: I offer in evidence Com. Ex. 122", to page 278, "Commission's Ex. 137 was marked as an exhibit and received in evidence." All these exhibits were objected to on the same grounds as Comm. Ex. 121.

41. Page 278, "Mr. Haycraft: I offer in evidence Com. Ex. 138", to page 331, "Commission's Exs. 282-A and 282-B and were received in evidence."

42. Page A, preceding page 414.

43. Page 428, "Mr. Weisman: It is perfectly relevant", to page 431, "and I strenuously object to it."

13932

44. Page 432, "Mr. Haycraft: I beg your pardon", to page 435, "if I may interrupt you for a moment."

45. Pages 473 to 477.

46. Page A, preceding page 569.

47. Page 573, "Mr. Martin: I do not think", to page 575, "objection overruled."

48. Page 623, "Mr. Martin: I object to that question", to page 625, "(last question again read)".

49. Page 633, "A. Force like a bludgeon would have", to page 634, "once or twice already, has he not".

50. Page 635, "May I amplify that", to page 637, "Thank you."
51. Page 648, "This is simply reading", to page 651, "The same objection, your Honor."
52. Page 684, "Mr. Martin: Your Honor, please", to page 692, "(last question read)".
53. Page 700, from "returns $5,019.80", to page 701, "strike out the returns".
54. Page A, preceding, and pages 752-755, "all right, Mr. Lieber".
55. Page 769, "The effect on my business", to page 772, "as to the effect upon your business".
56. Page 774, "In the first place", to page 776, "Mr. Haycraft: No, sir". 13934
57. Page 777, to "marked for id. Com. Ex. 314," page 778.
58. Page 788, "(Invoice from Schunemans)", to page 790, "marked for id. Comm. Exhibit 330".
59. Page 809, "Mr. Haycraft: May I point out", to "but not the other", page 813.
60. Page 823, "Mr. Weisman: I object", to page 825, "The witnesses thereupon retained".
61. Page 831, "Mr. Haycraft: I object, Mr. Examiner", to page 835, "I will refrain from that, but I will just ask him this question".
62. Page 846, "Mr. Haycraft: Mr. Examiner, I would like to know", to page 853, "(last question read as follows)". 13935
63. Page 855, "Mr. Haycraft: Now, Mr. Examiner, this witness has testified", to "(Question read)", page 856.
64. Page A, preceding, and pages 918 to 923, "Examiner Bennett: All right".
65. Page 1038, "Mr. Weisman: Exception", to page 1040, "I will remain seated".

66. Page 1043, "stamp gave him that privilege", to pag
1045, "I do not want to argue".
67. Page 1048, "Mr. Haycraft: Objected to", to "g
ahead and answer it, if he can", page 1050.
68. Page 1053, "The Witness: May I answer", to pag
1054, "if you feel that you can".
69. Page 1074, "Mr. Haycraft: I object", to page 107
"Mr. Weisman: Thank you, your Honor".
70. Page 1079[1] to following page, "to give the substanc
of the conversation".
71. Page 1080, from "Q. If that were so", to end of page
72. Page A, preceding page 1092.

13937 73. Page 1103, "Q. Was there anything said at tha
time", to end of page 1105.
74. Page 1111, "Mr. Weisman: Just a moment", to pag
1115, "without any further explanation".
75. Page 1123, "Mr. Weisman: Just a moment", to pag
1125, "take a few moments".
76. Page 1127, "Q. When you testified", to bottom o
page 1129.
77. Page 1136, "Examiner Bennett: What?", to pag
1142, "I still urge my question".
78. Page 1160, "Q. Let us see", to page 1162, "We ar
through with that, Mr. Haycraft".
79. Page 1165, "Mr. Ballan: Just a moment", to pag
1167, "Mr. Weisman: Thank you".

13938 80. Page 1177, "(Letter from W. J. Shields)", to pag
1183, "Comm. Ex. 351".
81. Page 1184, "(Letter from A. E. Stern)", to pag
1190, "Comm. Ex. 356-E".
82. Page A, preceding page 1196.
83. Page 1203, line 7, to page 1204, line 9.
84. Page 1204, line 20, to page 1205, line 20.
85. Page 1206, line 11, to page 1208, line 5.
86. Page 1242, line 14, to page 1244, line 2.
87. Page 1260, line 22, to page 1262, line 11.

88. Page 1267, lines 9 to 25.
89. Page 1275, lines 3 to 17.
90. Page 1290, line 11, to page 1294, line 14.
91. Page 1301, line 2, to page 1302, line 10.
92. Page 1303, line 20, to page 1304, line 10.
93. Page 1311, line 9, to page 1312, line 19.
94. Page 1322, line 2, to page 1325, line 15.
95. Page 1325, line 19, to page 1330, line 22.
96. Page 1344, line 24, to page 1346, line 6.
97. Page 1352, line 22, to page 1356, line 11.
98. Page A, preceding page 1357.
99. Page 1363, line 3, to page 1365, line 19.
100. Page 1373, line 9, to page 1375, line 22.

13940

101. Page 1395, line 14, to page 1406, line 1.
102. Page 1410, line 22, to page 1413, line 14.
103. Page 1423, lines 1 to 24.
104. Page 1428, line 13, to page 1429, line 4.
105. Page 1450, line 9, to page 1451, line 4.
106. Page 1458, line 12 to line 25.
107. Page 1461, line 6, to page 1465, line 15.
108. Page 1486, line 11, to page 1490, line 1.
109. Page 1502, line 1, to page 1505, line 25.
110. Page 1511, line 4, to page 1512, line 6.
111. Page 1534, line 15, to page 1535, line 9.
112. Page 1545, "Mr. Weisman: I object as incompetent", to page 1546, line 16.
113. Page 1555, line 21, to page 1556, line 15.
114. Page 1558, line 12, to page 1560, line 16.

13941

115. Page A, preceding page 1585.
116. Page 1598, line 25, to page 1601, line 8.
117. Page 1613, "Mr. Martin: I object", to page 1615, "I will let the witness answer."
118. Page 1620, line 5, to page 1623, line 10.
119. Page 1629, line 24, to page 1631, line 13.
120. Page 1634, line 10, to page 1635, line 8.
121. Page 1645, lines 8 to 23.

122. Page 1646, lines 15 to 24.
123. Page 1654, line 1, to page 1655, line 18.
124. Page 1657, line 16, to page 1658, line 20.
125. Page 1659, line 25, to page 1662, line 16.
126. Page 1692, line 3, to page 1695, line 3.
127. Page 1698, line 19, to page 1699, line 18.
128. Page 1717, line 17, to page 1719, line 12.
129. Page A preceding page 1720.
130. Page 1729, line 15, to page 1733, line 15.
131. Page 1736, line 8, to page 1738, line 9.
132. Page 1745, line 25, to page 1746, line 24.
133. Page 1778, line 15, to page 1779, line 20.
13943 134. Page 1782, line 6, to page 1783, line 5.
135. Page 1785, line 15, to page 1786, line 4.
136. Page 1786, line 18, to page 1791, line 4.
137. Page 1825, line 13, to page 1826, line 11.
138. Page 1791, lines 19 to 25.
139. Page 1831, lines 1 to 10.
140. Page 1841, line 11, to page 1842, line 7.
141. Page 1847, line 23, to page 1855, line 1.
142. Page 1855, line 12, to page 1860, line 10.
143. Page 1876, lines 11 to 21.
144. Page 1877, line 21, to page 1888, line 8.
145. Pages A and B preceding page 1895.
146. Page 1900, line 1, to page 1901, line 1.
147. Page 1901, line 11, to page 1903, line 3.
13944 148. Page 1908, line 19, to page 1909, line 22.
149. Page 1903, line 18, to page 1905, line 17.
150. Page 1940, line 25, to page 1941, line 21.
151. Page 1942, line 4, to page 1943, line 3.
152. Page 1945, line 9, to page 1959, line 10.
153. Page 1959, line 16, to page 1962, line 20.
154. Page 1963, line 10, to page 1964, line 4.
155. Page 1970, line 11, to page 1971, line 5.
156. Page 1973, line 15, to page 1976, line 3.

157. Page 1977, line 4, to page 1978, line 11.
158. Page 1982, line 11, to page 1983, line 12.
159. Page 1986, line 7, to page 1987, line 17.
160. Page 1988, line 11, to page 1989, line 12.
161. Page 1992, line 15, to page 1993, line 16.
162. Page 1995, line 15, to page 1996, line 14.
163. Page 2007, line 19, to page 2023, line 15.
164. Page 2024, line 9, to page 2026, line 20.
165. Page 2028, lines 2 to 22.
166. Page 2035, line 8, to page 2036, line 6.
167. Page 2037, line 21, to page 2039, line 3.
168. Page 2052, line 20, to page 2053, line 20.
169. Page 2054, line 8, to page 2055, line 15. 13946
170. Page 2062, line 25, to page 2064, line 11.
171. Page 2075, line 2, to page 2077, line 14.
172. Page 2079, line 13, to page 2081, line 18.
173. Page 2096, line 14, to page 2101, line 25.
174. Page 2110, line 14, to page 2113, line 17.
175. Page 2114, line 4, to page 2116, line 17.
176. Page 2117, line 1, to page 2118, line 3.
177. Page 2121, line 1, to page 2123, line 15.
178. Page 2127, line 14, to page 2130, line 6.
179. Page 2135, line 17, to page 2136, line 19.
180. Page 2138, line 11, to page 2142, line 3.
181. Page 2151, lines 2 to 12.
182. Page 2159, line 8, to page 2160, line 4.
183. Page 2163, line 11, to page 2165, line 16. 13947
184. Page 2166, lines 4 to 14.
185. Page 2169, line 3, to page 2179, line 16.
186. Page 2170, line 25, t page 2171, line 21.
187. Page 2180, line 23, t page 2183, line 1.
188. Page 2185, line 12, page 2186, line 7.
189. Page 2192, line 2, t page 2196, line 15.
190. Page 2197, line 23, o page 2199, line 24.
191. Page 2200, line 22, to page 2202, line 9.

192. Page 2202, line 11, to page 2203, line 3.
193. Page 2212, line 4, to page 2213, line 4.
194. Page 2223, line 2, to page 2226, line 18.
195. Page 2229, line 14, to page 2231, line 8.
196. Page 2232, lines 11 to 16.
197. Page 2251, line 11, to page 2252, line 14.
198. Page 2258, line 11, to page 2260, line 6.
199. Page A preceding page 2284.
200. Page 2295, lines 1 to 13.
201. Page 2296, line 8, to page 2300, line 13.
202. Page 2303, line 12, to page 2307, line 6.
203. Page 2311, lines 9 to 25.
13949 204. Page 2333, line 16, to page 2338, line 17.
205. Page 2343, lines 2 to 18.
206. Page 2345, line 13, to page 2346, line 9.
207. Page 2351, line 20, to page 2356, line 17.
208. Page 2357, line 25, to page 2359, line 20.
209. Page 2385, lines 1 to 14.
210. Page 2406, line 17, to page 2408, line 4.
211. Page 2415, lines 2 to 17.
212. Page 2415, line 25, to page 2417, line 2.
213. Page 2431, line 21, to page 2436, line 17.
214. Page 2467, line 11, to page 2469, line 7.
215. Page 2485, line 10, to page 2486, line 10.
216. Page 2530, line 20, to page 2531, line 22.
217. Page 2542, line 6, to page 2544, line 7.
13950 218. Page 2552, line 4, to page 2553, line 16.
219. Page 2558, line 8, to page 2559, line 8.
220. Page 2564, line 14, to page 2565, line 13.
221. Page 2565, line 22, to page 2567, line 25.
222. Page 2569, line 12, to page 2574, line 6.
223. Page 2576, line 16, to page 2577, line 12.
224. Page 2583, lines 3 to 21.
225. Page 2588, line 12, to page 2589, line 16.
226. Page 2595, line 4, to page 2596, line 10.

227. Page 2599, line 5, to page 2600, line 9.
228. Page 2604, line 24, to page 2606, line 7.
229. Page 2607, line 12, to page 2610, line 10.
230. Page 2610, line 8, to page 2651, line 21.
231. Page 2663, line 25, to page 2665, line 11.
232. Page 2747, line 9, to page 2748, line 19.
233. Page 2759, line 22, to page 2760, line 13.
234. Page 2762, line 22, to page 2763, line 20.
235. Page 2767, line 4, to page 2769, line 21.
236. Page 2780, line 9, to page 2781, line 5.
237. Page 2787, line 4, to page 2788, line 9.
238. Page 2880, line 11, to page 2882, line 18.
239. Page 2887, line 9, to page 2890, line 20. 13952
240. Page 2890, line 25, to page 2892, line 18.
241. Page 2893, lines 2 to 13.
242. Page 2894, line 10, to page 2896, line 2.
243. Page 2898, line 12, to page 2899, line 18.
244. Page 2902, line 5, to page 2903, line 13.
245. Page 2916, line 15, to page 2999, line 13.
246. Page 2975, line 15, to page 2976, line 10.
247. Page 2977, line 10, to page 2980, line 8.
248. Page 2984, line 20, to page 2985, line 18.
249. Page 2994, line 5, to page 2995, line 2.
250. Page 3003, lines 8 to 23.
251. Page 3004, lines 9 to 25.
252. Page 3016, lines 9 to 24.
253. Page 3018, line 22, to page 3019, line 23.
254. Page 3069, "Q. I show you a letter", to page 3070, "Res. Ex. 24". 13953
255. Page 3075 to page 3080.
256. Page 3082, "Q. You also admitted, I believe," to page 3083, "what the record shows":
257. Page 3103, "Mr. Martin: That is objected to" to "(Question read.)"
258. Page 3160, "Mr. Martin: That is objected to" to "(The question was read)", page 3163.

259. Page 3214, last line, to "Mr. Albert: Very well," page 3216.
260. Page 3260, "Mr. Martin: I would like to", to page 3263, "Examiner Bennett: That is all right."
261. Page 3264, "Mr. Martin: I object to it", to page 3267, "I personally did not see the telegram, that is all."
262. Page 3280, "Q. Did you also read", to page 3282, "I want to show it to the witness."
263. Page 3285, "Mr. Albert: May I explain", to page 3287, "Examiner Bennett: All right."
264. Page 3321 to page 3322.

13955

265. Page 3326, line 2, to page 3327, line 16.
266. Page 3333, line 8, to page 3334, line 4.
267. Page 3360, line 25, to page 3362, line 9.
268. Page 3363, line 8, to page 3364, line 25.
269. Page 3369.
270. Page 3371, line 9, to page 3373, line 3.
271. Page 3390, line 15, to page 3392, line 25.
272. Page 3406, line 9, to page 3410, line 6.
273. Page 3484, line 6, to page 3485, line 22.
274. Page 3486, line 20, to page 3488, line 10.
275. Page 3496, lines 11 to 16.
276. Page 3497, line 21, to page 3502, line 4.
277. Page 3518 to page 3521, line 10.
278. Page 3522, "Mr. Martin: Now, if your Honor please," to page 3524, line 19.

13956

279. Page 3578, line 4, to page 3581, line 8.
280. Page 3601, line 7, to page 3602, line 11.
281. Page 3602, line 25, to page 3603, line 21.
282. Page 3610, line 14, to page 3611, line 13.
283. Page 3630, lines 10 to 25.
284. Page 3631, line 15, to page 3632, line 8.
285. Page 3635, line 8, to page 3637, line 2.
286. Page 3638, line 18, to page 3641, line 5.

287. Page 3645, line 3, to page 3646, line 6.
288. Page 3651, line 19, to page 3653, line 12.
289. Page 3653, line 16, to page 3654, line 2.
290. Page 3682, line 16, to page 3683, line 14.
291. Page 3718, lines 3 to 22.
292. Page 3732, line 21, to page 3737, line 5.
293. Page 3745, line 24, to page 3747, line 18.
294. Page 3750, line 4, to page 3751, line 9.
295. Page 3763, lines 7 to 20.
296. Page 3764, line 17, to page 3765, line 22.
297. Page 3767, lines 1 to 18.
298. Page 3768, line 13, to page 3769, line 8.
299. Page 3774, line 13, to page 3775, line 22. 13958
300. Page 3778, line 20, to page 3779, line 25.
301. Page 3785, line 12, to page 3786, line 11.
302. Page 3787, line 8, to page 3788, line 13.
303. Page 3799, line 19, to page 3801, line 10.
304. Page 3804, line 3, to page 3806, line 16.
305. Page 3806, line 25, to page 3810, line 10.
306. Page 3814, line 2, to page 3816, line 7.
307. Page 3843, line 7, to page 3845, line 2.
308. Page 3845, line 14, to page 3847, line 1.
309. Page 3849, lines 1 to 24.
310. Page 3852, line 12, to page 3854, line 20.
311. Page 3867, line 12, to page 3868, line 10.
312. Page 3868, line 17, to page 3869, line 4.
313. Page 3870, line 11, to page 3871, line 18. 13959
314. Page 3874, line 19, to page 3875, line 17.
315. Page 3878, lines 9 to 24.
316. Page 3879, line 5, to page 3880, line 13.
317. Page 3880, line 20, to page 3881, line 11.
318. Page 3881, line 24, to page 3882, line 19.
319. Page 3883, line 14, to page 3898, line 14.
320. Page 3909, line 12, to page 3910, line 8.
321. Page 3934, lines 8 to 22.
322. Page 3971, line 1, to page 3988, line 5.

323. Page 4047, lines 2 to 25.
324. Page 4071, line 17, to page 4072, line 17.
325. Page 4077, line 15, to page 4082, line 1.
326. Page 4100, line 12, to page 4101, line 22.
327. Page 4103, lines 5 to 25.
328. Page 4138, line 3, to page 4139, line 13.
329. Page 4150, line 23, to page 4152, line 3.
330. Page 4154, line 18, to page 4162, line 5.
331. Page 4162, line 21, to page 4163, line 8.
332. Page 4183, line 5, to page 4202, line 2.
333. Page 4210, line 10, to page 4212, line 3.
334. Page 4215, line 23, to page 4216, line 25.

13961

335. Page 4229, line 15, to page 4230, line 4.
336. Page 4259, line 19, to page 4261, line 4.
337. Page 4261, line 10, to page 4262, line 21.
338. Page 4264, lines 1 to 25.
339. Page 4265, line 23, to page 4267, line 21.
340. Page 4271, line 5, to page 4272, line 8.
341. Page 4273, line 9, to page 4276, line 1.
342. Page 4290, lines 1 to 22.
343. Page 4299, line 25, to page 4304, line 16.
344. Page 4318, line 17, to page 4318, b, line 3.
345. Page 4318, c, line 10, to page 4318, d, line 14.
346. Page 4318, e, line 7, to page 4320, line 25.
347. Page 4325, line 13, to page 4327, line 6.
348. Page 4331, line 7, to page 4332, line 22.

13962

349. Page 4333, line 23, to page 4334, line 25.
350. Page 4337, line 10, to page 4339, line 22.
351. Page 4345, line 18, to page 4346, line 5.
352. Page 4352, line 2, to page 4353, line 16.
353. Page 4359, "Q. What effect did the sale of a copy" to page 4360, "and make it more specific for you"
354. Page 4363, "Mr. Haycraft: Mr. Examiner, I wish at this time to inform you", to page 4365, "All right proceed, Mr. Albert".

355. Page 4370, entire page, to page 4372, "(Record read by the reporter)".
356. Page 4376, "Examiner Bennett: Try to avoid going over matter", to page 4377, "Examiner Bennett: Any further examination".
357. Page 4388, "Mr. Keller: It is already in evidence", to page 4390, "Mr. Keller: That is right".
358. Page 4400, "Mr. Albert: Now, if it please the Court", to page 4404, "(Question read)".
359. Page 4407, "Examiner Bennett: There seems to be", to page 4408, "Examiner Bennett: It may be received".
360. Page 4443, "In addition, I believe", to bottom of page 4444. 13964
361. Page 4457, "Mr. Albert: That is objected to", line 23.
362. Page 4466, "Mr. Haycraft: It is now 4.30", to page 4472.
363. Page 4509, line 2, to page 4512, line 3.
364. Page 4515, line 5, to page 4516, line 5.
365. Page 4520, line 15, to page 4521, line 7.
366. Page 4523, line 12, to page 4524, line 4.
367. Page 4531, line 24, to page 4533, line 5.
368. Page 4534, lines 1 to 18.
369. Page 4540, line 1, to page 4541, line 19.
370. Page 4542, line 18, to page 4543, line 9.
371. Page 4556, line 23, to page 4558, line 16.
372. Page 4562, line 18, to page 4565, line 6.
373. Page 4568, line 21, to page 4569, line 25. 13965
374. Page 4571, line 21, to page 4572, line 19.
375. Page 4581, line 10, to page 4583, line 19.
376. Page 4599, line 7, to page 4603, line 17.
377. Page 4616, line 22, to page 4627, line 14.
378. Page 4656, line 12, to page 4657, line 15.
379. Page 4661, lines 6 to 24.
380. Page 4708, line 1, to page 4712, line 19.
381. Page 4765, line 21, to page 4767, line 4.

382. Page 4769, line 9, to page 4781, line 25.
383. Page 4803, lines 11 to 23.
384. Page 4825, line 12, to page 4872, line 24, identifyi
Exhibits 602 to 694, inclusive.
385. Page 4878, line 15, to page 4914, line 5.
386. Page 4914, line 15, page 4915, line 25.
387. Page 4924, line 11, to page 4925, line 9.
388. Page 4946, line 14, to page 4948, line 20.
389. Page 4952, line 12, to page 4954, line 18.
390. Page 4955, line 25, to page 4957, line 5.
391. Page 5012, line 17, to page 5013, line 22.
392. Page 5019, lines 6 to 25.
13967 393. Page 5135, line 6, to page 5136, line 23.
394. Page 5142, line 11, to page 5146, line 9.
395. Page 5203, line 9, to page 5211, line 25.
396. Page 5216, line 24, to page 5218, line 5.
397. Page 5224, line 25, to page 5226, line 2.
398. Page 5227, line 22, to page 5228, line 16.
399. Page 5238, line 1, to page 5239, line 10.
400. Page 5246, line 16, to page 5248, line 12.
401. Page 5261, line 16, to page 5262, line 13.
402. Page 5265, line 9, to page 5266, line 9.
403. Page 5272, line 25, to page 5274, line 22.
404. Page 5276, line 8, to page 5277, line 2.
405. Page 5293, line 7, to page 5311, line 25.
406. Page 5312, line 7, to page 5314, line 2.
407. Page 5347, line 24, to page 5348, line 21.
13968 408. Page 5353, line 23, to page 5354, line 16.
409. Page 5355, line 23, to page 5357, line 25.
410. Page 5358, line 10, to page 5359, line 25.
411. Page 5365, lines 2 to 22.
412. Page 5395, line 23, to page 5400, line 25.
413. Page 5408, line 14, to page 5409, line 6.
414. Page 5422, line 5, to page 5425, line 4.
415. Pages A, B, C, D and E, preceding page 5426.
416. Page 5427, line 1, to page 5429, line 25.

417. Page 5432, line 14, to page 5434, line 5.
418. Page 5458, line 19, to page 5461, line 25.
419. Page 5463, line 20, to page 5464, line 13.
420. Page 5468, line 20, to page 5469, line 17.
421. Page 5474, line 11, to page 5476, line 1.
422. Page 5490, line 22, to page 5491, line 24.
423. Page 5505, line 15, to page 5507, line 25.
424. Page 5522, line 1, to page 5544, line 15.
425. Pages A, B, C, D and E, preceding page 5545.
426. Page 5553, line 8, to page 5554, line 8.
427. Page 5559, line 8, to page 5560, line 4.
428. Page 5565, lines 6 to 25.
429. Page 5566, line 19, to page 5568, line 10. 13970
430. Page 5569, line 19, to page 5571, line 2.
431. Page 5571, line 17, to page 5576, line 4.
432. Page 5587, line 14, to page 5588, line 16.
433. Page 5600, lines 5 to 19.
434. Page 5605, line 12, to page 5608, line 3.
435. Page 5609, lines 11 to 24.
436. Page 5616, line 6, to page 5617, line 1.
437. Page 5619, lines 1 to 18.
438. Page 5619, line 22, to page 5620, line 13.
439. Page 5628, line 24, to page 5629, line 24.
440. Page 5631, line 2, to page 5635, line 21.
441. Page 5637, line 20, to page 5658, line 25.
442. Page 5661, line 1, to page 5666, line 10.
443. Page 5682, lines 4 to 24. 13971
444. Page 5683, line 20, to page 5685, line 1.
445. Page 5687, line 24, to page 5690, line 24.
446. Page 5703, line 25, to page 5704, line 23.
447. Page 5705, line 13, to page 5707, line 7.
448. Page 5708, lines 7 to 22.
449. Page 5723, line 9, to page 5724, line 16.
450. Page 5749, line 24, to page 5753, line 18.
451. Page 5755, lines 1 to 16.
452. Page 5759, line 9, to page 5761, line 10.

453. Page 5762, line 15, to page 5763, line 17.
454. Page 5765, lines 3 to 24.
455. Page 5767, line 7, to page 5769, line 9.
456. Page 5770, line 9, to page 5772, line 6.
457. Page 5776, line 3, to page 5778, line 3.
458. Page 5779, line 21, to page 5782, line 20.
459. Page 5783, line 9, to page 5788, line 25.
460. Page 5793, line 8, to page 5794, line 24.
461. Page 5797, line 6, to page 5799, line 1.
462. Page 5801, line 6, to page 5802, line 15.
463. Page 5804, line 16, to page 5805, line 19.
464. Page 5806, lines 6 to 20.
13973 465. Page 5807, lines 1 to 9.
466. Page 5807, line 12, to page 5808, line 18.
467. Page 5809, lines 1 to 23.
468. Page 5810, line 2, to page 5814, line 4.
469. Page 5814, line 23, to page 5815, line 17.
470. Page 5818, line 2, to page 5820, line 11.
471. Page 5820, line 22, to page 5821, line 5.
472. Page 5823, line 1, to page 5828, line 8.
473. Page 5829, line 20, to page 5830, line 5.
474. Page 5830, line 17, to page 5831, line 4.
475. Page 5835, line 14, to page 5836, line 24.
476. Page 5838, line 10, to page 5841, line 6.
477. Page 5842, line 9, to page 5846, line 11.
478. Page 5852, line 1, to page 5853, line 2.
13974 479. Page 5854, line 4, to page 5855, line 17.
480. Page 5856, line 23, to page 5858, line 10.
481. Page 5860, line 2, to page 5862, line 21.
482. Page 5863, line 9, to page 5864, line 13.
483. Page 5867, lines 3 to 25.
484. Page 5878, line 19, to page 5880, line 24.
485. Page 5881, line 24, to page 5887, line 6.
486. Page 5888, line 21, to page 5890, line 10.
487. Page 5892, line 6, to page 5893, line 10.
488. Page 5894, line 15, to page 5895, line 16.

489. Page 5896, line 11, to page 5897, line 21.
490. Page 5900, lines 1 to 21.
491. Page 5905, lines 4 to 18.
492. Page 5907, line 15, to page 5909, line 18.
493. Page 5913, lines 3 to 24.
494. Page 5914, line 20, to page 5918, line 12.
495. Page 5933, lines 2 to 20.
496. Page 5933, line 23, to page 5936, line 1.
497. Page 5936, line 19, to page 5937, line 11.
498. Page 5938, line 21, to page 5943, line 19.
499. Page 5948, line 5, to page 5951, line 15.
500. Page 5957, line 25, to page 5960, line 11.
501. Page 5963, line 18, to page 5964, line 20. 13976
502. Page 5971, line 24, to page 5972, line 25.
503. Page 5974, line 4, to page 5983, line 19.
504. Page 5984, lines 2 to 15.
505. Page 5984, line 19, to page 5986, line 3.
506. Page 5994, line 2, to page 5995, line 1.
507. Page 5995, line 13, to page 5996, line 4.
508. Page 5996, line 11, to page 5997, line 24.
509. Page 5999, line 17, to page 6000, line 19.
510. Page 6001, line 14, to page 6002, line 12.
511. Page 6006, line 19, to page 6008, line 23.
512. Page 6013, lines 6 to 25.
513. Page 6015, line 5, to page 6019, line 10.
514. Page 6020, lines 2 to 24.
515. Page 6022, line 11, to page 6029, line 10.
516. Page 6037, line 5, to page 6041, line 21. 13977
517. Page 6044, line 6, to page 6045, line 25.
518. Page 6055, line 7, to page 6056, line 5.
519. Page 6065, line 21, to page 6071, line 9.
520. Page 6072, line 1, to page 6085, line 8.
521. Page 6090, line 21, to page 6091, line 10.
522. Page 6092, line 11, to page 6093, line 7.
523. Page 6094, line 7, to page 6099, line 4.
524. Page 6102, line 3, to page 6105, line 16.

13978 *Stipulation as to Matter Omitted.*

525. Page 6114, line 15, to page 6117, line 5.
526. Page 6120, line 9, to page 6122, line 22.
527. Page 6126, line 22, to page 6128, line 7.
528. Page 6130, line 17, to page 6131, line 19.
529. Page 6132, line 20, to page 6133, line 16.
530. Page 6135, line 14, to page 6136, line 19.
531. Page 6140, lines 7 to 23.
532. Page 6142, line 13, to page 6146, line 16.
533. Page 6147, line 14, to page 6149, line 11.
534. Page 6149, line 23, to page 6150, line 18.
535. Page 6151, line 22, to page 6152, line 23.
536. Page 6153, line 8, to page 6154, line 23.
13979 537. Page 6157, line 21, to page 6161, line 14.
538. Page 6167, line 25, to page 6168, line 16.
539. Page 6172, line 14, to page 6175, line 1.
540. Page 6175, line 4, to page 6179, line 25.
541. Page 6180, line 8, to page 6182, line 6.
542. Page 6186, line 3, to page 6187, line 20.
543. Page 6190, line 7, to page 6191, line 21.
544. Page 6192, line 25, to page 6194, line 18.
545. Page 6195, line 13, to page 6196, line 24.
546. Page 6197, line 5, to page 6198, line 23.
547. Page 6208, line 15, to page 6209, line 10.
548. Page 6213, line 21, to page 6215, line 15.
549. Page 6217, line 15, to page 6221, line 11.
550. Page 6222, line 7, to page 6223, line 2.
551. Page 6228, line 16, to page 6231, line 6.
13980 552. Page 6232, line 2, to page 6246, line 18.
553. Page 6246, line 21, to page 6247, line 18.
554. Page 6249, line 2, to page 6250, line 8.
555. Page 6251, line 1, to page 6252, line 15.
556. Page 6254, lines 1 to 17.
557. Page 6257, lines 10 to 25.
558. Page 6258, line 22, to page 6261, line 19.
559. Page 6262, line 8, to page 6271, line 8.
560. Page 6273, line 3, to page 6284, line 19.

561. Page 6287, line 20, to page 6290, line 14.
562. Page 6290, line 20, to page 6293, line 10.
563. Page 6296, line 19, to page 6297, line 20.
564. Page 6300, lines 8 to 25.
565. Page 6301, line 10, to page 6302, line 14.
566. Page 6303, line 23, to page 6305, line 4.
567. Page 6306, line 14, to page 6307, line 10.
568. Page 6317, line 9, to page 6318, line 15.
569. Page 6323, line 21, to page 6325, line 4.
570. Page 6335, line 23, to page 6337, line 21.
571. Page 6349, lines 3 to 21.
572. Page 6851, line 21, to page 6352, line 19.
573. Page 6352, line 22, to page 6362, line 7. 13982
574. Page 6365, line 3, to page 6365, line 25.
575. Page 6368, line 7, to page 6371, line 23.
576. Page 6373, line 8, to page 6374, line 10.
577. Page 6377, line 23, to page 6379, line 6.
578. Page 6380, line 9, to page 6384, line 7.
579. Page 6384, line 17, to page 6385, line 25.
580. Page 6388, line 24, to page 6393, line 4.
581. Page 6394, lines 1 to 22.
582. Page 6395, lines 1 to 16.
583. Page 6398, line 2, to page 6398a, line 3.
583. Page 6398a, lines 6 to 16.
584. Page 6399, line 6, to page 6400, line 6.
585. Page 6400, lines 8 to 24.
586. Page 6402, line 21, to page 6404, line 15.
587. Page 6405, line 3, to page 6409, line 25. 13983
588. Page 6410, line 21, to page 6412, line 7.
589. Page 6412, lines 11 to 22.
590. Page 6412, line 25, to page 6415, line 17.
591. Page 6418, line 7, to page 6431, line 24.
592. Page 6434, line 3, to page 6436, line 8.
593. Page 6441, line 20, to page 6442, line 19.
594. Page 6444, line 7, to page 6451, line 18.
595. Page 6452, line 15, to page 6454, line 17.

13984 *Stipulation as to Matter Omitted.*

596. Page 6456, line 6, to page 6458, line 20.
597. Page 6459, line 20, to page 6460, line 20.
598. Page 6460, line 25, to page 6463, line 15.
599. Page 6464, line 1, to page 6465, line 2.
600. Page 6466, line 11, to page 6467, line 23.
601. Page 6474, line 17, to page 6475, line 5.
602. Page 6475, line 7, to page 6480, line 8.
603. Page 6482, line 22, to page 6483, line 25.
604. Page 6485, line 5, to page 6486, line 19.
605. Page 6488, line 9, to page 6491, line 19.
606. Page 6497, line 10, to page 6498, line 18.
607. Page 6500, line 22, to page 6508, line 17.
13985 608. Page 6509, line 15, to page 6557, line 15.
609. Page 6558, line 1, to page 6563, line 4.
610. Page 6563, line 16, to page 6565, line 15.
611. Page 6566, line 11, to page 6570, line 15.
612. Page 6571, line 11, to page 6573, line 4.
613. Page 6574, line 5, to page 5676, line 5.
614. Page 6584, line 24, to page 6596, line 18.
615. Page 6599, line 19, to page 6600, line 17.
616. Page 6601, line 8, to page 6602, line 15.
617. Page 6603, line 3, to page 6605, line 24.
618. Page 6606, line 8, to page 6607, line 17.
619. Page 6610, line 6, to page 6611, line 22.
620. Page 6615, line 20, to page 6616, line 19.
621. Page 6618, line 19, to page 6621, line 10.
622. Page 6623, line 1, to page 6670, line 4.
13986 623. Page 6673, line 14, to page 6676, line 3.
624. Page 6676, line 21, to page 6680, line 4.
625. Page 6684, line 10, to page 6685, line 25 (Women's Wear Article on red card out).
626. Page 6687, line 20, to page 6692, line 22.
627. Page 6693, line 9, to page 6707, line 16.
628. Page 6708, line 20, to page 6712, line 11.
629. Page 6712, line 25, to page 6717, line 24.

630. Page 6743, "Q. Mr. Bergdahl, based upon your experience", to page 6749, "(Question as amended read as follows)".

631. Page 6756, "Mr. Weisman: What is 'the laws of the land'", to page 6759, "However, you may begin and restate that if you like".

632. Page 6760, "Q. With the same foundation question", to page 6764, "(There was a short recess taken)".

633. Page 6772, "Mr. Weisman: May I have that read", to page 6776, "Examiner Averill: Proceed to do so".

634. Page 6782, "Mr. Haycraft: I object to that question", to page 6783, "Examiner Averill: All right, go ahead". 13988

635. Page 6788, "Q. Professor Nystrom further says", to page 6791, "and then you may answer".

636. Page 6795, "Mr. Haycraft: That is objected to", to page 6797, "if you cannot answer it, say so".

637. Page 6797, "Examiner Averill: What you meant to say", to page 6798, "they were in business and making a living".

638. Page 6810, "Mr. Weisman: Well, as I understood it", to page 6812, "2 o'clock P. M. of the same day".

639. Page 6829, "Examiner Averill: Why do you say that", to page 6831, "Examiner Averill: And let us try to get along".

640. Page 6832, "Mr. Haycraft: Same objection", to page 6835, "the best that he can". 13989

641. Page 6837, "Mr. Haycraft: Objected to", to page 6839, "Examiner Averill: Yes".

642. Page 6840, "Examiner Averill: He has already answered", to "we might have in connection with our trade protection", to page 6849, line 15.

643. Page 6867, "Mr. Martin: Apparently it is in tweed", to bottom of page 6872.

644. Page 6873, "Q. Well, tell us first", to page 6877, "and that is making it very plain indeed".
645. Page 6886, "Mr. Weisman: I ask that the latter part", to page 6894, "A. About 50 million roughly".
646. Page 6896, "Q. When you gave orders", to page 6897, "I am not going to".
647. Page 6904 to end page 6905.
648. Page 6908, line 23, to page 6911, line 17.
649. Page 6912, line 16, to page 6915, line 16.
650. Page 6923, line 20, to page 6924, line 16.
651. Page 6928, lines 2 to 22.
652. Page 6930, line 10, to page 6931, line 21.

13991

653. Page 6932, line 2, to page 6933, line 21.
654. Page 6937, line 24, to page 6938, line 9.
655. Page 6938, line 21, to page 6940, line 19.
666. Page 6945, line 12, to page 6949, line 22.
667. Page 6958, lines 3 to 15.
668. Page 6961, lines 2 to 13.
669. Page 6963, line 11, to page 6965, line 13.
670. Page 6967, line 6, to page 6968, line 14.
671. Page 6978, line 17, to page 6980, line 13.
672. Page 6982, line 1, to page 6983, line 14.
673. Page 6984, line 12, to page 6985, line 3.
674. Page 6991, line 1, to page 6992, line 2.
675. Page 6992, line 12, to page 6993, line 16.
676. Page 6995, line 19, to page 7000, line 5.
677. Page 7005, line 16, to page 7008, line 3.

13992

678. Page 7008, line 9, to page 7009, line 8.
679. Page 7010, lines 8 to 25.
680. Page 7011, line 5, to page 7012, line 5.
681. Page 7015, line 3, to page 7016, line 24.
682. Page 7017, line 14, to page 7019, line 18.
683. Page 7021, line 19, to page 7024, line 11.
684. Page 7026, line 7, to page 7030, line 17.
685. Page 7033, line 7, to page 7034, line 6.
686. Page 7035, lines 3 to 24.

687. Page 7036, lines 4 to 19.
688. Page 7040, line 23, to page 7041, line 24.
689. Page 7044, line 13, to page 7045, line 2.
690. Page 7045, line 18, to page 7046, line 7.
691. Page 7048, line 5, to page 7049, line 16.
692. Page 7057, line 5, to page 7059, line 23.
693. Page 7064, lines 1 to 10.
694. Page 7072, line 15, to page 7074, line 7.
695. Page 7078, lines 6 to 23.
696. Page 7080, line 15, to page 7081, line 3.
697. Page 7082, line 24, to page 7083, line 22.
698. Page 7086, line 20, to page 7087, line 20.
699. Page 7093, line 16, to page 7095, line 12.
700. Page 7101, line 3, to page 7108, line 6.
701. Page 7111, line 16, to page 7113, line 19.
702. Page 7114, line 20, to page 7115, line 2.
703. Page 7119, lines 11 to 23.
704. Page 7121, line 2, to page 7124, line 3.
705. Page 7143, line 16, to page 7144, line 19.
706. Page 7146, line 8, to page 7148, line 9.
707. Page 7149, line 19, to page 7153, line 18.
708. Page 7155, line 2, to page 7158, line 1.
709. Page 7158, line 15, to page 7159, line 2.
710. Page 7160, line 1, to page 7162, line 4.
711. Page 7164, line 14, to page 7165, line 6.
712. Page 7165, line 18, to page 7166, line 14.
713. Page 7167, line 10, to page 7173, line 20.
714. Page 7173, line 23, to page 7175, line 4.
715. Page 7175, line 20, to page 7177, line 5.
716. Page 7177, line 13, to page 7183, line 5.
717. Page 7184, line 19, to page 7185, line 12.
718. Page 7187, line 4, to page 7189, line 14.
719. Page 7197, line 13, to page 7198, line 8.
720. Page 7198, line 13, to page 7198, line 25.
721. Page 7199, line 24, to page 7202, line 16.
722. Page 7203, line 16, to page 7204, line 4.

13994

13995

723. Page 7207, line 12, to page 7208, line 14.
724. Page 7209, line 16, to page 7210, line 5.
725. Page 7215, lines 2 to 25.
726. Page 7222, line 9, to page 7223, line 9.
727. Page 7226, line 12, to page 7227, line 15.
728. Page 7228, line 22, to page 7229, line 8.
729. Page 7229, line 21, to page 7237, line 11.
730. Page 7248, line 24, to page 7250, line 20.
731. Page 7259, line 17, to page 7265, line 9.
732. Page 7269, line 21, to page 7270, line 13.
733. Page 7273, line 23, to page 7275, line 4.
734. Page 7275, line 8, to page 7276, line 10.
13997 735. Page 7276, line 14, to page 7277, line 4.
736. Page 7277, lines 8 to 17.
737. Page 7279, line 14, to page 7280, line 3.
738. Page 7285, line 23, to page 7285, line 17.
739. Page 7290, line 15, to page 7291, line 2.
740. Page 7292, line 6, to page 7295, line 4.
741. Page 7297, line 14, to page 7300, line 19.
742. Page 7311, line 13, to page 7312, line 11.
743. Page 7312, line 15, to page 7313, line 6.
744. Page 7315, line 25, to page 7316, line 25.
745. Page 7317, line 25, to page 7318, line 10.
746. Page 7318, line 16, to page 7319, line 13.
747. Page 7323, line 9, to page 7324, line 12.
748. Page 7325, lines 2 to 12.
749. Page 7325, line 19, to page 7326, line 4.
13998 750. Page 7326, line 21, to page 7328, line 4.
751. Page 7340, lines 8 to 19.
752. Page 7346, line 20, to page 7348, line 17.
753. Page 7349, line 4, to page 7350, line 19.
754. Page 7358, line 13, to page 7359, line 13.
755. Page 7362, line 2, to page 7363, line 9.
756. Page 7364, line 8, to page 7365, line 4.
757. Page 7367, line 1, to page 7368, line 3.
758. Page 7373, lines 6 to 16.
759. Page 7374, line 24, to page 7375, line 17.

760. Page 7383, line 10, to page 7384, line 12.
761. Page 7386, line 13, to page 7388, line 11.
762. Page 7388, line 16, to page 7391, line 13.
763. Page 7391, line 17, to page 7392, line 8.
764. Page 7396, line 17, to page 7398, line 5.
765. Page 7398, line 13, to page 7399, line 25.
766. Page 7406, lines 17 to 25.
767. Page 7408, line 7, to page 7409, line 7.
768. Page 7412, line 16, to page 7413, line 9.
769. Page 7417, line 2, to page 7419, line 24.
770. Page 7421, line 21, to page 7422, line 14.
771. Page 7423, line 9, to page 7424, line 24.
772. Page 7428, line 12, to page 7429, line 10. 14000
773. Page 7430, line 8, to page 7432, line 7.
774. Page 7432, line 10, to page 7433, line 11.
775. Page 7435, line 23, to page 7436, line 6.
776. Page 7439, line 19, to page 7442, line 2.
777. Page 7443, line 11, to page 7444, line 17.
778. Page 7444, line 22, to page 7445, line 8.
779. Page 7445, line 16, to page 7446, line 23.
780. Page 7447, line 14, to page 7448, line 9.
781. Page 7475, line 16, to page 7476, line 13.
782. Page 7476, line 25, to page 7477, line 11.
783. Page 7488, line 16, to page 7489, line 20.
784. Page 7509, line 11, to page 7511, line 10.
785. Page 7523, lines 10 to 24.
786. Page 7530, line 25, to page 7532, line 25.
787. Page 7533, lines 5 to 21. 14001
788. Page 7535, line 4, to page 7536, line 7.
789. Page 7548, line 2, to page 7549, line 22.
790. Page 7554, line 18, to page 7556, line 25.
791. Page 7559, line 10, to page 7560, line 25.
792. Page 7562, line 1, to page 7566, line 2.
793. Page 7578, line 8, to page 7580, line 7.
794. Page 7587, line 25, to page 7590, line 17.
795. Page 7603, line 6, to page 7604, line 18.
796. Page 7626, line 24, to page 7627, line 8.

797. Page 7628, lines 2 to 12.
798. Page 7635, line 3, to page 7636, line 6.
799. Page 7637, line 9, to page 7638, line 6.
800. Page 7648, line 18, to page 7649, line 19.
801. Page 7654, line 12, to page 7655, line 21.
802. Page 7664, line 15, to page 7666, line 5.
803. Page 7668, line 16, to page 7671, line 5.
804. Page 7679, line 17, to page 7680, line 15.
805. Page 7702, line 25, to page 7705, line 4.
806. Page 7705, line 9, to page 7710, line 2.
807. Page 7711, line 7, to page 7713, line 16.
808. Page 7713, line 20, to page 7714, line 8.
14003 809. Page 7714, line 12, to page 7715, line 7.
810. Page 7715, line 11, to page 7717, line 3.
811. Page 7718, line 21, to page 7719, line 16.
812. Page 7720, line 1, to page 7721, line 21.
813. Page 7722, line 17, to page 7730, line 13.
814. Page 7732, line 9, to page 7733, line 9.
815. Page 7733, lines 12 to 25.
816. Page 7734, line 8, to page 7739, line 20.
817. Page 7746, line 11, to page 7749, line 4.
818. Page 7755, line 13, to page 7756, line 21.
819. Page 7760, line 16, to page 7761, line 22.
820. Page 7762, lines 1 to 22.
821. Page 7763, lines 1 to 12.
822. Page 7765, line 8, to page 7769, line 22.
823. Page 7770, line 10, to page 7771, line 20.
14004 824. Page 7774, line 12, to page 7775, line 10.
825. Page 7776, line 18, to page 7778, line 3.
826. Page 7786, line 15, to page 7787, line 23.
827. Page 7788, lines 1 to 9.
828. Page 7789, lines 4 to 25.
829. Page 7790, line 23, to page 7792, line 3.
830. Page 7792, line 9, to page 7793, line 10.
831. Page 7796, line 1, to page 7798, line 10.
832. Page 7802, line 19, to page 7803, line 9.
833. Page 7809, line 7, to page 7813, line 16.

834. Page 7814, line 15, to page 7818, line 25.
835. Page 7822, line 6, to page 7823, line 14.
836. Page 7830, line 9, to page 7833, line 14.
837. Page 7839, line 21, to page 7840, line 8.
838. Page 7845, lines 4 to 18.
839. Page 7845, line 21, to page 7846, line 12.
840. Page 7849, lines 3 to 23.
841. Page 7852, line 16, to page 7860, line 23.
842. Page 7863, line 17, to page 7864, line 20.
843. Page 7867, lines 4 to 15.
844. Page 7875, line 10, to page 7877, line 22.
845. Page 7878, line 14, to page 7879, line 7.
846. Page 7881, line 4, to page 7882, line 7. 14006
847. Page 7882, line 14, to page 7886, line 2.
848. Page 7916, line 12, to page 7918, line 10.
849. Page 7919, line 16, to page 7921, line 2.
850. Page 7924, line 6, to page 7926, line 18.
851. Page 7928, line 10, to page 7929, line 13.
852. Page 7929, line 17, to page 7929, line 25.
853. Page 7933, line 21, to page 7935, line 2.
854. Page 7935, lines 17 to 25.
855. Page 7936, line 16, to page 7938, line 11.
856. Page 7938, line 22, to page 7942, line 18.
857. Page 7950, line 15, to page 7953, line 4.
858. Page 7954, lines 5 to 17.
859. Page 7954, lines 21 to 25.
860. Page 7956, lines 2 to 18.
861. Page 7957, lines 8 to 24. 14007
862. Page 7962, line 5, to page 7963, line 8.
863. Page 7965, line 22, to page 7967, line 1.
864. Page 7967, line 6, to page 7968, line 12.
865. Page 7968, line 17, to page 7971, line 4.
866. Page 7971, line 9, to page 7976, line 5.
867. Page 7976, line 9, to page 7980, line 18.
868. Page 7980, line 23, to page 7983, line 17.
869. Page 7983, line 22, to page 7984, line 8.
870. Page 8004, line 23, to page 8008, line 3.

14008 *Stipulation as to Matter Omitted.*

871. Page 8026, line 6, to page 8027, line 17.
872. Page 8027, line 21, to page 8031, line 3.
873. Page 8031, line 11, to page 8032, line 19.
874. Page 8032, line 24, to page 8033, line 22.
875. Page 8037, line 1, to page 8044, line 20.
876. Page 8045, line 1, to page 8065, line 11.
877. Page 8070, line 13, to page 8071, line 14.
878. Page 8071, line 18, to page 8072, line 11.
879. Page 8072, line 15, to page 8073, line 6.
880. Page 8073, line 10, to page 8074, line 11.
881. Page 8074, line 15, to page 8076, line 1.
882. Page 8076, line 7, to page 8082, line 12.
14009 883. Page 8083, line 1, to page 8084, line 11.
884. Page 8085, line 1, to page 8086, line 14.
885. Page 8087, line 1, to page 8129, line 21.
886. Page 8154 to page 8158.
887. Page 8175, line 16, to page 8176, line 7.
888. Page 8201, line 1, to page 8207, line 25.

Dated, Washington, D. C., March 5th, 1940.

W. T. KELLEY,
Chief Counsel for Federal Trade Commission.

MARTIN A. MORRISON,
Assistant Chief Counsel for Federal
14010 Trade Commission.

REUBEN J. MARTIN,
Attorney for Federal Trade Commission.

WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Petitioners.

[fol. 4671] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 312

(Argued June 4, 1940. Decided July 22, 1940)

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,

against

FEDERAL TRADE COMMISSION, Respondent

On petition to review a "cease and desist" order of the Federal Trade Commission

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Milton C. Weisman for the petitioners.
Everett F. Haycraft for the respondent.

L. HAND, C. J.:

This case comes before us on petition to review an order of the Federal Trade Commission, directing the petitioners to "cease and desist" from certain "unfair trade practices" in interstate commerce. The principal respondent below, the Fashion Originators Guild, and its members sell medium [fol. 4672] and high priced women's dresses to retailers, who select from designs exhibited in show rooms in New York City. The members make their dresses from what they assert to be "original designs" of their own, to protect which the Guild was organized in 1932, though the designs are neither patented nor copyrighted. About a fourth of all women's dresses made in this country sell for more than $10.75, and the Guild (disregarding whether they were members for the whole year) in 1935 sold 42% of these; their sales of cheaper dresses were less, though in the next lowest grade, $6.75 to $10.75, they were 10% of the total sales in that class. (The Commission found much higher percentages than these; but for the purposes of the case it is not necessary to do more than to take the Guild's own figures.) In order to prevent what the Guild calls "style piracy," that is, the copying of their "original designs," the Guild and

its members refuse in combination to sell any dresses to retailers who purchase, or order to be manufactured, dresses which the Guild finds embody copies of its designs. For that purpose it has set up a "Piracy Committee" which decides which of the designs "registered" by its members, are "originals"; it employs shoppers in various parts of the country who visit the shops of retailers and report delinquents; if a retailer is found to be selling "pirated designs," he must stop doing so, or he will get no more dresses of any sort from the Guild; nor will be be allowed to see the designs exhibited in its New York show rooms. Retailers who coöperate with the Guild must agree to accept the decision of the "Piracy Committee," and must return to sellers any dresses that have been "pirated"; they must also agree to abide by the Guild's regulations. Furthermore, in their sales they must warrant to the customers that the designs of the dresses they sell have not been "pirated," The Guild keeps a card index in which it enters upon red cards the names of those retailers who fail in any of these [fol. 4673] regards. It also maintains a group known as the "Textile Affiliates or Associates" whose members register textile designs with the "National Federation of Textiles," and the dressmaker members of the Guild agree that they will not buy "unregistered" fabrics; conversely, textile members of the Guild agree to sell only to dressmakers who are parties to the combination. About twelve thousand retailers had signed the agreement by the end of the year 1935, and were coöperating with the Guild. Besides the Guild proper, several other subsidiary organizations were made parties to the proceeding, as well as their officers and members and those of the Guild: it is not necessary, however, to describe the relations of the subsidiaries to the parent. The Commission, having found the foregoing facts, made an order appropriate to break up the combination, which the respondents petitioned to review.

The findings are supported by an abundance of evidence and are indisputable; they do not go beyond the conceded purposes of the Guild, which does not indeed deny them, but on the contrary seeks to justify the combination. It says that the sanctions which it imposes were necessary to protect the industry as a whole from "demoralization" and the "property" of its members from appropriation. In great detail it offered to prove what were the results of allowing "style piracy" to continue; how disastrous it was to all

those in the business—manufacturers, retailers and customers—how "style pirates" in some instances gained access to their designs by bribery, burglary and other crimes; how the Guild had benefited the whole industry by the elimination of such evil practices. The Commission refused to receive any evidence of the kind; it held that the combination was unlawful per se; thereby, by implication ruling that even though the combined interests of all those affected made "style piracy" an evil, the manufacturers could not lawfully unite to suppress it by the means employed.

[fol. 4674] At the outset a preliminary question arises which we must dispose of before we proceed to the merits. The Commission asks us not to consider the proffered evidence on the ground that the Guild's only remedy was under § 5 of the Act; that is, having failed to "apply to the court for leave to adduce additional evidence", it lost its only opportunity to question or correct any ruling made during the hearing. This argument rests upon an obvious misunderstanding of the section, and would incidentally result in a procedure that would greatly hamper, if it did not destroy, the effectiveness of the Commission itself. Section five is not directed to the correction of errors committed by the Commission during its proceedings or at any other time; it is analogous to a motion for a new trial upon newly discovered evidence. This appears from its very language, which makes it a condition upon the relief granted that "there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission." It is absurd to speak of the exclusion of evidence as a "failure to adduce" it. Moreover, the notion that every time an examiner erroneously rules out evidence at a hearing, the respondent must apply first to the Commission, and then to the court, to correct his error at the risk of forfeiting all right to complain, scarcely needs to be stated to be answered. It contradicts the whole presupposition on which the statute was drawn; i. e., that the court shall have no jurisdiction over the proceedings until the Commission has concluded the case. Chamber of Commerce v. Federal Trade Commission, 280 Fed. Rep. 45, 48 (C. C. A. 8). Cf. Federal Power Commission v. Edison Co., 304 U. S. 375, 384, 385; Jones v. Securities & Exchange Commission, 79 Fed. (2) 617, 619 (C. C. A. 2). We must therefore decide the case as though the Guild had proved what it offered to prove; that is, we must decide whether its offer was relevant. If it was, the case

must go back for further hearing, because the examiner [fol. 4675] made it plain that he would hear nothing of the kind suggested; and his refusal absolved the Guild from the idle ceremony of swearing witnesses and questioning them. We proceed therefore to the merits.

The author of a design for a dress should be deemed to be on the same footing as the author of a drawing or a picture; and the author of a drawing or a picture has a "common-law property" in its reproduction. Prince Albert v. Strange, 1 McN. & G. 25, 43; Turner v. Robinson, 10 Ir. Ch. 121; S. C. on appeal, 10 Ir. Ch. 510; Parton v. Prang, Fed. Cas. 10, 784; Oertel v. Wood, 40 How. Pr. (N. Y.) 10; Oertal v. Jacoby, 44 How. Pr. (N. Y.) 179. The controversy as to whether "intellectual property" is lost by "publication" goes back to the Eighteenth Century. The great case of Donaldson v. Beckitt, 4 Burr. 2408, decided, although by a narrow vote, that it is not so lost; but it also decided that the statute destroyed the "property" itself; and the result in most cases was therefore the same as though publication was an abandonment, since the act applied only to published works. It would follow, if Donaldson v. Beckitt, supra (4 Burr. 2408) remains law in all that it held, that so far as the statute does not cover such property, "publication" does not destroy it, and that it is therefore perpetual. Mr. Drone in his well-known work (A Treatise on the Law of Property in Intellectual Productions, 1879) insists that this is the only proper result (pp. 116-118); but his opinion was obviously much colored by his passionate disapproval of Donaldson v. Beckitt, supra (4 Burr. 2408) anyway; and we think that the logic, if inexorably applied, is overwhelmed by the practical absurdity of the result. It would certainly be a strangely perverse anomaly that turned the grant of statutory copyright into a detriment to the "author"; yet it would be hard to prove that the statutory remedies conferred made up for the limitation of the monopoly. Omission of property from the act would be a [fol. 4676] bonanza to those who possessed property of that kind. Although it is true that when Donaldson v. Beckitt, supra (4 Burr. 2408) was decided, there was considerable "intellectual property" which the statute did not cover, we do not believe that the judges would have countenanced such a result, and the implications of Turner v. Robinson, supra (10 Ir. Ch. 121, S. C. 10 Ir. Ch. 510) were very clearly to the contrary. When in this country the Constitution (§ 8, Art.

1) gave to Congress power to "secure" to authors the "exclusive Right to their * * * Writings," it was to be only "for limited Times," and did not allow a perpetual copyright. The purpose so disclosed is certainly inconsistent with the assumption that an author—notwithstanding publication and full enjoyment of his "common-law property"—might maintain his monopoly for "unlimited Times". While we have been unable to discover any case which squarely presented the situation—that is, in which "intellectual property", not covered by the copyright act then in existence, was challenged because of its "publication"—there are plenty of general expressions in the books that the "common-law property" does not survive. Wheaton v. Peters, 8 Pet. 591, 658; Bobbs-Merrill Co. v. Straus, 210 U. S. 339, 347; American Tobacco Co. v. Werckmeister, 207 U. S. 284, 299, 300; Caliga v. Inter Ocean Newspaper, 215 U. S. 182, 188; Werckmeister v. American Lithographic Co., 134 Fed. Rep. 321, 324-326 (C. C. A. 2); Parton v. Prang, supra, 1277 (Fed. Cas. 10784); Palmer v. DeWitt, 47 N. Y. 532, 536-538; Jewelers Mer. Agency v. Jewelers Publishing Co., 155 N. Y. 241; Oertel v. Jacoby, supra, p. 188 (44 How. Pr. 179); Waring v. WDAS Broadcasting Station, 194 Atl. 631, 635, 636 (Pa.); Chamber of Commerce v. Wells, 100 Minn. 205 (111 N. W. 157, 159). We conclude therefore that, regardless of whether the Guild's designs could be registered or not, "publication" of them was a surrender of all its "common-law property" in them.

[fol. 4677] To embody a design in a dress or a fabric, and offer the dress for general sale was such a "publication"; nothing more could be done to bring it into the public demesne. It may be unfortunate—it may indeed be unjust—that the law should not thereafter distinguish between "originals" and copies; but until the copyright law is changed, or until the Copyright Office can be induced to register such designs as copyrightable under the existing statute, they both fall into the public demesne without reserve. Cheney Bros. v. Doris Silk Corp., 35 Fed. (2) 279 (C. C. A. 2). The Guild has therefore no more excuse for preventing other dressmakers from copying one than the other. Indeed, it is conceivable that those who might go to the trouble and expense of seeking out the best-known dressmakers of Paris, and of copying their models and designs—as was frequently done—should assert that by investing so much, they too acquired a "property" in the

designs they brought back which ought to be protected against all but the author himself. We are therefore to judge the Guild as a combination seeking to exclude outsiders from a market to which they have as lawful access as it has itself.

A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a boycott; and a boycott is prima facie unlawful; it must be justified. United States v. American Livestock Company, 279 U. S. 435, 437; Restatement of Torts, §765 (1). That it can be justified we have indeed very recently said in Millinery Creators' Guild v. Federal Trade Commission, 109 Fed. (2) 175, 176; and in the case at bar for example, it would be a lawful form of self-help for members of the Guild to refuse in combination to deal with retailers who knowingly bought dresses of those who had stolen "unpublished" designs; or who got access to them by any other crime, or by a breach of promise not to use them; further, it would be lawful to refuse to [fol. 4678] deal with a retailer who knowingly bought of one who copied "unpublished" designs, without the author's consent, however the copier gained access to them. But that excuse does not extend to a boycott of retailers who buy dresses copied from "published" designs; if that is to be justified, the excuse must be found elsewhere. Many trade combinations which affect competition are lawful, when they are designed to prevent trade "abuses"; they are "reasonable," though perhaps to say so is no more than to state the problem. Appalachian Coals, Inc. v. United States, 288 U. S. 344, 374; Sugar Institute v. United States, 297 U. S. 553, 598. Certainly it is not true that the lawfulness of every combination depends upon whether it "reasonably" corrects trade "abuses"; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful per se, the purposes of the confederates will not justify them. Sugar Institute v. United States, supra, 599 (297 U. S. 553). The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing, in spite of the probability that the combination in fact benefited the industry. United States v. Socony-Vacuum Co., 309 U. S. —. However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all.

The case at bar is not one of price-fixing, and for that reason United States v. Socony-Vacuum Co., supra (309 U. S. —) does not control, for the members of the Guild are free to compete with each other in price or in any other way they choose. The purpose was no more than to exclude "piratical" dressmakers from any share in the market for "original" designs; all else was left open. Success in that purpose might, or might not, result in an increase in price to the consumer, or in that stabilization of prices which United States v. Socony-Vacuum, supra (309 U. S. —) [fol. 4679] condemned. Nobody can tell what will be its effect because, although the exclusion of the "piratical" dressmakers will reduce the supply and price is normally a function of supply, it does not appear that the Guild has not a reserve of producing power equal to what is excludes. If so, it may well be able to take up the slack, so to say, created by its efforts, and free competition among the members may keep prices as low and as wayward as they were before. Price fixing is not, however, the only means unlawful per se; the interest of the consumer is not all that determines the "reasonableness" of a contract "in restraint of trade." It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain. Montague & Co. v. Lowry, 193 U. S. 38, 47; Eastern States Retail Lumber Dealers Association v. United States, 234 U. S. 600, 611; Binderup v. Pathé Exchange, 263 U. S. 291, 311, 312; Anderson v. Shipowners Association, 272 U. S. 359, 363; Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association, 274 U. S. 37, 54; Paramount Famous Corp. v. United States, 282 U. S. 30, 43, 44; United States v. First National Pictures, Inc., 282 U. S. 44, 54; National Harness Association v. Fed. Tr. Comm., 268 Fed. Rep. 705, 712 (C. C. A. 6); Wholesale Grocers Ass'n v. Fed. Tr. Comm., 277 Fed. Rep. 657, 663; (C. C. A. 5); Butterick Publishing Co. v. Fed. Tr. Comm., 85 Fed. (2) 522 (C. C. A. 2). There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that that power is not at the moment

exercised is no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at [fol. 4680] any time be used, and there will then be no protection to the consumer.

Finally, it is of no consequence that the Guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales. The reason is as follows. Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and à fortiori a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above over designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods. As to each design therefore the Guild is seeking to establish a monopoly; and it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons the combination was unlawful per se; the Commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as Millinery Creators' Guild v. Federal Trade Commission, supra (109 Fed. (2) 175). Similarly the conduct of the examiner in shutting off cross-examination and the like—of which the Guild urgently complains—was proper; the case stood admitted, no defence was possible; indeed, so far as the Guild has any complaint whatever, it is that the hearings against it were drawn out most unnecessarily.

In 1937 the First Circuit did indeed affirm a decree which dismissed a bill in equity brought against the Guild by a retailer. Wm. Filene's Sons Co. v. Fashion Originators Guild, 90 Fed. (2) 556. We cannot find any distinction [fol. 4681] between the facts as there found and those which we feel bound here to take as though proved; and it follows from what we have already said that we are unwillingly forced to a different conclusion. That difference lies in the fact that, as we have said, we do not understand that a court will inquire into whether a combination benefits an industry when the means used are themselves unlawful; and that

to try altogether to exclude others from manufacturing what they are free to make, is an unlawful means. If on the other hand the First Circuit believed that the "originator" of a design has an interest to protect greater than one who has merely appropriated an existing design at his own labor and expense, we cannot agree as to that either.

The order will therefore be affirmed, except that—as in Butterick Publishing Co. v. Federal Trade Commission, supra, 526, 527 (85 Fed. (2) 522)—it will not be understood to apply to cases in which a retailer knowingly buys dresses, access to the design of which has been procured (1) by fraud, bribery or any other crime, (2) through some breach of contract, or (3) before the design has by "publication" come into the public demesne.

Order affirmed.

[fol. 4682] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,
against
FEDERAL TRADE COMMISSION, Respondent

On Petition to Review and Set Aside an Order of the Federal Trade Commission

Petition for Rehearing and Brief in Support Thereof

Weisman, Quinn, Allan & Spett, Attorneys for Petitioners.

Milton C. Weisman, Melvin A. Albert, of Counsel.

[fol. 4683] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,
against
FEDERAL TRADE COMMISSION, Respondent

On Petition to Review and Set Aside an Order of the Federal Trade Commission

Petition for Rehearing

Come now the petitioners and by their attorneys respectfully petition this Honorable Court for a rehearing for the

reason that this Court erred in its decision affirming, as modified, the order of the Federal Trade Commission and upon such rehearing for a reversal of said order or for further modification thereof for the following reasons:

1. The Court erred in concluding as a matter of fact that the program of the Fashion Originators Guild of America, Inc., established or tended to establish a monopoly in members of the Fashion Originators Guild of America, Inc., in their designs or in the market for the sale thereof.

[fol. 4684] 2. If the Court's conclusion as to the existence of a monopoly or tendency to mon-polize is correct, nevertheless such monopoly as may be held to exist in the instant case is not one which comes within the condemnation of the antitrust acts, since concededly it accomplishes none of the obnoxious results which prompted the enactment of the law against monopolies.

3. Even if the program results in a monopoly or a tendency to monopolize, members of the petitioners have an absolute property right which they may be permitted to preserve since such property right, to wit, the right to continue in business, was threatened by an admitted evil which was accomplishing the destruction, not only of the business of manufacturers, but likewise that of retailers, and which evil was depressing conditions of labor and creating confusion and lack of confidence in the minds of consumers.

4. The Court condemned only so much of the program as creates or tends to create a monopoly. Many features of the program restrained by the cease and desist order have no such effect and involve solely the relationship of members of the Guild to each other. Therefore, so much of the cease and desist order as restrains members of the Guild from indulging in activities involving solely the voluntary action of members of the Guild and embracing only legitimate trade association activities and resulting in no monopolistic menace should be reversed. Such items of the cease and desist order are the following:

"9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to contribute to the cost of advertisements of retail dealers in women's garments" (fol. 427).

"10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers" (fol. 428).

[fol. 4685] "11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments" (fol. 428).

"12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers" (fol. 429).

"13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of America, Inc., and from imposing or collecting fines or penalties or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc." (fol. 429).

5. Regardless of the existence or non-existence of a property right in design; regardless of the right to justify the program as aimed at an industry destroying evil; and since such rule does not create or tend to create a monopoly Guild members may collectively refuse to deal with retailers who conduct their business in violation of law, local or state (Wolfenstein v. Fashion Originators Guild of America, Inc., 244 N. Y. A. D. 656). Therefore, so much of the cease and desist order as restrains members of the Guild from refusing to sell at retail or to persons conducting their business in residences, residential quarters, hotels or apartment buildings (fol. 426) should be reversed.

6. Although the Court has indicated that the members of the Guild presently engage in none of the illegal practices [fol. 4686] condemned by law. (Standard Oil v. United

States, 221 U. S. 1), in that the program does not result in the fixation of prices, a limitation of production or a deterioration of quality, nevertheless the program has been condemned. By reason of the overwhelming equities in favor of the petitioner's program in the attempt to eliminate a conceded evil which was threatening to destroy the industry; since the fairness and reasonableness of the program in operation is not contested and since the benefits resulting to manufacturers, retailers, labor and consumer are uncontradicted, it is respectfully urged that the Court should adopt the procedure enunciated in Appalachian Coals v. United States, 288 U. S. 344, and if it is apprehensive of potential future injury resulting from the Guild program, preserve the right of the Commission to assail such future conduct on the instant record and permit such additional evidence to be adduced as in the opinion of the Commission may be requisite.

Wherefore, your petitioners respectfully pray for a rehearing of their petition to review and set aside the order of the Federal Trade Commission and upon such rehearing for a reversal of said order in whole or in part, as requested.

Dated, August 5, 1940.

Weisman, Quinn, Allan & Spett, Attorneys for Petitioners, By Milton C. Weisman.

[fol. 4687] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al., Petitioners,

against

FEDERAL TRADE COMMISSION, Respondent

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Milton C. Weisman and Melvin A. Albert for the petitioners.

PER CURIAM:

Petition for rehearing denied.

L. H., A. N. H., H. B. C., Circuit Judges.

Filed August 12, 1940.

[fol. 4688] UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of August, one thousand nine hundred and forty.

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

A petition for a rehearing having been filed herein by counsel for the petitioners,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

D. E. Roberts, Clerk, by A. M. Bell, Deputy Clerk.

[fol. 4689] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Fashion Originators Guild of America, Inc., et al. v. Federal Trade Commission. Order. United States Circuit Court of Appeals, Second Circuit. Filed August 12, 1940. D. E. Roberts, Clerk.

[fol. 4690] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 16581

FASHION ORIGINATORS GUILD OF AMERICA, INC., et. al.,
Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

Notice

To: Messrs. Weisman, Quinn, Allan & Spett,
1450 Broadway, New York, N. Y.

GENTLEMEN:

Please Take Notice that the proposed decree, a copy of which is hereunto annexed, is being transmitted to D. E.

Roberts, Esq., Clerk of the United States Circuit Court of Appeals for the Second Circuit, at the United States Court House, Foley Square, New York City, for submission to said Court in accordance with the usual practice.

W. T. Kelley, Chief Counsel,
Federal Trade Commission.

Receipt of a copy of the above notice and draft of decree annexed hereunto, is hereby acknowledged this — day of —, 1940.

Weisman, Quinn, Allan & Spett, Attorneys for the Petitioners.

[fol. 4691] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 16581

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

Decree

The petitioners herein, having filed with this Court on, to-wit, April 6, 1939, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 8, 1939, under the provisions of Section 5 of the Federal Trade Commission Act, and a copy of said petition having been served upon the respondent herein, and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent; and the matter having been heard by this Court on briefs and argument of counsel, and this Court thereafter, on July 22, 1940, having rendered its decision affirming said order of the respondent, with the exception noted at the end hereof;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 8, 1939, be, and the same hereby is, affirmed, with the exception noted at the end hereof;

And it is Hereby Further Ordered, Adjudged and Decreed that the petitioners, Fashion Originators Guild of America, Inc., its officers,

Maurice Rentner, President, Treasurer and Member of its Board of Governors.
Herbert Sondheim, First Vice-President and Member of its Board of Governors.
Charles Gumprecht, Second Vice-President and Member of its Board of Governors.
J. A. Livingston, Treasurer and Member of its Board of Governors.
[fol. 4692] Albert M. Post, Executive Director.
James M. Golby, Executive Secretary.

and their successors;

William Bass,	David Bender,
Louis J. Brenner,	Theodore Racoosin,
Jo Copeland,	Charles Lang,
William Fox,	Samuel Kass,
Joseph Halpert,	D. Eli Lahm,
Charles Miller,	Louis M. Wersba,
Kallman Carmel,	Leo Del Monte,
David M. Goodstein,	Matthew Kane,

Louis J. Mallas,

and their successors, members of its Board of Governors;

Austin M. DeLisser, executive secretary of the Textile Merchants Group of the Fashion Originators Guild of America, Inc., and E. W. Freudenberg, Samuel Levine and E. E. Meyer, and their successors, Members of its Steering Committee, and the following named members of the Fashion Originators Guild of America, Inc.

Aldrich & Malvin, Inc.	Bender & Hamburger, Inc.
Charles Armour & Bros., Inc.	Brenner, Joseph & White, Inc.
Joseph & Ben Barnett, Inc.	Hattie Carnegie, Inc.
William Bass Dress Corp.	Lewis Cohn, Inc.

David Crystal, Inc.
Anna Duke, Inc.
Feigenbaum & Adelsohn, Inc.
Herman Floersheimer & Bro., Inc.
Louise Barnes Gallagher, Inc.
Garfinckel & Siegel, Inc.
A. Goodman & Co., Inc.
Julius Grossman & Fred. Greenberg Dress Co., Inc.
Charles Groden, Inc.
Max Heit Dress Corp.
Myron Herbert & Charles Cooper, Inc.
Virginia Hume & Gold, Inc.
Kallman & Morris, Inc.
Samuel Kass Gowns, Inc.
Charles Kondazian & Papaz, Inc.
Charles Lang, Inc.
Lenkowsky Modes, Inc.
Milton Altmark, Inc.
Arons, Bernstein & Arons, Inc.
Rose, Barrack & Lalm, Inc.
Herman Beispel, Inc.
Blotta & Conti, Inc.
Brenner, Morris, Inc.
Clifford Salkin, Inc.
Jo Copeland, Inc.
Dolces Dressing, Inc.
Eta, Inc.
Pauline Fields, Inc.
Henry Ganz, Inc.
Gardner & Schwartz, Inc.
Ed Garrick & Co., Inc.
Joseph Greenberg-Bettina, Inc.
Joseph Halpert, Inc.
Jack Herzog & Bros., Inc.
E. A. Jackson-Bienard, Inc.
Kaplan & Moskowitz, Inc.
Kiviette, Inc.
Kornhauser Gowns, Inc.
LaRue Dresses, Inc.
Mary Lee Frocks, Inc.
Mary Liotta, Inc.
H. Milgrim & Bros., Inc.
Jennie Moskowitz, Inc.
Nomis Dress Co., Inc.
Pattulo Modes, Inc.
[fol. 4693]
Ben Reig, Inc.
Nettie Rosenstein Gowns, Inc.
Rusolph Gowns, Inc.
J. M. Silverman Dresses, Inc.
Herbert Sondheim, Inc.
Frank Starr Friedlander, Inc.
Suttre-Fox, Inc.
John Traina, Inc.
Fred A. Block, Inc.
H. N. Fried
Lang-Kohn Mfg. Co.
Robinson Bros., Inc.
Dartmoor Coat Co., Inc.
Ben Gershel & Co., Inc.
Ben Ginsberg, Inc.
Aaron Goldstein Co., Inc.
Grossman & Spiegel, Inc.
Monte, Sans & Pruzan, Inc.
Louis Kallish
Ashley Frocks, Inc.
Joseph M. Duberman
Joanne, Jr., Zinn Bros., Inc.
Louise Mulligan, Inc.
M. A. Litvin, Inc.
Germaine Monteil, Inc.
Nanty Frocks, Inc.
Paul Parnes, Inc.
Perles & Gilbert, Inc.
Maurice Rentner, Inc.
James J. Rothenberg, Inc.
Ruffolo Bros., Inc.
Somay, Inc.

Spectator Sports, Inc.
Straus-Miller, Inc.
A. Traina Gowns, Inc.
B. G. Garment Co., Inc.
S. Eisenberg
Junior Guild Frocks, Inc.
Matthew Kadetsky Co.
Carmel Bros., Inc.
Deitsch, Wersba & Coppola, Inc.
Del Monte Hickey Co., Inc.
Louis Goldstein Company, Inc.
Philip Mangone & Co., Inc.
Zuckerman & Kraus, Inc.
Max Rosenbluth.
J. H. Horwitz
Jane Junior Dresses, Inc.
Junior League Frocks, Inc.
Ira Rentner-Miller, Inc.
Amrein Freudenberg & Co., Inc.
Bloomsburg Silk Mill, Inc.
Brueck & Richards, Inc.
Chatillon, Mouly, Roussel, Inc.
Combier & Co., Inc.
Coudurier, Frustus & Devigne, Inc.
Silk Guild of America, Inc.
Empire Silk Co. (Inc.)
The Forstman Woolen Co. (Inc.)
Theodore J. Gallagher, Inc.
L. J. Hyams
Kandelaft Silks, Inc.
Maginnis & Thomas, Inc.
Menke Kaufman & Co.
Wm. C. Openhym
L. & E. Stirn, Inc.
Bianchini, Ferier, Inc.
Sidney Blumenthal & Co., Inc.
Case & Co., Inc.
Cheney Bros., Inc.
Descours, Genthon, Inc.
Croydon Fabrics, Inc.
F. DuCharne Silk Co., Inc.
Cohn-Hall-Marx Co., Inc.
Frank Associates, Inc.
Hess, Goldsmith & Co., Inc.
Jane Hyams Lace Net Importing Co., Inc.
H. B. Mallinson & Co., Inc.
Onondaga Silk Co.
Remond-Holland, Inc.
Stunzi Sons Silk Co., Inc.
Susquehanna Silk Mills (Inc.)
J. A. Wagenbauer, Inc.
Wechaler Silk Corp.
J. J. & N. Blackstone, Inc.
Ellen Lace & Embroidery Co., Inc.
Ikle Freres & Co., Inc.
Lido Embroidery, Inc.
Record Lace & Embroidery Co., Inc.
Walter Tobler
Franz Hoenig
Schwarzenbach, Huber, Inc.
Wahnetah Silk Co., Inc.
Zellinger & Schreth, Inc.
Dutschler, Trull & Justin, Inc.

[fol. 4694]

L. H. Hollander
Herbert Lehman, Inc.
Maison France, Inc.
Swiss Novelty Embroidery Co., Inc.
Sol Wolfman, Inc.
Adler & Adler, Inc.
David M. Goodstein, Inc.
Joseph Levay, Inc.
David N. Lowenthal & Son, Inc.

Charles W. Nudelman, Inc.
Theodore Rosenberg
Star Maid Dresses, Inc.
Townley Frocks, Inc.
Aywon Dress Co., Inc.
Daytime Frocks, Inc.
Harry Frank
Goldman Frocks Co., Inc.
Jomark Dresses, Inc.
Parisian Mfg. Co., Inc.
Rosen Bros. Frocks, Inc.
Silver Dresses, Inc.
Witlin & Schneider, Inc.
Anderman-Bob Burns, Inc.
Gracé Ashley,
Capri Frocks, Inc.
Cohen-Tunick, Inc.
Sam Davidson, Inc.
Fashion Wear Dress Co., Inc.
Ginsburg & Abelson, Inc.
Lee Claire Costumes, Inc.
Lyttle Bros., Inc.
Matty Moskowitz, Inc.
Patricia Perkins, Inc.
Reich-Goldfarb & Co., Inc.
Schultze-Zuch, Inc.
Will Steinman, Inc.
Phil Zahn & Co., Inc.
Campus Modes, Inc.
Davidow, Inc.
Kane-Weill, Inc.
J. A. Livingston, Inc.
Mutual Rosenbloom Corp.
Zoltan Rosenberg
Sport Kraft, Inc.
San Steinberg & Co., Inc.
L. & D. Beilinson, Inc.
F. E. D. Dress Co., Inc.
Friedman Dress Co., Inc.
International Dress Co., Inc.
Joe Levine Dress Co., Inc.
C. H. D. Robbins Co., Inc.
Sheila-Lynn Dresses, Inc.
David S. Westheim Corp.
Bernard Appel, Inc.
Bonn Ray Dance Frocks, Inc.
Casino Dresses, Inc.
Dalton Frocks, Inc.
Dresden Dress Co., Inc.
Franklin Dress Co., Inc.
Alexander S. Gross, Inc.
Lyla Modes, Inc.
E. N. Marcus
Parnis-Levinson, Inc.
Radiant Dress Co., Inc.
L. C. Rosenblatt, Inc.
Stern & Goldberg, Inc.
Valroy, Inc.
Bretter & Sussman, Inc.
Flo-Frocks, Inc.
George Hess Co., Inc.
Michael K. plan
Wein Frocks, Inc.
Argosy Dresses, Inc.
Garland Dress Co., Inc.
Samuel Lipman
Julius Lipman
Rosenthal & Kallman, Inc.
Junior Fashion Guild, Inc.
M. Kaplan
Abbate-Swift, Inc.
Cecele Dance Frocks, Inc.
B. Tobias, Inc.
Herman Lipman
Marie-Lynn Dance Frocks, Inc.

[fol. 4695] and all present and future members, their agents, servants and employees, each and all,

Cease and Desist from directly or indirectly, jointly or severally, entering into or carrying out any understanding,

arrangement, agreement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to hinder or suppress competition in the interstate sale and distribution of women's garments or textiles used in the manufacture thereof; or to hinder or suppress competition among manufacturers of said garments or textiles in the interstate sale and distribution of said products to retail dealers, and particularly from directly or indirectly, in pursuance of any such understanding, arrangement, agreement, combination or conspiracy, from:

1. Inducing, coercing, constraining or compelling manufacturers of women's garments to confine their purchases of textiles to those textile manufacturers who register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

2. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to buy from textile manufacturers who sell to retail dealers in women's garments who enter into agreements with manufacturers to manufacture styles, or to refuse to sell to such retail dealers as resort to such practices.

3. Inducing, coercing, constraining or compelling textile members of the Fashion Originators Guild of America, Inc., to refuse to sell textiles to women's garment manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

4. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell their merchandise to retail dealers who do not agree to cooperate with, or who do not cooperate with, the Fashion Originators Guild of America, Inc., by refusing to buy women's garments declared by it to be copies of original registered designs of its members and registered by them in the registration bureau of said petitioner, Fashion Originators Guild [fol. 4696] of America, Inc., and by returning to the manufacturers thereof any such copies which may be found in

their stock, and by stamping all their orders for merchandise with the warranty clause stamp of the Fashion Originators Guild of America, Inc., which recites that the seller warrants that the garments ordered and sold are not copies of styles originated by members of the Fashion Originators Guild of America, Inc., and that the purchaser reserves the right to return any merchandise which is not as warranted.

5. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to confine their sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, to retail dealers in women's garments who are members of the respective petitioner local guilds of those cities, to-wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc., or those who conform to the standards and regulations of such petitioner local guilds.

6. Inducing, coercing, constraining or compelling the women's garment-manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to conduct off-price promotion sales, or clearance sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, prior to the dates fixed for such sales by the respective petitioner local guilds, to-wit, Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc.

7. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell at retail, or to persons conducting their business in residences, residential quarters, hotels or apartment buildings.

8. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to exhibit or sell their merchandise to retail dealers who fail or refuse to sign the Declaration of Cooperation of the Fashion Originators Guild of America, Inc., or who, having signed same, fail or refuse to comply with the conditions thereof.

[fol. 4697] 9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to

contribute to the cost of advertisements of retail dealers in women's garments.

10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers.

11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments.

12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers.

13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of America, Inc., and from imposing or collecting fines or penalties, or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc.

It is Further Ordered, that the petitioner Michigan Avenue Guild of Chicago,—

Guy L. Ederheimer,
Edward A. Fletcher,
Harry Blum,
Louis Gossert,
A. E. Levitt,
Bernard Rose,
Herman Friedman,
Frank L. Cole,
L. R. Pearson,
Leo Bramson,
M. E. Greenbaum,
Sally K. Greenbaum,
E. R. Lindburg,
George M. Gleason,
Clarence A. Powell; and
Elise A. Runyan,—

its officers and members of its Board of Directors and their successors, its members and all future members;

The petitioner, Minneapolis Fashion Guild, Roy H. Bjorkman, its Executive Secretary, and his successors, its officers and members of its Board of Directors and their successors, its members and all future members;

[fol. 4698] The petitioner, Ladies Ready-to-Wear Guild of Baltimore, Inc.,

Charles G. Hutzler,
C. F. Roycroft,
William Pollock,
Martin B. Kohn,
J. E. Ellington,
Allen S. Metzger,
Fred H. Alperstein,
Lester Bonwit,
Albert D. Slesinger,
Sam J. Schleisner, and
Hal W. Kenaston;

its officers and members of its Board of Directors, and their successors, its members and all future members:

Cease and Desist from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, or persons, association or corporation:

(a) To refuse to purchase any of their requirements from manufacturers of women's garments who are not members, or who do not conform to the standards, ethics or regulations of the Fashion Originators Guild of America, Inc.;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., prohibiting the purchase or sale of women's garments declared by it to be copies of styles or designs registered as original by its members in its design registration bureau;

(c) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any such declared copies as are mentioned in sub-paragraph (b), that are found in their stock shall be removed from sale and returned to the manufacturer thereof;

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that all orders for women's garments shall be stamped with its warranty clause which recites that the seller warrants that the garments are not copies of styles or designs registered with the Fashion Originators Guild of America, Inc., as original by its members, and reserving the right in the purchaser to return any merchandise which is not as warranted;

(e) To comply with the requirement of the Fashion Originators Guild of America, Inc., that purchases of women's garments be made only from its members in good standing or from manufacturers who observe its standards, ethics, policies and regulations.

[4699] It is Further Ordered, that the petitioner National Federation of Textiles, Inc., Peter Van Horn, its President, Irene L. Blunt, its Secretary, and their successors, all other of its officers and their successors, members of its Board of Directors and their successors, and its members and all future members, their agents, servants and employees:

Cease and Desist from directly or indirectly, jointly or severally, entering into, or carrying out, any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, persons, association or corporation,—

To publish in trade journals, newspapers, or in any other manner, that manufacturers of women's garments have entered into an agreement not to purchase textiles from manufacturers thereof who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

It is Further Ordered, that petitioners Marshall Field & Company, Allied Stores Corporation, the Lindner Co'y, Joseph Horne Company, Mandel Brothers, Inc., John Wanamaker, Philadelphia, Lit Brothers, Inc., Bullock's, Inc., The Emporium Capwell Corporation and J. L. Hudson Co., their officers, members of their Boards of Directors, and their successors, their agents, servants and employees, and approximately 12,000 retail dealers in women's garments throughout the United States who have signed Declarations of Cooperation with petitioner Fashion Originators Guild of America, Inc., whom it is impracticable to name herein, and of whom the petitioners specifically named in this paragraph are representative:

Cease and Desist from, directly or indirectly, jointly or severally entering into, or carrying out any understanding, arrangement, agreement, combination or conspiracy with each other, or with any other person or persons, association or corporation:

(a) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion

Originators Guild of America, Inc., or who do not conform to its standards, ethics and regulations;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members;

(c) To comply with the request of the Fashion Originators Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists;

[fol. 4700] (d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any women's garments found in their stocks which have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

(e) No part of the foregoing order shall apply to cases in which a retailer buys dresses whose style or design he knows the dressmaker to have copied without consent from an "unpublished" style or design; the privilege so conferred shall, however, cease as soon as the style or design in question shall be "published"; after which the retailer shall be free to buy dresses made after it, no matter by what means the dressmaker originally obtained access to it.

And It Is Hereby Further Ordered, Adjudged and Decreed that the petitioners as above set forth shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth the manner and form in which they have complied with this decree.

By the Court:

——— ———, ——— ———, ———, Circuit Judges.

August 24, 1940.

[fol. 4701] Endorsed: In the United States Circuit Court of Appeals for the 2nd Circuit. Fashion Originators Guild of America, Inc., et al., Petitioners, v. Federal Trade Commission, Respondent. No. 16581. Decree. United States Circuit Court of Appeals, Second Circuit. Filed August 26,

1940. D. E. Roberts, Clerk. W. T. Kelley, Chief Council for Federal Trade Commission.

[fol. 4702] UNITED STATES OF AMERICA,
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1a to 32a and 1 to 4701 inclusive in 6 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Fashion Originators Guild of America, Inc., et al., Petitioners, against Federal Trade Commission Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit this third day of September, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal.)

[fol. 4703] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 251.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Office - Supreme Court, U. S.
FILED
OCT 31 1940
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC. ET AL.

v.

FEDERAL TRADE COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CHARLES B. RUGG
MILTON C. WEISMAN
Counsel for Petitioners

ARCHIBALD COX
MELVIN A. ALBERT

PRESS OF GEO. H. DEAN CO., BOSTON

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INDEX

	Page.
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT	3
ASSIGNMENT OF ERRORS	8
REASONS FOR GRANTING THE WRIT	9
APPENDIX	14

CITATIONS

Cases:

Appalachian Coals, Inc. v. *United States*, 288 U. S. 344 ..... 11, 12

Board of Trade of the City of Chicago v. *United States*, 246 U. S. 231 11

Wm. Filenes Sons Co. v. *Fashion Originators' Guild of America*, 90 F (2) 556 9

International News Service Co. v. *Associated Press*, 248 U. S. 215 11

Millinery Creators' Guild v. *Federal Trade Commission*, No. 251, October Term 1940 ..... 11, 12, 13

Sugar Institute, Inc. v. *United States*, 297 U. S. 553 .. 11

Statutes:

Judicial Code Section 240 (a) 2

Federal Trade Commission Act, Section 5 3

Miscellaneous:

Callman, Style and Design Piracy, 22 J. of Pat. Off. Soc. 578 11

Paul H. Nystrom, Fashion Merchandizing, The Ronald Press (1932) 11

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No.

FASHION ORIGINATORS' GUILD OF AMERICA, INC. ET AL.

v.

FEDERAL TRADE COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, Fashion Originators' Guild of America, Inc. et al.,[1] pray that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above case on August 24, 1940, modify-

[1]The other petitioners too numerous to name herein are all those persons named in the decree of the Circuit Court of Appeals for the Second Circuit (R. 4685-4688, 4691-4693) with the exception of Austin M. DeLisser, E. W. Freudenburg, Samuel Levine, E. E. Meyer, National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt. The petitioners, therefore, are the officers, members and affiliates of Fashion Originators' Guild of America, certain retail guilds and retailers cooperating with F.O.G.A. in its program to reduce style piracy.

ing and affirming an order of the Federal Trade Commission.

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit is reported 114 F. (2d) 80 and is printed R. 4671-4679.

JURISDICTION

The decree of the Circuit Court of Appeals which the petitioners request this Court to review was entered August 24, 1940. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the collective refusal of manufacturers of garments of their own original designs to deal with retailers marketing unauthorized copies of their original designs is an "unfair method of competition" under Section 5 of the Federal Trade Commission Act, notwithstanding that the economic background of the program and its effect upon the industry and consumers show the restraint to be "reasonable".

2. Whether the systematic unauthorized copying of garments as originally designed by the petitioners is unfair competition against the evil effects of which the petitioners, without thereby violating Section 5 of the Federal Trade Commission Act, may protect themselves by collectively refus-

ing to deal with retailers so long as such retailers continue to market such unauthorized copies.

3. Whether the collective action of retailers in refusing to deal in unauthorized copies of petitioners' original creations is an "unfair method of competition" under Section 5 of the Federal Trade Commission Act, notwithstanding that the economic background of such action and its effect upon the industry, the retailer, and consumer, shows the restraint to be "reasonable".

STATUTE INVOLVED

The statute involved is Section 5 of the Federal Trade Commission Act, 38 Stat. 719, U.S.C. Title 15, Sec. 45. Its text in the Appendix, infra, pp.

STATEMENT

The petitioner, Fashion Originators' Guild of America, Inc. (hereinafter referred to as "F.O.G.A."), is a New York membership corporation whose membership was at one time composed of textile and ladies garment manufacturers (R. 108-121), but later was confined to ladies garment manufacturers. On April 16, 1936, the Federal Trade Commission issued its complaint against F.O.G.A., its members and certain cooperating retailers alleging them to be guilty of unfair methods of competition under Section 5 of the Federal Trade Commission Act (R. 3-25).

After hearings upon the complaint and answers, the Commission made the following findings pertinent to the question presented:[2]

F.O.G.A. was organized to protect the originators of ladies' garments of original design against "copying".[3] (This is known in the trade as "style piracy".) (R. 122, fol. 365). To accomplish that end it embarked on a two-fold program. First, as the principal means of executing its purpose to suppress style piracy, F.O.G.A. persuaded retailers that they should subscribe to a declaration of policy by which they undertook to buy merchandise only upon a warranty that it was not a copy of an original creation of an F.O.G.A. member and to withdraw from sale and return to the manufacturer any merchandise adjudged by the "piracy committee" of F.O.G.A. (an independent body of retailers) to be such a copy (R. 124, fol. 370, 371). That was accomplished by threats that the dress manufacturer members of F.O.G.A. would not sell to retailers who refused to adopt that policy (R.

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[2]The Federal Trade Commission made numerous other findings concerning trade practices which the petitioner sought to put into effect. For example, F.O.G.A. had sought to bring about uniform discounts for cash and to put an end to the practice of manufacturers' contributing to the retailers' advertising costs. The Commission ordered F.O.G.A. and its members to cease and desist from its efforts to enforce these and similar trade practices. The propriety of that part of the order does not raise the serious questions of public importance involved in the remainder of the F.O.G.A. program.

[3]"Copying" has a peculiar meaning in the garment industry. The second, third and successive dresses put out by the designing manufacturer are not copies but originals. A "copy" is an unauthorized reproduction made by another manufacturer. The word is used in that sense throughout this petition. Ladies' dresses, suits and coats are the garments here involved.

124-125, fol. 372-373). Such threats were carried out (*Ibid.*). Second, in a few cities, F.O.G.A. secured agreements from local retailers associations that members of such associations should follow the above-described policy and should also refuse to buy from F.O.G.A. members who dealt with local retailers marketing copies of F.O.G.A. designs (R. 123, fol. 368). Further to effectuate its purposes and to police the above system, F.O.G.A. adopted the following procedure: A design registration bureau was established at which F.O.G.A. members registered their designs (R. 125, 126, fol. 375, 376). "Shoppers" were employed to ascertain whether any retailer was selling what appeared to be a copy of a registered design (R. 126, 127, fol. 378, 379). If one was, the fact was reported to F.O.G.A. (*Ibid.*). The manufacturer of the copy was given an opportunity to appear before a "piracy committee" composed of experts who are retailers or buyers not members of F.O.G.A. (the decision of which was subject to appeal by him but not by the member to a second and similar committee). If he did, he was heard, but whether he did or not, the committee decided whether or not the garment complained of was in fact a copy of an original (not simply a registered) design before any action was taken (R. 126, fol. 377). If the committee decided the registered design to be original and the garment to be a copy, the retailer was notified and requested to remove it from sale and return it to the manufacturer. If he refused, the manufacturer members of F.O.G.A. refused to sell him garments. To give them the necessary information, a list of retailers selling pirated designs was maintained;

each new recalcitrant dealer was added to it (R. 127). Retailers require the products of F.O.G.A. members to meet consumer demand and in 1936 the sales of members were a substantial proportion of the total (R. 121, 122, fol. 363, 364).[4]

The petitioners have not fixed or sought to fix prices, have not limited or tried to limit production, have not divided or sought to divide markets or caused or sought to cause deterioration of their products (R. 4367-4368). The Commission made no findings contrary to the undisputed testimony to this effect.

At the hearings before the Federal Trade Commission the petitioners did not deny the greater part of the above facts. They did deny that F.O.G.A. members held a dominating position in the industry but unless the decision below is to be defended on other grounds than the court adopted, that issue is now immaterial. The real defense offered was proof of the living background of the mechanical program described by the Commission (R. 4307-4327). Manufacturers in the industry are of two kinds. First are the manufacturers who adapt "styles" into original "designs". Second are the copyists who systematically live off the "designs" of originators. "Styles" are fixed by

[4]The Commission found that 38% of the sales in the wholesale price range of $6.75 and up and 83.99% of the sales in the price range of $10.75 and up were by F.O.G.A. members (R. 121, 122, fol. 363, 364). These figures, it is submitted, are inaccurate. For example, the evidence of the Commission shows that the figure 83.99% is a mathematical error and should be 63.99%. The court below accepted as the proper proportions 10% in the price range of $6.75 and up and 42% in the price range of $10.75 and up (R. 4671).

the fashion centers. There congregate designers sent by originators and they, after viewing the coming styles, interpret them into many "designs" according to their skill and taste. Without copying, the original design has value for about three months after the initial sale. But though it is free to all to adapt a style into any of the infinite number of possible designs, copyist manufacturers stand aside until the originators have developed designs. Then, gaining access to the designs by unfair and unlawful means if necessary, they meticulously copy the originals and sell the copies, thus obtaining the benefit of the investment and ability of others without cost to themselves. This piracy had devastating effects throughout the industry. The honest manufacturer lost the value of his creation. Sweat shops sprang up. Customers looking for originality were outraged to find that the market was flooded with copies of what they had thought was exclusive. Prices in many instances rose instead of fell for the originator and initial copyists were compelled to increase them to recapture the initial investment quickly and on what garments they could. Confidence in the retailer and therefore his business suffered; he lost his reputation for careful selection of originals and for charging prices commensurate with the individuality of the dress. The evil fed upon itself, producing slow disintegration of the industry. The F.O.G.A. program was designed to check it, not by tampering with prices or production, or by dividing markets, but simply by offering to retailers the choice of buying original designs of F.O.G.A. mem-

bers and selling no copies of them or of selling such copies and original designs of those not members. The period of protection was limited in practice to about three months. After that copies could be sold by anyone.

The Commission refused to hear this. It repeatedly ruled that the practices of F.O.G.A. could not be justified by any evidence of "what the necessity of the action [of F.O.G.A.] may have been" and excluded the proffered proof that the practices of F.O.G.A. were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils flowing from the pirating of original designs. (R. 4308, fol. 12922; R. 4307-4327.)

Upon the aforesaid findings the Commission entered, on February 8, 1939, an order directing the petitioner to cease and desist from the above-described practices. Thereafter the petitioners filed a petition in the Circuit Court of Appeals for the Second Circuit seeking review of the order of the Federal Trade Commission and to have it set aside (R. 1a-32a). On July 22, 1940, the decision of that court was rendered, and on August 24, 1940, the petition for review was denied (R. 4684-4694).

ASSIGNMENT OF ERRORS

The Circuit Court of Appeals erred:

1. In entering a decree affirming and enforcing with modifications the order of the Federal Trade Commission.

2. In ruling that the F.O.G.A. program was an unlawful boycott which might not be justified.

3. In ruling that the Federal Trade Commission did not err in excluding evidence of conditions in the garment industry before and after the adoption of the F.O.G.A. program, of the nature and effect of style piracy, of the reason for adopting the particular program and of the fact that the program was reasonable.

4. In ruling that a garment manufacturer is entitled as a matter of law to engage in systematic copying (as distinguished from isolated reproduction) of garments created and sold by manufacturers of garments of original design.

5. In ruling that the F.O.G.A. program was unlawful because each member manufacturer sought thereby to acquire a monopoly of each dress of his own original design.

6. In ruling that the F.O.G.A. program was unlawful because the combination might in the future fix prices or regulate production.

REASONS FOR GRANTING THE WRIT

1. *The decision below is in conflict with the decision of the Circuit Court of Appeals for the First Circuit in Wm. Filene's Sons Co.* v. *Fashion Originators' Guild of America,* 90 F. (2) 556. This conflict was expressly recognized by L. Hand, C. J., in the opinion of the court below.[5] The Solicitor

[5] "In 1937 the First Circuit did indeed affirm a decree which dismissed a bill in equity brought against the Guild by a retailer. *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild,* 90 Fed. (2). 556. We cannot find any distinction between the facts as there found and those which we feel bound to take as though proved, and it follows from what we have already said that we are unwillingly forced to a different conclusion."

General also recognized the conflict in his reply to the petition for certiorari in *Millinery Creators' Guild, Inc.* v. *Federal Trade Commission,* No. 251, October Term, 1940. Certiorari was granted in the *Millinery* case on October 14, 1940.

2. *This case presents an important question of Federal Law which has not been but should be decided by this Court.* The Commission proceeded upon the theory that F.O.G.A. was an unlawful combination *per se* because the combination involved a concerted refusal to deal. It refused to receive evidence of conditions in the industry before and after the cooperative effort was undertaken, of the nature and effect of the evil of "style piracy", of the destruction of the interests of manufacturer and laborer and retailer and consumer, of the reasonableness of the means adopted and of the ultimate results upon prices and competition (R. 4307-4327). The court below agreed. F.O.G.A. members have no "property" in their designs, it said; the combination is a boycott to exclude copyists from the market; it cannot be justified by proof that it benefits the remaining manufacturers and consumers as well; it aims at a monopoly in each original dress and so is unlawful. In so condemning the F.O.G.A. program, both Commission and Court hewed a new path away from established principles and practice. Barring cases involving attempts to regulate prices or production or to divide markets, this Court has uniformly pointed out that an industry's voluntary cooperative effort must be judged in the light of the facts peculiar to

the industry, the conditions before and after the restraint was imposed, the evil believed to exist and the reason for adopting the particular remedy. *Board of Trade of The City of Chicago* v. *United States,* 246 U. S. 231, 238; *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344; *Sugar Institute, Inc.* v. *United States,* 297 U. S. 553, 597-598.

There is also raised a serious question in regard to the significance of *International News Service Co.* v. *Associated Press,* 248 U. S. 215. The scope of that decision has not been delimited by this Court but since the systematic deceptive copying of dresses of original design is the same kind of conduct as the systematic copying of papers spreading recent news we submit that the court probably was wrong in not following that decision. *Cf. Callman, Style and Design Piracy,* 22 J. of Pat. Off. Soc. 578, 586.

The public importance of these questions is obvious. The ladies garment industry is a major industry. To it their final determination has vital significance. *Cf. Paul H. Nystrom, Fashion Merchandizing, The Ronald Press* (1932), Chapter 14.

3. *The present case should receive full consideration by the Court notwithstanding that a writ of certiorari has been granted in Millinery Creators Guild* v. *Federal Trade Commission.* Although the two cases are somewhat analogous the records differ sharply. The *Millinery* case was decided principally upon a stipulation of facts. No evidence was offered to show in justification of the boycott that the program was reasonable or what had been con-

ditions in the industry before and after the program was adopted, what evils had existed and why the particular remedy was adopted. In the instant case the petitioners urged that the principle recognized in *Appalachian Coals, Inc.* v. *United States, supra,* was as applicable to a concerted refusal to deal as to other restraints not regulating prices, production or quality and they did offer to prove in great detail the effect upon the industry of style piracy and of the cooperative effort to eliminate it. This case, therefore, does raise a fundamental question which may not be raised by the *Millinery* case—whether a boycott can be justified by proof that it benefits the consumer and the industry as a whole.

The conflict between the First and Second Circuit Courts of Appeals which is the chief reason for asking this Court to review either this or the *Millinery* case springs from and is best shown by the conflicting decisions upon the legality of the F.O.G.A. program (*Cf.* Reply to Petition for Certiorari, *Millinery Creators Guild* v. *Federal Trade Commission,* No. 251, October Term 1940). The identical program was held lawful in one case and unlawful in the other. Evidence in justification was considered and held sufficient in the First Circuit. The same evidence was offered in this case but was excluded as immaterial. In the *Millinery* case, however, the record contains no such evidence or offer of proof.

Moreover, the program of the Millinery Guild differed from that of F.O.G.A. For example, the Millinery Guild did regulate prices. The Federal

Trade Commission so found.[6] F.O.G.A. did not regulate prices directly or indirectly. The Federal Trade Commission did not find that it did. The court below accepted the uncontradicted evidence of this fact.[7] This difference in the programs and the differences in the records upon which the cases arise make it peculiarly advisable, we submit, that this Court when it resolves the conflict between the circuits should consider in addition to the *Millinery* case the very program which occasioned the conflict.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Second Circuit should be granted and the case set down for argument immediately following *Millinery Guild, Inc.* v. *Federal Trade Commission,* No. 251, October Term, 1940.

CHARLES B. RUGG
MILTON C. WEISMAN
Counsel for Petitioners.

ARCHIBALD COX
MELVIN A. ALBERT

October 1940.

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[6] "The . . . result of the said . . . practices have been and now are . . . to creat monopoly in the sale of women's hats . . .
(b) By depriving the public of the benefits of price competition among retailers . . .
(d) By increasing the price of stylish hats for women. . . ."

[7] "The case at bar is not one of price fixing . . ." (R. 4677).

APPENDIX

Statute Involved

Section 5(a) of the Federal Trade Commission Act, 38 Stat. 719, as amended by Act of June 23, 1938, c. 601, § 1107(f), 52 Stat. 1028, U. S. C. Title 15, Sec. 45 provides as follows:

> "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> "The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

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In the Supreme Court of the United States

OCTOBER TERM 1940

No. 537

FASHION ORIGINATORS GUILD OF AMERICA, INC.
ET AL.

v.

FEDERAL TRADE COMMISSION

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

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PRESS OF GEO. H. ELLIS CO., BOSTON

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INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement	3
A. Facts	3
B. Proceedings before the Commission	14
Assignment of Errors	16
Summary of Argument	17
Argument	22
I. The Petitioners' Program Does Not Violate Section 5 Because Its Sole Consequence Is To Curb the Unlawful Competition of the Style Pirate	22
A. "Style Piracy" is unfair competition in which the copyist has no right to engage	22
B. The sole consequence of the FOGA program is to limit the unlawful activities of the style pirates and of the retailers who join with them	35
C. A method of competition which has no effect except to limit the unfair competition of others is not a violation of Section 5	37
II. The Federal Trade Commission Erred in Refusing to Hear Evidence of the Economic Justification for the FOGA Program	40
A. The proffered evidence was relevant and material to a determination of whether the petitioners were violating the Sherman Act	42
B. The proffered evidence was relevant and material to a determination of whether the petitioners' conduct was of a kind tortious at common law	56
Conclusion	67
Appendix	68

CITATIONS

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Addyston Pipe & Steel Co. v. *United States*, 85 Fed. 271; affirmed 175 U.S. 211 49

Aikens v. *Wisconsin*, 195 U.S. 194 ..... 28, 57

A.L.A. Schechter Corp. v. *United States*, 295 U.S. 495 ..... 26, 32, 41

American Column & Lumber Co. v. *United States*, 257 U.S. 377 50

Anderson v. *United States*, 171 U.S. 604 48

Apex Hosiery Co. v. *Leader*, 310 U.S. 469 ..... 45, 51, 54

Appalachian Coals, Inc. v. *United States*, 288 U.S. 344 ..... 20, 44, 46, 47, 50, 51

Associated Press v. *Station KVOS*, 9 F-Supp. 279 (D. Wash.) reversed 80 F. (2d) 575 (C.C.A., 9th) reversed to be dismissed for want of jurisdiction 299 U.S. 269 ..... 30, 32

Bedford Company v. *Stone Cutters Ass'n*, 274 U.S. 37 49

Binderup v. *Pathé Exchange*, 263 U.S. 291 ..... 49, 50

Board of Trade of the City of Chicago v. *United States*, 246 U.S. 231 ..... 44, 46, 47

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Brown v. *United States*, 256 U.S. 335 38

Case of the Schoolmasters, Y.B. 11 Hen. 4 f. 47, pl. 21 28

Cement Mfgrs. Protective Association v. *United States*, 268 U.S. 588 ..... 47, 50

Cheney Bros. v. *Doris Silk Corp.*, 35 F. (2d) 279 (C.C.A., 2d) 32, 59, 66

Crump Co. v. *Lindsay*, 130 Va. 144 30

Duplex Co. v. *Deering*, 254 U.S. 443 49

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Estate Stove Co. v. *Gray & Dudley*, 50 F. (2d) 413 (C.C.A., 6th) 30

Page

Cases:

Ethyl Gasoline Corp. v. *United States*, 309 U.S. 436 ... 45

Federal Electric Co. v. *Flexhume Corp.*, 33 F. (2d) 412 (C.C.A., 7th) ... 31

Federal Trade Commission v. *Beechnut Packing Co.*, 257 U.S. 441 ... 41, 56

Federal Trade Commission v. *Butterick Pub. Co.*, 85 F. (2d) 522 (C.C.A., 2d) ... 37

Federal Trade Commission v. *Curtis Pub. Co.*, 260 U.S. 568 ... 50, 67

Federal Trade Commission v. *Gratz*, 253 U.S. 421 ... 40, 41, 66

Federal Trade Commission v. *Raladam*, 283 U.S. 643 ... 38

Federal Trade Commission v. *Raymond Bros. Clark Co.*, 263 U.S. 565 ... 42, 56

Federal Trade Commission v. *R. F. Keppel & Bros.*, 291 U.S. 304 ... 39, 41, 67

Federal Trade Commission v. *Royal Milling Co.*, 288 U.S. 212 ... 39

Fisher v. *Star Publishing Co.*, 231 N.Y. 414 ... 32

Fonotipia Ltd. v. *Bradley*, 171 Fed. 951 (S.D.N.Y.) ... 32

Garrett v. *Taylor*, Cro. Jac. 567 ... 28

Germanow v. *Standard Unbreakable Watch Crystals*, 283 N.Y. 1 ... 30, 31

Grenada Lumber Co. v. *Mississippi*, 217 U.S. 433 ... 42, 56

Hanna Mfg. Co. v. *Hillerich & Bradsby Co.*, 78 F. (2d) 763 (C.C.A., 5th) ... 30

Hunt v. *New York Cotton Exchange*, 205 U.S. 322 ... 32

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International News Service Co. v. *Associated Press*, 248 U.S. 215 ... 18, 26, 29, 32, 65, 66

Interstate Circuit v. *United States*, 306 U.S. 208 ... 46, 51

Jackson v. *Quickslip Co.*, 110 F. (2d) 731 (C.C.A., 2d) ... 31

Kaeser & Blair, Inc. v. *Merchants Ass'n*, 64 F. (2d) 575 (C.C.A., 6th) ... 31

Kemp & Beatley v. *Hirsch*, 34 F. (2d) 291 (E.D.N.Y.) ... 7

Page

Cases:

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Maple Flooring Mfgrs. Association v. *United States*, 268 U.S. 563 ..... 47, 50

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McCaulley v. *Tierney*, 19 R.I. 255 ..... 57, 64

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Mogul S.S. Co. v. *McGregor*, 23 Q.B. Div. 598, (1892) A.C. 25 57

Montague v. *Lowry*, 193 U.S. 38 48

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Mosler Safe Company v. *Ely Norris Safe Company*, 273 U.S. 132 27

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National Exhibition Co. v. *Teleflash*, 24 F. Supp. 488 (S.D.N.Y.) 30

Paramount Famous Lasky Corp. v. *United States*, 282 U.S. 30 50

Peirce v. *Society of Sisters*, 268 U.S. 510 27

Pittsburg Athletic Co. v. *KQV Broadcasting Co.*, 24 F. Supp. 490 (W.D. Pa.) 30

Ploof v. *Putnam*, 81 Vt. 471 38

Page

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RCA Mfg. Co. v. *Whiteman*, 114 F. (2d) 86 (C.C.A., 2d) ..... 30.

Re Le May's Registered Design, 28 Ch. Div. 24 33

Reynolds & Reynolds Co. v. *Norick*, 114 F. (2d) 281 (C.C.A., 10th) 31

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Sinko v. *Snow Craggs Corp.* 105 F. (2d) 450 (C.C.A., 7th) 31

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Standard Oil Co. v. *United States*, 221 U.S. 1 ..... 41, 44, 53, 54, 55

Standard Oil Co. v. *United States*, 283 U.S. 163 .. 46

Steiff v. *Gimbel Bros.*, 214 Fed. 569 (C.C.A., 2d) 37, 59

Sugar Institute Inc. v. *United States*, 297 U.S. 553 20, 44, 46, 47, 51

Tarleton v. *McGawley*, Peake's N.P. 270 28

Truax v. *Corrigan*, 257 U.S. 312 ..... 27, 28

United States v. *American Livestock Comm. Co.*, 279 U.S. 435 .....42, 56, 65

United States v. *American Oil Co.*, 262 U.S. 371 50

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Vegelahn v. *Gunter*, 167 Mass. 92 57

Vincent v. *Lake Erie Transp. Co.*, 109 Minn. 456 38

Vortex Mfg. Co. v. *Ply-Rite Contracting Co.*, 33 F. (2d) 302 (D. Md.) 29

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Wolfenstein v. *Fashion Originators' Guild*, 244 App. Div. 656 65

Statutes:

Australian Preservation of Industries Act, 1908-1910 40

Copyright Act, Section 5; 35 Stat. 1076, 17 U.S.C.A. §5 7

Federal Trade Commission Act, Section 5, 38 Stat. 719, U.S.C. Tit. 15, Sec. 45 ..... 2, 68

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Page

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	Page
Miscellaneous:	
Note (1919) 19 Col. L. Rev. 233	27
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Page

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In the Supreme Court of the United States

OCTOBER TERM 1940

No. 537

FASHION ORIGINATORS GUILD OF AMERICA, INC.
ET AL.

v.

FEDERAL TRADE COMMISSION

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit is reported 114 F. (2d) 80 and is printed R. 4671-4679. The findings and order of the Federal Trade Commission are printed R. 107-148.

JURISDICTION

The decree of the Circuit Court of Appeals was entered August 24, 1940. The petition for a writ of certiorari was filed October 31, 1940 and was granted November 25, 1940. The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the systematic unauthorized copying of garments of original design is unfair competition against which the originators of the designs may protect themselves without violating Section 5 of the Federal Trade Commission Act by collectively refusing to deal with retailers while they are knowingly marketing such unauthorized copies.

2. Whether under the circumstances evidence of the economic necessity for their program and of its beneficial consequences was erroneously excluded in a proceeding under Section 5 of the Federal Trade Commission Act against manufacturers of garments of their own original designs for collectively refusing to deal with retailers marketing unauthorized copies of those original designs.

3. Whether under the circumstances evidence of the economic necessity for their action and of its beneficial consequences was erroneously excluded in a proceeding under Section 5 of the Federal Trade Commission Act against retailers who, at the request of certain manufacturers, refused to market unauthorized copies of garments designed by those manufacturers.

STATUTE INVOLVED

The statute directly involved is Section 5 of the Federal Trade Commission Act, 38 Stat. 719, U.S.C. Tit. 15, Sec. 45. Indirectly involved are Sections 1 and 2 of the Sherman Act, 26 Stat. 209, U.S.C. Tit. 15, Sec. 1, 2. The texts of these sections are printed in the Appendix, *infra*, p. 68.

STATEMENT

A. *Facts*

A decade ago the ladies' garment manufacturing industry was divided into two well defined groups of manufacturers (R. 4311, 4312, fol. 12933, 12934).[1] First, were those manufacturers whom we may call originators (R. 4311, fol. 12933). They sent representatives to the style centers of the world (R. 4312, fol. 12936). (Formerly it was Paris, today and tomorrow New York.) The representatives observed the prevailing styles[2] and predicted, if they could, the fashions[3] to come (*ibid*). Thereupon the originator put the skilled designer to work; he interpreted and adapted the prevailing fashions into many different original designs[4] (R. 4312, fol. 12935; R. 4313, fol. 12937). Then the best designs were embodied into samples and finally into any number of dresses the manufacturer saw fit (R. 4313, fol. 12938, 12939). Those he sold to retailers and the retailers, to consumers. Without copying, the style life of a garment (the period between the first order received by the manufacturer and the last) would have been about three months (R. 4313, fol. 12939).

---

[1]The Federal Trade Commission excluded all evidence of the basic facts and economic conditions necessary to full comprehension of the issues presented. The facts stated under this heading include those which were found by the Commission, which appear in evidence which was uncontradicted and which appear in the petitioners' offer of proof (R. 4309-4327). Substantially all of the facts stated were found as facts by Judge Brewster on affidavits and by a master after prolonged litigation in *Wm. Filene's Sons Co.* v. *Fashion Originators Guild of America*; his report was confirmed by the district judge and the order was affirmed. See 14 F. Supp. 353; 90 F.(2d) 556.

[2]A "style" is a characteristic or distinctive artistic expression or presentation. NYSTROM, FASHION MERCHANDIZING, The Ronald Press (1932) 33. The style of a dress is the sum of its general lines and characteristics (R. 4312, fol. 12934).

[3]A "fashion" is a style accepted and used. NYSTROM, *loc cit. supra.*

[4]A design is a particular adaptation or interpretation of a style. *Ibid.* The design of a dress is the sum of all its particular details, hence any style may be embodied in innumerable designs (R. 4312, fol. 12935). These definitions were accepted in the National Recovery Administration. See JOHNSTON AND FITCH, DESIGN PIRACY AND ITS TREATMENT UNDER N.R.A. CODES, Office of National Recovery Administration, 1936.

Living off the originators and unable to exist without them were the manufacturers known to the industry as "copyists"[5] or "style pirates".[6] (R. 4311, fol. 12933). They made no effort to develop their own designs; on the contrary their livelihood was manufacturing dresses embodying designs which were literal copies of the designs of the originators (R. 4314, fol. 12942). Access to the originals was easily gained; sketches were made by the copyist at fashion shows or in retail stores (R. 4315, fol. 12943). Often, however, he was not content to wait until publication but gained access to the originals by fraud, burglary or bribery (R. 4314, 4315, fol. 12942-12945). Then the copyists manufactured the copies, using cheap materials and poor workmanship, and put them on the market through retail outlets (R. 4319, fol. 12955, 12956).

The effect upon the consumer was immediate. She had no way upon superficial examination in the store of knowing when a dress was an original and when it was a copy (R. 4320, fol. 12958). Yet women insist upon fashionableness and distinctiveness in their attire (R. 4324, fol. 12971-12972). The woman who bought an original, therefore, was outraged, if, window shopping, she saw apparently identical dresses all down the street selling for less than she had paid. But the dresses were never the same. They were made of cheaper materials and workmanship and for that reason cost less (R. 4318, fol. 12953). Consumers in all price ranges demanded that originals be separated from copies (R. 4320, fol. 12960).

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[5]A "copy" is not any garment which is a reproduction of the first one made but is any unauthorized reproduction of an original design. Authorized reproductions made by the creator or originator of the design, therefore, are known as "originals" and unauthorized reproductions as copies. In practice, all copies are made by manufacturers who make substantially nothing but copies. (R. 4311, 4314, fol. 12933, 12942).

[6]"Style pirates" is a misnomer; "design pirates" would be the more accurate term.

The consumer's anger was directed, of course, at the retailer. In a world where fashion rules it was useless for the retailer to try to explain that the similarity was superficial and that the copy down the street sold for less because it was cheaply made of inferior materials. Neither could he hope, by showing that no one could know where the copyist would strike next, to satisfy his customers who complained that he did not sell modish garments. In both respects his reputation and, therefore, his business suffered (R. 4318, fol. 12954). But copying coupled with women's demand for distinctive clothes damaged the retailer in other ways also. Anticipating that a design would be successful he would stock a number of garments embodying it. When copies appeared he could not sell them; a limited number of garments of one design will satiate the market not because the demand for garments is limited but because a garment could not be sold when its design became common. If the copy was cheap, the retailer was hurt worse, not because the cheap copy filled a demand for garments which the retailer of originals was seeking to supply but because wide sales of the design to customers in any price range shifted the demand in other price ranges away from that design to another and again left the retailer stocked with garments which he could sell only at a loss if at all. For one or more of those reasons merchants who handled "high styled" dress creations ran their departments at a loss. And the loss was attributable to style piracy only. (R. 4318-4319, fol. 12954-12955.)

It was the originator manufacturer, however, who suffered the most. First, his sales on the initial showings were reduced to a minimum. The retailers, fearful of losses due to stocking any design which might be widely copied, would not place large orders but bought from hand to mouth. The manufacturer in turn could not plan his production intelligently. He could not employ help

steadily. He could not buy or manufacture in bulk. His costs, therefore, were tremendously increased (R. 4316-4317, fol. 12948-12949). Second, where the copyist destroyed a retailer's market for designs he had stocked, the retailer returned the dresses to the manufacturer. Or, if the design had been pilfered surreptitiously and the copies appeared before the originals were shipped, then the order was cancelled. Style piracy was the chief cause of cancellations and returns (R. 4316, fol. 12946). Third, style piracy deprived the manufacturer of "reorders". Retailers never stock very many garments of any design. In the absence of copying they would have reordered many dresses in the successful designs and on those large reorders the originator could make up the cost of design creation. The copyist here did the greatest damage. The successful design was at once made up by him into copies which were rushed on the market. When they arrived the style life of the dress was ended; the originator received no reorders for the design having become common could no longer be sold (R. 4317, fol. 12950-12951; R. 4314, fol. 12941). Without reorders no originator could survive; upon them depended the success or failure of his business (R. 4314, fol. 12941). Finally, the originator's accounts receivable became harder to collect. The retailer who had lost heavily on a widely copied line demanded and to preserve the outlet had to be given some discount off the original purchase price (R. 4319, fol. 12957).

Style piracy directly caused those four evils. Those evils caused disintegration of the industry (R. 4321, fol. 12963). Design originators could not continue in business profitably. Bankruptcies were frequent. The annual business mortality rate was twenty-five per cent (R. 4315, fol. 12945).

Style piracy injured the laborer also because uncertainty in respect to reorders made it impossible for the manufacturer to space production evenly (R. 4317, fol. 12951). Manufacturing became a series of sprints between originators to make and sell their dresses and pirates to copy quickly the design of each popular dress, followed by slack periods in which all waited for another popular design to be developed. This injured everyone, but most of all the laborer. For him there were nothing but short bursts of employment—for long hours at minimum wages if he was employed by the copyist—succeeded by layoffs (R. 4321, fol. 12962-12963).

Originators and retailers alike realized that they were confronted with a choice between voluntary action and business disaster (R. 4322, fol. 12964; R. 4325, fol. 12975). They chose the former. In seeking to defend themselves against style piracy they had little recourse but to adopt some form of self-help. The copyright laws were not applicable; a dress design is not within the category "works of art; models or designs for works of art". 35 Stat. 1076, U.S.C. Tit. 17 §5. See *Kemp & Beatley* v. *Hirsch*, 34 F. (2d) 291, (E.D.N.Y.). JOHNSTON AND FITCH, *op. cit. supra*, n. 4, 96-98. The design patent law involved expenditures disproportionate to the value of a design and delay exceeding the style life of the garments. R.S., §§4929, 4933 amended by 32 Stat. 193, amended by 53 Stat. 1212, U.S.C. Tit. 17 §73. (R. 4325, fol. 12973.) Court help based on common law principles might have been obtained once a precedent was made; but in daily practice the court processes would have been too complicated and slow (Cf. R. 4325, fol. 12973).

In 1932, against this background, the petitioner Fashion Originators' Guild of America, Inc. (hereinafter referred to as FOGA) was organized for the purpose of saving the industry from the evil of style piracy (R. 122, fol. 364, 365). To accomplish that end it adopted a pro-

gram which would impede the copyist yet would not regulate prices, production or quality. It was this:

At the outset FOGA went to certain retailers and asked them to agree to sell no copies of FOGA designs. Many perceiving the advantage to the industry agreed (R. 124, fol. 370-371). Others were given these alternatives—to sell the garments made by FOGA members and to sell no copies of them, or to sell copies of FOGA designs and to look elsewhere for original creations (R. 124, fol. 372). They made their choice when the alternatives were put up to them—and although the prestige of FOGA members may have influenced their decision, the choice was freely made and the alternatives fairly stated (R. 220, fol. 658).

To give an initial basis for executing the program FOGA established a design registration bureau where each member registered each of his designs. But registration was not evidence of originality; that issue if ever raised was determined later. Registration simply dated the design and limited the claim of originality (R. 4327-4329).

To seek out copies was unnecessary. Cooperating retailers swiftly called them to the attention of FOGA. If there was substance to the charge both the manufacturers were notified; the FOGA arbitration machinery was set in motion. A panel of arbitrators had been established to adjudge what was a copy and what was not (R. 4335, fol. 13002, R. 4337, fol. 13010). None of them represented FOGA manufacturers; all were merchandise managers and buyers for retail stores and so had no interest in any prospective controversy (R. 4337). The manufacturer of the alleged copy could challenge anyone drawn from the panel until three satisfactory to him were selected or, if there were none, he could name one man, FOGA would name another, and the two a third (R. 211, fol. 631-632; R. 4338-4340, fol. 13014-13019). Potentially they had two ques-

tions to decide: the first, whether the alleged original was in fact an original; the second, whether the alleged copy was in fact a copy. On both questions each party was heard and the committee decided (R. 4340-4341, fol. 13020-13022).[7]

If the FOGA member did not establish his claim, that was an end of the matter (R. 4341, fol. 13021). If the garment was adjudged a copy of an original, the copyist could appeal, if he wished, to a second committee made up of merchandise managers, store owners and heads of New York offices whose decision was final (R. 4341, fol. 13022, R. 4342-4343, fol. 13026-13028). If there was no appeal or if the second panel like the first found copying had occurred, then the retailer was asked to remove the copy from sale. If he did not, a "red card" was issued and the FOGA members refused to deal with him, but only until he ceased to sell copies of their goods (R. 215; R. 3277, fol. 9831).

To acquaint retailers with decisions of the arbitrators shoppers employed by FOGA visited them (R. 205, fol. 613). They were not spies. They shopped openly and disclosed their purpose and identity (R. 4336, fol. 13008). Their chief duty was to discover by comparison of the manufacturer's identifying order number whether retailers were marketing adjudged copies of FOGA original designs (R. 4345-4346, fol. 13035-13036).[8] If one was, the retailer was informed of the decision, comparison being made by manufacturer's number. The retailer might withdraw the copy. If he did the matter ended. If he did not FOGA was notified and persuasion attempted. If the retailer persisted, a "red card" might issue. (R. 215.)

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[7]Indeed, even if the copyist did not appear, the question of whether copying had occurred was always raised by the committee itself and decided without hearing the FOGA manufacturer. (R. 4342, fol. 13024.)

[8]Sometimes shoppers received the complaints that a cooperating retailer was selling copies and forwarded the complaints to FOGA (R. 203, fol. 623; R. 4336, fol. 13006).

The FOGA program took the above form because it was appropriate to remedy the old evils yet at the same time was not broader than was necessary if it was to be effective. The boycott is narrow in scope. It is invoked only against retailers whose policy is to sell copies of FOGA designs. When they stop, members are free to deal with them (R. 3277, fol. 9831). Protection is limited as to subject matter, as to time and as to place. Only designs which in fact are the original designs of FOGA members are protected; "imports", licensed copies of foreign designs, are not (R. 4324, fol. 12970).[9] Protection lasts only for a short period—in practice, for about three months.[10] Thereafter, in following years, anyone may make copies. Protection is granted only in a limited number of places. All the copyists' wares may be hawked in stores which do not sell FOGA garments; retailers affected by the FOGA program are less than one-fifth of the available outlets.[11] Any retailer may sell copies of originals designed by a manufacturer not a member of FOGA. And any retailer selling copies of FOGA designs may buy originals else-

[9]It has sometimes been claimed that copies of French creations for which the importer buys a license should be protected. FOGA does not grant that protection.

[10]The FOGA rules provided for protection for six months. Exhibits 1-A–1-T. But a season lasts only three months, R. 4313, fol. 12939, so that no one would be interested in copying or preventing copying after that length of time until the following year, by which time the six months' period for protection would have expired.

[11]The Commission found that approximately 12,000 retailers cooperated in the FOGA program (R. 125, fol. 373). About 400 were red carded (R. 127, fol. 381). In 1935 there were approximately 62,766 retail stores selling type of ladies garment with which FOGA was concerned. Therefore the FOGA program directly affected only 19.8% of the outlets.

The figure 62,766 is made up of the figures given by the Department of Commerce, Census of Business: 1935, Retail Distribution Vol. II, p. 12, for the following classes of retail stores:

Dry goods	28,709
Department	4,201
Family clothing	7,881
Women's Ready to Wear	21,975

These classifications all sell women's garments other than accessories. See *Id.*, Vol. I, part IV.

where; less than fifty per cent of the originators were members of FOGA.[12] In other words, the petitioners, both manufacturers and retailers, did not seek to keep all copies, even all copies of FOGA garments, from the market but simply to keep copies of any FOGA designs from being sold at the same time in the same store as any FOGA originals.

The FOGA program was successful. It was the greatest single factor in stabilizing the industry to the benefit of manufacturer, retailer, consumer and laborer. It resulted in increased competition on an ethical, fair, competitive basis and has resulted in a decrease of failures and of losses in the industry. The evils which previously had threatened the existence of the industry were largely eradicated. (R. 4325, fol. 12974-12975.)

This result was accomplished with a minimum of injury to anyone. The only persons whom the Federal Trade Commission found to have been injured were the copyists and the retailers who were "red carded". (R. 130, fol. 389.) The hardship to copyists, however, was limited by four factors. First, there were ample retail outlets to which they might sell copies of FOGA designs; less than one-fifth of the retailers were cooperating with

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[12] FOGA had 176 manufacturer members in April, 1936 (R. 122, fol. 365). Only 81 were manufacturers in the price range of $16.50 wholesale (R. 4394, fol. 13182). At the same time, there were over 423 firms in that price range available to those "red carded" by FOGA (R. 4389, fol. 13167). Few, if any, of those would be copyists—50% is an excessive estimate; but even on that hypothesis, the estimate made in the text is moderate.

The Federal Trade Commission found that FOGA members manufactured 83.99% of the garments in the price range of $10.75 and up wholesale and 38.8% in the price range of $6.75 and up (R. 122, fol. 364). The first figure is an obvious error in printing which, we think, respondent will admit. The figure should be 63.99%, for it must be based upon Exhibit 941, the highest estimate in the record. Assuming the figures of 38.8% and 63.99% to be based upon competent testimony, it is obvious that there was an ample supply for stores with whom FOGA members refused to deal. There appears to be no evidence to support the finding that *all* retailers require FOGA garments (R. 121-122, fol. 363-364). And it is absurd. It is common knowledge that there are many retailers who do not sell any dresses costing $6.75 wholesale for that would be in excess of $10 retail.

FOGA.[13] Second, they might sell everywhere copies of designs other than those originated by FOGA. There were many of them.[14] Third, the copyists had free rein the ensuing year; protection in theory was limited to six months (Exhibit 1), in practice to three.[15] Fourth, there was ample opportunity for the copyists to compete honestly; plenty of able designers were available (R. 4324, fol. 12971). The loss to the red-carded retailers, moreover, resulted from their own deliberate and persisting choice. Had they agreed to the program they would have been better off than they were prior to the formation of FOGA (R. 4318-4319, fol. 12953-12956; R. 4325, fol. 12975).

The benefits of the program were accomplished without any injury to the consumer. On the contrary her interests were advanced.

First, the FOGA program does not regulate the price structure or increase the cost of fashionable designs to low income consumers. FOGA has never directly or indirectly interested itself in the price at which a manufacturer or retailer may sell his products (R. 4367-4368, fol. 13101-13102). The Federal Trade Commission has not even hinted that the FOGA program enhanced prices or affected them in any manner in any range—a silence which is eloquent in view of the known importance and practice of making such a finding in anti-trust cases which permit it.[16] Whether the program does not regulate price because there is an excess of production among FOGA members, as the court below reasoned (see R.

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[13]See note 11, *supra*.

[14]See note 12, *supra*.

[15]See note 10, *supra*.

[16]The court below stated "the case at bar is not one of price-fixing" (R. 4677). See also *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild*, 90 F. (2d) 556 at 560.

4677), or whether because the pirated design still competes in the market through retailers who did not cooperate with FOGA or whether for some other reason, is immaterial. The fact is not a matter as to which speculation could take the place of proof. The FOGA program was in effect for many years before the hearings. The Commission, upon which the burden rested, deliberately refused to look to experience.

Second, the FOGA program does not parcel out or limit production of dresses (R. 4368, fol. 13102). The uncontradicted testimony was to that effect. The Commission did not suggest the contrary. Neither can it be reasoned that the program threatens to reduce the supply of modish dresses because it prevents copies from being sold by cooperating retailers. For all that appears, originals may take their places in the market or the copies may find buyers in non-cooperating stores. This case, therefore, does not involve regulation of the quantity of garments or designs available to the consuming public.

Third, the FOGA program does not deteriorate quality, the last great concern of the consumer (R. 4368, fol. 13103-13104). That must be taken as true on this record for the Commission refused to hear evidence on the point. And it is obvious. Today quality in ladies' garments is not measured by utility as was the homespun of the frontier. In a fashion goods industry style and originality are the criteria of quality. The consumer assumes the materials and the workmanship of all dresses in a given price range to be uniform (R. 4324, fol. 12971-12972). Hence, the elimination of the deceptive selling of a multitude of copies improves the quality of the products where as here it does not by raising prices keep exclusive designs from the consumer (Cf. R. 4320, fol. 12958-12960).

B. *Proceedings Before the Federal Trade Commission*

On April 16, 1936, the Federal Trade Commission issued its complaint against FOGA, its members and certain cooperating retailers alleging them to be guilty of unfair methods of competition under Section 5 of the Federal Trade Commission Act (R. 3-25). Hearings were held upon the complaint and answers. Notwithstanding that the petitioner proved or offered to prove all the facts we have stated the Commission then made only the following findings pertinent to the question presented:[17]

The members of FOGA, competing among themselves and with other manufacturers, ship and sell their goods in interstate commerce (Par. 7).[18] They are a dominant factor in the industry for all retailers require their product (Par. 8). In 1932 FOGA was organized to prevent style piracy (Par. 9) and to accomplish that purpose it has done the following acts: It has agreed with certain local associations of retailers not to sell to non-members of those associations in exchange for the associations' agreements that their members would not sell copies of FOGA designs (Par. 10). It persuaded many retailers voluntarily to adopt the policy of buying merchandise only upon a warranty that it was not a copy of an original creation of an FOGA member and of withdrawing from sale and returning to the manufacturer any merchandise adjudged by the "piracy committee" of FOGA to be such a copy (Par. 11). In other cases retailers were induced to adopt the policy by threats that the dress manufacturer members of FOGA would not sell to re-

[17]Many of the findings deal with relatively unimportant FOGA activities. Most of them had been abandoned prior to the issuance of the order of the Federal Trade Commission. The petition for certiorari raised no questions in respect to those parts of the order; hence we shall omit all reference to the findings upon which it was based.

[18]The findings are set forth R. 108-134. For convenience in reference the record citations in this summary are to the numbered findings of the Commission.

tailers who refused to adopt it (Par. 11). Such threats have been carried out and in 1936 there were 12,000 cooperating retailers (Par. 11). A design registration bureau was established at which FOGA members registered their designs; registration raised no presumption of originality but dated the claim (Par. 12). "Shoppers" ascertained whether any retailer was selling what appeared to be a copy of a registered design; if one was, the fact was reported to FOGA (Par. 14). A "piracy committee" decided after notice and hearing whether or not the garment complained of was in fact a copy of an original design. If it held the registered design to be original and the garment to be a copy, the copyist had an appeal; then the status of the garment was fixed (Par. 13). A list of retailers who refused to adopt the policy recommended by FOGA or who refused to abide by the decision of the piracy committee was maintained by a card index system in which those who would not cooperate were marked with a red card. In March, 1936, there were 400 of them (Par. 15). This program has caused loss to the retailers who refused to cooperate and to the copyist manufacturers (Par. 28, 29).

At the hearings the petitioners did not deny most of those findings.[19] The petitioners' real defense was that the mechanical program could not properly be studied as an isolated skeleton clothed in dry terms of "coercion" and "boycott" but must be judged as we have attempted to describe it, as a living force in a functioning economy. They did show how the program operated. They did prove that they have not fixed or sought to fix prices, have not limited or tried to limit production, have not divided or sought to divide markets or caused or sought to cause deterioration of their products (R. 4367-4368). They offered to prove facts compelling the ultimate fac-

[19] A few are based on errors in arithmetic or are obviously absurd, but so far as they go most of the above findings are accurate. See note 12 *supra*.

tual conclusion that the practices of FOGA were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils flowing from the pirating of original designs and had in fact benefited all four (R. 4308, fol. 12922; R. 4307-4327). The Commission, however, refused to hear that evidence (R. 4307-4327). It repeatedly ruled that the practices of FOGA could not be justified by any evidence of "what the necessity of the action [of FOGA] may have been" and excluded the proffered proof (see, *e.g.*, R. 4308, fol. 12922).

On February 8, 1939, on the basis of the above findings, the respondent entered a cease and desist order (R. 135-148). The first part before this Court for review is the provisions which forbid the manufacturer petitioners to combine to induce retailers not to market copies of their own original designs and to induce each other not to deal with retailers who are selling them (R. 140; R. 141, fol. 422-423). The second is those provisions which forbid the retailer petitioners from voluntarily agreeing among themselves and with the manufacturer petitioners not to sell such copies (R. 147-148, par. (b) and (d)).

Thereafter the petitioners filed a petition in the Circuit Court of Appeals for the Second Circuit seeking review of the order of the Federal Trade Commission and to have it set aside (R. 1a-32a). On July 22, 1940, that court handed down its opinion affirming the order in part but modifying it in certain details (R. 4679). On August 24, 1940, a decree was entered in accordance with the opinion (R. 4684-4694).

ASSIGNMENT OF ERRORS

The Circuit Court of Appeals erred:

1. In entering a decree affirming and enforcing with modifications the order of the Federal Trade Commission.

2. In ruling that a garment manufacturer is entitled as a matter of law to engage in systematic copying (as distinguished from isolated reproduction) of original creations sold by manufacturers of garments of original design.

3. In ruling that the FOGA program was an unlawful boycott which might not be justified by the evidence offered by the petitioners.

4. In ruling that the Federal Trade Commission did not err in excluding evidence of conditions in the garment industry before and after the adoption of the FOGA program, of the nature and effect of style piracy, of the reason for adopting the particular program and of the fact that the program was reasonable.

5. In ruling that the FOGA program was unlawful because it results in each member manufacturer acquiring a "monopoly" of each of his own original garment designs.

6. In ruling that the FOGA program was unlawful because the combination might in the future fix prices or regulate production.

SUMMARY OF ARGUMENT

I.

Style piracy is unfair competition which equity would enjoin at the suit of an originator. A dress has its chief value not on account of the utility of the cloth or the artistry of the lines and colors but from the freshness of its design. The business of designing and selling women's garments is, on account of woman's nature, therefore, the business of creating and publishing the news of the world of fashion. A dress in a commonplace design has no larger market than last week's newspaper.

The style pirate unlike the originator does not create his own designs. Gaining access to originals by any means at hand he deliberately, continuously and systematically makes and retailers sell, often as originals, Chinese copies of those which are or promise to be successful. That fills a part of the demand which the originator might have filled and—far more important—destroys the greatest part of the demand for originals. The demand is destroyed because the copies deprive the originals of their freshness; customers who would have bought them select other garments of a design less common. Hence the instant case is on all fours with *International News Service Co.* v. *Associated Press,* 248 U.S. 215. But, regardless of precedent, we submit, style piracy is unfair competition as a matter of principle. It is not necessary to show a "property right" in each design or a "passing-off". There is a tort (we call it "unfair competition") if one trader injures the business of another by depriving him of sales by some practice which society through its spokesmen condemns as "wrongful". Style piracy does injury to originators' businesses; it deprives them of sales. Style piracy is wrongful; it is a type of the professional parasitism which equity has not hesitated to forbid, which industry almost unanimously proscribed in the NRA codes and which the Federal Trade Commission itself has condemned in Trade Practice Conferences. Both elements of the tort, therefore, are present.

The FOGA program has no consequence except to limit this unfair competition of the style pirate by keeping the products by which he competes unfairly out of the stores in which FOGA originals are marketed. Equity would give that relief. The determination of whether a garment is a copy and therefore one by which the copyist competes unfairly is made by an impartial committee composed of the very experts whose testimony would

receive the greatest weight in court. The commission has not found that any one except the style pirate and the retailer allied with him is injured.

Since style piracy is unfair competition and since the FOGA program has no effect but to limit it and in limiting it does not injure the consumer, it follows that the FOGA program is not an unfair method of competition under Section 5. Section 5 develops the law of torts in the public interest but retains the essential characteristics of that law and therefore should not be construed to bar reasonable self-help. Moreover, Section 5 was not intended to and does not protect from interference trade which is unlawful and has no right to exist.

II.

The Federal Trade Commission erred in refusing to hear evidence of the causes and consequences of the FOGA program and of the social and economic conditions in which it functioned. The only conceivable basis for branding the program unfair is that it involves combined action. Each petitioner could have done alone what the petitioners have done collectively without danger of criticism. The determination of whether a combination violates Section 5 turns upon an evaluation of its social and economic desirability—the act supplies no more definite test—and that evaluation can be made in a case like this one only when all the relevant facts have been uncovered. That is true from the viewpoint of the two expositions of policy here relevant—the Sherman Act and the common law precedents.

Whether FOGA violated the Sherman Act could not be determined by logic alone. Notwithstanding slight differences of expression, there has been unanimous agreement that the eventual question under the Act is whether a particular restraint does or threatens injury to the

consumer's interests—whether it is "unreasonable"—and that the only workable technique for deciding that question is the study of the causes, functioning and consequences of the restraint. In three cases apparent exceptions to that general principle exist—where prices are fixed, where production is limited and where quality is deteriorated—but the exceptions are more apparent than real for the true basis of the refusal to examine further is that the direct and immediate injury to the consumer is so real and so serious as to make it vain to search for compensating benefit. The case at bar, however, comes within none of the three exceptions. The Commission did not even suggest that to curb style piracy would increase the cost of garments of modish designs or would decrease the number of garments or of designs or would deteriorate their quality. Therefore, the Commission erred in refusing to hear the evidence which would make it possible to evaluate the effect of the program upon the interests involved and thereby to determine whether it was "unreasonable" or "reasonable".

The offer of proof showed that the FOGA program was "reasonable". If all the manufacturers and all the retailers could agree not to make or sell copies, the agreement would be lawful. *Appalachian Coals, Inc.* v. *United States*, 288 U.S. 344; *Sugar Institute, Inc.* v. *United States*, 297 U.S. 553, 598. The sole purpose and sole effect of any agreement to curb style piracy in the garment industry is to preserve it from the devastating effects of that practice. The mere fact that the destructive practice is checked without the consent of the parasite who practices it does not render a different rule applicable. The Sherman Act does not enlarge his rights. And the decisions of this Court make it clear that although perhaps a combination of traders may not lawfully exclude another trader from any part of the market, nevertheless they may lawfully condition his

entry into it upon his abandoning practices which undermine the entire industry.

From the viewpoint of the common law also the exclusion of the proffered evidence was erroneous. A boycott although *prima facie* unlawful may be justified. Competition has quite steadily been held a justification. But we do not stand upon that proposition. The justification pleaded is even more apparent when the effect of the boycott on all the conflicting interests involved is considered. The petitioners offered to prove that even if the boycott did hurt the copyist and the retailer who deliberately allied himself with the copyist, nevertheless it benefited the manufacturer, retailer, laborer and consumer. Plainly the gains outweigh the losses.

The fundamental error in the Commission's procedure, therefore, lay in failing to exercise the very function for which it was created. It has often been recognized that the courts are handicapped in regulating business practices because their facilities and expertise are insufficient. At no time was that fact more keenly felt than when the Federal Trade Commission was created. The purpose of Congress was to provide for expert factual judgments by establishing as the primary body a commission which could properly investigate and analyze the factual data in the light of particular competitive conditions. The instant case presents in acute form the very type of controversy which it was intended the Commission should deal with in that manner. Since it did not, the cause should be remanded in order that the administrative function be exercised.

ARGUMENT

I.

The Petitioners' Program Does Not Violate Section 5 Because Its Sole Consequence Is To Curb the Unlawful Competition of the Style Pirate.

FOGA was organized and exists for the primary purpose of checking style piracy (R. 122, fol. 365). Its members and other manufacturers originate designs. Copyists, on the other hand, live by reproducing without authority those designs created by originators. The business of the copyist is the deliberate, continuous and systematic appropriation of the benefits of the originator's efforts. He damages the originator's business by depriving him of customers who would otherwise surely be his. So to steal a free ride and injure the originator is unfair competition in which the copyist has no right to engage. The FOGA program has no effect except to limit those wrongful activities. Therefore that program is not an unfair method of competition. We consider these points seriatim.

A.

"Style piracy" is unfair competition in which the copyist has no right to engage.

The development of designs for ladies' garments is a major function of an industry ruled by the dictates of fashion. The "style" comes first; it is the broad outline, the general characteristics, the type from which the design is developed.[20] Styles are fixed at fashion centers. There the representatives of the manufacturers of originals congregate to observe the styles and to pre-

[20] See note 2, *supra*.

dict their trend. Then by labor, skill, ingenuity and a flair they adapt and interpret the style *à la mode* into many different designs. (R. 4312-4313, fol. 12935-12938.)

Next, the manufacturer who originates designs makes and vends the dresses embodying them. Although as between two new designs it may be the artistic quality or attractiveness of a design which makes it successful, between two dresses the customer chooses accordingly as she believes one dress or the other embodies the very latest style and design (Cf. R. 4324, fol. 12971-12972). The business of manufacturing and selling ladies' garments is the business of creating and publishing the news of fashion.

An analogy may be helpful. The publisher of a large newspaper has a vast organization which collects and sells to the public information concerning current events. First are the reporters who go where the news is being made. They are comparable to the representatives of manufacturers in attendance at the fashion centers of the world. Next the reporters or editors write up and analyze what they observe. Some may notice this; others that. The good reporter or editor knows the public appetite and catches in his article the striking, the picturesque and the significant; the laggard does not. The writing of the news story is comparable to the interpretation of one's observation of a style into a design; the successful designer catches the striking line, turns the picturesque phrase and foresees the public demand. The news story then is embodied in paper and ink; the design in cloth and dye. The papers of one publisher have their greatest value when they carry the latest news. The information they contain gives them some value even when the news is old; and the paper itself has some uses. The publisher's ideal, however, is to obtain a scoop—to alone tell the public in his papers today what will be the headlines in others' to-

morrow. The closer the publisher comes to this ideal, the more valuable his papers. The position of the dress manufacturer is the same. A design keeps some value from the artistry even when it is old; and the cloth has some utility. Nonetheless, the manufacturer's, like the publisher's, ideal is in his dresses to illustrate exclusively the news of the world of fashion, to show today what well dressed women will wear next month and others the month following. Finally, the creator of a design, like the creator of a news story, can realize its value only by publishing it.

In the ladies' garment industry there has grown up a parasite—the "style pirate" or "copyist".[21] He makes no effort to collect the information of the fashion world; he employs no designers to interpret it and embody their interpretation into garments. At first he sits quiet but once someone else has designed a garment which has caught or appears likely to catch the public fancy he springs to action. Indeed, instances have been recorded where the copyists stole the actual design by burglary or by bribery without waiting to sketch it at a showing. (R. 4314-4315, fol. 12942-12944.) But since publication of designs is the originating manufacturer's livelihood, the copyist usually has no need to do more than buy a dress of each design he will copy. His next steps are to embody the design in dresses of his manufacture and to sell them. The copy is always meticulously and slavishly made; the copyist contributes nothing; he simply sells as his the designs produced by the other (R. 4314-4315, fol. 12942-12945). He deceives the customer by passing off his copies as originals (R. 4320, fol. 12958-12959).

The immediate consequence of style piracy is damage to the business of the originator; he loses sales. The reason is this: The market for garments of any par-

[21]See notes 5, 6, *supra*.

ticular design is limited by the desire of women to wear distinctive clothes representative of fashion trends (R. 4324, fol. 12971-12972). Once a certain number of dresses of one design are sold, the market is satiated. The copyist, therefore, by selling copies cuts down the reorders which would otherwise come to the creator of the design, causes the cancellation of orders and leads retailers to make returns (R. 4316; R. 4317, fol. 12951). Again the analogy may be helpful. If one newspaper carried an exclusive story of an internal collapse in Italy written after expense and effort by a skilled reporter, the story would have great value. If another publisher five minutes after papers carrying the story were on the street had out a paper containing the same story copied from the first, he would make sales and the first publisher would lose those he would have made. Here, as in the newspaper world, the demand is limited not by the purses and numbers of customers but by their demand for freshness. The pirate does not simply take the sales the originator would have made, but by selling cheap replicas of the design he prostitutes it and prevents the originator from selling his reproductions. Thus, although the copyist may not place his goods in the hands of consumers who would have bought from the originator, nevertheless his sales destroy the freshness of the design, and compel the customers who would have bought it from the originator to turn elsewhere for a different design.

The conduct of the copyist, then, like that of every cheat and parasite, is shocking to ordinary business morality. Even the copyist himself admits that. JOHNSTON AND FITCH, *op. cit. supra*, n. 4, 57-58. Also it results in injury to the business of the originator; the copyist takes some sales from him and destroys his chance to make others. Consequently, it is submitted that there are present all the elements necessary to make out a case of unfair competition against the copyist.

In urging that conclusion upon the Court we do not ask it to go beyond its own precedent. In *International News Service Co.* v. *Associated Press,* 248 U.S. 215, a defendant whose business was the distribution of news was enjoined for a limited period from selling news systematically and deliberately copied from publications of a competitor who had expended the money and skill needed to collect it. The Court held that there was unfair competition because the defendant had damaged the plaintiff's business by misappropriating what equitably belonged to the plaintiff. "The underlying principle is . . . that he who has fairly paid the price should have the beneficial use of the property." 248 U.S. at 240. See *A.L.A. Schechter Corp.* v. *United States,* 295 U.S. 495, 532. The compelling analogy between news piracy and design piracy leads to the conclusion that design piracy, like news piracy, is unfair competition. Cf. *Callman, Style and Design Piracy,* 22 J. OF PAT. OFF. 578, 586. The sole distinction is that, instead of papers, garments are involved, instead of information, designs.

The analogy between the *International News Service* case and the case at bar as well as the nature of the problem actually involved in both cases can best be analyzed by contrasting that problem with the one which that case has sometimes been thought to have involved. Many commentators have viewed the *International News* case as an example of the controversy in which an appreciation of the fairness of an originator's claim to the fruits of his labor presses against an acute consciousness that society "progresses" by the interchange of ideas and by the exercise of its forbears' instinct for copying. *E.g.,* Note (1934), 47 HARV. L. REV. 1419, 1426-1427; Note (1930), 14 MINN. L. REV., 537. Some of them have held the decision to proclaim a man's right to the fruit of his labors and to forbid any man to reap where the first has sown. *E.g.,* Note (1935), 33 MICH. L. REV. 822; Cf.

Callman, op. cit. supra, 580; *Rogers, Unfair Competition,* 17 MICH. L. REV. 490. Others of them have urged that it ought to be restricted to its particular facts and not treated as a precedent. *E.g., Handler, Unfair Competition,* 21 IOWA L. REV. 175, 191. It would seem, however, that neither view is correct. The difficulty arises partly from the repeated use of the concept "property" and the consequent insistence that for equity to grant relief against any copying is for the Court to recognize that any creator has a right to exclude all others from using his idea. The difficulty also arises from the notion that the action of unfair competition protects the property right of a trader in the marks and identifying dress of his merchandise which are associated with his good will, and that therefore an appropriation of such "property" is a prerequisite to an action for unfair competition. Cf. *Rogers, loc. cit. supra.* It is submitted that those two notions are based upon forgetfulness of the rudiments of the law of unfair competition. Cf. Note (1919), 19 COL. L. REV. 233, 238.

"Unfair competition"[22] is essentially a branch of the law of torts. A man's interest in his business is a subject of protection against unlawful invasion by others. Indeed, equity calls it a property right and will enjoin unlawful interferences. *Truax* v. *Corrigan,* 257 U.S. 312, 327. And of that interest the trader's interest in his prospect of customers is a chief part which equity will also protect. *Peirce* v. *Society of Sisters,* 268 U.S. 510. Conversely, unless this business injury is proved, it matters not what was the conduct of the defendant. *Mosler Safe Company* v. *Ely Norris Safe Company,* 273

[22]By "unfair competition" we refer to any practice which is held by courts of law or equity to give one trader who suffers a business injury a cause of action against another trader. Many of the authorities stating that "unfair competition" is limited to cases of passing off doubtless would grant relief under some other name in cases which would come under our broad definition.

U.S. 132. To make out the tort, however, more must be proved. Unless the conduct causing the injury is "wrongful" the business injury is no matter. *"The Case of the Schoolmasters"*, Y.B. 11 Hen. 4, f. 47, pl. 21. But, we submit, the injured trader has a remedy whenever he shows that the other invaded his interest in his business by lessening his prospect of customers by an act which society condemns.[23]

The common dictum that "passing off" is "the essence of unfair competition" is not inconsistent with the analysis that a case of unfair competition is made out by proof of the above two elements. Indeed it hits closer to the mark than is at first apparent. The reason is this: Proof of passing off itself proves both "wrongful" conduct and a business injury. First, the defendant has committed an intentional fraud. Second, the very fact that he seeks to sell his goods as if they were the plaintiff's, establishes that his conduct deprives the plaintiff of patronage. The case of passing off, in short, involves *ipso facto* both elements of the cause of action. For that reason it is a typical and simple case of unfair competition.

But it is not the only case. Other illustrations are common provided that injury to the business is made out. To assault a trader's prospective customers is actionable. *Garret* v. *Taylor,* Cro. Jac. 567; *Tarleton* v. *McGawley,* Peake's N.P. 270. Cf. *Truax* v. *Corrigan, supra.* Similarly, it is wrongful to drive away his cus-

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[23]No other definition of an act which will give rise to a cause of action when loss of customers results appears to be possible. The same difficulty of articulation arises whether there be the *prima facie* theory of torts advanced by Holmes and Wigmore (see *Aikens* v. *Wisconsin,* 195 U.S. 194, 204; *Wigmore, The Tripartite Division of the Law of Torts,* 8 HARV. L. REV. 200; or the contrary thesis of Salmond (see Salmond, The Law of Torts (7th ed.) 9) or even the novel scheme suggested by Callman (see *Callman, What is Unfair Competition,* 28 GEO. L. J. 585). Any definition or single descriptive word assumes the conclusion and is of no assistance in advancing to new conclusions. Yet business men know well enough what is unfair. See remarks of Senators Cummins and Saulsbury, Cong. Rec., 63rd Cong. 2d Sess. pp. 11449, 11593. We shall use the colorless word "wrongful."

tomers by repeated threats of suits for patent infringement. *Maytag Co.* v. *Meadows Mfg. Co.*, 35 F. (2d) 403 (C.C.A. 7th). And if A sells his goods by representing that they are just like B's when they are not, the cause of action is made out because a fraud (i.e., "wrongful" conduct) has caused customers apparently about to buy B's goods to buy those of A. *Motor Improvements Inc.* v. *A. C. Spark Plug Co.*, 80 F. (2d) 385 (C.C.A., 6th), *Vortex Mfg. Co.* v. *Ply-Rite Contracting Co.*, 33 F. (2d) 302 (D. Md.). Those examples confirm the analysis that although proof of "passing off" may be a convenient means to show the tort, the tool must not become the master, and that in each case the questions are (1) was there an injury to the business and (2) do society and its spokesman, the chancellor, condemn the conduct by which the injury was accomplished. In the present case both questions must be answered affirmatively.

(1) Clear and immediate injury to the design originator's business flows from the conduct of the copyist. The petitioners offered to show the myriad of ways in which it injured him—by causing returns and cancellations, by destroying his reputation, by cutting off reorders. Such evidence should be unnecessary for the peculiar nature of the values involved itself proves that actual injury to the originator is the inevitable consequence of the piracy. The chief sales value of a garment lies in the freshness of its design. Every garment made by the copyist destroys that freshness and with it the sales otherwise to be made by the creator of the design. Style piracy, therefore, deprives the originator of patronage just as plainly as assaults upon customers, passing off or threatened suits for patent infringement. There is a business injury. Cf. *International News Service Co.* v. *Associated Press, supra.*

That fact distinguishes this charge that the style pirate is guilty of unfair competition from the vain complaints

against competitors' appropriation of new ideas, embodied in advertising or methods of doing business. *E. g., Estate Stove Co.* v. *Gray & Dudley,* 50 F. (2d) 413 (C.C.A. 6th); *International Heating Co.* v. *Oliver Oil Gas Burner & Mach. Co.,* 288 Fed. 611 (C.C.A. 8th); *Westminster Laundry Co.* v. *Hesse Envelope Co.,* 170 Mo. App. 238; *Germanow* v. *Standard Unbreakable Watch Crystals,* 283 N.Y. 1; Note (1932) 45 HARV. L. REV. 542. In such cases the plaintiff to recover must establish a property right in his idea. Perhaps it should be accorded him and the law is too slow to appreciate and recognize intangible trade values; but the weight of opinion is otherwise. See cases last cited. Compare *R. C. A. Mfg. Co.* v. *Whitman,* 114 F. (2d) 86 (C.C.A. 2d) cert. den. Dec. 16, 1940, with *Waring* v. *WDAS Broadcasting Station,* 327 Pa. 433, and *Waring* v. *Dunlea,* 26 F. Supp. 338 (D.N.C.). See also *Uproar Co.* v. *National Broadcasting Co.,* 8 F. Supp. 358 aff'd. 81 F. (2d) 373 (C.C.A., 1st), 36 COL. L. REV. 1011; *Pittsburg Athletic Co.* v. *KQV Broadcasting Co.,* 24 F. Supp. 490 (W. D. Pa.); *National Exhibition Co.* v. *Teleflash,* 24 F. Supp. 488 (S.D.N.Y.); *Hanna Mfg. Co.* v. *Hillerich & Bradsby Co.,* 78 F. (2d) 763 (C.C.A. 5th), 49 HARV. L. REV. 496. That question is not involved here for, as we have shown, the charge contains the element for want of which those complaints first failed—a showing that direct business injury due to a direct loss of custom resulted from the copying. See Sims, J., concurring, *Crump. Co.* v. *Lindsay,* 130 Va. 144; *Associated Press* v. *Station KVOS,* 9 F. Supp. 279 (D. Wash.) reversed 80 F. (2d) 575 (C.C.A. 9th), reversed with instructions to dismiss for want of jurisdiction 299 U.S. 269, 34 MICH. L. REV. 738. Cf. *Developments in the Law—Unfair Competition,* 46 HARV. L. REV. 1171, 1175.

(2) The conduct of the copyist is "wrongful", that is to say, it is condemned by both the courts and society. As to much of it there is no question. Thus, the court

below correctly held that the copyist could not lawfully sell copies from designs obtained by fraud, burglary or bribery. R. 4679. Accord: *Montegut* v. *Hickson*, 178 App. Div. 94; *Margolis* v. *National Bellas Hess Co.*, 139 Misc. 738.

But even when the copyist avoids those crude methods, his conduct is "wrongful". He systematically, mechanically and continuously appropriates the fruits of the creator's skill, labor and expense. He is not like the wide-awake competitor who espies and fills a particular demand that another may first have noticed. See, *e.g.*, *McGhee* v. *LeSage*, 32 F. (2d) 875 (C.C.A. 9th); *Federal Electric Co.* v. *Flexhume Corp.*, 33 F. (2d) 412, 415 (C.C.A. 7th); *Germanow* v. *Standard Unbreakable Watch Crystals*, 283 N.Y. 1; *Reynolds & Reynolds Co.* v. *Norick*, 114 F. (2d) 281 (C.C.A. 10th); *Jackson* v. *Quickslip Co.*, 110 F. (2d) 731 (C.C.A. 2d); *Sinko* v. *Snow-Craggs Corp.*, 105 F. (2d) 450 (C.C.A. 7th); *Keystone Type Foundry* v. *Portland Pub. Co.*, 186 Fed. 690 (C.C.A. 1st). Cf. *Kaeser & Blair, Inc.* v. *Merchants Ass'n.*, 64 F. (2d) 575 (C.C.A. 6th). The distinction between the two seems obvious.[24] The one leads an independent existence; he himself copies, conceives and adapts. His conduct is part of the daily business and social intercourse by which society "progresses". That process is so much a matter of give and take that neither law nor society can pause to consider whether A has added more than B. The other lives by copying only. In a field where ideas put into tangible form are the prime subject of each sale—the design and not the cloth is what the consumer buys—he steals and sells the others "wares" and makes none of his own. Not only that he steals his advertising and repu-

[24] In the debates on Section 5 of the Federal Trade Commission Act those opposing its passage argued for more certainty in its prohibitions. Senators Cummins and Saulsbury quite correctly replied that every business man knew the difference between what was and was not a fair method of competition. Cong. Rec. 63rd Cong. 2d Sess. pp. 11449, 11593. We submit that the distinction here drawn is equally recognizable.

tation (R. 4319, fol. 12955-12956). He is a deliberate parasite. Copying is his business. NYSTROM, *op. cit. supra* n. 2, 218-219. While, therefore, the law raises no bar to the one, it long has forbidden the other to reap what he has not sown if actual injury to the plaintiff's business is threatened. *Hunt* v. *New York Cotton Exchange*, 205 U.S. 322; *Fonotipia Ltd.* v. *Bradley*, 171 Fed. 951 (S.D. N.Y.); *Prest-O-Lite Co.* v. *Davis*, 209 Fed. 917 (S.D. Ohio) aff'd. 215 Fed. 349 (C.C.A., 6th); *Meccano Ltd.* v. *Wagner*, 234 Fed. 913 (S.D. Ohio) aff'd. in part 246 Fed. 603 (C.C.A., 6th); *Meyer* v. *Hurwitz*, 5 F. (2d) 370 (E.D. Pa.); *Associated Press* v. *Station KVOS*, 80 F. (2d) 575 (C.C.A., 9th), 44 Yale L. J. 877; *Fisher* v. *Star Publishing Co.*, 231 N.Y. 414; Cf. *Uproar Co.* v. *National Broadcasting System*, 8 F. Supp. 358, aff'd. 81 F. (2d) 373.

Cheney Bros. v. *Doris Silk Corp.*, 35 F. (2d) 279 (C.C.A. 2d) and similar cases are not contrary to those decisions. The *Cheney* case involved only the casual copyist and would be relevant only if a property right in his designs were claimed for the creator. But no such property right is claimed here, nor any protection against isolated reproduction. The conduct which we say the law should condemn is deliberate, continuous parasitism. In *International News Service* case this Court condemned it. In *A. L. A. Schechter Corp.* v. *United States*, 295 U. S. 495, 532, the condemnation was reiterated.

Society's contempt for the copyist who is a parasite has been expressed in other ways also. In Germany it was held unfair for a trader to copy mechanically the artificial flowers drawn from natural flowers at great expense by his competitor.[25] Legislative bodies in several countries have awarded the designer protection against

[25]The court considered the precise charge and held that "should even after further investigations the Court not finding a passing off he would have to re-examine whether the means used by the defendant do not intend an unjust enrichment at the expense of the plaintiff and whether these means are in harmony with the requirements of a fair business life." See *Callman, op. cit. supra*, p. 26, 584.

misappropriation of the values resulting from his skill, labor and expense.[26] Congress has never either enacted or rejected the bills introduced but its committees have reported them favorably.[27] Acting conjointly, industry and the executive branch of the government in the NRA codes quite uniformly outlawed the style pirate.[28]

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[26]In several foreign countries the designer is awarded protection against misappropriation of the values resulting from his skill, labor and expense. The Brazilian Act of 1934 grants a patent to the author of any new and original design and defines a new design as one which has not been used or described in Brazil and does not so imitate another design as to confuse the public. See JOHNSTON & FITCH, *op. cit. supra*, n. 4, 73. France, by law of July 14, 1909, as amended, permits copyright registration of each new design. See 2 LADAS, THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY, Harv. Uni. Press (1935) p. 1018; *Callman, op. cit. supra*, p. 26, 587, note 86. In Great Britain protection is somewhat narrower. The Patents and Designs Act, 7 Edw. VII, c. 29, 9 and 10 Geo. V, c. 80 protects "every new and original design", and the test applied is not the harsh text of genius. See *Re Le May's Registered Design*, 28 Ch. Div. 24 (1884).

[27]In H. REP. 1372, 71st Cong., 2d Sess., the Committee on Patents recommended passage of the Vestal Bill, saying "It has long been established that industrial designs are entitled to adequate protection, but under the present laws it is not possible to obtain adequate protection, and in consequence thereof the original productions of artists and designers are pirated and sold in inferior goods so that their market is impaired or destroyed shortly after they appear on the market." See also SEN. REP. 1627, 71st Cong., 3rd Sess., and SEN. REP. 1280, 72d Cong., 2d Sess. An attack on the bill is contained in Note (1931) 31 COL. L. REV. 1447.

[28]The China and Porcelain Manufacturers' code contained the following provision: "Copying of prints or decalcomania or hand printed patterns or shapes of any American Pottery or China Manufacturers, which is a new and original design, and not an adaptation of foreign or domestic design, shall constitute an unfair method of competition." CCH Trade Reg. Service, Vol. II B, par. 38,645. The Wall Paper Manufacturers' Code provided: "VII—the following shall constitute unfair methods of competition. (a) The copying of designs and/or patterns." *Ibid.* Vol. II A, par. 8518. The Silk Textile code provided: "No employer shall take orders for or print or Jacquard weave any design not registered with the Textile Design Registration Bureau of the Silk Association of America, Inc., or its successor, or do any work on any registered design except with the written consent of the person making the registration." *Ibid.* Vol. II A, par. 8548.18. Similar provisions were included in codes for other industries in which design is important. See *e.g.* Leather Goods Industry Code, American Petroleum Equipment Code, *Ibid.* Vol. II A, par. 8581; Funeral Supply Code, *Ibid.* Vol. II A, par. 8597; Rainwear Division of the Rubber Manufacturers' Code, *Ibid.* Vol. II B, par. 40001.78; Manufacturers of Luggage and Fancy Leather Code, *Ibid.* Vol. II A, par. 8543; Furniture Manufacturers' Code, *Ibid.* Vol. II B, par. 38,655; Manufacturers of Toys and Playthings Code, *Ibid.* Vol. II A, par. 8568; The Cotton Glove Manu-

The Federal Trade Commission itself has specifically condemned the piracy of patterns, styles and designs. In many industries it has accepted rules proposed in Trade Practice Conferences which unequivocally condemned the practice of copying competitors' creations. For example, the Molded Products Industry proposed and the Federal Trade Commission accepted the following rule:

> "Rule 11. A practice has arisen among some manufacturers of usurping the designs or styles of the products of others, and in many instances using them on inferior products, and it is the opinion of the industry that such action on the part of manufacturers is wholly improper from every standpoint of fair dealing and business honesty; therefore the members of the Molded Industry go on record as being unalterably opposed to any piracy of designs or styles, that they condemn such action and that they will make every effort within their power to bring about the discontinuance of such practices." — C.C.H. Trade Regulation Service, Supp., par. 12,580.

In other Trade Practice Conferences this standard rule has been adopted:

> "The practice of usurping designs, styles, or patterns, originated by a competitor, and appropriating them for one's own use within one year after such origination is condemned by the industry."

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facturers' Code, The Carpet and Rug Manufacturers' Code, *Ibid.* Vol. II B, par. 40,039. Although the Committee on Industrial Analysis reported that the period of experience was too brief to draw conclusions upon whether governmental design protection should be increased, (H. Doc. 158, 75th Cong., 1st Sess. p. 160) the code provisions are strong evidence that those faced with the practice condemned it. In the four clothing industries where no such protection was included in the codes it was only the administrative difficulties which caused the omission and not the lack of opinion condemning the parasite. JOHNSTON & FITCH, *op. cit. supra* n. 4, 136.

With changes in the period of protection that rule has been accepted by the Federal Trade Commission for more than a dozen industries.[30]

The expositions of business morality by courts, by legislatures, by administrative officials, by business men and even by the respondent Federal Trade Commission uniformly brand "wrongful" the practice of systematically and continuously living upon the work of another. Such conduct may and should be judged wrongful without regard to the deeper question of whether a "property right" should be granted to protect the creator of new ideas not protected by existing laws. Such conduct as practiced by the style pirate in the garment industry, it is clear, deprives the originators of sales which they might reasonably expect to make and consequently damages their businesses. It is submitted, therefore, that both elements of the tort exist and that the style pirate is engaged in unfair competition with the petitioners which equity would enjoin them from continuing.

B. *The sole consequence of the FOGA program is to limit the unlawful activities of the style pirates and of the retailers who join with them.*

FOGA was organized and exists to protect the businesses of those manufacturers of original designs who care to join against the deliberate systematic copyist (R. 122, fol. 364, 365). That object it accomplishes in three ways—by obtaining agreements from retailers not to sell copies of FOGA designs, by inducing retailers not to sell such copies by threatening to cut off their supply of dresses of FOGA designs and by actually refusing to

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[30] *E.g.*, All Cotton Wash Goods, C.C.H. Trade Regulation Service, Supp., par. 12,637; Baby and Doll Carriage (*Id.* par. 12,606), Clothing Cotton Converters (*Id.* par. 12,609), Barre Granite (*Id.* par. 12,640), Embroidery (*Id.* par. 12,608), Greeting Card (*Id.* par. 12,575), Household Furniture and Furnishing (*Id.* par. 12,620), Milk and Ice Cream Can (*Id.* par. 12,597), Upholstering Textile (*Id.* par. 12,550).

sell FOGA designs to any retailer who is marketing a copy of an FOGA design (R. 124, fol. 370-372). The means, therefore, were perfectly adapted to the end, that is to say, FOGA sought not to destroy the copyist but simply to keep his copies out of a portion of the market. Equity would exclude them entirely.

The administration of the program appears to have been fair. Its focal point is, of course, the determination of what is an original and what is a copy. Neither question was decided by members of FOGA: retail men were the judges to insure impartiality (R. 4335, fol. 13002; R. 4337, fol. 13010). To insure personal impartiality also, the alleged copyist was given the right to challenge each member of the panel until three acceptable men were drawn or to have his case judged by a committee of three chosen one by FOGA, one by the alleged copyist and the third by these two (R. 211, fol. 631-632; R. 4338-4340, fol. 13014-13019). To insure expertness the panel was made up of buyers, retail store owners and merchandise managers—the persons whose testimony in court would receive the greatest weight (*Ibid*). Finally, to guard against a mistake the manufacturer of a garment adjudged a copy of an FOGA original by one committee was given a right to appeal to a second (R 4341, fol. 13022; R. 4342-4343, fol. 13026-13028). Only upon the appellate decision or a failure to appeal were the wheels for enforcement set in motion. The system therefore would seem to be as fair as could be devised. Indeed the Commission has not even challenged its fairness.

The respondent has not found the price structure to be affected and the evidence is that it was not (R. 4367-4368, fol. 13101-13102). As the Court below stated, "The case at bar is not one of price fixing" (R. 4677). The respondent did not find that production was decreased; the testimony is that it was not (R. 4368, fol. 13102).

There is no finding that quality was deteriorated; every indication is that it was improved.[31] The Commission did not find that anyone was damaged except the copyist and the retailer who insisted on selling copies of FOGA designs. The former, we submit, had no right to what he lost for it was ill gotten. So with the latter; by knowingly selling copies he intentionally abetted the tort feasor who systematically made them and so became a tort feasor himself. Cf. *Steiff* v. *Gimbel Bros.*, 214 Fed. 569 (C.C.A., 2d). The question then comes down to this: May some manufacturers adopt a form of self-help against unfair competition which simply excludes from a portion of the market the articles by which others compete unfairly?

C. *A method of competition which has no effect except to limit the unfair competition of others is not a violation of Section 5.*

The Court below held that the FOGA manufacturers lawfully might defend themselves against tortious conduct, upon the authority of *Federal Trade Commission* v. *Butterick Pub. Co.*, 85 F. (2d) 522 (C.C.A., 2d) and modified the cease and desist order to permit application of the FOGA program to copies tortiously made by the copyist when he appropriated unpublished designs. This view we submit was correct for two reasons. The error of the court below lay in failing to hold equally tortious the systematic copying of published designs and in failing to permit them to be excluded from the market for the same two reasons.

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[31] Although there is no finding upon these three points in this record, in *Wm. Filene Sons* v. *Fashion Originators Guild*, 90 F.(2d) 556, at page 560, it was found, after a thorough trial in respect to the same program that "the Guild and its members and affiliates have not fixed or tried to fix prices, have not limited or tried to limit production, and have not caused or tried to cause any deterioration in the quality of their products."

The first reason is that Section 5 of the Federal Trade Commission Act cannot be supposed to have barred all self-help to a trader. The phrase "unfair methods of competition" denotes trade practices similar to but not necessarily the same as those denoted by "unfair competition". The law of unfair competition is part of the law of torts. The law of torts being one of relativity and not of absolutes never bars reasonable self-help against a tortious attack although the same conduct if used offensively might be tortious.[32] In this case the petitioners have combined not to injure the copyist or to destroy any legitimate trade he might acquire but only to preserve their businesses by eliminating that illegitimate part of the copyist's sales which injured them. The petitioners have, as it were, taken ahold of each other's business simply to prevent the copyists from wresting it from each one singly by improper methods.

Second, the Federal Trade Commission Act does not protect from interference trade which has no right to exist. In *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643, the Court considered a similar question and said (p. 652): "The court below thought that the trade to be protected 'was that legitimate trade which was entitled to hold its own in the trade field without embarrassment from unfair competition'. There is much force in this conception of the act, and the language just quoted from the *Winsted* case seems inferentially to lend it support. Certainly, it is hard to see why Congress would set itself to the task of devising means and creating administrative machinery for the purpose of preserving the business of one knave from the unfair competition of another." There are certain qualifications which should be made before that statement could be fully accepted. It would

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[32]Instances are self-defense, *Brown* v. *United States*, 256 U.S. 335, and the various types of privilege, *Vincent* v. *Lake Erie Transp. Co.*, 109 Minn. 456, *Ploof* v. *Putnam*, 81 Vt. 471.

seem that if the public is found to be injured a respondent could not defend successfully on the ground that his competitors did similar wrongs. For example, a trader should not be heard to defend a charge that he competed unfairly in falsely advertising his products by replying that all his competitors made sales by schemes appealing to the gambling instinct of children. The Act is intended also to protect the public. See *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212; *Federal Trade Commission* v. *R. F. Keppel & Bros.*, 291 U.S. 304. Congress did not intend, however, to vest the Federal Trade Commission with jurisdiction to prevent methods of competition which have no consequences except to limit those activities of others which are unfair and which equity would forbid.[33]

The findings of the Federal Trade Commission show only that this is such a case. The copyist and the retailer who aids him are the only persons found to be hurt. They are engaged in tortious conduct. The FOGA program does no more than limit the field of those tortious activities. Therefore it is not unlawful under Section 5.

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[33]The Congressional history of Section 5 of the Federal Trade Commission Act supports that conclusion. Mr. Stevens, one of the House Managers, explained the conference report and said of Section 5: "The essence of the practice must be ascertained by the commission if the general purpose and the result of it will be to the detriment of the public by eliminating competition which in the public interest ought to exist, or by injuring those who ought not to be injured by driving out of business that which ought to be sustained and protected. In the interest of the general public, then it is a fraud against the public and ought to be repressed." Cong. Rec. 63rd Cong. 2d Sess., p. 14937.

II.

The Federal Trade Commission Erred in Refusing to Hear Evidence of the Economic Justification for the FOGA Program

No single test can be applied to determine what is an "unfair method of competition" under Section 5 of the Federal Trade Commission Act. Congress deliberately chose a vague phrase.[34] The debates show its belief that a definitive list of the kind of practices intended to be made unlawful could not be drawn up and that any attempt to do so would invite evasion.[35] The reason no doubt is a second fact shown by the debates—the conviction of Congress that the economic conditions and the business facts of each case were the true criteria of unfairness[36] and that accordingly the task of investigating and analyzing the facts and of forming a judgment was one appropriate not for the courts, but for men experienced in dealing with economic and business realities.[37] Congress sought to provide for those expert factual judgments by establishing as the primary body a com-

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[34]See Report of Committee on Interstate Commerce, Sen. Rep. 597, 63rd Cong., 2d Sess., p. 13.

[35]Senator Newlands, who had charge of the bill, many times reiterated that belief. See Cong. Rec., 63rd Cong., 2d Sess., pp. 10376, 11082, 11083, 11084, 11092. See *Montague, Unfair Methods of Competition*, 25 Yale L. J. 20, for other excerpts establishing this point.

[36]See *Remarks of Senator Newlands, id.* pp. 11084, 11107; of Senator Thomas, *id.* p. 11181, and this Statement of the Managers on the Part of the House: "Whether competition is unfair or not generally depends upon the surrounding circumstances of each particular case. What is harmful under certain circumstances may be beneficial under other circumstances." *Id.*, p. 14924. Before Congress as an example was the Australian Preservation of Industries Act, 1908-1910; it declared "unfair competition means competition which is unfair under the circumstances."

[37]See Henderson, The Federal Trade Commission, pp. 4-16. Cf. Mr. Justice Brandeis dissenting, *Federal Trade Commission* v. *Gratz*, 253 U.S. 421, 433. One result of that belief is section 7 of the act. The same thought is a thread running through the debates upon section 5. Cong. Rec. 63rd Cong., 2d Sess., pp. 11083, 11092, 11104, 11112, 11113, 12147, 12216, 14924.

mission which could properly investigate and analyze the factual data in the light of particular competitive conditions. See *A.L.A. Schechter Corp.* v. *United States*, 295 U.S. 495, 532-533. Only the ultimate decision of the legal question of whether a method of competition was unfair was left to the courts. *Federal Trade Commission* v. *Gratz*, 253 U.S. 421.

In making their decisions the commission and the courts are not bound by the common law rules of unfair competition as they stood in 1914. *Federal Trade Commission* v. *R. F. Keppel & Bros.*, 291 U.S. 304, 310-312. Nonetheless they are guided by those precedents which expounded the prevailing business morality, including the disclosures of predatory practices in early Sherman Act cases,[38] and by statutory statements of public policy, for example, by the Sherman Act, *Id.* at 313. Cf. *Federal Trade Commission* v. *Gratz, supra*, at 427; *Federal Trade Commission* v. *Beechnut Packing Co.*, 257 U.S. 441. Sufficient criteria are available from those sources to enable the Commission and ultimately the Court to form the requisite economic and moral judgment. Such was the intention of Congress.[39]

In the present case the only question before the Federal Trade Commission was whether the element of combination renders "unfair" the petitioners' program to protect the ladies garment industry by suppressing the

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[38] See, *e.g.*, *United States* v. *Standard Oil Co.*, 221 U.S. 1; *United States* v. *American Tobacco Co.*, 221 U.S. 106; *United States* v. *General Electric Co.*, 1 D. & J. 267; *United States* v. *Patterson*, 201 Fed. 697, 222 Fed. 599; *United States* v. *American Thread Co.*, 1 D. & J. 449.

[39] "Indeed, the debates themselves suggest, what seems obvious from the text of the Act, that it was the Congressional intention to confer on the Commission subject to court review, the duty of giving a detailed content to the general principle embodied in the phrase, and to employ, in fulfilling this duty, not only the rules and precedents established by the courts at common law and under previous statutes, but the technique of reasoning by analogy and upon principle, with which jurists are familiar." HENDERSON, *op. cit. supra*, p. 86. See especially the remarks of Mr. Covington, Cong. Rec. 63rd Cong., 2d Sess., p. 14928.

evil of style piracy. Nothing is done in the execution of the program which each petitioner could not do alone without danger of criticism. *United States* v. *Colgate & Co.*, 250 U.S. 301, 307; *Federal Trade Commission* v. *Raymond Bros. Clark Co.*, 263 U.S. 565. Cf. *Grenada Lumber Co.* v. *Mississippi*, 217 U.S. 433. Indeed, morality is on the side of the petitioners. A boycott like any combination can be justified; it is only *prima facie* unlawful. *United States* v. *American Livestock Comm. Co.*, 279 U.S. 435. Consequently it was the duty of the Commission to make its determination only after a thorough study of the operation and industrial setting and of the economic causes and effects of the FOGA program. That is the teaching of both the common law and Sherman Act precedents as well as of the history of Section 5. But although the petitioners urged the necessity, the duty to form an expert judgment upon the business facts was not performed. The Commission's failure to perform it cannot be justified by any suggestion that FOGA would be an unlawful combination either at common law or under the Sherman Act, notwithstanding the proffered evidence of what causes produced and what effects flowed from its program.

We shall consider what was the appropriate technique and whether the proffered evidence was sufficient first, from the viewpoint of the Sherman Act and second, from the outlook of the common law.

A.

The Proffered Evidence was Relevant and Material to a Determination of Whether the Petitioners were Violating the Sherman Act.

Notwithstanding the petitioners' careful offer to prove that their combined refusal to deal with copyists was economically desirable and notwithstanding that the

FOGA program affected neither prices, quality nor production, was reasonably adapted and operated fairly to the end sought and granted only limited protection (R. 4307-4327), nevertheless both the Commission and the court below assumed that whether the program was an unfair method of competition should be determined by syllogistic reasoning in absolute terms and not by study of the living social and economic background. The Commission held that any boycott was illegal *per se* (R. 4673). The court below reasoned thus: Equity would not prevent the marketing of copies, therefore the copyist and retailers had an absolute right to market them; the FOGA program interfered with that absolute right, therefore it was unlawful regardless of whether the interests of the FOGA members, of the rest of the industry and of the consumer were all served by the program (R. 4674-4677).

Viewing the case as a Sherman Act controversy, both the view of the Commission and that of the court appear mistaken. Whether a combination is unlawful under that statute cannot be determined *in vacuo* by rigid logic but only by examination of the functioning of the combination and of its interplay with the realities about it. The reason is this: The Sherman Act does not condemn every contract or combination which restrains interstate trade. Its object was protection of the consumer. The ultimate test to be applied, therefore, is whether an actual or necessary consequence of the restraint is injury to the consumer's interests. The determination of that question requires an investigation of the economic data and of all else that may aid to interpret it.

Whatever differences in phraseology with occasional divergences of opinion may appear in them, the leading decisions under the Sherman Act establish it firmly that that is the fundamental issue and that the technique for deciding it. All now agree that the Act does not condemn

every restraint of trade or commerce; the only questions are what restraints are lawful and what unlawful. The dividing line has been said to be the line between "reasonable" and "unreasonable" judged from the viewpoint of the consumer. *Standard Oil Company* v. *United States,* 221 U.S. 1. Cf. *Nash* v. *United States,* 229 U.S. 373. In that generally accepted view "The Sherman Act, as a charter of freedom, has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions. Thus, in applying its broad prohibitions, each case demands a close scrutiny of its own facts. Questions of reasonableness are necessarily questions of relation and degree." *Appalachian Coals, Inc.* v. *United States,* 288 U.S. 344; *Sugar Institute Inc.* v. *United States,* 297 U.S. 553. The essentially similar test stated by Mr. Justice Brandeis also emphasizes that at heart each Sherman Act problem is factual. "The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied, the nature of the restraint and its effect actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy are all relevant facts." *Board of Trade of the City of Chicago* v. *United States,* 246 U.S. 231. The nature of the problem is not altered if the line between lawful and unlawful be located not first by generalization but by directly examining each restraint to determine whether it produced certain definite injuries. "The end sought was the prevention of the restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or other-

wise control the market *to the detriment of purchasers or consumers of goods and services . . .*" *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 493 (italics added). In brief, however the issue be viewed, there must be an analysis of the causes and effects of the restraint to determine its effect upon the economy and particularly upon the consumer.

Doubtless there may be cases where an analysis of the industry is unnecessary in practice—for example, where the restraint is intended to or in fact does control the market price. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150. The reason for the irrelevance of evidence of the industrial conditions in such a case is this: An attempt to fix prices if successful strikes the consumer in his most vital spot; the interest of the consumer that prices shall not be enhanced outweighs any other interest or combination of interests; therefore, the law will hear no attempted justification.[40] In other words, a practice regulating market price is *per se* "unreasonable". *United States* v. *Trenton Potteries Co.*, 273 U.S. 392. The same result perhaps would follow wherever an agreement to limit production was challenged not only because prices would be enhanced but also because the consumer's second vital concern is securing a quantity of goods and services. As to that, however, the law may be less rigid. Cf. *National Association of Window Glass Manufacturers* v. *United States*, 263 U.S. 403. Similarly, the third great concern of the consumer, his interest in the quality of products, might be considered so weighty as to counterbalance the combined interests of all others. Such cases, however, are exceptions. The rule is settled that where the restraint does not regulate prices, production or quality,

[40] But see *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436, where the Court seems to have considered that protection of the public health *might* justify a combination regulating prices if the public health could be protected in no other way.

all the economic conditions in the industry, including the purpose and effect of the restraint, must be considered and the conflicting interests evaluated as would be done in the law of torts.[41] For in such a case the question of "reasonableness" is one of fact and not of logic. Of that, the content of the Court's opinions is the best indication. *E.g., Board of Trade of City of Chicago* v. *United States,* 246 U.S. 231; *National Association of Window Glass Manufacturers* v. *United States,* 263 U.S. 403; *Standard Oil Company* v. *United States,* 283 U.S. 163, 169; *Appalachian Coals, Inc.* v. *United States,* 288 U.S. 344; *Sugar Institute* v. *United States,* 297 U.S. 553; *Interstate Circuit* v. *United States,* 306 U.S. 208, 230-232.

The instant case falls within the general class and not within the three exceptions.

First, the FOGA program is not intended to and does not regulate prices. Its members have never directly or indirectly interested themselves in the price which a manufacturer may charge for his products (R. 4367-4368, fol. 13101-13102). The Federal Trade Commission has not even hinted that the program enhanced prices or in any way affected the price structure. Cf. JOHNSTON AND FITCH, *op. cit. supra,* n. 4, 60.

Second, the FOGA program does not parcel out or limit production of dresses (R. 4368, fol. 13102). The uncontradicted testimony was to that effect. Again, the Commission did not suggest the contrary.

Third, the FOGA program does not deteriorate quality, the last great concern of the consumer (R. 4368, fol. 13103-13104). Style and originality in ladies' garments are the important criteria of quality. It improves the quality of the products to curb the deceptive selling of copies as originals where as here it does not raise prices and keep exclusive designs from the consumer.

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[41] See pp. 56-64, *infra.*

The FOGA program, therefore, does not strike the consumer in any one of his three vulnerable spots and is not within any of the three exceptions to the general rule that Sherman Act problems are questions of fact. Since the Federal Trade Commission refused to hear and weigh the facts making possible a proper evaluation of the sundry conflicting interests, it was in error. After strenuous litigation of the facts which the commission refused to hear, it was found in the First Circuit "that The Guild and its members and affiliates have not fixed or tried to fix prices, have not limited or tried to limit production and have not caused or tried to cause any deterioration in the quality of their products . . . that the object of The Guild and its members and affiliates was beneficial, rather than prejudicial, not only to the interests of the dress industry but as well to the interests of the public." See *Wm. Filene's Sons Co.* v. *Fashion Originators Guild of America,* 90 F. (2d) 556, 560. The facts offered to be proved were more than ample to show the combination to be "reasonable".

The decisions of this Court require that conclusion. "Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law." *Sugar Institute, Inc.* v. *United States,* 297 U.S. 553, 598. See also *Board of Trade of City of Chicago* v. *United States,* 246 U.S. 231; *National Association of Window Glass Mfgrs.* v. *United States,* 263 U.S. 403; *Appalachian Coals, Inc.* v. *United States,* 288 U.S. 344. Cf. *Maple Flooring Mfgrs. Association* v. *United States,* 268 U.S. 563; *Cement Mfgrs. Protective Association* v. *United States,* 268 U.S. 588. If all retailers and all manufacturers had formed a trade association and agreed not to manufacture or sell copies of original designs and

had enforced the agreement by reasonable penalties, the facts proved or offered to be proved would show the association to be a lawful cooperative endeavor. Its sole purpose and sole effect would be to preserve the industry by eliminating a parasitic practice which was destroying the industry and with it the parasite. That very thing has been done under the auspices of the respondent.[42]

It makes no serious difference that much of the restraint of commerce in the present case arises without consent of the parasite and the very few retailers who opposed the program of most of the interested retailers and the FOGA manufacturers (R. 4325, fol. 12974, cf. R. 124, fol. 372). Even if it be assumed that the copyist will not be prevented by a court from marketing copies, *non constat* that he has an absolute right to do it without interference by anyone. Certainly he had no such right at common law. See pp. 56-64, *infra*. The Sherman Act does not enlarge *his* rights. It too does not guarantee to a trader the right to do without private interference whatever the law does not forbid, regardless of the destructive effect of his conduct upon an entire industry and of the reasonableness of the restraint imposed upon it.

That was decided first in *Anderson* v. *United States*, 171 U.S. 604. Subsequent decisions did not alter the rule. In the next two important cases in this field, *Montague* v. *Lowry*, 193 U.S. 38, and *Eastern States Retail Lumber Dealers Ass'n* v. *United States*, 234 U.S. 600, boycotts were held to violate the Sherman Act but it would seem quite clear that in each a contract, between the members of the combination and the persons against whom it was directed, to accomplish the object of the combinations would have been equally unlawful. More important, the Court did not suggest that it was applying a different

[42] See p. 34, *supra*.

rule than usual because the restraints were aimed at others. Next, *Duplex Co.* v. *Deering*, 254 U.S. 443, and *Bedford Company* v. *Stone Cutters' Ass'n*, 274 U.S. 37, made it clear that no such decision had been intended. In the latter, Mr. Justice Brandeis said, dissenting: "The Act does not establish the standard of reasonableness. What is reasonable must be determined by the application of principles of the common law. . . . Tested by these principles, the propriety of the unions' conduct can hardly be doubted." The majority disagreed but not because they believed some other test was applicable because a boycott was involved; they, too, held that justification was possible.

The motion picture cases did not involve a break in the current of decision. *Binderup* v. *Pathé Exchange*, 263 U.S. 291, revealed a crude attempt to exclude another from the trade. Undoubtedly the Sherman Act gives a trader some protection against combined efforts to drive him out of business; that is because Congress was conscious that wholly to exclude a competitor from the market tended towards monopoly and resulting enhancement of prices. The same consciousness caused Congress to make it unlawful for a trader to agree to withdraw from the market, save in exceptional cases. *Addyston Pipe & Steel Co.* v. *U.S.*, 85 Fed. 271 (C.C.A., 6th) aff'd. 175 U.S. 211. The reason for the parallel rules being the same, it would seem the rule against driving the trader from the market may be subject to similar exceptions. *Binderup* v. *Pathé Exchange, supra*, did not decide the contrary. But that, in any event, is not this case. FOGA does not aim to reduce the number of manufacturers supplying the market by driving the copyist manufacturers out. It aims to make them stop selling copies in a limited area and to compete in it on a basis which is both fair and beneficial to the industry and the consumer. Neither will the FOGA program by eliminating copying

automatically reduce the number of manufacturers supplying the market. There is an ample supply of able and experienced designers for the copyist to employ (R. 4324, fol. 12971). There is good reason to believe that they would be successful. JOHNSTON AND FITCH, *loc. cit. supra*, n. 4, 60. In short, the *Binderup* and similar cases are inapplicable here because the combination is aimed at certain competitive methods injurious to the industry and not at reducing the number of competitors.[43] Likewise, it would seem that the decision in *Paramount Famous Lasky Corp.* v. *United States*, 282 U.S. 30, rested not on the boycott but upon the fear that higher prices would follow that elimination of competition among distributors which would be brought about by use of a uniform contract. The terse opinion in *United States* v. *First National Pictures*, 282 U.S. 44, also is not a precedent here, first, because by the boycott condemned the honest exhibitor was made to suffer to prevent others' frauds and, second, because the alleged evils flowed from block-booking and therefore were of the distributor's own making.

Whatever doubt might have existed upon these decisions, however, has now been allayed. Three recent decisions of the Court show that a cooperative endeavor

[43]This would seem to be a sufficient answer to the suggestion of the Court below that FOGA was also unlawful because if it is successful it will acquire the power to fix prices. We have three other answers. First, the Federal Trade Commission did not find that FOGA would in fact have power to fix prices; the Court could not properly substitute its judgment for the Commission's silence; the facts are not that clear. Cf. *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U.S. 568. Second, "the law did not make . . . the existence of unexerted power an offense." *United States* v. *United States Steel Corp.*, 251 U.S. 417, 451. Third, it is obvious that every trade association may shift the emphasis of its activities and using the materials it has acquired lawfully begin to fix prices or production. Cf. *Appalachian Coals Inc.* v. *United States, supra.* Compare *Maple Flooring Mfrs. Ass'n* v. *United States*, 268 U.S. 563, and *Cement Mfrs. Protective Ass'n* v. *United States*, 268 U.S. 588, with *American Column & Lumber Co.* v. *United States*, 257 U.S. 377, and *United States* v. *American Oil Co.*, 262 U.S. 371. Yet a trade association while its activities are lawful is not to be condemned because it may some day take different action any more than business competitors violate the law by dining together because they may later emulate the guests of Judge Gary.

to regulate others' competitive practices by a concerted refusal to deal is not *per se* a violation of the Sherman Act. In *Sugar Institute* v. *United States,* 297 U.S. 553, the Court did not segregate its discussion of the legal principles applicable to the boycott of brokers and warehousemen from its general decision that a factual analysis must be the basis for a sound decision. On the contrary, it considered the background and effect of the boycott before condemning it. In *Interstate Circuit* v. *United States,* 306 U.S. 208, 230-232, a boycott to regulate the trade practices of those boycotted was held unlawful but only after an explicit consideration of its "reasonableness" and upon the conclusion that the cost outweighed the benefit. Finally, in *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, a conspiracy intended to keep a manufacturer's goods out of the market until he changed his competitive methods was held not to violate the Sherman Act.

The decisions of this Court do show, therefore, what appeared true on principle—that an industry is not rendered powerless to rid itself of a destructive evil by the recalcitrance of those who would destroy it for their own selfish advantage. The doctrine expounded in the *Appalachian Coals* and *Sugar Institute* decisions is applicable in those circumstances. They are the circumstances here. Prior to the formation of FOGA the industry was in such a chaotic state that business mortality among manufacturers was twenty-five per cent a year. The FOGA program in order to save the industry sought to reduce copying by protecting original creations but not imports for three months, and in such a way that there remained outlets for the copyist of FOGA designs and sources of originals for non-cooperating retailers. The program operated fairly; the system of arbitration was as equitable as could be devised. Its consequences where these: The copyist and non-cooperating retailer suffer "great financial losses" (R. 130, fol. 389-390); there is,

however, ample opportunity for them to compete if they abandon their unethical practice; market price is unaffected; production, undiminished; quality, improved; FOGA has operated "to the benefit of manufacturer, retailer, consumer and laborer . . . [and] has resulted in increased competition on an ethical, fair, competitive basis and has resulted in a decrease of failures and of losses in the industry" (R. 4325, fol. 12975). On those facts no one could conclude that the restraint was unreasonable. Those were found to be the facts by the courts which have considered the evidence. *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild*, 14 F. Supp. 353; 99 F. (2d) 556. On that evidence the restraint was held lawful. The Circuit Court of Appeals said: (at p. 560)

> "that the red card system, adopted and enforced by The Guild, does not constitute or result in an illegal boycott; that the concerted refusal on the part of members and affiliates of The Guild to sell to retailers who refuse to protect the original creations of such members and affiliates involves no denial or abridgement of the right of fair competition either as between manufacturers or as between retailers; that there is nothing arbitrary, capricious, unreasonable or unduly coercive as a matter of law in either the anti-piracy activities or the fair-trade practice regulations of The Guild; and that the means adopted by The Guild for carrying out its anti-piracy program are reasonable and do not unduly restrain interstate commerce."

One paragraph of the opinion below requires brief comment before concluding discussion of the Sherman Act. The court stated that FOGA "aimed at monopoly" because it sought to secure for each manufacturer control of all reproductions of each of his original designs

and that, it said, is monopoly because a copyright for a design would be ranked as a monopoly (R. 4678). Confusion between the different meanings of monopoly must not be allowed to lead to the conclusion that that fact, if true,[44] would render FOGA unlawful regardless of its causes, functions and consequences. FOGA and its members do not "monopolize" in the sense the word is used in section 2 of the Act.[45]

Monopoly is a word of many meanings. According to one technically correct legal definition it is the sovereign grant of an exclusive right or privilege. A copyright is an example, and the court below used the word in that sense. But section 2 obviously does not speak of monopoly in any such sense; when it was enacted the fear of monopoly by sovereign grant had died. See *Standard Oil Co.* v. *United States,* Argument for United States, 221 U.S. at 24-26. Another correct use of "monopoly" is to describe the control nearly every trader has of his product. Our economy is composed of countless little monopolies. See CHAMBERLAIN, THE THEORY OF MONOPOLY (1935) Harv. Uni. Press, esp. ch. IV. Section 2 obviously does not use the work in that sense either. It speaks of "monopolizing *any part* of the trade or commerce among the states".[46] If "monopolizing" meant excluding others or securing to oneself alone, then every trader would be violating the Act for every trader seeks to exclude others from and to

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[44]The premise is not true. FOGA does not interfere at any time with the making of copies or with the marketing of copies in 80% of the retail outlets. See note 11, *supra.*

[45]It seems unlikely that the court intended to imply the contrary. The paragraph in question is expressly directed only to the error assigned below that the commission erred in admitting and excluding evidence of the volume of sales of FOGA members as compared to the volume for the whole industry. The first sentence of that paragraph so indicates. And the structure of the whole opinion shows that the court had decided every other point before coming to that one. But the most convincing reason for thinking so is that the charge of attempting a monopoly certainly cannot be levied at the retailer petitioners.

[46]Italics supplied.

secure to himself alone just as large a part of the trade or commerce among the states as he is able. But "to monopolize" has another meaning. At common law "to monopolize" was to commit the essential wrong in the ancient crimes of engrossing, forestalling and regrating —to tamper with the flow of goods into the market by acts outside the normal course of trade in such a way as to enhance prices or otherwise injure the consumer. *Standard Oil Co.* v. *United States,* 221 U.S. 1, 53; *Adler, Monopolizing at Common Law and Under the Sherman Act,* (1917) 31 HARV. L. REV. 246, 258-263. If "monopolizing" in section 2 be given that meaning, section 2 can be read straightforwardly. So read, it prohibits any acts outside the normal course of trade by which one secures such control over any part of the trade or commerce among the states as enables him to wrong the customers.

Consideration of the spirit and purpose of the Sherman Act makes it apparent that that interpretation is correct. The consumer who required passage of the Act was not interested in technical definitions. For years he had viewed the evils which had flowed from the monopolies of Elizabeth and James I as proof that "monopoly" existed and that there was an undue "restraint of trade". See *Standard Oil Co.* v. *United States,* 221 U.S. 1, 56, 58. "The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services . . ." *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 493. Accordingly section 1 prohibits all contracts, combinations and conspiracies having an undue tendency or a purpose to accomplish those results. Section 2 "seeks, if possible, to make the prohibitions of the act more complete and perfect by embracing all attempts to reach the end prohibited by the first section, that is, restraints of trade by any attempt to

monopolize or monopolization thereof, even although the acts by which such results are attempted to be brought about or are brought about be not embraced with the general enumeration of the first section". *Standard Oil Co.* v. *United States*, 221 U.S. 1, 61. In other words section 1 prohibits agreements outside the ordinary course of trade which fix or are intended to fix price, quantity or quality or which increase the power of the parties to fix them whereas section 2 prohibits all acts outside the ordinary course of trade which regulate price, quantity or quality or which secure to anyone the power to do it, even though there be no agreement. Where there is an agreement "to monopolize" under section 2, therefore, there is a contract in restraint of trade under section 1; and conversely, if there is an agreement but it is not in restraint of trade under section 1, then it is not a conspiracy to monopolize under section 2. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, note 59 at p. 226; *Standard Oil Co.* v. *United States*, 221 U.S. 1, 61.

It follows that whether or not FOGA seeks for each member a monopoly like a copyright is immaterial and that the Commission erred for the reasons already given. Briefly restated in the language of section 2 they are these: To monopolize is to control the market to the disadvantage of those who consume. If that control be the power to fix prices, production or quality, perhaps monopolization is proved without need of further facts. But that is not the case here. Each dress even if its design be unique competes with countless other dresses. Therefore even if there were no copies the price, production and quality of the reproductions made by the originator should result from the unregulated operation of normal market forces. Certainly, the Commission did not find the contrary, and it could not, without hearing the evidence which it excluded. Similarly, it could not tell whether the public interest was otherwise prejudiced

because it refused to learn the facts. The fundamental error from the viewpoint of section 2 is the same as from that of section 1: the Commission had a factual question before it—whether the FOGA program caused or threatened the evils which mark "monopolizing"—yet it refused to hear the facts.

B.

The proffered evidence was relevant and material to a determination of whether the petitioners' conduct was of the kind tortious at common law.

Viewed from the law of torts it seems plain that, even if the business of the copyist is legitimate, the FOGA program could be shown to be lawful notwithstanding that it interfered with that business. The law of torts, and particularly the law of business torts, is not one of absolutes. A concerted refusal to deal is to be judged as any combination. It is not the refusal to deal but the concert which requires justification. *Federal Trade Commission* v. *Raymond Bros. Clark Co.*, 263 U.S. 565; *Grenada Lumber Co.* v. *Mississippi*, 217 U.S. 433. Compare *United States* v. *Colgate Co.*, 250 U.S. 300, with *Federal Trade Commission* v. *Beechnut Packing Co.*, 257 U.S. 441. And a combination to injure another in his trade or business is a tort only if it is not justified. See *United States* v. *American Livestock Comm. Co.*, 279 U.S. 435.

To determine whether a combination is justified is ultimately to evaluate conflicting interests in the light of a wise social policy. "The true grounds of decision are considerations of policy and social advantage; and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody

disputes." See Holmes, J., dissenting in *Vegelahn* v. *Gunter*, 167 Mass. 92, 106.[47]

Two factors are always present—the interest of the persons against whom the action is directed in freedom to do business as they will and—to set against it—the interest of the members of the combination in protecting their own businesses and in conducting them as they choose. The courts often have looked no further but, apparently believing that the interests balance, have said that competition was a justification and refused to intervene. *Mogul S. S. Co.* v. *McGregor*, [1892] A.C. 25 (House of Lords), 23 Q.B. Div. 598 (Court of Appeal). Boycotts, therefore, have usually been held lawful where competition in trade was the justification pleaded. *Sorrell* v. *Smith*, [1925] A.C. 700 (House of Lords); *Robitaille* v. *Morse*, 283 Mass. 27; *Bohn Mfg. Co.* v. *Northwestern Lumbermen's Association*, 54 Minn. 223; *McCaulley* v. *Tierney*, 19 R.I. 255. Judged by this test and by the uniform current of decision the FOGA program plainly does not involve any actionable tort.

We do not suggest, however, that the program should be judged by so limited a test. Maturer analysis has shown that the interests to be evaluated in determining whether a concerted refusal to deal is justified should be broken into smaller divisions and weighed in sharper

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[47] It is submitted that this is true whether one select as his scheme for synthesis and analysis the *prima facie* of torts adopted by Holmes and Wigmore (see *Aikens* v. *Wisconsin*, 195 U.S. 194; *Wigmore, The Tripartite Division of the Law of Torts*, 8 Harv. L. Rev. 200) or the thesis of Salmond (*Salmond, The Law of Torts* (7th ed.) 9). Even the less familiar schemes like Callman's thesis that there is an order of peace and an order of conflict, the latter being one governed by the "rules of the game" (see *Callman, What is Unfair Competition*, 28 Geo. L.J. 585), force one to the same conclusion. The reason is that wherever there is a conflict its resolution ultimately depends upon what data is considered and what weight is given to each item. The great difficulty has been one of articulation and it is not for many years that jurists have plumbed the familiar phrases. The development of the law of conspiracy from *Mogul S.S. Co.* v. *McGregor*, 23 Q.B. Div. 598, to 4 *Restatement of Torts*, §765, is an illustration.

scales. Among the factors to be considered are: (1) the immediate object of the combination, (2) the nature of conduct at which the combination is directed, (3) the necessity and appropriateness of the combination to accomplish the ultimate end sought, (4) the manner in which the boycott is practiced, (5) the relative hardship of the alternatives imposed upon those against whom the combination is aimed, (6) the harm resulting to members of the combination from the conduct against which the conspiracy is directed, and (7) most important, the effect upon those not immediate parties to the dispute, *i.e.*, upon all others in the industry and upon the consumer as well. Compare 4 *Restatement*, Torts, §765; *Handler, The Sugar Institute Case and The Present Status of The Anti-Trust Laws*, 36 COL. L. REV. 1, 14, 17.

It seems too clear for argument that those proper tests cannot be applied unless the data concerning each factor and the whole economic background giving them substance and showing their interaction, is before the body charged with making the evaluation. The basic vice in the Commission's procedure in this case is that it laid aside even the common law technique in favor of *a priori* reasoning.

The proffered evidence, moreover, clearly indicates that the concerted refusal to deal might be justified by the business situation and therefore be "fair". The facts proved or offered to be proved show that if the Commission had believed the proof and had judged the case by expertly evaluating the seven controlling factors its judgment would have been, or at least might have been,[48] that the boycott was not tortious.

[48] Where an administrative commission proceeds on an erroneous legal theory and therefore does not consider the relevant facts it is not for the Court to make the judgment in its stead. Hence, the case must be remanded if, from the facts contained in the offer of proof, the Commission might have concluded that conditions justified the boycott. Under such circumstances the Court will not attempt to draw the factual conclusions but will remand the case to the Commission. See p. 67, *infra*.

(1) The immediate purpose of the boycott is to secure to each originator of designs some of the fruits of his own expense and labor by keeping copies of original FOGA creations from being sold in the same retail stores as originals. The broad objective was to preserve the industry. In short, the combination that is FOGA, and its program, are no more than the device adopted by originators with the aid of retailers to protect themselves, the industry and the consumer from the ravages of the copyist.

(2) As the purpose of FOGA is protection against copying, so the acts at which the combination is aimed are the manufacture and marketing of deliberate copies of FOGA designs. The copyist systematically appropriates the skill and outlay of the originator. Such deliberate continuous misappropriation of trade values is, we submit, unlawful when, as here, it injures the business of their creator (see pp. 22-35, *supra*). But even if practical difficulties prevent equity from checking him, certainly this parasite commends himself to no one;[49] and that is true quite apart from the material damage which he causes. Cf. *Cheney Bros.* v. *Doris Silk Co.*, 35 F. (2d) 279, 281 (C.C.A. 2d); *Nat Lewis Bags, Inc.* v. *Carole Bags, Inc.* 83 F. (2d) 475, 476 (C.C.A. 2d). The retailer selling copies is little better in law or morals. If he insists upon selling a copy after it is called to his attention, he sanctions the piracy and takes a position like that of a contributory infringer. Cf. *Steiff* v. *Gimbel Bros.*, 214 Fed. 569 (C.C.A. 2d).

(3) The FOGA program is appropriate and necessary if effective design protection is to be achieved (R. 4307, fol. 12921). Originators seeking to defend themselves

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[49] "The opposition to design protection does not directly deny that there is an ethical factor in favor of the proponents." JOHNSTON AND FITCH, *op. cit. supra* n. 4, 47.

against style piracy had to adopt some form of self-help. The design patent and copyright laws even where applicable in theory are valueless to the dress designer in practice. See JOHNSTON AND FITCH, *op. cit. supra* n. 4, 96-98; R. 4325, fol. 12973. Court help, based on the common law principles which we have discussed might be obtained but it would seem that the Court processes would be too slow to be useful (Cf. R. 4325, fol. 12973).

They also had little choice but to adopt some form of combined action. The copyists are not combined but their economic weight is wholly on one side. Each originator alone might survive against the ravages of a single copyist but he could not hope to protect himself against a flock.[50]

The program adopted is only as broad as is necessary to accomplish its purpose. The boycott is sharply limited in scope; it is invoked only while copies of FOGA designs are being sold. Likewise, the protection granted is limited both as to subject matter, as to time and as to place. Only designs which in fact are the original designs of FOGA members are protected; "imports", licensed copies of foreign designs, are not. Protection lasts only three months; thereafter the design is open to copying. Protection is granted only in 19.8% of the

[50]It has been urged that the relative economic strength of the warring parties should be given great weight. See *Handler, Unfair Competition*, 21 IOWA L. REV. 175, 208. This suggestion has several faults unless followed with great caution. First, it seems to make lawful a boycott aimed at an undesirable (but not unlawful) end if the fight seems likely to end in a draw and, conversely, to condemn a boycott aimed at accomplishing an end all the world held desirable if the conspirators were economically so strong as to be sure of success. Secondly, if the suggestion is based upon the premise that the law insists that the fight be a fair one in the sense that the combatants must be of a weight, then it appears to overlook the fact that a light fighter can sometimes more than make up for his lack of weight by his lack of scruples. The case at bar is an example.

However that may be, it is important to note here that the copyists are in fact acting in unison against the originators and that FOGA is not directed against individual copyists but against the conduct common to the members of that class. Hence the suggested test is met.

retail outlets; copyists may sell copies of FOGA designs in all others.

(4) The administration of the program appears to have been fair beyond whisper of criticism. What is an original and what is a copy, is not decided by members of FOGA; retail men were the judges to insure impartiality (R. 4335, fol. 13002; R. 4337, fol. 13010). To eliminate any chance of bias the alleged copyist was allowed to challenge each member of the panel until three acceptable men were drawn or to have his case judged by a committee of three chosen, one by FOGA, one by the alleged copyist and the third by these two (R. 211, fol. 631-632; R. 4338-4340, fol. 13014-13019). The panel was made up of buyers, retail store owners and merchandise managers—the persons whose testimony in court would receive the greatest weight (*Ibid.*). An appeal lay (R. 4341, fol. 13022; R. 4342-4343, fol. 13026-13028).

(5) The Federal Trade Commission found that copyists have suffered "great financial loss" (R. 130, fol. 389). The hardship to them, however, was limited by four factors. First, there were ample retail outlets to which they might sell copies of FOGA designs; only 19.8% of the retailers were cooperating with FOGA.[51] Second, they might sell everywhere copies of designs other than those originated by FOGA.[52] Third, the copyists had free rein the ensuing year; protection even in theory was limited to six months (Exhibit 1).[53] Fourth, there was ample opportunity for the copyists to compete honestly; plenty of able designers were available (R. 4324, fol. 12971).

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[51]See note 11, *supra*.

[52]See note 12, *supra*.

[53]See also note 10, *supra*.

The Federal Trade Commission also found that the retailer who refused to cooperate suffered "great financial loss" from the FOGA program (R. 130, fol. 389). That loss, however, resulted from their own deliberate and persisting choice. Had those retailers agreed to the program they would have been better off than they were prior to the formation of FOGA (R. 4318-4319, fol. 12953-12956; R. 4325, fol. 12975).

(6) Whatever may have been the losses to the copyists and non-cooperating retailers they were more than offset by the curative effects of the program. Style piracy caused the manufacturer of originals to suffer cancellations and returns of orders, ruined his reputation and good will, destroyed the value of the originals and reduced the recorders of each design (R. 4316, fol. 12946-12948, R. 4317, fol. 12951). The result prior to the advent of FOGA was that "the business mortality of those who attempted to engage in the creation of styles [*i.e.* designs] was 25 per cent per year" (R. 4315, fol. 12945). "The sole and only reason" that each member joined FOGA was "that in his opinion the elimination of style piracy was absolutely necessary and essential if such persons were to be able to continue in business" (R. 4322, fol. 12964).

Style piracy also severely damaged the retailers by destroying the confidence of consumers (R. 4318-4319, fol. 12953-12956). The retailers who subscribed to the FOGA program subscribed "in recognition of the existence of the evil and because they believed the elimination of style piracy absolutely necessary to their continuance in business" (R. 4325, fol. 12974). Their belief, as such, would not justify their conduct; but there is no reason to suppose that what the 12,000 retailers believed is untrue, and the fact, if true, is surely relevant.

(7) We turn now to the final and weightiest factor in the ultimate evaluation—the interests of the consumer. They are not endangered by the program; on the contrary they are advanced.

First, the FOGA program does not regulate the price structure. It has never directly or indirectly interested itself in the price at which a manufacturer or retailer may sell his products (R. 4367-4368, fol. 13101-13102). The Federal Trade Commission has not even hinted that the FOGA program enhanced any prices of any garment or any design or in any way affected the price structure. Cf. JOHNSTON & FITCH, *op. cit. supra*, n. 4, 60.

Second, the FOGA program does not parcel out or limit production of dresses (R. 4368, fol. 13102). The uncontradicted testimony was to that effect. The Commission did not suggest the contrary. Neither can it be reasoned that the program threatens to reduce the supply of dresses or of designs because it prevents copies from being sold by cooperating retailers. For all that appears, originals may take their places in the market or the copies may find buyers in non-cooperating stores.

Third, the FOGA program does not deteriorate quality, the last great concern of the consumer (R. 4368, fol. 13103-13104). That must be taken as true on this record for the Commission refused to hear evidence on the point. (R. 4324, fol. 12971-12972). On the contrary the elimination of the deceptive selling of a multitude of copies is a great advantage to the consumer (Cf. R. 4320, fol. 12958-12960).

The foregoing brief survey of the evidence which the petitioners introduced or offered upon the vital factors to be evaluated in deciding whether the FOGA program was "unfair" upon analogy to the principles of the law of torts makes it abundantly clear that the boycott would be

found "justified" as a matter of tort law and "fair" if the proffered evidence were believed. Cf. 4 *Restatement of Torts*, §765, especially Illus. 5, 6; *Sorrel* v. *Smith*, [1925] A.C. 700 (House of Lords); *Robitaille* v. *Morse*, 283 Mass. 27; *Bohn Mfg. Co.* v. *Northwestern Lumbermen's Association*, 54 Minn. 223; *McCaulley* v. *Tierney*, 19 R.I. 255. The only injury which the Commission found anyone to have suffered was "the great financial loss" suffered by the copyists and the non-cooperating retailers. The ethics of their conduct not even they themselves will defend. The offered proof showed that the honest manufacturer, the retailer, the laborer and the consumer all were tremendously benefited by the work of FOGA. From the viewpoint of the common law, therefore, as well as from the viewpoint of the Sherman Act, the Commission erred in refusing to consider the proof which was offered.

We return now to Section 5 of the Federal Trade Commission Act. The respondent acted without regard to the world in which petitioners acted; it judged and condemned the petitioners *in vacuuo*, pausing to consider realities only to find how the petitioners acted and that the style pirate and the retailer who deliberately gave him a market were injured. The respondent refused to learn the facts of the industry and to consider whether the concerted refusal of the retailer petitioners to market copies of FOGA originals and of the manufacturer petitioners to sell to retailers who did market them was not in fact a benefit to the industry and to the consumer, accomplished without affecting the price structure or the cost of high styled designs to low income consumers, without limiting the supply of ladies' garments, without lowering stand-

ards of quality in workmanship, materials or design and without any other injury to the consumer.

That was error. If direct precedent is needed to show that a boycott can be justified against the charge that it is an "unfair method of competition", it exists in *United States* v. *American Livestock Commission Co.*, 279 U.S. 435. Therefore the issue before the Commission was essentially a difficult question of policy, and questions of policy are initially questions of fact and degree. The petitioners offered to prove a moral and an economic justification for their program. On affidavits a district court judge found true most of the facts set forth in the offer of proof and concluded that the program was lawful. *Wm. Filene's Sons Co.* v. *Fashion Originators Guild of America*, 14 F. Supp. 353, (D. Mass.). A master in chancery after prolonged litigation found true every ultimate fact offered to be proved and most of those offered as subsidiary to them. The district judge and the Circuit Court of Appeals confirmed his findings. *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild of America, Inc.*, 90 F. (2d) 556 (C.C.A., 1st). Both courts believed those facts to show that the attempt to restrict style piracy was reasonable and should continue. A state appellate court earlier reached the same conclusion. *Wolfenstein* v. *Fashion Originators Guild*, 244 App. Div. 656. This Court has held upon precisely analogous facts that piracy which caused loss to the creator was to be forbidden by the courts. *International News Service Co.* v. *Associated Press*, 248 U.S. 215. The Federal Trade Commission has given its approval in similar industries to Trade Practice Codes outlawing design piracy. N.R.A. codes also condemned the copyist.

Under such conditions the Commission manifestly erred in condemning the petitioners' program without hearing.

Systematic piracy certainly should be condemned unless some strong public policy requires its continuance. Note, (1935) 44 Yale L. J. 877. Even in cases where the creator has been denied the aid of equity, the court has stayed its hand only because the court room is not the forum suited to developing those manifold facts of the industry which are essential to a decision. *Cheney Bros.* v. *Doris Silk Corp.*, 35 F. (2d) 279, 281. Cf., Mr. Justice Brandeis dissenting, *International News Service Co.* v. *Associated Press*, 248 U.S. 215, 267. The same philosophy requires condemnation of protective measures against the design pirate and the consequent blessing upon the piracy to be withheld until all the facts are shown. To discover and weigh such facts—to create a body in a position to formulate a policy—and thus to remedy the handicaps of the courts was the purpose of those who set up the Federal Trade Commission. The announcement of "the rule of reason" in the *Standard Oil* and *American Tobacco* cases engendered the beliefs that the courts were attempting to solve economists' problems and that a trained body of men could both operate more efficiently and make sounder decisions. See *Henderson, loc. cit. supra. Cf.*, Mr. Justice Brandeis dissenting, *Federal Trade Commission* v. *Gratz*, 253 U.S. 421, 433; Cong. Rec., 63rd Cong., 2d Sess., pp. 11083, 11092, 11104, 11112, 11113, 12147, 12216, 14924. For that reason the Federal Trade Commission was created with the avowed purpose of lodging the administrative functions committed to it in "a body specially competent to deal with them by reason of information, experience and careful study of the business and economic conditions of the industry affected," and it was organized in such a manner, with respect to the length and expiration of the terms of office of its members, as would "give to them an opportunity to acquire the expertness in dealing with these special questions

concerning industry that comes from experience." SEN. REP. 597, 63rd Cong., 2nd Sess., pp. 9, 11.[54]

The failure of the Commission to exercise the function for which it was created cannot be cured by speculation or argument in the courts. In view of the offer of proof and the extrinsic evidence that there is much support for it, no findings could possibly be added to those of the Commission. *Federal Trade Commission* v. *Curtis Publishing Company,* 260 U.S. 568. Moreover, in a case of this kind the Commission's expert judgment made upon proper investigation and analysis might be of great aid to the court. *Federal Trade Commission* v. *R. F. Keppel & Bro.,* 291 U.S. 305, 314.

CONCLUSION

It is respectfully submitted that the decree of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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January, 1941.

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[54]In the Senate Senator Newlands, in charge of the bill, said "This Tribunal, composed of economists and lawyers and men experienced in industry, is called upon to apply this standard . . . to the varying facts, situations and conditions affecting interstate trade." Cong. Rec., 63rd Cong., 2d Sess., 11113. Senator Hollis, who also played a leading role continued the explanation later and stated that in each case there would be "an investigation such as no court has the facilities for making" and "findings by a commission composed of men whose judgment on a question of business practice, by reason of their comprehensive knowledge and experience, will be entitled to great weight." *Ibid,* p. 12,147. The Managers on the Part of the House explained in submitting the Conference Report that "Whether competition is unfair or not generally depends upon the surrounding circumstances of the particular case. What is harmful under certain circumstances may be beneficial under other circumstances" and that therefore the prevention of unfair competition "can be best accomplished through the action of an administrative body composed of practical men thoroughly informed in regard to business who will be able to apply the rule enacted by Congress to particular business situations," *Ibid,* p. 14924.

APPENDIX

Federal Trade Commission Act, Section 5, 38 Stat, 719, 15 U. S. C. A. §45:

"SEC. 5. Unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce."

Sherman Act, Sections 1, 2, 26 Stat. 209, 15 U. S. C. A. §§1, 2:

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

"Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,
Petitioners,

against

FEDERAL TRADE COMMISSION,
Respondent.

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

		PAGE
I.	Why did the Commission ban the program?	1
II.		3
III.		4
IV.		4
V.		5
VI.	If style piracy is not a tort, can the program be sustained?	6
VII.	Is there any evidence of price fixing or price protection? Did the offer of proof inferentially negative price fixing?	9
VIII.	What is the relationship between patent pools and the present program?	11
IX.	The Millinery Guild case distinguished	12
Conclusion		14

TABLE OF CASES CITED

PAGE

Appalachian Coals, Inc. v. United States, 288 U. S. 344 ..... 3, 5, 8, 12

Atchison, Topeka & Santa Fe R. R. v. United States, 295 U. S. 193, 201, 202 3

Irene & Sons v. Federal Trade Commission, 299 Fed. 468, 471 ..... 4, 9

Bigelow v. Calumet & Hecla Mining Co., 167 Fed. 704, 712, 716 5

C. E. Stevens & Foster v. Klieser Co., 109 Fed. (2d) 764, 770 5

Cheney v. Doris Silk Corp., 35 Fed. (2d) 279 ..... 6, 8

Federal Trade Commission v. Algoma Lumber Co., 291 U. S. 67 6

Federal Trade Commission v. Beech Nut Packing Co., 257 U. S. 441 ..... 3, 6

Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568, 579 ..... 3, 6

Federal Trade Commission v. Gratz, 253 U. S. 421 3

Federal Trade Commission v. Paramount Famous Lasky Corp., 57 Fed. (2d) 152, 157 ..... 3, 5

Federal Trade Commission v. Klesner, 280 U. S. 19 6

Heuser v. Federal Trade Commission, 4 Fed. (2d) 632, 634 ..... 4, 9

International News Service v. Associated Press, 248 U. S. 215 8

Lynch v. Magnavox Co., 94 Fed. (2d) 883, 888 5

Millinery Creators Guild v. Federal Trade Commission, No. 251, October Term 1940 ..... 12, 13

PAGE

Philip Carey Manufacturing Co. v. Federal Trade Commission, 29 Fed. (2d) 49 ..... 4, 9

Saginaw Broadcasting Co. v. Federal Communications Commission, 96 Fed. (2d) 554, 559 3

Silver v. Federal Trade Commission, 289 Fed. 985, 990 3

Standard Oil Co. of N. J. v. Federal Trade Commission, 282 Fed. 81 ..... 3, 5

Standard Oil Co. v. United States, 221 U. S. 1 5

Sugar Institute v. United States, 297 U. S. 553 ..... 3, 5, 8, 12

Toledo Pipe Threading Machine Co. v. Federal Trade Commission, 6 Fed. (2d) 876 3

United States v. Patten, 187 Fed. 664, at 672 5

United States v. Whiting, 212 Fed. 466, 476, 479 4

Whitwell v. Continental Tobacco Co., 125 Fed. 545 5

William Filene's Sons v. FOGA, 90 Fed. (2d) 556 ..... 4, 8

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For the convenience of the Court, petitioners herein set forth the answers to the questions propounded by the Court upon oral argument.

I

Why did the Commission ban the program?

The Commission entered its cease and desist order upon the erroneous proposition that the collective refusal of the members of the Guild to do business with retailers is illegal per se (as distinguished from prima facie illegal) and that no evidence in justification, of whatever character, was relevant or material.

The case was tried, the findings of the Commission made and the order entered upon the simple issue that an alleged

boycott existed and that the reason permitting such action by members of the Guild was wholly irrelevant and immaterial (fols. 5909, 5912, 6617, 6620, 6677, 7406-7416, 7706, 7775, 8642, 10962-10975, 11037, 12051, 12922, 13111, 13118).

As was said by the attorneys for the Commission:

(Fol. 10962)

> "Mr. Haycraft: I want to make this plain—that I shall object to any question that will refer to whether or not style piracy is good or is not good as a thing that should be done. That is not an issue in this case. It has not been made an issue in this case."

(Fol. 10974)

> "Mr. Haycraft: The contention of the Commission is that regardless of whether this is an evil or a benefit, that you cannot use a boycott to stop it and that is the issue in this case."

(Fol. 12923)

> "Examiner Diggs: The simple question in this case is whether, conceding that the respondents have done the things charged in the complaint, those things constitute a violation of law. And that is the only issue in this case and therefore I am going to refuse to permit the respondents to introduce any testimony along the lines indicated; that is to say, testimony showing the necessity for this action or the chaotic condition of the industry prior to its adoption."

This was summed up in the brief of the attorneys for the Federal Trade Commission in asking for the issuance of a cease and desist order by the Federal Trade Commission in the following statement:

> "The question to be determined is not what was the reason which led to the boycott, but is whether or not in fact there was a boycott as a result of a combination or a conspiracy."

II

Whether proceedings are brought under the Federalo Trade Commission Act or the Sherman Act, the standard for the interpretation of what is an unfair method of competition is the same and under each it is at all times necessary to determine the reasonability of the restraint complained of with relation to the particular industry involved. *Silver* v. *Federal Trade Commission,* 289 Fed. 985, 990; *Federal Trade Commission* v. *Beech Nut Co.,* 257 U. S. 441; *Federal Trade Commission* v. *Gratz,* 253 U. S. 421; *Standard Oil Co. of N. J.* v. *Federal Trade Commission,* 282 Fed. 81; *Toledo Pipe Threading Machine Co.* v. *Federal Trade Commission,* 6 Fed. (2d) 876; *Federal Trade Commission* v. *Paramount-Famous-Lasky Corp.,* 57 Fed. (2d) 152; *Saginaw Broadcasting Co.* v. *Federal Communications Commission,* 96 Fed. (2d) 554, 559; *Atchison, Topeka & Santa Fe R. R.* v. *United States,* 295 U. S. 193, 201, 202; *Federal Trade Commission* v. *Curtis Publishing Co.,* 260 U. S. 568, 579.

Notwithstanding the foregoing, the Commission refused to permit petitioners to introduce evidence and in addition failed to make findings with respect to the facts peculiar to the business in which the restraint was imposed, the nature of the restraint, the effect actual or probable, the history of the restraint, the evil complained of necessitating the reason for adopting the particular remedy, the reasonableness of the application of the restraint in the light of the evil sought to be ameliorated or the economic necessity for the things sought to be obtained (see offer of proof, fols. 12927-12980). Proof with relation to all of the foregoing has been held a sine qua non for the determination of whether or not the restraint is illegal. *Sugar Institute* v. *United States,* 237 U. S. 553; *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344.

III

Since the respondent failed to make appropriate findings with respect to the history and economic background as enumerated above, which failure was deliberate and premeditated in an attempt to establish an untenable theory, it is urged that the order appealed from should be reversed and the Commission's complaint dismissed. *Bene & Sons* v. *Federal Trade Commission,* 299 Fed. 468, 471; *United States* v. *Whiting,* 212 Fed. 466, 476, 479; *Heuser* v. *Federal Trade Commission,* 4 Fed. (2d) 632, 634; *Philip Carey Manufacturing Co.* v. *Federal Trade Commission,* 29 Fed. (2d) 49.

IV

The Court below sustained the Commission's order, not upon the ground that a boycott was illegal per se, but upon the ground that because petitioners' actions resulted in the creation of a minute and limited monopoly (the meaning of which is undefined) there could be no justification for the program. The Court's decision therefore is predicated upon a rule of law never before urged, to wit, that although the combined interests of all those affected made style piracy an evil; that although the program established reasonably necessary and equitably fair methods to curb the evil; that although the program had no other purpose except the elimination of such evil of style piracy (*William Filene's Sons* v. *FOGA,* 90 Fed. [2d] 556) all such justification is immaterial and the program is illegal solely because a monopoly, however limited, was created, even though such monopoly resulted in none of the evils which lead to the condemnation of monopolies.

While the Commission sought to establish that proof of boycott is proof of illegality per se, the Court below enunciated the doctrine that proof of monopoly is proof of illegality per se sufficient to sustain the Commission's order.

However, that "monopoly" has no fixed or artificial meaning, but that on the contrary that its meaning is obscure is urged in *C. E. Stevens & Foster* v. *Klieser Co.*, 109 Fed. (2d) 764, 770, and clearly whatever may be meant by monopoly, a monopoly is not unlawful when it does not affect price, deteriorate quality or limit production. *Standard Oil Co.* v. *United States*, 221 U. S. 1; *Lynch* v. *Magnavox Co.*, 94 Fed. (2d) 883, 888; *Bigelow* v. *Calumet & Hecla Mining Co.*, 167 Fed. 704, 712, 716.

The failure on the part of the Commission to find that petitioners in any way affect price, deteriorate quality or limit production and the elimination by the Court below as irrelevant of the question of whether or not the petitioners substantially dominate the market adequately demonstrates that petitioners have not established a monopoly condemned by statute, since there can be no monopoly or threat thereof when opposing forces must compete for trade solely upon the merits of their product. *United States* v. *Patten*, 187 Fed. 664, at 672; *Whitwell* v. *Continental Tobacco Co.*, 125 Fed. 545; *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 86; *Federal Trade Commission* v. *Paramount Famous Lasky Corp.* 57 Fed. (2d) 152, 157.

V.

In seeking to sustain the respondent's order the Solicitor General abandons the theory advanced by the Court below (i. e., monopoly is proof of illegality per se) and reasserts the erroneous theory of the Commission that a boycott per se is illegal. That such is not the case has been long settled by this Court in the *Sugar Institute* and *Appalachian Coals* cases wherein the essential standard of reasonableness was erected in order that realities might dominate judgment in the determination of the existence of a restraint condemned by law.

Since obviously the Commission was seeking to establish an untenable legal theory this Court in reversing the order below should dismiss the complaint and not remand for further testimony.

VI

If style piracy is not a tort, can the program be sustained?

What is unfair competition condemnable by the Federal Trade Commission must be determined on the facts of the particular case upon specific evidence in the light of the particular competitive conditions and of the specific public interest in the particular industry. *Federal Trade Commission* v. *Curtis,* 260 U. S. 568; *Federal Trade Commission* v. *Beech Nut Packing Co.,* 257 U. S. 441; *Federal Trade Commission* v. *Klesner,* 280 U. S. 19; *Federal Trade Commission* v. *Algoma Lumber Co.,* 291 U. S. 67.

The petitioner herein made an offer of proof (fols. 12927-12980) to demonstrate and establish the atrocious conditions in the industry resulting from the prevalence of the evil of style piracy which necessitated collective action by petitioners because of the absence of a legal remedy against style piracy (*Cheney* v. *Doris Silk Corp.,* 35 Fed. [2d] 279), which testimony, in addition, would have established that style piracy was a socially undesirable form of competition. Appropriate extracts from such offer of proof are as follows:

(Fol. 12945)

> "I would prove that prior to the advent of the Guild this style piracy was responsible for the chaotic condition of the dress industry, for the inability of those creating styles to stay in business profitably, for the large number of bankruptcies which attended the industry."

(Fol. 12953)

"I would also prove that prior to the advent of the Guild this copying was a severe danger and injury to the retailer; that such design piracy also injured and in many cases destroyed the reputation of a retailer for honesty, stylability and service; that these are important assets of the retailer."

(Fol. 12957)

"I would also prove that before the advent of the Guild this style piracy was injurious and harmful to the consumer."

(Fol. 12960)

"I would also prove that the effect of this style piracy was tremendously injurious and detrimental to labor, for style piracy was the greatest of all contributing factors to the sweat shop conditions which were so long incident to the dress business."

(Fol. 12974)

"The members of the Guild realized that style piracy was destroying their business and industry and that cooperative effort was necessary in order to protect themselves and by reason thereof voluntarily and willingly instituted the Guild program as protection against the thieving practices of unscrupulous competitors who were perpetuating a method of doing business which was slowly destroying the entire industry."

(Fol. 12975)

"The Guild program has lately ameliorated evil conditions which existed due to the evil of style piracy and has been the greatest single factor in stabilizing the industry to the benefit of manufacturer, retailer, consumer and employer. The Guild program has resulted in increased competition on an ethical, fair, competitive basis and has resulted in a decrease of failures and of losses in the industry."

All testimony with regard to the elements of originality in a dress, the method of copying and the difference between a copy and an original dress was excluded by the Commission (fols. 1237, 1833-1840, 2567, 2700, 6677, 6788, 7745, 11013, 11924).

Proof of all of the foregoing would have established the existence of an industry-destroying evil, of an honest and fair program for its amelioration which did not affect a fixation of prices, a deterioration of quality or limitation of production (*William Filene's Sons* v. *FOGA*, 90 Fed. [2d] 556), regardless of the existence or non-existence of any property right in their merchandise. *Cheney* v. *Doris Silk Corp.*, 35 Fed. (2d) 279. Petitioners do possess the intangible right to protect their industry from destruction and to prevent the appropriation of their businesses. *International News Service* v. *Associated Press*, 248 U. S. 215.

Neither the *Cheney* case nor the *International News* case are strictly in point for in such cases resort was had to the Court for the sanction of a legal injunction. (Additionally the delays incident to obtaining injunctive relief and the expense of posting bonds preclude the use of such remedy if the *Cheney* case is wrong; and if the *Cheney* case is wrong then petitioners are possessed of a positive right which they may protect.) Petitioners seek to fill in the "hiatus of incompleted justice" resulting from their lack of a legal remedy solely in order to eliminate a socially undesirable form of competition which, if not tortious, is nevertheless unethically destructive. In such case absence of a legal remedy is a spur to judicial sanction rather than a bar. *Sugar Institute, Appalachian Coals* cases.

Since the respondent deliberately elected to exclude evidence of the existence of an evil necessitating the action complained of, proof of the existence of which was offered and could clearly have been established (*William Filene's Sons* v. *FOGA*, 90 Fed. [2d] 556), the order below should be reversed and the complaint of the respondent dismissed.

VII

Is there any evidence of price fixing or price protection? Did the offer of proof inferentially negative price fixing?

The Federal Trade Commission neither by word nor implication charged or argued that petitioner's program in any manner, either directly or indirectly, acted upon or affected price, price structures or price maintenance, or that the program was adopted to further or advance any of such purposes. No findings were made by the respondent with regard thereto or that the petitioner's program had any effect upon production or quality. The failure to so find is an equivalent to a finding in favor of petitioners. *Heuser* v. *Federal Trade Commission,* 4 Fed. (2d) 632 at 634; *Philip Carey Mfg. Co.* v. *Federal Trade Commission,* 29 Fed. (2d) 49; *Bene & Sons* v. *Federal Trade Commission,* 299 Fed. 468 at 471.

On the contrary, the respondent affirmatively found that all members of the petitioner are in active competition among themselves (fol. 363).

The Court below, in its opinion, has held that the question of price fixing is not involved in the instant case.

All of the foregoing is predicated upon the uncontradicted and unchallenged testimony of petitioners, the only testimony in the record upon the subject, as follows (fol. 13,101):

> "Q. Now, Mr. Post, has the Guild at any time in the execution of its program attempted to in any manner fix prices at which either the manufacturer may sell dresses to the retailer or the retailer to the consumer? A. It has not in any way.
>
> Q. Has the Fashion Originators Guild at any time required or advised or interested itself in the price at which any manufacturer was to sell his dresses? A. It has not, directly or indirectly, or in any manner.

Q. And is it a fact that in so far as the Fashion Originators Guild is concerned any manufacturer may sell his dresses at any price, in any price line or in any manner in so far as the price is concerned which he deems fit? A. We have no interest in prices and he may do as he pleases.

Q. Has the Fashion Originators Guild of America at any time during its existence in any manner attempted to control or regulate the production on the part of its members? A. It has nothing whatever to do with production.

Q. Has the Fashion Originators Guild of America at any time since its inception attempted in any manner to allocate or parcel out customers to its members? A. It has not.

Q. Or to in any manner assign territory to its members? A. No, they have not.

Q. Has the Fashion Originators Guild of America at all times attempted to encourage and permit free and active competition among its members or the retail trade? A. They have.

Q. Has the Fashion Originators Guild of America at any time attempted to in any manner interfere, advise or direct manufacturers with respect to the quality of the material which they use? A. No, they have not."

Without the slightest support in the record or the findings of the respondent, the Solicitor General has urged that petitioner's program maintains a floor to prices. The uncontested record indicates that the members of the Fashion Originators Guild constituted manufacturers in a price range fron. 3.95 to, for practical purposes, infinity, and the respondent has found that all members compete freely with each other (fol. 363). Under such circumstances that the inference of the Solicitor General is utterly unfounded is immediately apparent.

Petitioners' members do not protest against honest competition which may necessitate their production of quality dresses in a lower price line than customary. Petitioners' program is aimed at the evil of copying which results in the manufacture of a cheap copy of an expensive original

which makes the expensive original unsaleable but does not gain a customer for the cheap copy. The woman who would buy the expensive original dress will merely refrain from buying that model which she has seen copied and will not buy the cheap copy either. Thus, the copyist battens on the creative genius, financial investment and business industry of the manufacturer of originals to the utter confusion of the entire industry, of labor, and of the consumer, as previously noted.

In the light of the record, it is patent that price fixing, price protection, price maintenance or any improper influence on prices is not an element in the instant case.

VIII

What is the relationship between patent pools and the present program?

None.

The object of a patent pool is to preserve a monopoly for a limited fraternity with the intent and accomplishment of a fixation of prices. The purpose and motive of such combinations are sufficient to condemn them. As has heretofore been shown, petitioner's program may be joined by any manufacturer who will be entitled to all of its benefits. The program in no way affects prices, limits production, ...iorates quality or assigns markets. The members of the Fashion Originators Guild of America are in active competition with each other. Their combination arises not from a desire to boycott in order to harm competitors in order to accomplish any of such ends, but is aimed solely and only at the amelioration of the industry-destroying evil of style piracy which adversely affected manufacturers, retailers, laborer and consumer. Their combination was defensive to preserve the industry for the good of all and not offensive to obtain advantage for a few.

The beneficent effect of the program has never been challenged by any Court and, while banning it on technical grounds, even the Court below did not question its purposes, motives or accomplishments.

The realities which must dominate judgment referred to in the *Appalachian Coals* case, 288 U. S. 344, at 360, clearly demonstrate that the reasons which impel the condemnation of patent pools do not apply to petitioners' program. On the contrary the doctrine of the *Sugar Institute* case that co-operative endeavor to eliminate industry abuses is proper supports petitioners' program herein.

IX

The Millinery Guild case distinguished.

Upon oral argument the Solicitor-General strained to identify the program of the Fashion Originators Guild of America, petitioners herein, with that of the Millinery Guild.

There is no common ground of attack.

(1) Contrary to the findings of the Commission and the decision of the Court in the *Millinery Guild* case, there is no question but that this petitioner's program does not intend to and does not in any way affect or regulate prices. This is evident from the lack of finding thereon by the respondent and from the affirmative testimony with regard thereto which is unchallenged and uncontradicted (fols. 13,101, 13,102).

(2) Under the rules established by petitioners, anyone may become a member of the Fashion Originators Guild of America without restriction if the applicant subscribes to the policy of the elimination of style piracy. In the *Millinery Guild* case, membership therein is restricted.

(3) Petitioners' program provides for the registration of designs but specifically proclaims that such registration establishes no presumption of originality but only the date when such contention has first been made. Registration with the Millinery Guild establishes a presumption of originality.

(4) The Boards of Arbitration established by petitioners are absolutely impartial, unconnected with the members of the Fashion Originators Guild of America and determine the question of whether or not a design is an original or a copy. (The impartiality of such boards is not questioned.) In the *Millinery Guild* case the members thereof determine such question.

(5) Petitioners herein established a panel of arbitrators in order to provide for unbiased determination of the question and if he so desired a protesting copyist manufacturer was permitted to establish a Board of Arbitration of one member of his choice, one member chosen by the Guild, the two to choose a third. The Millinery Guild provided no alternatives.

(6) Petitioners' program under no circumstances permits even the registration of an import or an adaptation of an import as a member's original. In the Millinery Guild, members were permitted to register a Parisian import as a member's original.

(7) Petitioners established an elaborate method of appeal whereby an aggrieved copyist manufacturer might appeal his claim to another Board of Arbitration. The Millinery Guild provides no such procedure.

(8) Unlike the Millinery Guild member (who is expelled for violation of rules), members of the Fashion Guild who violate its rules are not expelled or thereafter excluded from membership but are fined in an amount commensurate

with the violation. No claim has ever been made that such fine was arbitrary or excessive.

(9) It should be borne in mind that co-operating retailers are not required to desist from doing business with copyist manufacturers. Co-operating retailers only agree not to sell a dress which has been adjudged a copy. Although the retailer may have taken off sale a dress which has been adjudged a copy, nothing prevents the retailer from continuing to do business with such manufacturer as to any and all dresses which may not have been adjudged copies. Retailers who co-operate with the Millinery Guild were required to desist from doing any business with copyist manufacturers.

(10) Every Court before whom petitioners' program has been presented has upheld petitioners' program in its mechanics as fairly, reasonably, honestly and justly administered and the record fails to reveal any claim on the part of the respondent or of any copyist manufacturer that his dress was improperly, arbitrarily or unfairly adjudged a copy. The mechanics of the Millinery Guild program have been attacked as arbitrary and unfair and in effect the Millinery Guild has subscribed to such attack by volunteering to change the mechanics of its program to conform to that of petitioners.

CONCLUSION

The respondent tried this case and urges its affirmance upon a simple legal theory, to-wit: that a boycott is illegal per se and that no evidence of any kind may be introduced in justification thereof. It is clear that the respondent deliberately chose to exclude evidence uniformly held material in order to establish this legal proposition. That the object of the respondent was to establish new law rather than to attack petitioners' program, as such, is a reason-

able conclusion not alone from the record but from the arguments presented in attempting to sustain the order. Petitioners have been required to expend thousands upon thousands of dollars to defend themselves from the imposition of this improper legal theory. The respondent has failed to prove its case as it attempted to prove it.

Under the circumstances, it is respectfully submitted that the order of the Circuit Court of Appeals, Second Circuit, affirming the cease and desist order of the Federal Trade Commission should be reversed, the cease and desist order entered by the Federal Trade Commission and the complaint dismissed.

Respectfully submitted,

CHARLES B. RUGG,
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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The Government believes the decision below to be correct and it will so urge on the merits if the petition for a writ of certiorari should be granted. However, as the court below expressly stated (R. 4678), its decision is inconsistent with that rendered by the Circuit Court of Appeals for the First Circuit in *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild,* 90 F. (2d) 556. In *Millinery Creators' Guild, Inc.* v. *Federal Trade Commission* (No. 251, this Term, certiorari granted October 14, 1940) the decision of the court below was likewise in substantial conflict with *Wm. Filene's Sons Co.*

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v. *Fashion Originators' Guild, supra,* and the Government therefore did not oppose the petition for certiorari.

In view of the conflict in decision between two different circuit courts of appeals, the Government does not oppose the petition for a writ of certiorari.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

NOVEMBER 1940.

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BRIEF FOR THE FEDERAL TRADE COMMISSION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	13
I. The combination cannot be justified on the ground that copying designs created by a competitor is unfair competition	15
II. There is no merit in petitioners' argument that the restraint here involved is not illegal *per se* because it does not regulate price, production, or quality	15
III. The boycott instigated by petitioners has suppressed competition by closing to competitors the available market outlets	20
Conclusion	21

CITATIONS

Cases:

International News Service v. *Associated Press*, 248 U. S. 215 — 15

Millinery Creator's Guild, Inc., v. *Federal Trade Commission*, No. 251, this Term — 13, 14, 16

Socony-Vacuum Oil Co. v. *United States*, 310 U. S. 150 — 17, 19

Statute:

Federal Trade Commission Act, c. 311, 38 Stat. 717, 15 U. S. C., secs. 41 *et seq.*, as amended by Act of March 21, 1938, c. 49, 52 Stat. 111, 15 U. S. C. Supp. V, secs. 44, 45 — 2–3

Miscellaneous:

Johnston & Fitch, *Design Piracy—The Problem and its Treatment under NRA Codes*, Trade Practice Studies, March 1936 — 17

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 4671) is reported in 114 F. (2d) 80.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on August 24, 1940 (R. 4694). Petition for certiorari was filed on October 31, 1940, and was granted November 25, 1940. The jurisdiction of this Court rests upon Section 5 of the Federal Trade Commission Act (15 U. S. C., sec. 45) and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

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QUESTION PRESENTED

Whether petitioners' combination to restrain interstate commerce by boycotting retailers marketing unauthorized copies of petitioners' dress designs and by inducing and coercing retailers to boycott manufacturers selling unauthorized copies, may be justified by evidence as to the economic necessity and the beneficial consequences of the program.

STATUTE INVOLVED

The statute involved is the Act of September 26, 1914, c. 311, 38 Stat. 717 (15 U. S. C., secs. 41 *et seq.*), as amended by the Act of March 21, 1938, c. 49, 52 Stat. 111 (15 U. S. C., Supp. V. secs. 44, 45), known as the Federal Trade Commission Act. The pertinent provisions of this Act are as follows:

> SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:
>
> "Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.
>
> * * * * *
>
> SEC. 5. Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair

methods of competition in commerce and unfair or deceptive acts or practices in commerce.

* * * * *

Section 5 further authorizes any party against whom the Commission has entered a cease and desist order to obtain a review on the law in an appropriate circuit court of appeals; gives such court jurisdiction to affirm, set aside or modify the order; and provides that the Commission's findings as to the facts, if supported by evidence, shall be "conclusive."

STATEMENT

This case involves the validity of an order of the Federal Trade Commission, issued under Section 5 of the Federal Trade Commission Act, directing the Fashion Orginators' Guild of America, Inc., the officers, members and affiliates of Fashion Originators' Guild of America, Inc., certain retail guilds, and various retailers of women's garments, to cease and desist carrying out a plan to prevent so-called "style piracy" or copying of designs for women's garments. The petitioners include the Fashion Originators' Guild of America, Inc., which will be referred to herein as FOGA, and the manufacturers named as respondents in the Commission's complaint, who will be referred to as members.[1]

[1] All of the various persons and guilds against whom the Commission issued its order (R. 135) are seeking a reversal of that order with the exception of Austin M. DeLisser, E. W. Freudenberg, Samuel Levine, E. E. Meyer, National Federation of Textiles, Inc., Peter Van Horn, and Irene L. Blunt.

The original complaint was issued by the Federal Trade Commission on April 16, 1936, charging that the petitioners had been guilty of unfair methods of competition under Section 5 of the Federal Trade Commission Act (R. 3–25). Answers were filed (R. 26–83) and hearings were held before trial examiners at various times and places commencing July 15, 1936, and closing March 16, 1938 (R. 151, 4451). On February 8, 1939, the Commission issued its findings of fact, conclusions of law and order (R. 107–148).[2] The court below, in affirming the order, held that "The findings are supported by an abundance of evidence and are indisputable * * *" (R. 4672). The petitioners have not assigned error to the court's ruling and raise no issue as to the sufficiency of the evidence to support the findings.[3] Those findings may be summarized as follows:

FOGA is a membership corporation organized in 1932 under the laws of New York by approximately 15 manufacturers of women's garments selling at wholesale for from $29.50 up (R. 108, 122). Manufacturers of lower priced women's garments were later included so that by 1935 the price range ran

[2] On March 29, 1939, the Commission, on its own motion, deleted a portion of the order which is immaterial to the present proceeding (R. 149–150).

[3] Petitioners rely primarily on the refusal of the trial examiners and the Commission to receive certain evidence proffered to prove the economic necessity and beneficial consequences of petitioners' activities. The offer of proof is described, *infra* pp. 12–13.

from $6.75 up per garment (R. 122). Also, manufacturers of textiles used in the women's garment manufacturing industry were admitted to membership (R. 122). By April 1936 the membership of the Guild consisted of 176 manufacturers of women's garments and 49 manufacturers, converters, dyers, and printers of textiles (R. 110–117; 122).

The garment manufacturing members of FOGA are a dominant factor in the women's garment industry. Their products are in such demand by the purchasing public that all retail dealers find it necessary to handle some of the lines manufactured by FOGA members in order to meet competition and public demand. In 1936 FOGA members sold 38.8 percent of all women's garments in the United States in the wholesale range of $6.75 and up and 63.99 percent in a wholesale price range of $10.75 and up (R. 121–122).[4]

FOGA was organized primarily for the purpose of preventing the copying for sale in commerce of alleged original creations of fashions and styles of women's garments (R. 122). This program was later expanded to afford protection to designs of textiles used in the manufacture of women's garments by an arrangement with the National Federation of Textiles, Inc., having a membership of approximately 100 manufacturers, converters, dyers, and printers of silk and rayon fabrics. (R. 119, 122, 128.)

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[4] As pointed out by petitioners in their brief (p. 11, n. 12), the figure 83.99 contained in the Commission's findings (R. 122) is a misprint. The correct figure is 63.99.

In furtherance of its purpose, FOGA secured at the outset the cooperation of local retail guilds located in Chicago, Minneapolis, and Baltimore (R. 117–119, 122). FOGA agreed to deal only with members in good standing in the local guilds. In return the local guilds agreed that their members (1) would not purchase from manufacturers not conforming to the ethics and the regulations of FOGA; (2) would not knowingly buy or sell copies of styles legitimately registered with the Guild; (3) would accept the decision of the "style piracy" division of FOGA on all questions of alleged design piracy; and (4) would stamp all orders for women's merchandise with the following warranty clause:

> This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.

The agreement further provided that the local guilds would suspend from membership any member who violated any of the provisions of the agreement and that none of their members would purchase from any member of FOGA who violated any of the above conditions until that member had been restored to good standing. (R. 123–124.) The above agreements were fulfilled by FOGA and its members and by the various local guilds and their members (R. 124).

In 1933 FOGA expanded its program and distributed to individual retail dealers in women's garments in territories which had no local guild a so-called "Declaration of Cooperation" to be signed by the individual retailer. The "Declaration of Cooperation" imposed upon the individual retailer substantially the same obligations as were imposed upon the members of the local retail guilds by the agreement described above. At first FOGA sought voluntary cooperation but after a number of signatures had been secured it coerced and compelled retailers to sign the declaration by threatening to refuse and refusing to permit members of FOGA to sell or to show merchandise to retailers who had not signed (R. 124).

As a result of the coercive activities by FOGA, approximately 12,000 retail dealers had signed the "Declarations of Cooperation" by the end of 1935. The majority of the 12,000 retail dealers who signed the "Declarations of Cooperation" did so because of threats that FOGA members would not exhibit or sell merchandise to them. Some retailers refused to sign and as a result the members of FOGA refused to sell or exhibit their merchandise to these noncomplying retailers. (R. 125.)

In furtherance of its program FOGA maintains a Design Registration Bureau with which members may register the design and style of each woman's garment claimed to be an original creation (R. 125–126). A "piracy committee" is established

which determines whether the garments alleged to be copies of original styles and designs created by FOGA members are such in fact, and review of the committee's decision may be had before other committees (R. 126). FOGA employs "shoppers" in principal cities to examine the stocks of women's apparel in the various retail stores to determine whether or not they are selling copies of registered designs (R. 126–127).[5]

FOGA maintains an elaborate white and red card index of retailers which, in effect, constitutes an approved list (white card) and a black list (red card) of retail stores, and all FOGA members refuse to sell to black-listed retail dealers. On March 20, 1936, more than 400 retail dealers located in various places in the United States were on the black list (R. 127).

A similar restrictive plan for protecting textile designs has been established by FOGA in conjunction with the National Federation of Textiles, Inc., which maintains a bureau known as the Industrial Design Registration Bureau. By agreement, the garment manufacturing members of FOGA refuse to buy textiles which are not registered in the Bureau and textile members of FOGA sell only to garment manufacturers who become parties to the agreement (R. 128).

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[5] The examination is made openly in the case of cooperating retailers but the "shoppers" do not disclose their identities to noncooperating retailers. Whenever copies of registered designs are discovered, a report is made to FOGA. (R. 126–127.)

FOGA, by resolutions and otherwise, has bound its members to observe various minor rules and regulations such as the prohibition of discounts in excess of a fixed maximum, the prohibition of retail selling or participation in retail advertising, and the prohibition of selling women's garments to persons conducting businesses in residential quarters (R. 129). Auditors are employed to audit the books of members to ascertain whether the members are selling to black-listed retailers or violating any of the other regulations (R. 130). Violations by members are punishable by fines ranging in one instance to $1,500 for a single violation, and FOGA announced that future violations would be punished by a fine of $5,000 (R. 130).

Retailers who have failed or refused to cooperate with FOGA have been occasioned loss of good will and great financial loss by the refusal of members to sell them merchandise (R. 130). Likewise, manufacturers who are not members of FOGA have been occasioned great financial loss due to retailers returning garments declared to be copies of designs registered with FOGA and also due to the activities of FOGA in inducing and compelling retailers to refrain from purchasing any merchandise from manufacturers declared to be confirmed copyists (R. 130–131).

As a result of the activities of FOGA and its members in sponsoring the foregoing program and in carrying out and enforcing the agreements made

pursuant thereto the following conditions and effects, among others, have been brought about (R. 131–132):

(1) Competitors of members of FOGA and the National Federation of Textiles, Inc., have been prevented from making sales of their products and shipments in interstate commerce with a resultant substantial lessening and suppression of competition in interstate commerce in the sale and shipment of women's garments and textiles.

(2) Retail dealers in women's garments have been prevented from buying their requirements from manufacturers boycotted by FOGA with the result that interstate commerce in the purchase and sale of women's garments has been substantially lessened and suppressed.

(3) FOGA and the National Federation of Textiles, Inc., have obtained and exercised control over the business practices of a majority of the manufacturers and distributors of women's garments and textiles and have the power to exclude from the industry those manufacturers and distributors who do not conform to their rules and regulations and thus they tend to create in themselves a monopoly of the industry.

(4) FOGA has coerced and compelled retail dealers to sign the Declaration of Cooperation submitted by the Guild.

(5) FOGA has caused retail dealers in women's garments who have not signed the Declaration of

Cooperation, or who having signed have violated it, to suffer great financial loss.[6]

From these findings of fact the Commission concluded that petitioner's activities constituted unfair

[6] In addition, the Commission found that FOGA and its members had been responsible for bringing about the following conditions which are important to show the extent of their activities (R. 131–132):

(1) FOGA fixes the amount of discounts to be given by its garment manufacturing members to retail dealers.

(2) Garment manufacturing members refuse to sell merchandise at retail or to persons conducting business in residential quarters.

(3) FOGA prohibits its garment manufacturing members from participating in retail fashion shows.

(4) FOGA prohibits its garment manufacturing members from subsidizing retail advertising.

(5) FOGA exacts fines from its garment manufacturing members for violation of its program.

(6) Garment manufacturing members refuse to buy from or sell to textile manufacturers who sell to noncooperating retailers.

(7) Textile members refuse to sell their products to noncooperating manufacturers.

(8) Garment manufacturing members refuse to purchase textiles from manufacturers who do not register their designs with the Industrial Design Registration Bureau.

(9) Textile members refuse to sell to manufacturers who will not purchase exclusively from textile manufacturers registering their designs with the Industrial Design Registration Bureau.

(10) Garment manufacturing members refuse to sell to retail dealers in Chicago, Minneapolis, and Baltimore who are not members in good standing of the respective local guild in those cities, and members of the local guilds confine their purchases of women's garments to members of FOGA (R. 131–133).

methods of competition in commerce, and tended to create a monopoly within the intent and meaning of the Act (R. 134). Thereupon the Commission issued its order directing petitioners to cease and desist their unlawful acts (R. 135–150).

A petition to review and set aside the Commission's order was duly filed in the Court of Appeals for the Second Circuit (R. 1a–32a). In a unanimous opinion filed July 22, 1940, the court held that petitioners were engaged in an unlawful boycott, that their activities tended to create a monopoly, that the exclusion from the market of any who supply it is unlawful *per se*, and that, therefore, the Commission properly refused to hear evidence in excuse of the practices and ordered petitioners to cease and desist the practices (R. 4671–4679).[7]

Petitioners do not challenge the Commission's findings but rely upon the refusal of the trial examiner and the Commission to receive certain evidence on the ground that the practices of FOGA could not be justified by evidence of what the necessity of the action may have been (R. 4307–4309). The evidence was offered to establish the reasonableness of the restraint of trade here involved. According to the offers of proof, this evidence would show

[7] At the conclusion of its opinion the court stated that the Commission's order "will not be understood to apply to cases in which a retailer knowingly buys dresses, access to the design of which has been procured (1) by fraud, bribery or any other crime, (2), through some breach of contract, or (3) before the design has by 'publication' come into the public demesne" (R. 4679).

(R. 4309-4327): That manufacturers in the women's garment industry are divided into two classes, (1) those who adapt the styles of the leading fashion centers of the world into original designs for dresses, and (2) the copying manufacturers who systematically pirate the designs of originators and sell them more cheaply. Without such copying original designs would have value for about three months after an initial sale. Copyist manufacturers wait until the originators develop designs and then by whatever means necessary they meticulously copy such original designs and sell such copies cheaply, thus obtaining the benefit of the originator's investment and ability without cost to themselves. Such style piracy has caused detrimental effects to the women's garment business through loss to the original manufacturer of designs and through the creation of sweat shops. Customers who think they have bought exclusive dress designs find the market flooded with copies. These conditions and others detailed in the offers of evidence, according to petitioners' contention, would show slow disintegration of the women's garment industry if it had not been for the Guild and its program.

ARGUMENT

All of the issues raised by this case are involved in *Millinery Creator's Guild, Inc., et al.* v. *Federal Trade Commission*, No. 251, now before this Court. The arguments advanced in the Government's brief in No. 251 at pages 12 to 34 are equally applicable to the instant case. Consequently, those arguments

will not be repeated but are adopted as our affirmative argument on the issues here presented and this brief will be confined to commenting on certain inferences and arguments contained in the brief for petitioners.

Petitioners insist that this case is distinguished from the *Millinery Creator's Guild* case by the fact that in the latter the Commission made an affirmative finding that the combination had the capacity and effect of maintaining prices, whereas no such finding was made in this case. We do not concede that the differences in the Commission's findings afford a valid basis for distinguishing the cases. But, in any event, the legal significance to be attached to the findings on price maintenance has been considered separately in our brief in No. 251 and is not sought to be applied to this case. The only other basis for distinguishing the two cases is that in the *Millinery Creator's Guild* case the parties were afforded full opportunity to present evidence as to the reasonableness of the restraints which they imposed; in the instant case, on the contrary, the Commission refused to hear evidence offered to prove the economic necessity and beneficial consequences of petitioners' program. Although we submit that the evidence was not admissible in either case, we concede that if the evidence offered in this case was relevant and material to the issues before the Commission, it was error to exclude that evidence.

I

THE COMBINATION CANNOT BE JUSTIFIED ON THE GROUND THAT COPYING DESIGNS CREATED BY A COMPETITOR IS UNFAIR COMPETITION

Petitioners insist that the boycott here involved was directed against "unfair competition" and therefore was not illegal. They cite *International News Service* v. *Associated Press*, 248 U. S. 215, as direct authority for their position. The answer to this contention is contained in our principal brief at pages 24 to 34.

II

THERE IS NO MERIT IN PETITIONERS' ARGUMENT THAT THE RESTRAINT HERE INVOLVED IS NOT ILLEGAL PER SE BECAUSE IT DOES NOT REGULATE PRICE, PRODUCTION, OR QUALITY

In attempting to establish that the evidence excluded by the Commission was essential to the issue of whether or not the FOGA program violated the Sherman Act, petitioners argue that the question of reasonableness is open in all Sherman Act cases "where the restraint does not regulate prices, production or quality" (petitioners' brief, p. 45). Assuming *arguendo* that petitioners' statement of the law is correct, we submit that under their own test the restraint here involved must be held to be illegal *per se*.

1. The assertion that this case does not involve regulation of price is based on the failure of the Commission to make any finding similar to that

made in the *Millinery Creator's Guild* case, *supra*, that the scheme was designed to maintain prices, and on the statement of the court below that "The case at bar is not one of price fixing * * *" (R. 4677). However, it does not follow that the boycott instigated by petitioners had no regulatory effect on prices.

Petitioners claim that fundamentally the value of the commodity which they market is due to the fact that it represents the latest fashion; materials and workmanship are secondary considerations (petitioners' brief, p. 46). In other words the commodity which petitioners sell is "fashion." They argue that the copyist destroys the market for that commodity "by selling cheap replicas of the design" (petitioners' brief, p. 25). A striking example is contained in petitioners' offer of proof in which they state "it was no uncommon thing for a dress, originally produced fairly and honorably at, say, $79.50 retail, to be copied down by simulation to $16, thus completely destroying the worth, the investment of the creator of the original" (R. 4317). The only conclusion to be drawn from this example is that the purpose of the combination was to prevent the marketing of a product for $16 which was a "Chinese" copy [8] of a product which petitioners were selling for $79.50. The obvious desirability of accomplishing this objective from petitioners' standpoint is that the public will not pay $79.50 for the latest fashion if that commodity can be purchased for $16. The inevitable result of the boycott, if successful, would be to prolong

[8] Petitioners' brief, p. 18.

the period during which petitioners might demand $79.50 for a garment which in the eyes of the public differed in no way from another garment which in the absence of restraint would be offered at $16. In our view this amounts to putting a floor under prices by a method analogous to the removal of distress gasoline from the market which was condemned in *Socony-Vacuum Oil Co.* v. *United States*, 310 U. S. 150.

2. Petitioners' assertion that the boycott does not regulate production is equally fallacious. It is true that the boycott is not designed to limit the total number of garmets produced. However, the sole purpose of the boycott is to limit the number of manufacturers who may produce garments in accordance with certain designs.

The court below pointed out that the result of the boycott was to establish a monopoly of each original design in the hands of its creator (R. 4678).[9] Peti-

[9] It has been recognized that this factor has a direct bearing on the question of price effects. In Johnston & Fitch, *Design Piracy—The Problem and its Treatment under NRA Codes*, Trade Practice Studies Section, March 1936, it is stated (p. 199):

"* * * The consumer desiring a copy of a particular item receives the benefit of copyists' prices at the level which appeals to him. Without copying, the policies of the original manufacturer would govern the cost of a design to the consumer. Thus, instead of open price competition for the business which a particular design will command, there would be substituted competition between different designs in different qualities at whatever price level the manufacturer chose to impose. Price maintenance would be possible; monopoly prices would be possible insofar as the particular design received consumer preference over other articles of comparable quality and usefulness but different design."

tioners contend that the reason for limiting the number of manufacturers who may produce in accordance with a particular design is to prevent flooding the market with "cheap replicas" and thus destroying the "freshness of the design" (petitioners' brief, p. 25). It is implicit in this argument that rarity of reproduction enhances the value of a design but mass reproduction destroys that value.

Petitioners say that they seek to protect the value of their designs. It is not to be assumed that having secured a monopoly of their original designs petitioners engaged in immediate mass reproduction of those designs on the scale that those designs would have been reproduced if free copying had been permitted. That would have defeated the purpose which petitioners set out to achieve. Consequently, the production of garments of certain designs must have been restricted and limited by the boycott.

3. The premise underlying petitioners' proposition that no restraint of trade is illegal *per se* unless it regulates prices, production or quality, is that reasonableness will justify any restraint which does not affect the interests of the consuming public. Throughout their brief petitioners reiterate that the public is not harmed by the boycott, only "style pirates" and retailers who buy from them suffer. If, as we have urged above, prices and production are affected by the boycott there is a direct injury to the consuming public. Furthermore, if part of the consuming public has been deprived of desirable products by the boycott, the injury is equally as

great. We submit that that has been the effect of the boycott in this case.

As has been pointed out above, the commodity which petitioners market is "fashion." The numerous magazines devoted to women's styles and fashions and the extensive advertising to be found in every newspaper and magazine has created a demand by the buying public for garments of the latest design. Petitioners are a dominant factor in the manufacture of garments to meet this demand (R. 121). However, many if not all of the garments manufactured by petitioners are sold at prices beyond the means of a large portion of the buying public. If the demands of that part of the consuming public for the latest fashions which they see depicted in magazines and advertisements are to be met, it must be done by supplying equivalent garments at a lower price. That function is performed by the manufacturers whom petitioners condemn as "style pirates."

Petitioners argue that that portion of the consuming public to which they cater is benefited by the elimination of copying because it is enabled to purchase original designs with assurance that cheap copies are not being sold. We submit that the detriment of denying to a large portion of the public the opportunity of fulfilling desires which the customs of modern society have created cannot be counterbalanced by any such ostensible benefits to a select consumer group. Compare *Socony-Vacuum Oil Co.* v. *United States*, 310 U. S. 150, 220–222.

III

THE BOYCOTT INSTIGATED BY PETITIONERS HAS SUPPRESSED COMPETITION BY CLOSING TO COMPETITORS THE AVAILABLE MARKET OUTLETS

In an apparent effort to avoid the force of the Commission's unchallenged finding that "competition in interstate commerce in the purchase and sale of women's garments has been substantially lessened, hindered and suppressed" (R. 131), petitioners assert that the 12,000 retailers cooperating with FOGA represent only 19.8 percent of the available retail outlets (petitioners' brief, p. 10, n. 11). While this statement is literally true, it is misleading because petitioners have used the total number of Dry Goods, Department, Family Clothing, and Women's Ready to Wear stores in the United States as a basis for the computation. Obviously, thousands of the stores making up the total figures are located in rural communities or cater to a trade that has no interest in fashion. Petitioners and their competitors are engaged in marketing the latest fashions through outlets that cater to a trade which desires that type of merchandise. Petitioners have made no effort to determine the number of outlets which fall in that category. However, the Commission found that competitive conditions make it necessary for all retailers to handle some of the lines manufactured by

members of FOGA (R. 121–122).[10] Since members of FOGA refuse to sell to noncooperating retailers, it may be inferred that the 12,000 retailers represent substantially all available outlets for the class of merchandise here involved.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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FEBRUARY 1941.

[10] Petitioners insist that the Commission's finding is absurd because all retailers do not buy garments priced as high as those made by petitioners (petitioners' brief, p. 11, n. 12). Literally read, the Commission's finding is not true, but taken in its context it is apparent that the Commission was referring to retailers who cater to the fashion trade.

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SUPREME COURT OF THE UNITED STATES.

No. 537.—October Term, 1940.

Fashion Originators' Guild of America, Inc., et al., *vs.* Federal Trade Commission.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 3, 1941.]

Mr. Justice Black delivered the opinion of the Court.

The Circuit Court of Appeals, with modifications not here challenged, affirmed a Federal Trade Commission decree ordering petitioners to cease and desist from certain practices found to have been done in combination and to constitute "unfair methods of competition" tending to monopoly.[1] Determination of the correctness of the decision below requires consideration of the Sherman, Clayton, and Federal Trade Commission Acts.[2]

Some of the members of the combination design, manufacture, sell and distribute women's garments—chiefly dresses. Others are manufacturers, converters or dyers of textiles from which these garments are made. Fashion Originators' Guild of America (FOGA), an organization controlled by these groups, is the instrument through which petitioners work to accomplish the purposes condemned by the Commission. The garment manufacturers claim to be creators of original and distinctive designs of fashionable clothes for women, and the textile manufacturers claim to be creators of similar original fabric designs. After these designs enter the channels of trade, other manufacturers systematically make and sell copies of them, the copies usually selling at prices lower than the garments copied. Petitioners call this practice of copying unethical and immoral, and give it the name of "style piracy." And although they admit that their "original crea-

[1] 114 F. (2d) 80. Because of inconsistency between the holding below and that of the First Circuit Court of Appeals in Wm. Filene's Sons Co. *v.* Fashion Originators' Guild of America, 90 F. (2d) 556, we granted certiorari. 311 U. S. —.

[2] 26 Stat. 209, 15 U. S. C. § 1 *et seq.*; 38 Stat. 730, 15 U. S. C. § 12 *et seq.*; 38 Stat. 717, 15 U. S. C. § 41 *et seq.*

tions" are neither copyrighted nor patented, and indeed assert that existing legislation affords them no protection against copyists, they nevertheless urge that sale of copied designs constitutes an unfair trade practice and a tortious invasion of their rights. Because of these alleged wrongs, petitioners, while continuing to compete with one another in many respects, combined among themselves to combat and, if possible, destroy all competition from the sale of garments which are copies of their "original creations." They admit that to destroy such competition they have in combination purposely boycotted and declined to sell their products to retailers who follow a policy of selling garments copied by other manufacturers from designs put out by Guild members. As a result of their efforts, approximately 12,000 retailers throughout the country have signed agreements to "cooperate" with the Guild's boycott program, but more than half of these signed the agreements only because constrained by threats that Guild members would not sell to retailers who failed to yield to their demands—threats that have been carried out by the Guild practice of placing on red cards the names of non-cooperators (to whom no sales are to be made), placing on white cards the names of cooperators (to whom sales are to be made), and then distributing both sets of cards to the manufacturers.

The one hundred and seventy-six manufacturers of women's garments who are members of the Guild occupy a commanding position in their line of business. In 1936, they sold in the United States more than 38% of all women's garments wholesaling at $6.75 and up, and more than 60% of those at $10.75 and above. The power of the combination is great; competition and the demand of the consuming public make it necessary for most retail dealers to stock some of the products of these manufacturers. ~~And the power of the combination is made even~~ And the power of the combination is made even greater by reason of the affiliation of some members of the National Federation of Textiles, Inc.—that being an organization composed of about one hundred textile manufacturers, converters, dyers, and printers of silk and rayon used in making women's garments. Those members of the Federation who are affiliated with the Guild have agreed to sell their products only to those garment manufacturers who have in turn agreed to sell only to cooperating retailers."

textiles. The Guild employs "shoppers" to visit the stores of both cooperating and non-cooperating retailers, "for the purpose of examining their stocks, to determine and report as to whether they contain . . . copies of registered designs . . . ." An elaborate system of trial and appellate tribunals exists, for the determination of whether a given garment is in fact a copy of a Guild member's design. In order to assure the success of its plan of registration and restraint, and to ascertain whether Guild regulations are being violated, the Guild audits its members books. And if violations of Guild requirements are discovered, as, for example, sales to red-carded retailers, the violators are subject to heavy fines.[3]

In addition to the elements of the agreement set out above, all of which relate more or less closely to competition by so-called style copyists, the Guild has undertaken to do many things apparently independent of and distinct from the fight against copying. Among them are the following: the combination prohibits its members from participating in retail advertising; regulates the discount they may allow; prohibits their selling at retail; cooperates with local guilds in regulating days upon which special sales shall be held; prohibits its members from selling women's garments to persons who conduct businesses in residences, residential quarters, hotels or apartment houses; and denies the benefits of membership to retailers who participate with dress manufacturers in promoting fashion shows unless the merchandise used is actually purchased and delivered.

If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition.[4] From its findings the Commission concluded that the petitioners, "pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally" had prevented sales in interstate commerce, had "sub-

[3] In one instance a fine of $1500 was imposed, and the Guild notified its membership that a fine of $5000 would be assessed in case of future violation.

[4] Federal Trade Commission *v.* Beech-Nut Packing Co., 257 U. S. 441, 453-455. See 26 Stat. 209, 15 U. S. C. § 1 *et seq.*; 38 Stat. 730, 15 U. S. C. § 12 *et seq.*; 38 Stat. 717, 15 U. S. C. § 41 *et seq.* By 38 Stat. 734, 15 U. S. C. § 21, the Federal Trade Commission is expressly given authority to enforce the Clayton Act.

stantially lessened, hindered and suppressed" competition, and had tended "to create in themselves a monopoly." And paragraph 3 of the Clayton Act (15 U. S. C. § 14) declares "It shall be unlawful for any person engaged in commerce, ... to . . . make a sale or contract for sale of goods, . . . on the condition, agreement, or understanding that the . . purchaser thereof shall not use or deal in the goods, . . . of a competitor or competitors of the . . . seller, where the effect of such . . . sale, or contract for sale . . . may be to substantially lessen competition or tend to create a monoply in any line of commerce." The relevance of this section of the Clayton Act to petitioners' scheme is shown by the fact that the scheme is bottomed upon a system of sale under which (1) textiles shall be sold to garment manufacturers only upon the condition and understanding that the buyers will not use or deal in textiles which are copied from the designs of textile manufacturing Guild members; (2) garment manufacturers shall sell to retailers only upon the condition and understanding that the retailers shall not use or deal in such copied designs. And the Federal Trade Commission concluded in the language of the Clayton Act that these understandings substantially lessened competition and tended to create a monopoly. We hold that the Commission, upon adequate and unchallenged findings, correctly concluded that this practice constituted an unfair method of competition.[5]

Not only does the plan in the respects above discussed thus conflict with the principles of the Clayton Act; the findings of the Commission bring petitioners' combination in its entirety well within the inhibition of the policies declared by the Sherman Act itself. Section 1 of that Act makes illegal every contract, combination or conspiracy in restraint of trade or commerce among the several states; Section 2 makes illega every combination or conspiracy which monopolizes or attempts to monopolize any part of that trade or commerce. Under the Sherman Act "competition not combination, should be the law of trade." *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 129. And among the many respects in which the Guild's plan runs contrary to the policy of the Sherman Act are these: it narrows the outlets to which garment and textile manufacturers can sell

[5] Cf. Federal Trade Commission *v.* R. F. Keppel & Bro., 291 U. S. 304, 314; Standard Fashion Co. *v.* Magrane-Houston Co., 258 U. S. 346, 357.

and the sources from which retailers can buy (*Montague & Co.* v. *Lowry*, 193 U. S. 38, 45; *Standard Sanitary Manufacturing Co.* v. *United States*, 226 U. S. 20, 48-49); subjects all retailers and manufacturers who decline to comply with the Guild's program to an organized boycott (*Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600, 609-611); takes away the freedom of action of members by requiring each to reveal to the Guild the intimate details of their individual affairs (*United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 389); and has both as its necessary tendency and as its purpose and effect the direct suppression of competition from the sale of unregistered textiles and copied designs (*United States* v. *American Linseed Oil Co., supra*, at 389). In addition to all this, the combination is in reality an extra-governmental agency which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus "trenches upon the power of the national legislature and violates the statute." *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 242.

Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For "it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 16; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 237. It was, in fact, one of the hopes of those who sponsored the Federal Trade Commission Act that its effect might be prophylactic and that through it attempts to bring about complete monopolization of an industry might be stopped in their incipiency.[6]

Petitioners, however, argue that the combination cannot be contrary to the policy of the Sherman and Clayton Acts, since the Federal Trade Commission did not find that the combination fixed or regulated prices, parcelled out or limited production, or brought about a deterioration in quality. But action falling into these three categories does not exhaust the types of conduct banned by the Sherman and Clayton Acts. And as previously pointed out, it was the object of the Federal Trade Commission Act to reach not

[6] Federal Trade Commission *v.* Raladam Co., 283 U. S. 643, 647. And see remarks of Senator Cummins, Chairman of the Committee which reported the bill, 51 Cong. Rec. 11455, quoted by Brandeis, J., in Federal Trade Commission *v.* Gratz, 253 U. S. 421, 435.

merely in their fruition but also in their incipiency combinations which could lead to these and other trade restraints and practices deemed undesirable. In this case, the Commission found that the combination exercised sufficient control and power in the women's garments and textile businesses "to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries." While a conspiracy to fix prices is illegal, an intent to increase prices is not an ever-present essential of conduct amounting to a violation of the policy of the Sherman and Clayton Acts; a monopoly contrary to their policies can exist even though a combination may temporarily or even permanently reduce the price of the articles manufactured or sold. For as this Court has said, "Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital."[7]

But petitioners further argue that their boycott and restraint of interstate trade is not within the ban of the policies of the Sherman and Clayton Acts because "the practices of FOGA were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils growing from the pirating of original designs and had in fact benefited all four." The Commission declined to hear much of the evidence that petitioners desired to offer on this subject. As we have pointed out, however, the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts. For this reason, the principles announced in *Appalachian Coals, Inc.* v. *United States*, 288 U. S.

[7] United States *v.* Trans-Missouri Freight Association, 166 U. S. 290, 323.